# JUDGMENT OF THE COURT (Third Chamber)

6 June 2002 *

In Case C-146/01,

**Commission of the European Communities**, represented by L. Ström, acting as Agent, and by M. van der Woude, avocat, with an address for service in Luxembourg,

applicant,

v

**Kingdom of Belgium**, represented by A. Snoecx, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt or to notify to the Commission, within the prescribed period, the laws, regulations and admini-

* Language of the case: French.

strative provisions necessary to comply with Articles 4(2), 5 and 6 of, and Annexes I and II to, Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas (OJ 1990 L 349, p. 21), the Kingdom of Belgium has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 5 March 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 30 March 2001, the Commission of the European Communities brought an action under Article 141 EA for a declaration that, by failing to adopt or to notify to the Commission, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Articles 4(2), 5 and 6 of, and Annexes I and II to, Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas (OJ 1990 L 349, p. 21), the Kingdom of Belgium has failed to fulfil its obligations under that directive.

## Relevant legislation

*Community law*

2 According to Article 1 of Directive 90/641, its purpose is to supplement Council Directive 80/836/Euratom of 15 July 1980 amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation (OJ 1980 L 246, p. 1), thereby optimising at Community level operational protection arrangements for outside workers performing activities in controlled areas.

3 Article 4(2) of Directive 90/641 provides:

'Pending the establishment, at Community level, of a uniform system for the radiological protection of outside workers, such as a computer network, recourse shall be had:

(a) on a transitional basis, in accordance with the common provisions set out in Annex I, to

— a centralised national network, or

— the issuing of an individual radiological monitoring document to every outside worker, in which case the common provisions of Annex II shall also apply;

(b) in the case of cross-frontier outside workers, and until the date of establishment of a system within the meaning of paragraph 2, to the individual document referred to in (a).'

4 Article 5 of Directive 90/641 provides as follows:

'Outside undertakings shall, either directly or through contractual agreements with the operators, ensure the radiological protection of their workers in

accordance with the relevant provisions of Titles III to VI of Directive 80/836/Euratom, and in particular:

(a) ensure compliance with the general principles and the limitation of doses referred to in Articles 6 to 11 thereof;

(b) provide the information and training in the field of radiation protection referred to in Article 24 thereof;

(c) guarantee that their workers are subject to assessment of exposure and medical surveillance under the conditions laid down in Articles 26 and 28 to 38 thereof;

(d) ensure that the radiological data of the individual exposure monitoring of each of their workers within the meaning of Annex I, part II to this Directive are kept up to date in the networks and individual documents referred to in Article 4(2).'

5 Article 6 of that directive provides:

'1. The operator of a controlled area in which outside workers perform activities shall be responsible, either directly or through contractual agreements, for the operational aspects of their radiological protection which are directly related to the nature of the controlled area and of the activities.

2. In particular, for each outside worker performing activities in a controlled area, the operator must:

(a) check that the worker concerned has been passed as medically fit for the activities to be assigned to him;

(b) ensure that, in addition to the basic training in radiation protection referred to in Article 5(1)(b), he has received specific training in connection with the characteristics of both the controlled area and the activities;

(c) ensure that he has been issued with the necessary personal protective equipment;

(d) also ensure that he receives individual exposure monitoring appropriate to the nature of the activities, and any operational dosimetric monitoring that may be necessary;

(e) ensure compliance with the general principles and limitation of doses referred to in Articles 6 to 11 of Directive 80/836/Euratom;

(f) ensure or take all appropriate steps to ensure that after every activity the radiological data of individual exposure monitoring of each outside worker within the meaning of Annex I, Part III, are recorded.'

6 Under Article 8(1) of Directive 90/641, Member States are to bring into force not later than 31 December 1993, the laws, regulations and administrative provisions necessary to comply with that Directive. They are forthwith to inform the Commission thereof.

7 Article 56 of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) provides that Directive 80/836, among others, is repealed with effect from 13 May 2000.

*Belgian law*

8 The purpose of the Royal Decree of 25 April 1997 on the protection of workers against the dangers arising from ionising radiation (*Moniteur Belge* of 12 July 1997, p. 18512, hereinafter 'the Royal Decree of 25 April 1997') is the transposition of Directive 90/641. The first subparagraph of Article 12 of that Royal Decree provides:

'Outside undertakings shall, either directly or through contractual agreements with the operators, ensure the radiological protection of their workers in accordance with Articles 13 to 19 of this Decree, and in particular:

1° guarantee that their workers are subject to assessment of exposure and medical surveillance under the conditions laid down in Articles 13 and 16 of this Decree;

2° ensure that the radiological data of the individual exposure monitoring of each of their workers are kept up to date in the individual documents of outside workers exposed to ionising radiation or in the centralised national networks.'

