JUDGMENT OF THE COURT (Sixth Chamber)
12 October 1995 *

In Case C-242/94,

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and F. Enrique Gonzalez Diaz, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by Alberto José Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Diaz, Abogado del Estado, of the Legal Service for Community Affairs, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

defendant,

APPLICATION for a declaration that, by failing to adopt or to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with the second Council Directive (90/619/EEC) of 8 November 1990 on

* Language of the case: Spanish.

the coordination of laws, regulations and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50), the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

composed of: G. Hirsch, President of the Second Chamber acting for the President of the Sixth Chamber, G. F. Mancini (Rapporteur), F. A. Schockweiler, J. L. Murray and H. Ragnemalm, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 September 1994, the Commission of the European Communities brought an action under Article 169 of the EC Treaty, seeking a declaration that, by failing to adopt or to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with the second Council Directive (90/619/EEC) of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct

life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50), the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

2 The first paragraph of Article 30 of Council Directive 90/619 provides that Member States are to take the measures necessary to comply with the directive within 24 months of the date of its notification — which was on 20 November 1990 — and to inform the Commission thereof forthwith.

3 On 21 December 1992, not having been informed by the Kingdom of Spain that the directive had been transposed into its national law, the Commission sent a letter of formal notice. On 15 February 1994, no answer having been received to that letter, it delivered a reasoned opinion requesting the Kingdom of Spain to take the measures necessary to comply with the directive within two months. The Kingdom of Spain did not respond to that reasoned opinion either. The Commission therefore brought the present action. In its application, it points out that, in accordance with Article 189 of the Treaty, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed.

4 The Spanish Government claims that work is proceeding on a draft law for the transposition of Council Directive 90/619. Furthermore, it says, the Directorate-General of Insurance has drawn up an administrative document, referred to as a 'Protocol', intended to ensure that Directive 90/619 is applied in practice even before it is formally incorporated into Spanish law.

5 It must first be stated in that regard that the Kingdom of Spain did not transpose Directive 90/619 within the period prescribed therein.

6 It has, furthermore, consistently been held that mere administrative practices, which by their nature are alterable at will by the administration and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under Article 189 of the Treaty (see Case C-381/92 *Commission* v *Ireland* [1994] ECR I-215, paragraph 7).

7 It must therefore be held that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with the second Council Directive (90/619/EEC) of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

Costs

8 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with the second Council Directive (90/619/EEC) of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty;**

2. **Orders the Kingdom of Spain to pay the costs.**

Hirsch Mancini Schockweiler

Murray Ragnemalm

Delivered in open court in Luxembourg on 12 October 1995.

R. Grass

Registrar

G. Hirsch

President of the Second Chamber
For the President of the Sixth Chamber