JUDGMENT OF THE COURT (First Chamber)
25 September 2003 *

In Case C-74/02,

Commission of the European Communities, represented by G. zur Hausen, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by W.-D. Plessing and M. Lumma, acting as Agents,

defendant,

* Language of the case: German.

APPLICATION for a declaration that, by failing to adopt within the prescribed period the measures necessary to comply with Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars (OJ 2000 L 12, p. 16), the Federal Republic of Germany has failed to fulfil its obligations under that directive,

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

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

gives the following

Judgment

1 By application lodged at the Court Registry on 5 March 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt within the prescribed period the measures necessary to comply with Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars (OJ 2000 L 12, p. 16; 'the Directive'), the Federal Republic of Germany has failed to fulfil its obligations under the Directive.

2 Having received no information from the German authorities concerning the transposition of the Directive into German law, the Commission initiated the infringement procedure. It gave the Federal Republic of Germany formal notice to submit its observations and, not being persuaded by the arguments put forward in response by the German Government, sent it a reasoned opinion on 25 July 2001. Since the Federal Republic of Germany did not respond to that opinion, the Commission brought the present action.

Legal context

3 The purpose of the Directive is to ensure that information relating to the fuel economy and CO_2 emissions of new passenger cars offered for sale or lease in the Community is made available to consumers in order to enable them to make an informed choice.

4 Under Article 12(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 18 January 2001 and were forthwith to inform the Commission thereof.

The failure to fulfil obligations

Arguments of the parties

5 The Commission submits that the third paragraph of Article 249 EC and the first paragraph of Article 10 EC require the Member States to which a directive is addressed to achieve the results prescribed by the Directive within the time-limit that it lays down.

6 Here, Article 12(1) of the Directive required the Member States to transpose the Directive into national law by 18 January 2001 and to communicate the implementing measures adopted to the Commission. This was not done.

7 The German Government does not deny the delay in implementing the Directive.

8 However, it points out that implementation of the Directive is about to be completed, a circumstance which should have been taken into account by the Commission before it brought the present action and which deprives it of any legal interest in bringing proceedings.

9 In addition, the delay in implementing the Directive is attributable to the fact that, under German domestic law, a legal basis had to be adopted prior to implementation of the Directive. This was achieved on 30 January 2002 with the adoption of the Gesetz zur Umsetzung von Rechtsakten der Europäischen Gemeinschaften auf dem Gebiet der Energieeinsparung bei Geräten und Kraftfahrzeugen — Energieverbrauchskennzeichnungsgesetz (Law for implementation of legal measures of the European Communities relating to energy savings achieved by appliances and motor vehicles). The regulation implementing the Directive can now be adopted on that basis.

10 Finally, the German Government explains that implementation of the Directive was deliberately delayed for reasons of procedural economy, in order for it to be

implemented at the same time as Directive 2000/55/EC of the European Parliament and of the Council of 18 September 2000 on energy efficiency requirements for ballasts for fluorescent lighting (OJ 2000 L 279, p. 33).

11 The Commission rejects entirely the arguments put forward by the German Government relating to the existence of particular features in its internal legal order, and to the fact that, for reasons of procedural economy, it chose to implement the Directive and other, subsequent, environmental protection directives simultaneously.

12 It is clear from the Court's settled case-law that those matters are irrelevant to consideration of an action for failure to fulfil obligations.

13 The Commission also considers it irrelevant that the Directive will be transposed into German law shortly. That mere fact cannot deprive the Commission of all legal interest in bringing proceedings.

14 Finally, the Court has consistently held that the question whether a Member State has failed to fulfil its obligations is determined at the end of the period laid down in the reasoned opinion.

Findings of the Court

15 First of all, it is 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; Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7; and Case C-114/02 *Commission* v *France* [2003] ECR I-3783, paragraph 9).

16 In the present case, it is not disputed that the Federal Republic of Germany did not adopt the measures necessary for the full implementation of the Directive within the period prescribed for that purpose.

17 The fact that an implementing measure will be adopted shortly is irrelevant and cannot deprive the Commission of all legal interest in bringing an action for failure to fulfil obligations since, in accordance with settled case-law, the Commission decides in the exercise of its discretion whether or not it is appropriate to bring such an action (see, in particular, Case C-383/00 *Commission* v *Germany* [2002] ECR I-4219, paragraph 19).

18 It must be added that, according to equally settled case-law, a Member State may not rely on provisions, practices or circumstances in its internal legal order to justify failure to comply with the obligations and time-limits laid down by a directive (see, *inter alia*, Case C-276/98 *Commission* v *Portugal* [2001] ECR I-1699, paragraph 20, and Case C-114/02 *Commission* v *France*, cited above, paragraph 11).

19 The action brought by the Commission must accordingly be considered to be well founded.

20 Consequently, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Federal Republic of Germany has failed to fulfil its obligations under the Directive.

Costs

21 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Federal Republic of Germany has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive**

1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

2. Orders the Federal Republic of Germany to pay the costs.

Wathelet Jann Rosas

Delivered in open court in Luxembourg on 25 September 2003.

R. Grass M. Wathelet

Registrar President of the First Chamber