

the effect of the excessively long period of 120 days prescribed by the Italian authorities for complying with a request to change prices is that the principle that economic operators must be free to fix maximum prices, enshrined in Article 9(1) of Directive 95/59/EC, is, in practice, to some extent undermined.

<sup>(1)</sup> Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40).

<sup>(2)</sup> Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1972 L 303, p. 1).

**Action brought on 22 December 2008 — Commission of the European Communities v Italian Republic**

(Case C-572/08)

(2009/C 55/22)

*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: A. Aresu and W. Mölls, acting as Agents)

*Defendant:* Italian Republic

**Forms of order sought**

— A declaration that the Italian Republic has failed to fulfil its obligations under Article 90 EC, by conferring a tax concession on regenerated lubricating oil produced from used oil collected in Italy, but refusing to confer the same concession on regenerated lubricating oil produced from used oil collected in other Member States (in accordance with Circular 24/D of 5 May 2004 of the Italian Revenue Authority and Article 1(116) of Law No 266 of 23 December 2005, as interpreted by Article 62 of the *Testo unico delle disposizioni legislative concernenti le imposte sulla produzione e sui consumi e relative sanzioni penali e amministrative* (Consolidated Text of Legislative Provisions relating to duties on production and consumption and related criminal and administrative penalties) approved by Decree No 504 of the President of the Republic of 26 October 1995);

— An order that the Italian Republic is to pay the costs.

**Pleas in law and main arguments**

The Commission complains that the Italian authorities are operating a system of tax concessions on regenerated lubricating oil which favours national production to the detriment of that from other Member States, in clear breach of the principle of non-discrimination, which in the field of taxation is laid down in Article 90 EC.

That system reproduces a previous regime of tax concessions already condemned by the Court of Justice in 1980, and the Italian Republic's arguments in favour of the new system cannot justify such a choice.

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*Language of the case: Italian*

**Parties**

*Applicant:* Commission of the European Communities (represented by: D. Recchia, acting as Agent)

*Defendant:* Italian Republic

**Form of order sought**

— Declare that the Italian Republic has failed to fulfil its obligations under Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 13 and 18 of Directive 79/409/EEC:

— by failing to transpose Directive 79/409/EEC <sup>(1)</sup> into Italian law in a manner which is wholly in compliance with that directive;

— by failing to transpose Article 9 of Directive 79/409/EEC into Italian law in a manner which ensures that the derogations adopted by the competent Italian authorities comply with the conditions and requirements laid down in that provision;

— Order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The Commission argues that the Italian legislation does not fully transpose Directive 79/409/EEC into Italian law in a manner that is in compliance with that directive:

**Article 2:** not transposed;

**Article 3:** not transposed in compliance with the directive, owing to the failure to transpose Article 2;

**Article 4(4):** not transposed;

**Article 5:** non-transposition of the prohibition of the deliberate destruction of nests and eggs, or of deliberate damage thereto, and of the prohibition of the deliberate disturbance of the species of bird protected by the directive;

**Article 6:** non-transposition of the prohibition on transport for sale;