JUDGMENT OF THE COURT (First Chamber)
30 May 2002 *

In Case C-441/00,

Commission of the European Communities, represented by M. Wolfcarius, acting as Agent, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, and R. Anderson, Barrister, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive,

* Language of the case: English.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, M. Wathelet and A. Rosas (Rapporteur), 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 21 March 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 November 2000, 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 Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6, 'the Directive'), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.

2 The object of the Directive is, in particular, to improve the interlinking and interoperability of national high-speed train networks and also access thereto.

3 Article 23(1) of the Directive provides that the Member States are to adopt the laws, regulations and administrative provisions necessary in order to comply with the Directive no later than 30 months after its entry into force, and forthwith to inform the Commission thereof.

4 Article 25 of the Directive provides that it is to 'enter into force on the 21st day following that of its publication in the *Official Journal of the European Communities*'. Since the Directive was published on 17 September 1996, it entered into force on 8 October 1996 and the period for transposition expired on 8 April 1999.

5 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having given the United Kingdom the opportunity to submit its observations, sent a reasoned opinion to that Member State, by letter of 31 January 2000, inviting it to take the measures necessary to fulfil its obligations under the Directive within two months of notification of the opinion.

6 In its reply of 5 April 2000, the United Kingdom pleaded the existence of legislative problems of a practical nature and explained that it expected to be able to adopt the measures necessary to implement the Directive fully before the end of 2000.

7 In those circumstances the Commission brought this action.

8 The Commission maintains that the United Kingdom has not adopted the measures necessary to implement the Directive. In that connection it recalls the obligations imposed on the Member States under the first paragraph of Article 10 EC and the third paragraph of Article 249 EC.

9 The United Kingdom acknowledges that the Directive has only been partially implemented within the time-limits.

10 The United Kingdom maintains, however, that the late implementation of some of the provisions of the Directive is partly due to the fact that the committee established under Article 21 of the Directive has not drawn up technical specifications for interoperability ('TSIs'), which, in its submission, form an integral part of the Directive. Therefore, certain parts of the Directive concerning TSIs have not yet been able to come into effect.

11 In that connection, the United Kingdom states that the Transport Act 2000, which entered into force on 1 February 2001, empowers the competent national authority to introduce regulations to give effect to TSIs as soon as they have been adopted and taken effect pursuant to the Community procedures. Those regulations are to be introduced in both Great Britain and, separately, in Northern Ireland, and are intended to take effect not later than at the end of June 2001, the earliest date on which the Commission has indicated that TSIs will have been adopted.

12 The United Kingdom concedes that the Directive has not been transposed in Northern Ireland, in particular as regards the provisions thereof concerning the appointment of notified bodies. However, it states that there are no high-speed rail lines in Northern Ireland, and no current plans in that regard. Accordingly at present the Directive is of no, or very little, practical relevance in Northern Ireland. None the less, it is intended that regulations implementing the Directive will be introduced in Northern Ireland by the end of June 2001 at the latest. Thus the whole of the Directive will have been implemented throughout the United Kingdom.

13 It is evident that the Directive has not been transposed in its entirety in the United Kingdom within the period prescribed by it, as the United Kingdom Government has conceded.

14 As regards the TSIs, the Court has already held that it is not apparent from the terms of the Directive and, in particular, of Article 23 thereof, that preparing TSIs is a precondition for the implementation of the Directive. It follows that the fact that the TSIs have not yet been adopted is irrelevant for the purposes of determining whether or not a Member State has failed to fulfil its obligations (Case C-372/00 *Commission* v *Ireland* [2001] ECR I-10303, paragraphs 14 and 15).

15 Nor is it relevant, as the Advocate General noted in point 6 of his Opinion, that no high-speed trains operate in Northern Ireland. In that connection the Court has already held that the fact that an activity referred to in a directive does not yet exist in a Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed (Case C-214/98 *Commission* v *Greece* [2000] ECR I-9601, paragraph 22, and *Commission* v *Ireland*, cited above, paragraph 11).

16 It is in fact necessary for all citizens subject to the law in the United Kingdom, like others subject to the law within the Community, to know what their rights and duties are if and when a high-speed rail system is created and operated in that Member State.

17 It is only where transposition of a directive is pointless for reasons of geography that it is not mandatory (see, to that effect, Case 420/85 *Commission* v *Italy* [1987] ECR 2983, paragraph 5). That is not so in the case of the island of Ireland, as may be seen from map 3.7 in Annex I to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ 1996 L 228, p. 1).

18 Since the Directive has not been transposed into national law within the period prescribed, the action brought by the Commission must be held to be well founded.

19 Consequently, it must be declared that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive, the United Kingdom has failed to fulfil its obligations under that directive.

Costs

20 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 United Kingdom 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 Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Jann Wathelet Rosas

Delivered in open court in Luxembourg on 30 May 2002.

R. Grass

Registrar

P. Jann

President of the First Chamber