JUDGMENT OF THE COURT (Third Chamber)
23 November 2000 *

In Case C-320/99,

Commission of the European Communities, represented by M. Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and G. Taillandier, Rédacteur in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ 1998 L 59, p. 1) or, in any event, by not communicating those provisions to the Commission, the French Republic has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, J.-P. Puissochet and F. Macken, Judges,

Advocate General: A. Saggio,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 August 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (OJ 1988 L 59, p. 1) or, in any event, by not communicating those provisions to the Commission, the French Republic has failed to fulfil its obligations under that directive.

2 Under Article 17(1) of Directive 97/68, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive not later than 30 June 1998 and forthwith to inform the Commission thereof.

3 On 25 August 1998, since it had not received any communication from the French Government of the measures implementing Directive 97/68 and had no information at its disposal suggesting that the French Republic had adopted the provisions necessary to comply with that directive, the Commission gave formal notice to the French Government to submit its observations on the subject within two months.

4 As that letter went unanswered, the Commission considered that the French Republic had not yet adopted the measures necessary to meet its obligations under Directive 97/68 and sent a reasoned opinion to that Member State on 17 December 1998 calling on it to comply with that opinion within two months of its notification.

5 That letter also went unanswered.

6 It was in those circumstances that the Commission, having obtained no other official and definitive information from the French Government, decided to bring the present action.

7 In its defence, the French Government does not deny that Directive 97/68 was not transposed into domestic law within the prescribed period. However, it asks the Court to take note of the fact that the procedure for the transposition of that directive is in the course of completion.

8 In that regard, it claims that it notified the Commission by letter of 3 September 1999 of the text of two draft national measures designed to transpose Directive 97/68 into domestic law. A memorandum enclosed with those measures referred to a decree adopted by the French Government on 10 March 1999 on the approval of engines designed to be installed in non-road mobile machinery as regards gaseous and particulate pollutants (JORF, 3 June 1999, p. 8188), in which the Government appointed the administrative and technical bodies responsible for examining applications from manufacturers, carrying out tests to measure polluting emissions and issuing 'EC approvals', as provided for in Article 16 of that directive.

9 In that connection, the Court would point out that, under the first paragraph of Article 5 of the EC Treaty (now the first paragraph of Article 10 EC), the Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. Such action includes directives which, pursuant to the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), are binding as to the result to be achieved upon each Member State to which they are addressed. That obligation implies, for each Member State to which a directive is addressed, adopting, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues (see Case C-336/97 *Commission* v *Italy* [1999] ECR I-3771, paragraph 19).

10 Since, in the present case, Directive 97/68 was not fully transposed within the period laid down in that directive, the action brought by the Commission must be considered well founded.

11 Accordingly, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68, the French Republic has failed to fulfil its obligations under that directive.

Costs

12 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 (Third Chamber),

hereby:

1. Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, the French Republic has failed to fulfil its obligations under that directive;

2. Orders the French Republic to pay the costs.

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 23 November 2000.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber