JUDGMENT OF THE COURT (Fourth Chamber)

6 June 2002 *

In Case C-177/01,

Commission of the European Communities, represented by H. Støvlbaek and J. Adda, acting as Agents, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by G. de Bergues and D. Colas, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to communicate to the Commission a summary of the inventories of equipment with PCB volumes of more than 5 dm^3, a plan for the decontamination and/or disposal of the

* Language of the case: French.

inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), as referred to in Article 6(3) of that directive, the French Republic has failed to fulfil its obligations under Articles 4 and 11 of that directive,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and A. La Pergola (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 24 April 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to communicate to it a summary of the inventories of equipment with PCB volumes of more than 5 dm^3, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), as referred to in Article 6(3) of that directive, the French Republic has failed to fulfil its obligations under Articles 4 and 11 of that directive.

2 Article 1 of Directive 96/59 states:

'The purpose of this directive is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this directive.'

3 Article 4(1) of Directive 96/59 provides:

'In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm^3, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this directive. In the case of power capacitors, the threshold of 5 dm^3 shall be understood as including all the separate elements of a combined set.'

4 Articles 6(3) of Directive 96/59 provides:

'Where reasonably practicable, equipment containing PCBs which is not subject to inventory in accordance with Article 4(1) and which is part of another piece of equipment shall be removed and collected separately when the latter equipment is taken out of use, recycled or disposed of.'

5 Article 11 of Directive 96/59 provides:

'1. Member States shall, within three years of the adoption of this directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

2. Member States shall communicate these plans and outlines to the Commission without delay.'

6 Since the Commission took the view that it had not been informed by the French Republic of any measures taken by that State to comply with Articles 4 and 11 of Directive 96/59 and that it was also not in possession of any other information to support the conclusion that that Member State had taken the measures necessary for that purpose, by letter of 13 April 2000, it gave the French Republic formal notice to submit its observations on that matter within two months, in accordance with the procedure provided for in Article 226 EC.

7 On 13 June 2000, in reply to that letter, the French authorities sent a note in which they stated, first, that a number of measures had already been taken with a view to adopting, in October 2001, an inventory of equipment containing PCBs. In that note, they then provided an estimate of the total amount of equipment in France containing PCBs or oils contaminated by PCBs. Finally, they submitted in that note a provisional timetable for decontamination and/or disposal, drawn up on the basis of existing treatment capacity.

8 Taking the view that the French authorities had not drawn up the summary of the inventories, the plan or the outline required under Articles 4 and 11 of Directive 96/59, on 27 July 2000 the Commission sent a reasoned opinion calling upon the French Republic to take the measures necessary to comply with it within two months of its notification.

9 In response, the French Republic informed the Commission by letter of 12 October 2000 that it intended to establish a timetable according to which, in accordance with the prescribed national procedure, it would be able to communicate to the Commission by October 2001 the information necessary for it to comply with Articles 4 and 11 of Directive 96/59.

10 On 26 January and 23 March 2001 respectively, the French Republic sent to the Commission Decree No 2001-63 of 18 January 2001 amending Decree No 87-59 of 2 February 1987 on the marketing, use and disposal of polychlorinated biphenyls and polychlorinated terphenyls (JORF of 25 January 2001, p. 1286; 'Decree No 2001-63') and the order of 13 February 2001 on the declaration of possession of equipment containing polychlorinated biphenyls and polychlorinated terphenyls (JORF of 6 March 2001, p. 3500; 'the order of 13 February 2001').

11 In its application, the Commission submits that the French Republic has failed to fulfil its obligations under Articles 4 and 11 of Directive 96/59. It claims that the provisions adopted by the French Republic subsequent to the reasoned opinion, such as Decree No 2001-63 and the order of 13 February 2001, are not such as to remedy that failure.

12 The French Government accepts that it had an obligation to draw up and send to the Commission within the periods prescribed by Directive 96/59 the documents referred to in Articles 4(1) and 11 of that directive. It does not dispute that at the date on which it lodged its defence it had not yet drawn up those documents and, consequently, was not in a position to send them to the Commission in the required form. The French Government claims, however, that the establishment of the procedure for drawing up those documents took longer than anticipated, that technical difficulties linked to the computerised system used caused

additional delay, and that it should be in a position to comply with the abovementioned provisions of Directive 96/59 in the course of 2002.

13 In that regard, it should be pointed out that it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the 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-315/98 *Commission* v *Italy* [1999] ECR I-8001, paragraph 11).

14 The French Government acknowledges that, at the end of the period laid down in the reasoned opinion, it had not yet communicated to the Commission the summary of the inventories, the plan or the outline referred to in Articles 4(1) and 11 of Directive 96/59.

15 In those circumstances, the action brought by the Commission must be considered well founded.

16 In consequence, it must be declared that, by failing to communicate to the Commission a summary of the inventories of equipment with PCB volumes of more than 5 dm^3, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1) of Directive 96/59, as referred to in Article 6(3) of that directive, the French Republic has failed to fulfil its obligations under Articles 4 and 11 of that directive.

Costs

17 Article 69(2) of the Rules of Procedure provides that 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 (Fourth Chamber)

hereby:

1. Declares that, by failing to communicate to the Commission of the European Communities a summary of the inventories of equipment with PCB volumes of more than 5 dm^3, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to

inventory in accordance with Article 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), as referred to in Article 6(3) of that directive, the French Republic has failed to fulfil its obligations under Articles 4 and 11 of that directive;

2. Orders the French Republic to pay the costs.

von Bahr Edward La Pergola

Delivered in open court in Luxembourg on 6 June 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber