JUDGMENT OF THE COURT (Fifth Chamber)
5 March 1998 *

In Case C-175/97,

Commission of the European Communities, represented by Michel Nolin and Laura Pignataro, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Kareen Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Gautier Mignot, Foreign Affairs Secretary in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by failing to adopt, or in any event failing to notify, within the prescribed time-limit, the laws, regulations and administrative provisions necessary to comply with Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32), the French Republic has failed to fulfil its obligations under the EC Treaty and under that directive,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida (Rapporteur), D. A. O. Edward and J.-P. Puissochet, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 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, or in any event by failing to notify, within the prescribed time-limit, the laws, regulations and administrative provisions necessary to comply with Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32; hereinafter 'the Directive'), the French Republic had failed to fulfil its obligations under the EC Treaty and under that directive.

2 The first subparagraph of Article 13(1) of the Directive provided that Member States were to adopt the provisions necessary to comply with the Directive before 1 January 1995 and inform the Commission thereof forthwith.

3 In its judgment in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827 the Court annulled the Directive whilst declaring that its effects were to be preserved until the Council had adopted new legislation in the matter.

4 Having received no notification of transposition measures adopted by the French Republic, and having no other evidence that the French Republic had complied with its obligation to implement the necessary provisions, the Commission gave the French Government formal notice by letter of 16 May 1995, pursuant to the first paragraph of Article 169 of the Treaty, to submit its observations within two months.

5 Having received no reply, the Commission sent a reasoned opinion to the French Republic on 27 June 1996, calling upon it to take the measures necessary to comply with its Community obligations within two months from the date of notification of the opinion.

6 By letter of 26 November 1996 the French authorities confirmed their willingness to transpose the Directive. Citing serious difficulties faced by road hauliers, they requested a further period in which to transpose the Directive by means of legislation.

7 Having received no further communication from the French authorities, the Commission brought this action.

8 In its defence the French Republic states that the Directive could not be transposed on account of difficulties in the road transport industry, caused mainly by a significant decline in business and by increased social security burdens on undertakings following the adoption of various measures designed to improve employees' working conditions.

9 The French Government also observes that those engaged in the transport business regard the distortions of competition arising from the widely divergent levels of taxation on diesel fuel in the various Member States as unacceptable. They may therefore find it difficult to accept the extra costs of the tax on vehicles, as a result of transposition of the Directive, before any progress is made with the proposals for harmonising rates of excise duty.

10 In those circumstances, the French Government submits, transposition of the Directive would have risked aggravating the high degree of social tension prevailing in the road transport industry and imperilling a service essential to the functioning of the national economy.

11 The French Government adds that the delay in transposing the Directive has not created any significant distortion in competition vis-à-vis the French Republic's partners. Whilst it is true that adoption of the Directive in question will entail an appreciable increase in certain vehicle taxation rates, Article 6(2) of the Directive allowed the French Republic a 50% reduction in the minimum rates applicable until the end of 1997. Moreover, a high rate of excise duty on diesel fuel is currently applied in France, which, from the point of view of the resulting overall cost of transport, largely compensated for the distortions resulting from the non-implementation of the Directive.

12 The Court observes, to begin with, that the French Government does not deny that the measures necessary to transpose the Directive into domestic law have not yet been adopted.

13 It should next be pointed out that mere apprehension of internal difficulties cannot justify a failure to comply with Community law (see, *inter alia*, Case C-52/95 *Commission* v *France* [1995] ECR I-4443, paragraph 38; Case C-265/95 *Commission* v *France* [1997] ECR I-6959, paragraph 55).

14 Finally, in so far as the finding of a Member State's failure to fulfil its obligations is not bound up with a finding as to the damage flowing therefrom, a Member State may not rely on the argument that the failure to adopt measures to transpose a directive has had no adverse consequences on other Member States (see, to that effect, Case C-263/96 *Commission* v *Belgium* [1997] ECR I-7453, paragraph 30; as regards Article 141 of the Euratom Treaty, see Case 7/71 *Commission* v *France* [1971] ECR 1003, paragraph 50).

15 In those circumstances, the Commission's action must be held to be well founded.

16 The Court therefore holds that, by failing to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to comply with the Directive, the French Republic has failed to fulfil its obligations under the first subparagraph of Article 13(1) thereof.

Costs

17 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 French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. **Declares that, by failing to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to comply with Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures, the French Republic has failed to fulfil its obligations under the first subparagraph of Article 13(1) of that directive;**

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

Gulmann Wathelet Moitinho de Almeida

Edward Puissochet

Delivered in open court in Luxembourg on 5 March 1998.

R. Grass

Registrar

C. Gulmann

President of the Fifth Chamber