JUDGMENT OF THE COURT (Sixth Chamber)
16 July 1998 *

In Case C-285/97,

Commission of the European Communities, represented by Francisco de Sousa Fialho, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Portuguese Republic, represented by Luís Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and Pedro Portugal, of the Legal Office of the Directorate-General for Environment, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1994 L 297, p. 29), the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and Article 2 of Directive 94/51/EC,

* Language of the case: Portuguese.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, G. F. Mancini, J. L. Murray, G. Hirsch and K. M. Ioannou, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 30 April 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 1 August 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1994 L 297, p. 29), the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and Article 2 of Directive 94/51/EC.

2 Under Article 2 of Directive 94/51 the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 1995 and inform the Commission thereof forthwith.

3 Since it had not received any notification concerning the transposition of Directive 94/51 into Portuguese law and had no other information enabling it to conclude that the Portuguese Republic had complied with that obligation, the Commission initiated the procedure provided for in Article 169 of the Treaty on 2 August 1995 by sending the Portuguese Government a letter of formal notice whereby it called upon it to submit its observations within two months.

4 By letter of 27 August 1996 the Portuguese Republic replied that Directive 94/51 had been transposed into Portuguese national law by Portaria (Implementing Order) No 602/94 of 13 July 1994 which had been notified previously to the Commission.

5 The Commission proceeded to analyse that order and concluded that it could not be considered to have transposed Directive 94/51 into domestic law. On 27 December 1996, it accordingly sent the Portuguese Republic a reasoned opinion, calling upon it to adopt the measures necessary to comply with its obligations under Directive 94/51 within two months with effect from its notification.

6 Since no reply was forthcoming and it had no other information to justify a finding that the Portuguese Republic had adopted the requisite measures, the Commission brought the present action.

7 The Portuguese Government does not deny that it failed to fulfil its obligations. However, it points out that a draft Portaria intended to transpose Directive 94/51 is currently awaiting publication in the *Diário da República*.

8 Since the transposition of Directive 94/51 has not been achieved within the prescribed period, the action brought by the Commission must be held to be well founded.

9 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 94/51, the Portuguese Republic has failed to fulfil its obligations under Article 2 of that directive.

Costs

10 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Portuguese Republic 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 adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms, the Portuguese Republic has failed to fulfil its obligations under Article 2 of that directive;

2. Orders the Portuguese Republic to pay the costs.

Ragnemalm Mancini Murray

Hirsch Ioannou

Delivered in open court in Luxembourg on 16 July 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber