JUDGMENT OF THE COURT (Fifth Chamber)
30 March 2004 *

In Case C-201/03,

Commission of the European Communities, represented by L. Ström and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Sweden, represented by A. Kruse, acting as Agent,

defendant,

APPLICATION for a declaration that by failing to adopt the necessary measures under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43), to ensure that priority is given to the processing of waste oils by regeneration where technical, economic

* Language of the case: Swedish.

and organisational constraints so allow, the Kingdom of Sweden has failed to fulfil its obligations under that directive,

THE COURT (Fifth Chamber)

composed of: C. Gulmann, President of the Chamber, S. von Bahr and R. Silva de Lapuerta (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
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

By application lodged at the Court Registry on 13 May 2003, the Commission of the European Communities brought an action under Article 226 EC for a

declaration that, by failing to adopt the necessary measures under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43) (hereinafter 'Directive 75/439'), to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organisational constraints so allow, the Kingdom of Sweden has failed to fulfil its obligations under that directive.

2 Pursuant to Article 2 of Directive 87/101, Member States were required to take the measures necessary to comply with that Directive with effect from 1 January 1990.

3 As it took the view that Article 3(1) of Directive 75/439 had not been transposed into Swedish law within the prescribed period, the Commission brought infringement proceedings against the Kingdom of Sweden. Having called upon the latter to submit its observations, the Commission sent it a reasoned opinion on 21 March 2002 inviting it to take the necessary measures to comply with that opinion within two months of its notification. As the information provided by the Swedish authorities disclosed that the directive in question had not been transposed, the Commission decided to bring this action.

4 While it did not deny that the directive had not been transposed, the Swedish Government claimed that the failure to do so resulted from the consideration being given by the competent authorities to the appropriate procedures for ensuring that priority was given to the disposal of waste oils by regeneration.

5 The Court has consistently held 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, inter alia, Case C-276/98 *Commission* v *Portugal* [2001] ECR I-1699, paragraph 20, and Case C-352/01 *Commission* v *Spain* [2002] ECR I-10263, paragraph 8).

6 In those circumstances, the Commission's application must be held to be well founded.

7 It must accordingly be held that, by failing to adopt the necessary measures under Article 3(1) of Directive 75/439 to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organisational constraints so allow, the Kingdom of Sweden has failed to fulfil its obligations under that directive.

Costs

8 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 against the Kingdom of Sweden and the latter has been unsuccessful, it should be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1) **Declares that by failing to take the necessary measures under Article 3(1) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986, to ensure that priority is given to the processing of waste oils by regeneration where technical, economic and organisational constraints so allow, the Kingdom of Sweden has failed to fulfil its obligations under that directive;**

2) **Orders the Kingdom of Sweden to pay the costs.**

Gulmann von Bahr Silva de Lapuerta

Delivered in open court in Luxembourg on 30 March 2004.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber