

OPINION OF MR ADVOCATE GENERAL  
DA CRUZ VILAÇA  
delivered on 10 November 1987 \*

*Mr President,  
Members of the Court,*

**I — Subject-matter of the application and relevant legislation**

1. *A* — In this action, brought under Article 169 of the Treaty, the Commission asks the Court to declare that the Italian Republic has failed to fulfil its obligations under Article 10 of Regulation (EEC) No 2782/75 of the Council of 29 October 1975<sup>1</sup> on the production and marketing of eggs for hatching and of farmyard poultry chicks, and Articles 4 (1) and 6 of Commission Regulation (EEC) No 1868/77 of 29 July 1977<sup>2</sup> laying down detailed rules of application for the first-mentioned regulation.

2. *B* — Article 9 of Regulation No 2782/75 of the Council requires each hatchery to communicate monthly to the competent agency of the Member State the number of eggs placed in incubation, the number of chicks hatched and the number of chicks intended for actual use.

3. Article 10 of that regulation provides that the Member States are to communicate to the Commission, after the relevant data have been received and analysed, a monthly summary based on the data for the previous month, which is also to show the number of

chicks imported and exported over the same period.

4. The second sentence of Article 4 (1) of Commission Regulation No 1868/77 states that the summary 'shall be forwarded by Member States to the Commission each calendar month not later than four weeks after the end of the month to which the figures refer'. In addition, Article 6 of that regulation provides that 'before 30 January each year Member States shall send to the Commission statistics on the structure and activity of hatcheries'.

5. The purpose of the statistics which I have just described is to provide the Commission with the information it needs in order to forecast production trends and adopt appropriate measures for the management of the common organization of the market in the sector concerned.

6. *C* — In its reasoned opinion, dispatched on 24 April 1985, the Commission stated that, since August 1983, it had received only complete monthly data for January and February 1983 and some data for February, March and April 1984. The last annual statistical return it had received was for 1982.

7. In its application (12 May 1986), the Commission stated that it received in June 1985 the annual data for 1983 and the monthly data up to the end of December 1984, that is to say, in any event, after the one-month period laid down in the

\* Translated from the Portuguese.

<sup>1</sup> — Official Journal 1975, L 282, p. 100.

<sup>2</sup> — Official Journal 1977, L 209, p. 1.

reasoned opinion had expired. Subsequently, according to the Commission, further monthly data were communicated out of time including, in March 1986, the monthly data relating to external trade for the period from February 1983 to June 1984.

8. The Commission also alleged in its application that it had not yet received the annual statistical returns for 1984 and 1985 (which should have been forwarded to it on 30 January 1985 and 30 January 1986 respectively). It also complained that the monthly data were still consistently being returned approximately two months after the expiry of the period prescribed by Article 4 (1) of Regulation No 1868/77.

## II — The annual statistical returns

9. As is clear from the documents before the Court, it is not disputed that there were considerable delays, in relation to the periods laid down, in forwarding the annual returns for 1983, 1984 and 1985 to the Commission.

10. It is surprising, however, that, as the Italian Government stated in its reply to the application and as the Commission confirmed in its rejoinder, the returns for 1984 and 1985 had already been received by the Commission on 28 June 1985 and 4 April 1986 respectively, which is to say before it instituted proceedings.

11. At the hearing, the Agent for the Commission ascribed that mistake to a failure to communicate data which had already been processed by the departments concerned and passed on to the Member States.

12. Although it expressly acknowledged that there had been 'a delay in discharging'

the obligation imposed by the regulation, the Italian Government argued that the fact that the returns for 1984 and 1985 had been forwarded before the Commission instituted proceedings meant that the action was not well founded.

13. In my view, that is not the case.

14. The default with which the Italian Republic is charged consists in its failure to observe the periods prescribed by the regulation. That is explained quite clearly in paragraphs 3 and 7 of the application and was already apparent from the reasoned opinion because, in stating that since 10 August 1983 it had received only some of the statistical data which should have been forwarded to it, the Commission made it clear that all the remaining information up to that date was missing.

15. Nor is the defect in question remedied by the subsequent communication of the missing data. A 'belated fulfilment of its obligations' by a Member State still constitutes a failure to fulfil its obligations and the Court would therefore have to make a declaration to that effect.

16. Moreover, as the Court has frequently pointed out,<sup>3</sup> even if the default is remedied after the expiry of the time-limit prescribed by the second paragraph of Article 169 of the Treaty, there is still an interest in pursuing an action.

17. As the Court has consistently held, however, the scope of an action brought under Article 169 of the Treaty is limited by the preliminary administrative procedure and is defined in the reasoned opinion, so

<sup>3</sup> — See the judgment of 5 June 1986 in Case 103/84 *Commission v Italian Republic* [1986] ECR 1759, paragraph 8 of the decision.

that it may not be widened in the contentious proceedings.<sup>4</sup>

18. The reasoned opinion was delivered before the end of 1985, with the result that Italy could not have been in default with regard to the communication of the annual data for that year. Therefore it would appear that, for procedural reasons connected with Italy's rights of defence, the Court should refrain from declaring that Italy has failed to fulfil its obligations in that regard.

