JUDGMENT OF THE COURT (Second Chamber)
16 October 2003 *

In Case C-307/02,

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

applicant,

v

French Republic, represented by G. Bergues and D. Petrausch, acting as Agents,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/21/EC of 25 April 2000 concerning the list of Community legislation referred to in the fifth indent of Article 13(1) of Council Directive 67/548/EEC (OJ 2000 L 103, p. 70), or in any event not immediately informing the Commission of those provisions, the French Republic has failed to fulfil its obligations under Article 3 of that directive,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (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

1 By application lodged at the Court Registry on 29 August 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/21/EC of 25 April 2000 concerning the list of Community legislation referred to in the fifth indent of Article 13(1) of Council Directive 67/548/EEC (OJ 2000 L 103, p. 70), or in any event not immediately informing the Commission of those provisions, the French Republic has failed to fulfil its obligations under Article 3 of that directive.

Legal framework

2 The Annex to Directive 2000/21 contains a list of Community legislation concerning product sectors for which Community notification or approval procedures exist and for which the requirements for data submission for the categories of substances identified in the list are equivalent to those laid down in Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition, 1967, p. 234). Included in that list is Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

3 Article 3 of Directive 2000/21 provides that:

'1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 1 April 2001 and shall immediately inform the Commission thereof.

2. When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.'

Pre-litigation procedure

4 In accordance with the procedure provided for in the first paragraph of Article 226 EC, the Commission, after giving the French Republic the opportunity to submit its observations, sent a reasoned opinion to that Member State by letter of 21 December 2001, requiring it to take the necessary measures to comply with that opinion within two months of its notification.

5 By letter of 6 February 2002, the French authorities stated that a draft decree concerning controls on the placing on the market of active substances and biocidal products contained a provision removing biocidal active substances from the scope of the requirement to declare new substances, as provided for under Directive 2000/21.

The application

6 The Commission points out that the French Republic neither adopted nor published, within the prescribed periods, the provisions necessary in order to comply with Directive 2000/21 and, in any event, did not inform the Commission of such provisions, thereby failing to fulfil its obligations under Article 3 of the Directive.

7 The French Government states that a draft decree concerning controls on the placing of biocidal active substances on the market and authorisation for placing biocidal products on the market has been drawn up. Article 24 of that decree was designed to exclude chemical substances which are used solely as active substances in biocidal products from the prior declaration procedure. By that decree, the French authorities will meet the requirements of both Directive 98/8 and Directive 2000/21.

8 It must be borne in mind that, according to settled case-law, 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 (see, *inter alia*, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26, and Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7).

9 It is not in dispute that the French Republic has not adopted the measures necessary to ensure the transposition of Directive 2000/21 within the period prescribed for that purpose.

10 Consequently, it must be held that by failing to adopt all the laws, regulations and administrative measures necessary to comply with Directive 2000/21, the French Republic has failed to fulfil its obligations under Article 3 of that directive.

Costs

11 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 sought an order for costs against the French Republic and the latter has been unsuccessful, the French Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Declares that, by failing to adopt all the laws, regulations and administrative measures necessary to comply with Commission Directive 2000/21/EC of**

25 April 2000 concerning the list of Community legislation referred to in the fifth indent of Article 13(1) of Council Directive 67/548/EEC, the French Republic has failed to fulfil its obligations under Article 3 of that directive;

2. Orders the French Republic to pay the costs.

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass
Registrar

V. Skouris
President