JUDGMENT OF THE COURT (Fourth Chamber)

16 December 2004 *

In Case C-358/03,

ACTION for failure to fulfil obligations under Article 226 EC, brought on 19 August 2003,

Commission of the European Communities, represented by D. Martin and H. Kreppel, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Austria, represented by E. Riedl, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of: K. Lenaerts, President of the Chamber, N. Colneric (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an opinion,

gives the following

Judgment

1 By its application, the Commission of the European Communities asks the Court to make a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully with Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual

Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1990 L 156, p. 9), or in any event, by not informing the Commission thereof, the Republic of Austria has failed to comply with its obligations under Article 9 thereof.

Legal background and pre-litigation procedure

2 As stated in Article 1(1) thereof, Directive 90/269 lays down minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers.

3 Under Article 9(1) of that Directive, Member States were to bring into force the laws, regulations and administrative provisions needed to comply therewith no later than 31 December 1992 and forthwith to inform the Commission thereof. For the Republic of Austria, which became a member of the Community on 1 January 1995, the period prescribed for the transposition of that Directive expired on the day it acceded to the Community.

4 Since it considered that the Republic of Austria had not informed it that it had adopted all the provisions necessary to comply with Directive 90/269, and without any other information enabling it to conclude that that Member State had adopted the necessary measures in that regard, the Commission commenced the procedure for failure to fulfil obligations.

5 Taking the view that the Directive had been transposed neither as regards the protection of staff employed by the Land and communes in Carinthia, nor as regards workers' protection in the agricultural and forestry establishments in Burgenland and Carinthia, the Commission, on 19 December 2002, issued a reasoned opinion inviting the Republic of Austria to adopt the measures necessary to comply with that opinion within a period of two months from the date of its notification.

6 Being dissatisfied with the Austrian authorities' replies, the Commission brought this action.

The action

7 It follows from settled case-law 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 (see, inter alia, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26, and Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7).

8 The Austrian Government contends that the complaint based on the failure to transpose Directive 90/269 is unfounded in relation to Burgenland, because of the

adoption, during 2000, of a regulation which was notified to the Commission on 24 October 2000.

9 In its rejoinder, the Commission admitted that.

10 As the reasoned opinion was issued on 19 December 2002, the action must therefore be dismissed in so far as it concerns Burgenland.

11 Whilst, as regards the Land of Carinthia, the Austrian Government does not deny the failure to fulfil obligations alleged against it, it nevertheless contends that the publication of the regulation necessary to transpose Directive 90/269 fully as regards agricultural and forestry workers was to take place at the end of 2003. As regards the need to adopt the transposing measures to ensure the protection of the staff of the Land, communes and associations of communes, the Federal State has kept the competent authorities of the Land of Carthinia regularly informed of their obligations in the matter.

12 In that context, the Austrian Government points out that Austrian constitutional law precludes the Federal State from adopting transposition measures in the place of a Land and that only censure by the Court confers the power on the Federal State to undertake the transposition.

13 In that connection, it should be recalled that, by virtue of the Court's settled case-law, a Member State may not plead situations in its internal legal order, including those resulting from its federal organisation, in order to justify failure to comply with the obligations and time-limits laid down in a directive (see, inter alia, Case C-111/00 *Commission* v *Austria* [2001] ECR I-7555, paragraph 12). Though each Member State may freely allocate areas of internal legal competence as it sees fit, the fact remains that it alone is responsible to the Community under Article 226 EC for compliance with obligations arising under Community law (Case C-87/02 *Commission* v *Italy* [2004] ECR I-5975, paragraph 38).

14 Therefore, the Commission's action must be upheld as regards the Land of Carinthia.

15 In the light of the foregoing considerations, first, it must be declared that, by failing to adopt the laws, regulations and administrative provisions necessary to comply, in the Land of Carinthia, with Directive 90/269, the Republic of Austria has failed to fulfil its obligations under that Directive, and second, the remainder of the action must be dismissed.

Costs

16 Under Article 69(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that the

parties bear their own costs. Since the Commission's action has been only partly successful, it is appropriate to order that the parties bear their own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply, in the Land of Carinthia, with Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Republic of Austria has failed to fulfil its obligations under that Directive;**

2. **Dismisses the remainder of the action;**

3. **Orders the Commission of the European Communities and the Republic of Austria to bear their own costs.**

Signatures.