19. However, in my view, that is not necessarily the case. Although the events in question occurred after the reasoned opinion was delivered, they are of exactly the same nature as those which were referred to in that opinion and involved the same kind of conduct, and there is no particular reason connected with those events which is likely to affect the procedural position of the defendant.

20. Hence, by analogy with its judgment of 22 March 1983 in Case 42/82 *Commission v France* [1983] ECR 1013, at p. 1040, paragraph 20 of the decision), I believe that the Court can declare that the Italian Republic has failed to fulfil its obligations on account of the delay which occurred in forwarding the annual statistical data for 1983, 1984 and 1985.

21. That conclusion is not precluded by the Italian Republic's contention, made in response to the reasoned opinion, that the sector concerned is being completely reorganized owing to the need to adapt internal administrative structures.

22. The Court has consistently held, in similar cases, that a Member State may not

plead 'internal administrative difficulties in order to justify a failure to comply with obligations and time-limits arising from Community law.'<sup>5</sup> In particular, the Court has already pointed out<sup>6</sup> that 'practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations'. The Member State concerned may avail itself, under the institutional system of the Community, of 'the necessary means to ensure that its difficulties be given due consideration, subject to compliance with the principles of the common market' and, in those circumstances, 'the possible difficulties of implementation alleged by the defendant cannot be accepted as a justification'. That is so particularly where, as in this case, it is necessary to give effect to a regulation which has been in existence for over 10 years.

23. That consideration also applies to the next point, in which I propose to deal with the problem of the delay in forwarding the monthly summaries.

### III — The monthly summaries

24. A — The Italian Government does not deny that there was a consistent delay in forwarding the monthly summaries of approximately two months, compared with the four-week period referred to in Article 4 of Commission Regulation No 1868/77.

25. It denies, however, that it has failed to fulfil any of its obligations on that account.

<sup>4</sup> — See, for instance, the judgment of 15 January 1986 in Case 121/84 *Commission v Italy* [1986] ECR 107, paragraph 8 of the decision; judgment of 20 February 1986 in Case 309/84 *Commission v Italy* [1986] ECR 599, paragraph 14 of the decision; and judgment of 17 June 1987 in Case 154/85 *Commission v Italy* [1987] ECR 2717, paragraph 6 of the decision.

<sup>5</sup> — Judgment of 17 June 1987 in Case 394/85 *Commission v Italy* [1987], cited above, paragraph 12 of the decision; see also judgment of 20 February 1986 in Case 309/84 *Commission v Italy* paragraph 17 of the decision; judgment of 12 February 1987 in Case 69/86 *Commission v Italy* [1987] ECR 773, paragraph 7 of the decision.

<sup>6</sup> — Judgment of 7 February 1979 in Case 128/78 *Commission v United Kingdom* [1979] ECR 419, 429, paragraphs 10 and 11 of the decision.

In its view, the four-week period cannot be regarded as a rigid and peremptory time-limit but is merely a typical indication of the time needed, on average, to discharge the obligation imposed by Article 10 of Regulation No 2782/75 of the Council, which does not prescribe a rigid period. According to the Italian Government, the delays in question occurred within reasonable limits.

26. The Italian Government also maintains that observance of the period in question presupposes compliance on the part of the hatcheries with the obligation imposed on them by Article 9 of Regulation No 2784/75 to communicate their data in due time, and it rejects an interpretation of Article 4 of Regulation No 1868/77 to the effect that the Member State is responsible for any delay on the part of the hatcheries, as in this case, in forwarding those data to it.

27. *B* — The arguments relied upon by the Italian Government would not appear to be well founded.

28. To begin with, it is clear from the actual wording of Article 4 of Regulation No 1868/77 that the period prescribed therein is a fixed one and its purpose is not merely to provide guidance.

29. As Article 189 of the EEC Treaty lays down, a regulation 'shall be binding in its entirety' and is not acceptable that 'a Member State should apply [its provisions] in an incomplete or selective manner'.

30. On the other hand, the period laid down is quite consistent with Article 10 of Regulation No 2782/75 of the Council. According to that provision, the monthly

summaries relate to the statistical data for the previous month. That regulation does not clearly indicate either the period within which such data are to be communicated or the date from which that period starts to run, nor did it in fact need to do so as it is a basic regulation. Those matters are set out, as is appropriate, in the Commission's implementing regulation which provides that the data are to be communicated within a four-week period and that the period starts to run from the end of the previous month.

31. Moreover, it is quite apparent that the wording of Article 10 of Regulation No 2782/75 itself points to the interpretation which subsequently found expression in the Commission's implementing regulation. It is difficult to perceive any difference between forwarding to the Commission a monthly summary based on data for the previous month and communicating data for each month in the four weeks following the end of each month.<sup>7</sup> Furthermore, Article 10 refers to 'data for the previous month' and not to 'data forwarded to the national authority in the previous month'. As the Agent for the Commission pointed out at the hearing, the latter solution would have unacceptable consequences inasmuch as it would render the statistical data irrelevant and make the processing thereof extremely awkward, and not even the Italian Republic has been prepared to adopt such an approach. It can therefore be stated, in my view, that, even in the absence of an implementing regulation, a reasonable interpretation of Article 10 of Regulation No 2782/75 would lead to the same conclusion as that which must without a shadow of doubt be reached in the light of the wording of Article 4 of Regulation No 1868/77.

