JUDGMENT OF THE COURT (First Chamber)

6 June 2002 *

In Case C-274/01,

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

applicant,

v

Kingdom of Belgium, represented by F. van de Craen, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of

* Language of the case: French.

establishment in national and international transport operations (OJ 1998 L 277, p. 17), the Kingdom of Belgium has failed to fulfil its obligations under 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 25 April 2002,

gives the following

Judgment

1 By an application lodged at the Court Registry on 12 July 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 Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations (OJ 1998 L 277, p. 17; 'the directive'), the Kingdom of Belgium has failed to fulfil its obligations under that directive.

2 The first subparagraph of Article 2(1) of the directive reads as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 October 1999. They shall forthwith inform the Commission thereof.'

3 In accordance with the procedure under the first paragraph of Article 226 EC, and having given the Kingdom of Belgium formal notice to submit its observations, the Commission sent a reasoned opinion to that Member State by letter dated 7 September 2000, requesting it to adopt the measures necessary to comply with its obligations under the directive within two months of the date of notification of that opinion.

4 The Belgian authorities replied by a letter dated 3 October 2000, in which they stated that the national measures necessary to transpose the directive were in the course of being adopted.

5 As no other information relating to the transposition of the directive was sent to the Commission within the time-limit set, it decided to bring the present action.

6 The Belgian Government contends, first, that as regards admission to the occupation of road haulage operator, a law was adopted in 1999. It admits, however, that entry into force of the provisions of that law is subject to the adoption of a royal decree and a ministerial order of implementation. The drafts of those acts have been prepared, but it has not yet been possible to adopt them because of the complexity of the subject-matter and the decision-making process.

7 Second, as concerns admission to the occupation of road passenger transport operator, the Belgian Government points out that transposition of the directive does not require a law, but rather a royal decree and a ministerial order. The drafts of those measures are still being examined, since they have not yet been adopted owing to the complexity of the subject-matter.

8 In that connection, it should be stressed that it is settled case-law that a Member State cannot rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period (see, in particular, Case C-276/98 *Commission* v *Portugal* [2001] ECR I-1699, paragraph 20).

9 Since the directive was not transposed within the time-limit set in the reasoned opinion, the action brought by the Commission must be considered to be well founded.

10 In consequence, it must be declared that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with the directive, the Kingdom of Belgium has failed to fulfil its obligations under the directive.

Costs

11 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 Belgium 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 98/76/EC of 1 October 1998 amending Directive 96/26/EC on**

admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2. Orders the Kingdom of Belgium to pay the costs.

Jann Wathelet Rosas

Delivered in open court in Luxembourg on 6 June 2002.

R. Grass

Registrar

P. Jann

President of the First Chamber