9 Article 13 of the Royal Decree of 25 April 1997 is as follows:

'The operator of a controlled area in which outside workers perform activities shall be responsible, either directly or through contractual agreements, for the operational aspects of their radiological protection which are directly related to the nature of the controlled area and of the activities.

In particular, for each outside worker performing activities in a controlled area, the operator must:

1° check that that outside worker has been passed as medically fit for the activities to be assigned to him. Prior to the activities, the outside undertaking shall provide to the operator's works doctor the individual exposure monitoring documents mentioned in Articles 28 and 29 so as to verify that each worker has been passed as medically fit for the activities which have been assigned to him;

2° also ensure that that outside worker receives individual exposure monitoring appropriate to the nature of the activities, and any operational dosimetric monitoring that may be necessary;

3° take all appropriate steps to ensure that, after every activity, the radiological data of individual exposure monitoring of each outside worker are recorded in

the individual documents of outside workers occupationally exposed to ionising radiation or in the centralised national networks.'

10 Under Article 28(1) of the Royal Decree of 25 April 1997, '[t]he Minister for Employment and Work shall decide upon the conditions concerning the establishment, the detailed rules for access to, and the working of, the centralised national network and the conditions for the issue of the individual exposure monitoring documents mentioned in Articles 11 and 12 of this Decree'.

11 Under Article 28(3) of the Royal Decree of 25 April 1997, '[i]f an outside worker employed by an undertaking established in a Member State of the European Union has not been provided with a document approved by that Member State, the provisions set out in Article 12 of this Decree shall apply'.

12 Article 5 of the Royal Decree of 2 October 1997 amending the Royal Decree of 28 February 1963 providing generally for the protection of the population and workers against the danger of ionising radiation and bringing into force part of the Law of 15 April 1994 on the protection of the population and the environment against the dangers arising from ionising radiation and concerning the Federal Agency for Nuclear Control (*Moniteur Belge* of 23 October 1997, p. 28167, hereinafter 'the Royal Decree of 2 October 1997'), provides for the insertion into Chapter III of the Royal Decree of 28 February 1963 of a new Section VI worded as follows:

'Section VI. Operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas.

Art. 37b. — General Provisions.

The system of radiological monitoring of outside workers shall provide protection equal to that provided for workers employed on a permanent basis by an operator.

Art. 37c. — Obligations of Outside Undertakings.

Outside undertakings shall, either directly or through contractual agreements with the operators, ensure the radiological protection of their workers in accordance with the provisions laid down in Chapter III, and in particular:

(a) ensure compliance with the general principles and the limitation of doses;

(b) provide the information and training in the field of radiation protection referred to in Article 25.

Art. 37d. — Obligations of Operators.

The operator of a controlled area in which outside workers perform activities shall be responsible, either directly or through contractual agreements, for the operational aspects of their radiological protection which are directly related to the nature of the controlled area and of the activities.

In particular, for each outside worker performing activities in a controlled area, the operator must:

(a) ensure that, in addition to the basic training in radiation protection referred to in Chapter III Section II, he has received specific training in connection with the characteristics of both the controlled area and the activities;

(b) ensure that he has been issued with the necessary personal protective equipment;

(c) ensure compliance with the general principles and limitation of doses.'

## Pre-litigation procedure

13 By letter of 30 July 1997, the Belgian authorities notified the Commission of the Royal Decree of 25 April 1997.

14 Since it considered that the provisions necessary to bring Belgian law into conformity with Articles 4(2), 5 and 6 of, and Annexes I and II to, Directive 90/641 had not been adopted, the Commission, by letter of 14 October 1999, gave the Kingdom of Belgium formal notice to submit to it its observations in that regard.

15 By letter of 8 March 2000, the Belgian authorities maintained essentially that the Royal Decree of 2 October 1997 enabled the transposition of Directive 90/641 to be completed. It appears from a document attached to that letter that the Belgian authorities had opted, pending the establishment of a centralised national network, for the issue of individual documents.

16 Not satisfied with that response, the Commission, by letter of 1 August 2000, sent the Kingdom of Belgium a reasoned opinion in which it reiterated the complaints set out in its letter of formal notice and called upon that Member State to adopt the measures needed to comply with the reasoned opinion within two months of its notification.

17 By letter of 7 September 2000, the Director General of the Ministry of Employment and Work acknowledged that the reasoned opinion was well founded. That letter stated that, as a result, the requisite measures would be taken by the Kingdom of Belgium within the period laid down.

18 Since the Commission subsequently received no information to lead it to conclude that the Kingdom of Belgium had complied with its obligations under Directive 90/641, it decided to bring the present action.

## Substance

19 The Commission claims that the Kingdom of Belgium has not completely transposed, first, Article 4(2) of Directive 90/641, and Annexes I and II thereto, owing to the lack of national provisions for putting in place a system of radiological monitoring, and, secondly, Articles 5 and 6 of that directive,

inasmuch as the national provisions adopted do not take account of outside workers employed by undertakings established in another Member State, when such workers are already holders of an individual radiological monitoring document.

20 In relation to the complaint based on the incomplete transposition of Article 4(2) of Directive 90/641, and of Annexes I and II thereto, the Commission states that the conditions concerning the establishment of, and the detailed rules for access to, and the working of, the centralised national network and the conditions for the issue of individual radiological protection documents, which, under Article 28(1) of the Royal Decree of 25 April 1997, are to be determined by the Federal Minister for Employment and Work, have not yet been laid down.

21 As for the complaint based on the incomplete transposition of Articles 5 and 6 of Directive 90/641, the Commission claims that the purpose of Article 28(3) of the Royal Decree of 25 April 1997, which refers to Article 12 thereof, is to mitigate the failure to be in possession of the appropriate document or the absence of registration in a centralised system by the issue of an individual Belgian document or by the registration of the worker in the centralised system. However, Article 12 aforesaid does not apply to outside workers employed by undertakings established in another Member State, if they are in possession of the document mentioned therein.

22 Therefore, application of the measures of protection referred to in Article 5(c) and (d) of Directive 90/641 is not secured for that category of outside workers.

23 Further, Article 12 of the Royal Decree of 25 April 1997 refers in particular to Article 13 thereof, which transposes Article 6 of Directive 90/641. Yet Article 13

does not apply to outside workers employed by undertakings established in another Member State who are in possession of an individual document provided by that State. It follows that Article 6 of that directive has not been completely transposed.

24 According to the Commission, the Royal Decree of 2 October 1997 does not alter that position.

25 The Belgian Government does not dispute the failure to fulfil its obligations of which it is accused and attached to its defence a draft Royal Decree intended to bring about the complete transposition of Directive 90/641.

26 In that regard, it is appropriate to recall that, according to settled case-law, 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, among others, Case C-384/99 *Commission* v *Belgium* [2000] ECR I-10633, paragraph 16). When the two month period imposed by the reasoned opinion of 1 August 2000 expired, the Royal Decree, which the Belgian Government had announced and whose purpose to complete the transposition of Directive 90/641 it acknowledged, had, at all events, not yet been adopted.

27 It is important to point out, first, that by omitting to determine the conditions concerning the establishment of, and the detailed rules for access to, and the working of, the centralised national network and the conditions for the issue of individual radiological monitoring documents, the Kingdom of Belgium has not put in place a system of radiological monitoring which complies with the requirements of Article 4(2) of Directive 90/641 and Annexes I and II thereto.

28 Secondly, the Belgian legislation does not comply with Article 5(c) of Directive 90/641, since it does not provide, in relation to outside workers employed by undertakings established in another Member State who are in possession of an individual document provided by that State, that the outside undertaking is to ensure that such individual document is kept up to date with the radiological data of the individual exposure monitoring of those workers.

29 Thirdly, in relation to the same category of outside workers, the Belgian legislation does not comply with Article 6 of Directive 90/641, inasmuch as it does not provide that operators of controlled areas must take the measures mentioned in Article 13 of the Royal Decree of 25 April 1997 for that category.

30 Consequently, it must be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Articles 4(2), 5 and 6 of Directive 90/641, and Annexes I and II thereto, the Kingdom of Belgium has failed to fulfil its obligations under that directive.

## Costs

31 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 Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Articles 4(2), 5 and 6 of, and Annexes I and II to, Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas, the Kingdom of Belgium has failed to fulfil its obligations under that directive;**

2. **Orders the Kingdom of Belgium to pay the costs.**

Macken Gulmann Cunha Rodrigues

Delivered in open court in Luxembourg on 6 June 2002.

R. Grass

Registrar

F. Macken

President of the Third Chamber