32. According to the Commission, the justification for imposing the period in question

<sup>7</sup> — Judgment of 7 February 1979 in Case 128/78 *Commission v United Kingdom*, cited above, paragraph 9 of the decision.

consists in the fact that the market must be monitored as quickly and as accurately as possible in view of the short marketing period for poultry in order to make available to the traders concerned data enabling them to respond in due time to market trends and thus to permit the common organization of the market in question, which is based on that response, to function effectively.

33. The Commission also claims that observance of the period by the other Member States has not given rise to any problems, which must militate in favour of the view that the period is a reasonable one and, in any event, demonstrates that compliance with that period is not an impossible task.

34. C — However, what are we to make of the argument that compliance with the period prescribed by Article 4 of the Commission's regulation depends on fulfilment by the hatcheries of the obligation, imposed on them by Article 9 (1) of the Council's regulation, concerning the communication of data?

35. The Italian Government considers that, as Article 9 (1) is directed at traders, the Member State itself cannot be held responsible for their failure to comply with the period imposed on them.

36. That is not, in my view, the best approach to the problem.

37. The obligation concerning the communication of data, which is imposed on Member States by Article 10 (1) of Regulation No 2782/75 and Article 4 (1) of Regulation No 1868/77, is peremptory and unequivocal and requires them to adopt the measures necessary to comply with it.

38. On the assumption that the prior communication of the data referred to in Article 9 is an ancillary obligation imposed on the hatcheries, it is for the Member States to ensure that the hatcheries comply with it on time.

39. In that regard the Commission has drawn attention to Article 16 of Regulation No 2782/75, according to which observance of the provisions of the regulation is to be checked by the agencies appointed by each Member State, and to Article 5 of Regulation No 1868/77 which provides that the Member States are to take 'all necessary measures to impose penalties for any infringement of the regulations on the production and marketing of eggs for hatching and of farmyard poultry animals', that is to say the two regulations whose interpretation is at issue.

40. In any event, Article 5 of the EEC Treaty requires the Member States to take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations... resulting from action taken by the institutions of the Community', and they are to facilitate 'the achievement of the Community's tasks'.

41. Moreover, the Commission made it clear at the hearing that, as the system pursues statistical rather than financial or fiscal objectives, it would always interpret the obligation concerning the communication of data in a reasonable manner and not treat as irregular any communication from which certain data had been omitted by reason of the fact that, from time to time, the producers had not supplied such data to the Member State concerned on time.

42. In those circumstances, the existence of an obligation imposed directly on traders would not appear to affect the peremptory

nature of the obligation, which is binding on the Member States, to comply with the machinery of, and the periods laid down by, Article 10 of Regulation No 2782/75 and Article 4 of Regulation No 1868/77.

43. *D*— At the hearing the Italian Republic contended that, in those circumstances, there had been an unacceptable alteration of the subject-matter of the application since the Commission had charged Italy only with infringing Article 10 of Regulation No 2782/75 and Articles 4 (1) and 6 of Regulation No 1868/77, and not with infringing the obligations relating to supervision and verification imposed upon Italy by Article 9 of Regulation No 2782/75 and Article 5 of Regulation No 1868/77.

44. That argument cannot be upheld. The default with which Italy is charged is non-compliance with the periods prescribed by the combined provisions of Article 10 of Regulation No 2782/75 and Articles 4 and 6 of Regulation No 1868/77. It was the Italian Government which, in its defence, at once defended itself by pleading delays on

the part of the hatcheries, which, in its view, could not be imputed to the Italian authorities. In referring to the supervisory obligations imposed on the Member States, the Commission merely sought to demonstrate that the Italian Republic's defence was not well founded, without in any way impairing Italy's procedural rights. In any event, the fact remains that those supervisory obligations flow, as is the nature of things, from the need to comply with the primary obligation, and it is not therefore surprising that disregard of the supervisory obligations may underlie a failure to comply with the primary obligation.

45. In any event, this case is not concerned with establishing whether Article 16 of Regulation No 2782/75 or Article 5 of Regulation No 1868/77, or even Article 5 of the EEC Treaty, has been infringed; it is concerned only with the question whether the periods prescribed by other provisions have been infringed, and it makes no difference for those purposes whether or not the measures in question contain express provisions regarding the supervisory obligations of the Member States.

#### IV — Conclusion

46. In the light of all the foregoing considerations, I suggest that the Court declare that, by failing to communicate to the Commission within the prescribed periods the statistical data referred to in Article 10 (1) of Regulation No 2782/75 of the Council and in Articles 4 (1) and 6 of Commission Regulation No 1868/77, the Italian Republic has failed to fulfil its obligations under those provisions.

47. The Italian Republic should therefore be ordered to pay the costs, in accordance with Article 69 (2) of the Rules of Procedure.