

REPORT FOR THE HEARING  
delivered in Case 429/85 \*

I — Facts and procedure

1. Directive 79/831 amended for the sixth time the 1967 basic directive. It introduced, *inter alia*, an obligation to notify the competent authorities of the Member States before such substances are placed on the market (Article 5) and laid down the purpose of and procedure for such notification and the powers of the competent authorities (Articles 6, 7 and 8).

2. Article 5 (1) of Directive 79/831 provides that no later than 18 September 1981 the Member States are to implement the laws, regulations and administrative provisions necessary to comply with Directive 67/548, as amended, and are to inform the Commission thereof.

3. The measure intended to transpose Directive 79/831 into Italian law is Decree No 927 of the President of the Republic of 24 November 1981 (*Gazzetta Ufficiale della Repubblica Italiana* No 50 of 20 February 1982).

4. In a letter dated 21 December 1983 the Commission took the view that the obligations imposed by Directive 79/831 had not been fulfilled and pursuant to the first paragraph of Article 169 of the EEC Treaty requested the Italian Government to submit its observations.

5. Those observations were forwarded to the Commission by Italy's Permanent Representation to the European Communities in a letter dated 16 February 1984.

The information supplied by the Italian Government led the Commission to take the view that only the third and fourth paragraphs of Article 8 of Decree 927/1981 did not comply with Article 8 (1) of the directive.

6. In consequence, the Commission took the view that there was a failure in that respect to fulfil the obligations imposed by the directive and on 9 November 1984 delivered a reasoned opinion in which the Italian Republic was requested to adopt the provisions needed to ensure full and proper application of the provisions of the directive within a period of two months.

7. The Italian Government replied to that reasoned opinion in a letter dated 27 December 1984 in which it stated *inter alia* that:

the practice followed by the Italian authorities in applying the third and fourth paragraphs of Article 8 of Decree 927/1981 are fully in accordance with what the Commission says in its reasoned opinion, and

in any event the Italian Government had undertaken to make the necessary amendments to its legislation in order to bring it into line with the Community rules.

That intention was confirmed on the Italian side in a telex message of 6 July 1985 in which it was stated that the amendment to

\* Language of the Case: Italian.

the decree in issue would require the adoption of a new presidential decree which would involve a procedure normally requiring 'quite a long time'.

8. To the Commission's knowledge, the amending decree thus referred to has not been adopted by the Italian Government. In those circumstances, the Commission lodged this application, which was registered at the Court on 23 December 1985.

9. 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

1. The Commission claims that the Court should:

(a) Declare that by failing to adopt within the prescribed period the measures needed to implement in full Council Directive 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(b) Order the Italian Republic to pay the costs.'

2. The Italian Government has not set out its conclusions.

## III — The relevant provisions

1. The first paragraph of Article 6 (1) of Directive 67/548 of 27 June 1967 (Official Journal, English Special Edition 1967, p. 234), as amended by Directive 79/831, provides that:

'... any manufacturer or importer into the Community of a substance within the meaning of this directive shall be required to submit to the competent authority... a notification including: ...'

2. The first paragraph of Article 8 (1) provides that:

'The substances listed below shall be considered as having been notified within the meaning of this directive when the following conditions are fulfilled:

...

substances placed on the market in quantities of less than one tonne per year per manufacturer provided that the manufacturer announces ...'

3. The third and fourth paragraphs of Article 8 (3) of Decree 927 of the President of the Italian Republic provide that:

'The substances listed below shall be deemed to be notified when the following conditions are satisfied:

...

substances placed on the market in quantities of less than one tonne per year per manufacturer or importer provided that this person announces ...'

#### IV — Submissions and arguments of the parties

1. The Commission contends that the addition of the words 'or importer' extends the exception in the directive.

2. It states that one of the fundamental elements of the new rules relating to the marketing of dangerous substances introduced by Directive 79/831 is the obligation to notify such substances imposed on all manufacturers or importers in the Community of those substances (Articles 6 and 7). Since, however, it is a complex and onerous procedure, the Community legislature decided, for the sake of easy administration, to provide for a number of exceptions to the general rule requiring notification, details of which are given in Article 8 (1) of the directive. They include the exception in the fourth indent of Article 8 (1) which concerns the 'mini-notification' or 'restricted notification' procedure, which allows the manufacturer to market small quantities of a substance after notifying the competent authorities thereof.

3. In the Commission's view, that exception to a general requirement has to be interpreted strictly. It is limited to one tonne per annum per manufacturer. The contested provision in the Italian decree allows that restriction to be circumvented since a foreign manufacturer may, on the basis of that provision, use several importers, each of whom may claim the right to market up to one tonne per annum of a particular substance without notification.

4. The Commission is aware that the Council declaration relied on by the Italian Government refers to the manufacturer and the importer. It argues, however, that the

declaration must be interpreted as meaning that the manufacturer leaves it to the importer to give notification in the name of the manufacturer and on his behalf, it being understood that the quantity of substance to be marketed relates solely to the manufacturer.

5. Finally, the Commission contends that, according to the established case-law of the Court, the administrative practice of the Italian authorities as regards the application of the contested provision in accordance with the requirements of the directive is not sufficient to constitute proper compliance with the obligations arising under the directive.

6. The Italian Government states that the addition concerning the importer was made:

- (a) in the light of the Council's declaration entered in the minutes which refers to the manufacturer and the importer, and
- (b) in order to avoid any discrimination between manufacturers and importers.

7. It contends that hitherto the national provision has been applied in a way which fully accords with the Commission's requirements:

- (a) by requiring that the person giving notice should state the other countries of the Community in which he intends to market the substance it is possible to prevent a manufacturer from using several importers to market various quantities of the substance at different

times so as to exceed the limit of one tonne per manufacturer throughout the Community;

- (b) the contested national provision has not been, and will not be, applied so as to enable the manufacturer to circumvent the limit of one tonne by using several importers;
- (c) in the case of importation, it has been required and will continue to be required that the manufacturer's name should be stated so that the importer is

treated as acting in the manufacturer's name and on his behalf.

8. The Italian Government admits, however, that, from a formal point of view, the national provision does not comply with the directive. As already stated during the procedure prior to the action, a decree amending the provision at issue should be adopted as soon as possible in order to put an end to the infringement.

C. Kakouris  
Judge-Rapporteur