JUDGMENT OF THE COURT (Third Chamber)
27 November 2003 *

In Case C-66/03,

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

applicant,

v

French Republic, represented by G. de Bergues and C. Bergeot-Nunes, acting as Agents,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to adopt and/or communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (OJ 2000 L 142, p. 47), the French Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Third Chamber),

composed of: A. Rosas, President of the Chamber, D.A.O. Edward (Rapporteur) and R. Schintgen, Judges,

Advocate General: A. Tizzano,
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 and/or communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (OJ 2000 L 142, p. 47), the French Republic has failed to fulfil its obligations under the EC Treaty.

2 Directive 2000/39 relates to the establishment of indicative occupational exposure limit values for the chemical agents listed in its Annex. According to Article 3(1), Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 31 December 2001 at the latest and forthwith to inform the Commission thereof.

Pre-litigation procedure and forms of order sought

3 Since the time-limit laid down in Article 3(1) of Directive 2000/39 expired without the Commission having received any information from the French Republic regarding the adoption of the necessary provisions to comply with the Directive, the Commission decided to initiate the procedure provided for in Article 226 EC.

4 As its letter of formal notice of 12 February 2002 went unanswered, on 1 July 2002 the Commission sent a reasoned opinion dated 25 June 2002 to the French Republic, requesting it to take the measures necessary to comply with that opinion within two months of notification thereof.

5 The French Government responded to the reasoned opinion by letter dated 18 September 2002. In this letter, it stated that a draft decree to implement Directive 2000/39 was in the process of being drawn up.

6 In those circumstances the Commission brought this action. The Commission claims that the Court should:

(1) declare that, by failing to adopt and/or communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2000/39, the French Republic has failed to fulfil its obligations under the Treaty; and

(2) order the French Republic to pay the costs.

7 The French Republic did not formally set out the order sought by it.

The failure to fulfil obligations

8 The Commission claims that the French Republic has failed to adopt and/or communicate to it the measures necessary to comply with Directive 2000/39.

9 The French Government does not deny that it failed to transpose the provisions of Directive 2000/39 within the period prescribed therein. It contends that transposition is under way and sets out the reasons for the delay.

10 The French Government notes specifically that there are in France a number of ministerial circulars setting indicative limit values for the majority of the chemical agents mentioned in the Annex to Directive 2000/39. On the Government's own admission, however, these limit values must be reconsidered in the light of Directive 2000/39 and are not contained in secondary legislation. Although domestic law empowers the national authorities to fix binding limit values, there is no provision which enables those authorities at present to fix indicative limit values. Furthermore, the Government states that it was essential to form several groups of experts and to carry out numerous consultations before transposing Directive 2000/39 into French law.

11 As to those submissions, suffice it to state 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 that 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-211/02 *Commission* v *Luxembourg* [2003] ECR I-2429, paragraph 6).

12 It also follows from settled case-law that a Member State may not plead provisions, practices or circumstances existing in its internal legal order in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, inter alia, Case C-286/01 *Commission* v *France* [2002] ECR I-5463, paragraph 13).

13 It must accordingly be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2000/39, the French Republic has failed to fulfil its obligations under that Directive.

Costs

14 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. As the Commission has applied for costs to be awarded against the French Republic and the latter has been unsuccessful, the French Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work, the French Republic has failed to fulfil its obligations under that Directive;**

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

Rosas Edward Schintgen

Delivered in open court in Luxembourg on 27 November 2003.

R. Grass

Registrar

A. Rosas

President of the Third Chamber