

JUDGMENT OF THE COURT
17 January 1991 *

In Case C-334/89,

Commission of the European Communities, represented by G. Marengo, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by I. M. Braguglia, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that by failing to adopt within the prescribed period the measures needed to implement in national law Commission Directive 85/411/EEC of 25 July 1985 amending Council Directive 79/409/EEC on the conservation of wild birds (Official Journal 1985, L 233, p. 33), or at least by failing to inform the Commission of any measures adopted, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

* Language of the case: Italian.

THE COURT

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges,

Advocate General: W. Van Gerven

Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 11 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 November 1990,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 30 October 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt within the prescribed period the measures needed to implement in national law Commission Directive 85/411/EEC of 25 July 1985 amending Council Directive 79/409/EEC on the conservation of wild birds (Official Journal 1985, L 233, p. 33), or at least by failing to inform the Commission of the measures adopted, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.
- 2 The first subparagraph of Article 4(1) of Directive 79/409 on the conservation of wild birds requires the Member States to adopt special conservation measures concerning the habitat of the species mentioned in Annex I to the directive in order to ensure their survival and reproduction in their area of distribution. According to the final subparagraph of that provision, Member States are to

classify in particular the most suitable territories in number and size as special protection areas for the conservation of those species.

- 3 Directive 85/411 replaced Annex I to Directive 79/409. The new Annex I enumerates 144 species in respect of which special conservation measures must be adopted. Article 2 of Directive 85/411 provides that the Member States are to bring into force implementing provisions before 31 July 1986 and are to inform the Commission thereof forthwith.
- 4 According to the Commission, the Member States must establish special protection areas and adopt special conservation measures in respect of each of the species referred to in Annex I to the directive. It argues that if a Member State considers the requirements of a directive to be inapplicable on the ground that certain factual conditions are not fulfilled, it is for that Member State to justify the absence of implementing measures. As regards this case the Commission states that the obligations to which Annex I to the directive relates must be implemented by identifying special protection areas for each species and by adopting special conservation measures.
- 5 The Italian Government points out that the new Annex I established by Directive 85/411 lists a large number of species which do not occur in Italian territory. In its view, it was reasonable to expect the Commission to indicate which species must be the subject of special conservation measures in Italy. Accordingly, in the absence of any indications of that kind, it was not required to adopt and consequently to notify measures implementing the directive as regards the species referred to in Annex I.
- 6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 7 According to the specific scheme of protection established for the bird species listed in Annex I to the directive, each Member State is under an obligation, by

virtue of Article 4(1) of the directive, to adopt the special protective and conservation measures required for those species. It must then inform the Commission of the manner in which it has discharged those obligations.

- 8 As the Court emphasized in its judgment of 11 July 1987 in Case 262/85 (*Commission v Italy* [1987] ECR 3073), a faithful transposition becomes particularly important in a case such as that of Directive 79/409 in which the management of the common heritage is entrusted to the Member States in their respective territories.
- 9 It is clear from that allocation of responsibilities that it is for the Member States to identify the species which must be the subject of the special protective and conservation measures required by Article 4(1) of the directive. Moreover, the Member States are better placed than the Commission to ascertain which of the species listed in Annex I to the directive occur in their territory.
- 10 The Italian Government has not, either during or before the proceedings before the Court, reported any special conservation measures adopted by it at national level in respect of the species listed in that annex. Nor has it made any claim to the effect that none of the species in question occurs in Italian territory. Accordingly, it should have established special protection areas and adopted special conservation measures in respect of the species present on its territory.
- 11 It must therefore be held that by failing to adopt within the prescribed period the measures needed to implement in national law Commission Directive 85/411 of 25 July 1985 amending Council Directive 79/409 on the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

- ¹² Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Italian Republic has been unsuccessful, 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 measures needed to implement in national law Commission Directive 85/411/EEC of 25 July 1985 amending Council Directive 79/409/EEC on the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;
- (2) Orders the Italian Republic to pay the costs.

Due	Mancini	O'Higgins	Rodríguez Iglesias
Díez de Velasco	Slynn	Kakouris	Joliet
			Schockweiler

Delivered in open court in Luxembourg on 17 January 1991.

J.-G. Giraud
Registrar

O. Due
President