

JUDGMENT OF THE COURT
OF 4 FEBRUARY 1981 ¹

**Commission of the European Communities
v Italian Republic**

“Failure of a State to fulfil its obligations — Implementation of a directive”

Case 45/80

*Member States — Obligations — Implementation of directives — Failure to fulfil —
Justification — Not permissible*
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.

In Case 45/80

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Gian Piero Alessi, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Ivo M. Braguglia, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

¹ — Language of the Case: Italian.

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under the EEC Treaty by not implementing Council Directive 76/767/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them (Official Journal 1976, L 262, p. 153),

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keefe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

The Directive cited above is one of the numerous harmonizing directives adopted by the Council with a view to the progressive elimination of the technical obstacles to intra-Community trade resulting from differences between national rules.

With a view to such harmonization and in order to achieve the free movement of pressure vessels within the EEC, that Directive lays down the principle of mutual recognition of inspection procedures and for that purpose introduces an EEC pattern approval procedure and an EEC verification procedure. The presence on a pressure vessel of the EEC mark showing that it has undergone the appropriate inspections indicates that it satisfies the relevant technical requirements and therefore makes it unnecessary, on the importation and placing into service of the vessel, to

repeat the inspections which have already been carried out.

The Directive constitutes a general framework within which the adoption of further directives is planned.

Finally, Article 24 provides that:

- “(1) Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.
- (2) Member States shall ensure that the texts of the provisions of national law which they adopt in the field covered by this Directive are communicated to the Commission.”

Consequently, the Member States were required to comply with the Directive before 30 January 1978.

Since the Italian Republic had neither adopted nor brought into force the necessary implementing measures within the period accorded to it, the Commission decided to initiate against it the procedure laid down by Article 169 of the Treaty for a declaration that the State had failed to fulfil an obligation under the Treaty.

By letter of 12 April 1978, the Italian Republic was given the opportunity to submit its observations in accordance with the first paragraph of Article 169.

No reply to that letter having been received, the Commission, after establishing the continued absence of national legal provisions for implementing the directives, delivered a reasoned opinion on 18 May 1979 stating that

“by failing to adopt the laws, regulations and administrative provisions necessary in order to comply with Council Directive 76/767/EEC of 27 July 1976 on pressure vessels and methods of inspecting them, Italy has failed to fulfil its obligations under that directive”.

That reasoned opinion was sent to the Italian Government by letter of 28 May 1979.

By a first memorandum dated 5 June 1979 the Italian Government replied through the intermediary of Italy's Permanent Representation that it had laid a draft law before its Parliament seeking legislative powers to adopt the necessary measures by way of regulations, but that the adoption of that draft law had not been possible owing to the premature dissolution of Parliament.

By a second memorandum dated 1 October 1979 Italy's Permanent Representation informed the Commission that implementation of the directive could be accomplished by means of regulations and assured it that those provisions would be adopted shortly.

Since the Commission received no further communication on this matter from the Italian Government and since the national provisions required in order to implement the directive had still not been adopted, the Commission brought the matter before the Court of Justice by lodging this application, which was received at the Court Registry on 14 February 1980.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare that the Italian Republic, by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive 76/767/EEC of 27 July 1976, on the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them, has failed to fulfil one of its obligations under the Treaty;
2. Order the defendant to pay the costs.

The *defendant* did not put forward any formal conclusions but stated that it

“hopes very shortly to obtain the necessary delegation of (legislative) powers so that in this case it may be considered that the object of the action has in substance been removed”.

III — Submissions and arguments of the parties

The *Commission* first analyses the objectives and the provisions of Directive 76/767/EEC and states that the Italian Republic did not adopt, within the period accorded to it, the measures needed to comply with the directive.

It then recalls that under Article 189 of the EEC Treaty, a directive is binding, as to the result to be achieved, upon each Member State and that, according to the

case-law of the Court of Justice (judgments of 26 February 1976 in Case 52/75 *Commission v Italy* [1976] ECR 277 and of 22 September 1976 in Case 10/76 *Commission v Italy* [1976] ECR 1359), this implies an obligation on the Member States to comply with the time-limits laid down by the Directive.

As the Court has also held (in Case 52/75, cited above, and in the judgment of 22 February 1979 in Case 163/78 *Commission v Italy* [1979] ECR 771) that a “Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits imposed by Community directives”, it is pointless for the defendant to attempt to justify its exceeding the 18-month time-limit accorded to it in order to bring into force the necessary implementing measures. Consequently, the Italian Republic has failed to fulfil one of its obligations under the Treaty.

The *Italian Republic* stresses that the draft law seeking legislative powers has again been laid before Parliament in the present session.

As the approval of this draft law was thought to be imminent, it seemed advisable “above all for reasons of legal certainty, not to implement by means of regulations certain provisions of Directive 76/767/EEC whose incorporation would not have required a law”.

The *Commission* states that the Italian Republic does not dispute either in fact or in law the arguments which it has put forward and that the defendant’s failure to fulfil its obligations is therefore established. It stresses the need to implement directives within the time-limits and the irrelevance, “as a means of

justifying the failures in question, of considerations relating to provisions or practices of internal law or to particular material circumstances existing at national level”.

Republic, represented by its Agent, A. Squillante, assisted by I. M. Braguglia, Avvocato dello Stato, presented oral argument at the sitting on 25 November 1980.

IV — Oral procedure

The Commission, represented by its Agent, G. P. Alessi, and the Italian

The Advocate General delivered his opinion at the sitting on 16 December 1980.

Decision

- 1 By application lodged at the Court Registry on 4 February 1980 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic, by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive 76/767/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them (Official Journal 1976, L 262, p. 153), has failed to fulfil one of its obligations under the Treaty.
- 2 Pursuant to Article 24 of Council Directive 76/767/EEC, the Member States were obliged to put into force the laws, regulations and administrative provisions needed in order to comply with that directive within 18 months of its notification. That period expired on 30 January 1978.
- 3 The Italian Government does not dispute the fact that it has not fulfilled that obligation. It explains that the delay in the incorporation of the Directive into the internal legal system arises from the fact that it considered it necessary to have adopted by the Italian Parliament a draft law giving it legislative powers to adopt the necessary measures by way of regulations. The draft law could not be adopted within the desired period owing to the premature dissolution of Parliament and it has again been laid before Parliament during the present session. The Italian Government then claims that,

whilst awaiting the approval of that draft law, which should be imminent, it preferred for reasons of expediency and legal certainty "not to bring partly into force by administrative measures certain provisions of Directive 76/767/EEC, the implementation of which would not have required a law".

- 4 Those circumstances cannot expunge the failure to fulfil its obligations with which the Italian Republic is charged. According to well-established case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.
- 5 It must therefore be held that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive 76/767/EEC, the Italian Republic has failed to fulfil one of its obligations under the Treaty.

Costs

- 6 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs if they have been asked for in the successful party's pleading.

Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive 76/767/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them (Official Journal 1976, L 262, p. 153) the Italian Republic has failed to fulfil one of its obligations under the Treaty;

2. Orders the defendant to pay the costs.

Mertens de Wilmars Pescatore Mackenzie Stuart Koopmans O'Keeffe
Bosco Touffait Due Everling

Delivered in open court in Luxembourg on 4 February 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL REISCHL

(see Case 44/80, p. 349)