# JUDGMENT OF THE COURT (Third Chamber)
1 April 2004 *

In Case C-64/03,

**Commission of the European Communities,** represented by J. Grunwald and H. Støvlbaek, acting as Agents, 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,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under that Directive,

* Language of the case: German.

THE COURT (Third Chamber),

composed of: A. Rosas, President of the Chamber, R. Schintgen (Rapporteur), and N. Colneric, Judges,

Advocate General: C. Stix-Hackl,
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 14 February 2003, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/CE of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1, 'the Directive'), the Federal Republic of Germany has failed to fulfil its obligations under that Directive.

2 Under Article 29 of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than two years from its entry into force and inform the Commission thereof forthwith. In accordance with Article 30, the Directive entered into force on 10 August 1998. The period for its implementation therefore expired on 10 August 2000.

3 Having received no information from the Federal Republic of Germany concerning the implementation of the Directive, the Commission, in accordance with the procedure laid down in the first paragraph of Article 226 EC, gave the Federal Republic of Germany formal notice to submit its observations, then, by letter of 13 June 2001, sent a reasoned opinion to that Member State requesting it to adopt the measures necessary to comply with its obligations under the Directive within a period of two months. As the information sent to the Commission by the German authorities subsequent to that opinion showed that certain provisions of the Directive had not been transposed into national law, or had only partially been transposed, the Commission decided to bring the present action.

4 The Commission claims firstly that the Federal Republic of Germany has not transposed into national law certain provisions of the Directive and secondly that it has only partially transposed other provisions of the Directive. Consequently, the Federal Republic of Germany has failed to fulfil its obligations under Article 29 of the Directive.

5 The German Government does not dispute the failure alleged. However, it points out that the provisions necessary to ensure the full implementation of the Directive were published on 23 May 2003 and entered into force on the following day.

6 However, 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 and that the Court cannot take account of any subsequent changes (see, inter alia, Case C-63/02 *Commission* v *United Kingdom* [2003] ECR I-821, paragraph 11).

7 In the present case the Federal Republic of Germany does not dispute that it has not completely transposed the Directive within the period prescribed.

8 Accordingly, the action brought by the Commission is well founded.

9 It must therefore be held that, by failing to adopt 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

10 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 (Third Chamber),

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, 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.**

Rosas Schintgen Colneric

Delivered in open court in Luxembourg on 1 April 2004.

R. Grass

Registrar

A. Rosas

President of the Third Chamber