Court of Justice of the European Communities: Italy Condemned for Failure to Implement Directive 97/36/EC

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Roberto Mastroianni
RTS Radio Télévision Suisse, Geneva

On 14 June, the Court of Justice of the European Communities in Luxembourg held that Italy has failed to fulfil its obligations under the EC Treaty by not adopting the necessary measures to transpose Directive 97/36/EC into its national law.

Directive 97/36/EC was adopted by the European Parliament and the Council on 30 June 1997. It amends the "Television Without Frontiers" Directive (89/552/EEC of 3 October 1989), introducing, inter alia, a revision of the principle whereby only the laws of the State of establishment apply to broadcasting activities taking place in the EC (Art. 2a), different rules on television advertising and teleshopping (Arts. 10 to 21), as well as a new provision concerning the transmission of major events (Art. 3a). According to Art. 2, para. 1, of the 1997 Directive, Member States were required to implement it in their national legislation not later than 31 December 1998, and to notify the Commission thereof.

Not having received any notification from the Italian Government, the Commission initiated the infringement procedure under Article 226 of the EC Treaty. The Italian Government replied that it had presented to the Senate a Draft Law (A.S. No 1138) to give full effect to Directive 97/36/EC and that it expected that the draft would be approved rapidly.

The Court did not consider this argument. Referring to its settled case law, it held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that it cannot take account of any subsequent changes. In the case in question, the reasoned opinion allowed the Italian Republic a period of two months from notification to comply therewith. Since the reasoned opinion was notified on 4 August 1999, the prescribed period expired on 4 October 1999.

Accordingly, the Court concluded that by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Articles 1(c), 2(1) and (2), 2a, 3a(3) and 10(1)(3) and (4), Article 12, inasmuch as it regulates teleshopping, and Articles 13 and 16(2) of Directive 89/552/EEC, as amended by Directive 97/36/EC, the Italian Republic has failed to fulfil its obligations under that directive.

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Court of Justice of the European Communities, Decision of 14 June 2001, Case C-207/00, Commission v. The Italian Republic

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