JUDGMENT OF THE COURT (First Chamber)
12 September 2002 *

In Case C-386/01,

Commission of the European Communities, represented by I. Martínez del Peral, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by S. Ortiz Vaamonde, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1998 L 101, p. 17) or, in any event, by failing to inform the Commission of the adoption of such provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive,

THE COURT (First Chamber),

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

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 30 May 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 8 October 2001, 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 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1998 L 101, p. 17; 'the Directive') or, in any event, by failing to inform the Commission of the adoption of such provisions, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive.

2 Article 2 of the Directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than two years after the entry into force of this Directive. They shall inform the Commission thereof.

...

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this directive.'

3 The Directive was published in the *Official Journal of the European Communities* on 1 April 1998. Therefore, pursuant to Article 254(1) EC, it entered into force on 21 April 1998, and the period prescribed for its transposition into national law expired on 21 April 2000.

4 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having given the Kingdom of Spain the opportunity to submit its observations, sent a reasoned opinion to that Member State, by letter of 9 March 2001, requesting it to take the measures necessary to fulfil its obligations under the Directive within two months of notification of the opinion.

5 The Spanish authorities replied by letter of 25 June 2001 stating that the national measures necessary to transpose the Directive were in the process of being adopted.

6 Since the Commission did not receive any other information regarding transposition of the Directive, it decided to bring the present action.

7 In its statement of defence, the Kingdom of Spain submitted that the Ministry of Justice had prepared a draft law intended to transpose the Directive. All the relevant procedural requirements had been met and the Government had already approved the draft law 'transposing into Spanish law various community

directives on the protection of the interests of consumers and users'. The draft law was therefore now only awaiting adoption by the Cortes Generales.

8 Those circumstances do not in any way alter the fact that, as is apparent from the explanations given by the Kingdom of Spain, the Directive was not transposed within the period laid down in the reasoned opinion. The action brought by the Commission therefore appears well founded.

9 It must accordingly be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that 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 Kingdom of Spain 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 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive.**

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

Jann Wathelet Rosas

Delivered in open court in Luxembourg on 12 September 2002.

R. Grass P. Jann

Registrar President of the First Chamber