OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 28 APRIL 1982 [1]

Mr President,
Members of the Court,

1. Introduction

The Commission claims that the Court should declare that, by failing to adopt within the prescribed period the measures needed in order to comply with Council Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies, the Italian Republic has failed to fulfil one of its obligations under the Treaty.

2. The course and object of the procedure

The Italian Government defends itself in these proceedings in particular by stating that no implementing legislation was necessary in view of the fact that the aims of the directive are, in substance, apart from a few small gaps, met by three laws a number of inter-union agreements. The fact that the Italian Government nevertheless introduced a draft law into Parliament in order to comply with the directive does not, in its opinion, mean that it would not have complied with the directive without that draft law. The aim of the draft law is merely to consolidate the provisions on the subject. The Italian Government accuses the Commission of wrongly drawing the conclusion that because the draft law is not yet operative, Italy had failed to fulfil its obligations under the Treaty. In its opinion, the Commission set out from the formalistic standpoint that the directive can be complied with only by the adoption of implementing measures, irrespective of whether the provisions of directives are already complied with in the legal order of a Member State. It contends that the Commission inferred purely from the fact that the implementing measures were not put into effect that the Italian Government had not complied with the obligations arising out of the directive, without ascertaining whether the aims of the directive were already ensured in the Italian legal order. In view of this controversy, I consider that it is right first to examine the course of the procedure and the object of the action. So far as the course of the procedure is concerned, I would also refer to the report for the hearing.

From the reasoned opinion which the Commission delivered to the Italian Government on 23 October 1979, it is clear first, from Section III thereof, that because the Italian Government had not up to that date communicated to it what measures had been taken, the Commission inferred that no measures had been adopted. Next the Commission stated under a separate Section IV that there were no specific rules in the Italian legal order at that time relating to collective redundancies. It further pointed out that there was an inter-union agreement of 5 May 1965 in relation to the industrial sector, laying down a

1 — Translated from the Dutch.

procedure of consultation with workers' representatives, and that a similar agreement applied in the transport sector. There was, however, no general obligation, also applied to sectors other than industry and transport, to inform the public authorities. In that regard it referred to Law No 675/1977 and in particular to Article 25 thereof, in which there was an obligation to inform the public authorities, but which did not comply with the directive, since they were not obliged, but only empowered, to intervene at the parties' request as mediators in search of possible solutions. On that basis, it finally reached the conclusion that the Italian legal order was not compatible with the provisions of the directive, and that the Italian Republic had therefore failed to fulfil its obligations.

It is also not clear from the subsequent observations to the Court that the Commission reached that conclusion by another route. In particular I would also refer to the Commission's answer to the Court's supplementary question, in which the former states its conclusion somewhat more fully. In addition, the Commission's representative again stated during the oral hearing, in answer to questions from the Court, that the Commission had actually compared the existing rules in Italy with the obligations laid down in the directive. If it had found that they were compatible therewith, it would not have brought the matter before the Court. It was also indicated by the Commission that it had proceeded on the assumption that implementing measures were not *per se* necessary in order to comply with a directive. I would agree with that in its entirety. It is generally stated in the final article of a directive that the Member State must bring into force within a specified period the laws, regulations and administrative provisions needed in order to comply with the directive. I would agree that further measures cannot be regarded as necessary if the legal order already complies with the provisions of the directive. In that regard I would point out, however, that the requirements of the directive must be unequivocally complied with, since otherwise it would not be possible to achieve the desired uniform result in the various legal orders in relation to the directive, with regard to which only the form and methods of implementation are left to the Member States.

At all events, it follows from the above that the Commission has brought this action before the Court because it is of the opinion that the Italian Republic did not adopt within the prescribed period the measures needed in order to comply with the directive, since the Italian legal order does not fulfil the requirements of the directive.

3. The contents of the directive

In order to be able to assess the Commission's application more precisely, some attention should be paid to the content of and obligations contained in the directive in question. It should first be stated that the directive was issued on 17 February 1975 and that the period prescribed in Article 6 (1) for its implementation expired on 19 February 1977, five years ago.

The directive is issued in particular on the basis of Article 100 of the EEC Treaty. In the first recital in the preamble it states that "it is important that greater protection should be afforded to workers in the event of collective redundancies". In the

following recitals in the preamble, it is stated *inter alia* that the differences between the provisions in force in the Member States "can have a direct effect on the functioning of the common market".

The directive contains four sections:

Section I: Definitions and scope (Article 1);

Section II: Consultation procedure (Article 2);

Section III: Procedure for collective redundancies (Articles 3 and 4);

Section IV: Final provisions.

In Article 1 a precise definition is given of the meaning of collective redundancies for the purposes of the directive: namely, dismissals effected by an employer for one or more reasons not related to the individual workers concerned, involving a fixed number of workers within a fixed period. In this regard the article provides two possible variations for the more precise determination of the number of workers, according to the choice of the Member States. Next, Article 1 (2) lays down the four cases to which the directive is not to apply. Article 2 provides for an obligatory consultation procedure with the workers' representatives, where an employer is contemplating collective redundancies, with a view to reaching an agreement. It also lays down minimum requirements as to the content of such consultations. Articles 3 and 4 contain *inter alia* an obligation for employers to notify the competent public authority in writing of any projected collective redundancies. The redundancies cannot take effect for a specified period after such notification. That period should be used by the public authority to seek solutions.

In conclusion the final articles (Articles 5 to 8) contain, in addition to the procedural obligations as to information which are also relevant in this case and the usual provision concerning the period prescribed for implementation, a provision in Article 5 which permits a Member State to apply provisions which are more favourable to workers.

In essence, the directive may be summarized as follows:

first, it lays down in detail the meaning of collective redundancies and determines in a negative sense the directive's field of application by stating four situations in which the directive is not applicable;

next it lays down the various obligations for employers where there is question of collective redundancies to initiate procedures involving consultation and information with the workers' representatives and the public authority.

4. The Italian Government's defence

So far as the Italian Government's defence is concerned, I would refer especially to its written observations on the reasoned opinion. In the oral procedure it referred particularly to its defence set out in those observations.

In these proceedings it seems to me to be crucial first to ascertain how far the concept of collective redundancies, including the field of application thereof, as defined in the directive, appears in the Italian legal order.

In its defence, the Italian Government refers to a Law No 604 of 15 July 1966, entitled "Norme sui licenziamenti

individuali". In that regard it states that, since Article 11 expressly excludes collective redundancies from the law's application, the Corte di Cassazione [Court of Cassation] has given a specific interpretation to the concept of collective redundancies. The Corte di Cassazione has interpreted that concept in accordance with the provisions thereon contained in the inter-union agreements. As a result, certain categories of collective redundancies, which may fall within Article 3 of the law, are not excluded from the application of the law. Moreover, the protection of workers goes further than is provided for in the directive, since redundancies of that kind are to be regarded as individual redundancies. It is, however, the Italian Government itself which speaks of "une catégorie déterminée de licenciements ..." [a specific category of redundancies] in the second paragraph on page 4 of its written reply to the reasoned opinion.

In my opinion, it is clear from that without any doubt that the Italian legal order does not contain the concept of collective redundancies as such, as provided for in the directive. At most it can in my opinion be stated that it contains that concept only in the negative sense, inasmuch as the meaning is apparently determined by the Corte di Cassazione in order subsequently to exclude it from the application of the law.

The Italian Government has raised no other submissions to pursuade the Court that the concept of collective redundancies in fact appears in its legal order.

As both the obligations provided for by the directive, that is to say the procedure for consultation of workers' representatives and the procedure for notification of the public authority, can arise only if there is a question of collective redundancies, it is clear that it is most important that the concept of collective redundancies as defined in the directive should be adopted into the legal order. At the risk of labouring the point, I would add that the inter-union agreements on which Italy relied first do not apply to all the employers covered by the directive or contain all the obligations contained in the directive. Secondly, with regard to Article 100 of the EEC Treaty and Article 6 of the directive, they cannot be regarded as "methods" within the meaning of Article 189 of the Treaty or as "laws, regulations of administrative provisions" within the meaning of Article 6 of the directive.

In my opinion, for that very reason it would be possible to omit a comparison of the two other laws named by the Italian Government in order to demonstrate that in fact the workers' representatives and the public authority are in fact notified by employers of projected redundancies. In this regard it relies on Law No 164 of 20 May 1974, providing for a pay supplement in certain cases (provvedimenti per la garanzia del salario) and Law No 675 of 12 August 1977 on coordinating measures concerning *inter alia* industrial policy and reorganization. However, the Italian Government itself displays some uncertainty as to whether those procedures are binding, in so far as it writes that the minister's intervention is both obligatory and optional. Moreover, there is another ground on which it seems that the requirements of the directive are not fulfilled. The Italian Government itself observes that there are partial gaps in the

non-industrial sectors, *inter alia* agriculture and trade, with regard to the obligations under the directive. That is incompatible with the clear provisions of the directive with regard to the field of application, because these sectors do not fall within the exceptions contained in Article 1.

5. Conclusions

For the foregoing reasons, the position is in my opinion as follows: in the Italian legal order there is no concept of collective redundancies as provided for in the directive; moreover, the laws in which a certain duty with regard to information and consultation is provided, do not apply in their entirety to all economic areas, as required by the directive; finally the minister's intervention is not solely obligatory in character.

From the well-established case-law of the Court, it follows that obligations under a directive should be strictly complied with. The directive in question itself mentions the fact that differences between the obligations in force in the Member States can have a direct effect on the functioning of the common market.

By virtue of Article 189 of the EEC Treaty, a directive is to be binding on the Member States as to the result to be achieved. The results which must be achieved depend on the content of the directive.

The aim of the directive in this case is that in the laws of the Member States a specific concept of collective redundancies should be applied, with additional obligations as to consultation and information coupled therewith.

From the foregoing, it is in my opinion established that the Italian Republic has not complied with those obligations under the directive.

In these proceedings it is therefore unnecessary for me to consider the question whether the Commission is at the same time incorrect in taking the view, on the basis of Article 5 of the EEC Treaty and the obligations as to information contained in Articles 6 (2) and 7 of the directive, that where a Member State alleges that its existing law is compatible with a harmonization directive, it must on its own initiative demonstrate the fact within the periods prescribed in the directive by means of a detailed analysis of the law in force.

Therefore I conclude that in the foregoing there is sufficient evidence that in the Italian legal order the requirements of the directive on collective redundancies are not at present complied with and that therefore the Commission's application should be granted. Moreover, the Italian Republic should be ordered to pay the costs.