JUDGMENT OF THE COURT (Fifth Chamber)
18 December 1997 *

In Case C-361/95,

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Blanca Vilá Costa, a national civil servant on secondment to its Legal Service, acting as Agents, 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

Kingdom of Spain, represented by Alberto José Navarro González, Director General of Community Legal and Institutional Affairs, and Rosario Silva de Lapuerta, Abogado del Estado, of the Community Litigation Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1) or, in the

* Language of the case: Spanish.

alternative, by failing to inform the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: A. La Pergola,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 June 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 November 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt and bring into force within the

prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1; hereinafter 'the Directive') or, in the alternative, by failing to inform the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

2 Article 57 of the Directive requires the Member States to adopt the laws, regulations and administrative provisions necessary for their compliance with the Directive not later than 31 December 1993 and forthwith to inform the Commission thereof.

3 On 10 February 1994, not having been informed of the measures adopted by the Kingdom of Spain in order to comply with the Directive, the Commission sent a letter calling upon the Kingdom of Spain to submit its observations within two months.

4 On 24 October 1994, not having received any communication from which it could conclude that the Kingdom of Spain had complied with its obligations under the Directive, the Commission addressed a reasoned opinion to the Kingdom of Spain, requesting it to take the measures necessary for compliance within two months.

5 By letter of 18 January 1995, the Spanish authorities stated that they were in the process of drafting the measures necessary for compliance with the Directive.

6 Not having received any communication subsequent to that letter from which it could conclude that the Kingdom of Spain had complied with its obligations under the Directive, the Commission brought the present proceedings.

7 It is clear from the Commission's application and oral submissions that this action concerns a failure to transpose the Directive within the period prescribed or, in the alternative, a failure to communicate the measures transposing it.

8 The Kingdom of Spain denies any such failure and submits that, in order to determine whether the Directive has been transposed, account must be taken not only of Law No 30/1995 of 8 November 1995, entitled Ordenación y Supervisión de los Seguros Privados (organization and monitoring of private insurance) (BOE No 268, 9 November 1995, p. 32480), which transposes the content of the Directive into Spanish law, but also of the Reglamento de Ordenación del Seguro Privado (Regulation on the organization of private insurance) approved by Royal Decree No 1348/85 of 1 August 1985 (BOE No 185, 3 August 1985) and Law No 30/1992 of 26 November 1992, entitled Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (legal rules governing public authorities and ordinary administrative procedure) (BOE No 285, 27 November 1992), to both of which Law No 30/1995 refers, and of the Ley Reguladora de la Jurisdicción Contencioso-Administrativa (Law governing administrative court proceedings) of 27 December 1956 (BOE No 363, 28 December 1956).

9 The Kingdom of Spain further submits that, as regards Articles 17, 21 and 22 of the Directive, concerning the general obligation to establish technical provisions, the assets acceptable as cover for those provisions and certain rules governing the diversification of such assets, the Commission has ignored the transitional arrangements laid down in Article 50 of the Directive, which provides:

'Spain, until 31 December 1996, and Greece and Portugal, until 31 December 1998, may operate the following transitional arrangements for contracts covering risks situated exclusively in one of those Member States other than those defined in Article 5(d) of Directive 73/239/EEC:

(a) ...

(b) the amount of the technical provisions relating to the contracts referred to in this Article shall be determined under the supervision of the Member State concerned in accordance with its own rules or, failing that, in accordance with the procedures established within its territory in accordance with this Directive. Cover of those technical provisions by equivalent and matching assets and the localization of those assets shall be effected under the supervision of that Member State in accordance with its rules and practices adopted in accordance with this Directive.'

10 The Kingdom of Spain infers that there is no obligation to transpose the relevant provisions until 31 December 1996 and that it is only with regard to the cover of technical provisions by equivalent assets and the localization of those assets that the rules or practices which it has established must be adopted or applied in accordance with the Directive.

11 It further considers that the transitional arrangements in Article 50 are also applicable to Articles 18 and 23 of the Directive, since their subject-matter relates to technical provisions.

12 The Commission maintains that Law No 30/1995 constitutes a tardy and incomplete transposition of the Directive. In particular, it considers that Articles 6, 7, 17, 18, 21 to 24 and 56 of the Directive have not been transposed as required.

13 As regards, first, the provisions of the Directive which the Kingdom of Spain claims were transposed by Law No 30/1995, it must be borne in mind that the Court has consistently held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-289/94 *Commission* v *Italy* [1996] ECR I-4405, paragraph 20).

14 In the present case, Law No 30/1995 was adopted after the end of the period laid down in the reasoned opinion and thus cannot be taken into account by the Court. It must therefore be held that the Articles of the Directive which the Kingdom of Spain claims were transposed by Law No 30/1995 were not in fact transposed within the period laid down.

15 As regards, second, the provisions of the Directive which the Kingdom of Spain considers to have been transposed by rules in force before the end of the period laid down by the Commission, it must be observed that, as the Commission has rightly pointed out, it is necessary in this case to adopt a specific measure transposing the Directive, since the second paragraph of Article 57(1) expressly requires

Member States to ensure that their measures transposing the Directive include a reference to it or that such reference is made when they are officially published (see, to the same effect, Case C-137/96 *Commission* v *Germany* [1997] ECR I-6749, paragraph 8). The measures on which the Kingdom of Spain relies, however, mentioned in paragraph 8 above, do not meet that requirement.

16 With regard, finally, to the provisions of the Directive which the Kingdom of Spain claims fall within the transitional arrangements laid down in Article 50 of the Directive, it must be held that, as the Commission has rightly contended, such arrangements can apply only where transposition of the Directive is complete and in accordance with its provisions.

17 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Spain has failed to fulfil its obligations under the Directive.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. The Commission has applied for costs against the Kingdom of Spain. Since the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), the Kingdom of Spain has failed to fulfil its obligations under that directive;**

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

Gulmann Wathelet Moitinho de Almeida

Jann Sevón

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber