

2. Orders Ireland to pay three quarters of the costs of the Commission of the European Communities and to bear its own costs;
3. Orders the Commission of the European Communities to bear one quarter of its own costs.

**Judgment of the Court (Seventh Chamber) of 29 October 2009 —
Commission v Italy**

(Case C-249/08)

(Failure of a Member State to fulfil obligations — Common fisheries policy — Conservation of resources — Control system in the fisheries sector — Regulation (EC) No 894/97 — Article 11 — Regulation (EEC) No 2241/87 — Article 1(1) and (2) — Regulation (EEC) No 2847/93 — Articles 2(1) and 31(1) and (2) — Prohibition of driftnets — Lack of an effective system of monitoring to ensure compliance with that prohibition)

1. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 28)*
2. *Fisheries — Conservation of the resources of the sea — Control measures — Obligations of the Member States (Art. 10 EC; Council Regulations No 2241/87, Art. 1(1), and No 2847/93, Arts 1, 2 and 31(1) and (2)) (see paras 30-33)*
3. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on Commission — Production of evidence showing failure — Incumbent on Member State concerned to refute evidence (Art. 226 EC) (see paras 45, 46)*
4. *Fisheries — Conservation of the resources of the sea — Control measures — Member States' duty to take penal or administrative action (Council Regulations No 2241/87, Art. 1(2), and No 2847/93, Art. 31(1) and (2)) (see paras 59-64, 70-72, 77)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1) and of Articles 2 and 31(1) and (2) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) — Inspection and control of fishing vessels and their activities — Measures to be taken in the case of non-compliance with the rules in force — Provisions relating to the retention on board or use of driftnets.

Operative part

The Court:

1. Declares that by failing to control, inspect and survey in a satisfactory manner fishing activities within its territory and within the waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of driftnets, and by not ensuring in a satisfactory manner that appropriate measures are taken against those responsible for infringements of the Community rules on the retention on board and use of driftnets, in particular by the imposition of dissuasive penalties on those persons, the Italian Republic has failed to fulfil its obligations under Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities and Articles 2(1) and 31(1) and (2) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, as amended by Council Regulation (EC) No 2846/98 of 17 December 1998;
2. Orders the Italian Republic to pay the costs.