JUDGMENT OF THE COURT (Sixth Chamber)
18 June 1998 *

In Case C-208/97,

Commission of the European Communities, represented by Francisco de Sousa Fialho, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Portuguese Republic, represented by Luís Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and João Lopes Fernandes, Director of the Legal Department of the National Water Institute, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

defendant,

APPLICATION for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ 1984 L 74, p. 49), and, in particular, by failing to draw up the specific

* Language of the case: Portuguese.

programmes required by that directive, and in the alternative, by failing forthwith to inform the Commission of such measures, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and under that directive,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini, J. L. Murray, G. Hirsch and K. M. Ioannou (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 2 April 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 May 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry

(OJ 1984 L 74, p. 49, hereinafter 'the Directive'), and, in particular, by failing to draw up the specific programmes required by the Directive, and in the alternative, by failing forthwith to inform the Commission of such measures, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and under the Directive.

2 Article 3 of the Directive concerns emission standards for mercury discharges from industrial plants.

3 To prevent or eliminate mercury pollution through discharges from other plants for which emission standards cannot be either established or regularly monitored because those sources are widely dispersed, Article 4(1) of the Directive provides that the Member States are to draw up specific programmes for mercury discharges by multiple sources which are not industrial plants and for which the emission standards laid down in Article 3 cannot be applied in practice. Paragraph 3 of that article provides that the specific programmes are to apply as from 1 July 1989 and are to be communicated to the Commission.

4 Under Article 7(1) of the Directive the Member States are to bring into force the measures necessary to comply with the Directive within two years following its notification and forthwith to inform the Commission thereof.

5 Since the programme or programmes implemented by the Portuguese Government as required by the Directive had not been communicated to it, the Commission,

by letter of 4 December 1992, requested that government to communicate such programme or programmes within two months.

6 Since it received no reply and there was no other information available to it to justify the conclusion that the Portuguese Republic had drawn up any such programme or programmes, the Commission gave the Portuguese Republic formal notice, by letter of 20 May 1992, to submit its observations on this point within two months.

7 The Portuguese Republic replied by letter of 6 January 1994 explaining that, as no sources discharging mercury in sectors other than the chlor-alkali electrolysis industry had been found, it considered that the conditions giving rise to the obligation to draw up programmes referred to under Article 4 did not obtain as there was no discharge of mercury or pollution by mercury and that, therefore, the obligation to draw up such programmes did not apply to it.

8 As it was not convinced that the observations of the Portuguese Republic were well founded, the Commission, by letter of 25 October 1995, sent it a reasoned opinion calling on it to take the measures necessary to comply with that opinion within two months of its notification.

9 By letter of 18 July 1996 the Portuguese Government replied to the Commission's reasoned opinion, pointing out that, whilst it recognised the necessity and urgency of implementing the programmes in question, bringing them into operation was proving particularly difficult because of problems relating to the identification of sources that were many and varied. The Portuguese Republic added that it was in

the process of assessing the prospects and the conditions for reaching agreements with the entities concerned (professional associations, hospitals, local authorities etc.) as well as the technical conditions and the establishment of criteria and rules for monitoring mercury discharges from multiple non-industrial sources. Finally, it stated that it would need three months to carry out its plans, the results of which would be notified to the Commission at the appropriate time.

10 Following that letter the Commission received no information from the Portuguese Government to justify the conclusion that the Portuguese Republic had fulfilled the obligations imposed by the Directive. The Commission therefore brought this action.

11 The Commission submits that it is clear from the reply to the reasoned opinion that the Portuguese Republic does not dispute that it must draw up the specific programmes described in Article 4 of the Directive. However, it points out that, even though the periods prescribed have expired, the Portuguese Republic has not drawn up or implemented the specific programmes and, in any event, has not notified it of them. Accordingly, it has failed to fulfil its obligations under both the third paragraph of Article 189 of the Treaty and the Directive.

12 The Portuguese Government does not deny that it has failed to fulfil its obligations. It points out that it has made an effort to overcome the difficulties it encountered in drawing up the specific programmes for mercury discharges required by Article 4 of the Directive, particularly as regards the identification of the many different sources. However, despite its efforts, the complex nature of the work

required to draw up the definitive programmes means that its completion still poses certain difficulties.

13 It follows from the foregoing that the Directive was not transposed within the prescribed period.

14 The action brought by the Commission must therefore be held to be well founded.

15 It must therefore be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the Directive, and, in particular, by failing to draw up the specific programmes required by it the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of the Directive.

Costs

16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Portuguese Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry and, in particular, by failing to draw up the specific programmes required by that directive, the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of the said directive;**

2. **Orders the Portuguese Republic to pay the costs.**

Ragnemalm Mancini Murray

Hirsch Ioannou

Delivered in open court in Luxembourg on 18 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber