JUDGMENT OF THE COURT (Sixth Chamber)

28 November 2002 *

In Case C-259/01,

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

applicant,

v

French Republic, represented by G. de Bergues and A. Bréville-Viéville, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1), or, in any event, by not notifying the Commission thereof, the French Republic has failed to fulfil its obligations under that directive and, in particular, under Article 29 thereof,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 July 2001, 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 Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1, hereinafter 'the Directive'), or, in any event, by not notifying the Commission thereof, the French Republic has failed to fulfil its obligations under that directive and, in particular, under Article 29 thereof.

Legal background and pre-litigation procedure

2 Under Article 29 of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply therewith no later than two years from its entry into force, that is 10 August 2000 at the latest, and forthwith to inform the Commission thereof.

3 By letter of 17 August 2000, the French authorities sent the Commission certain information on the state of transposition of the Directive into French law. They stated that a draft law had been adopted by the Conseil des ministres (Council of Ministers) and was to be submitted to the Parliament with a view to its adoption as soon as possible.

4 Since it received no information allowing it to conclude that measures transposing the Directive had been formally adopted within the period prescribed by

Article 29 thereof, on 22 September 2000 the Commission sent the French authorities a letter of formal notice stating that it considered that the French Government had failed to fulfil its obligations in that regard under Community law and asking it to submit its observations within a period of two months.

5 By letter of 21 November 2000, the French authorities replied to that letter of formal notice maintaining that the transposition of the Directive into French law necessitated considerable changes in the national legislative framework and that, pending the adoption of the draft law to bring about that transposition, certain transitional measures liberalising access to the gas network had been put in place by the French economic operators.

6 Since it considered that no measure transposing the Directive had been adopted by the French Republic, the Commission sent it, on 5 February 2001, a reasoned opinion requesting it to take the measures necessary to comply with the obligations arising from the Directive within a period of two months from the date of notification of that opinion.

7 By letter of 6 April 2001, the French authorities again informed the Commission, first, of their willingness to transpose the Directive into French law and, secondly, of the existence of temporary measures intended to ensure the immediate attainment of the objectives of the Directive.

8 Since that information indicated that the Directive had still not been transposed into French law, the Commission decided to bring this action.

Substance

Arguments of the parties

9 Claiming that the French Republic has failed to fulfil its obligations under Article 29 of the Directive, the Commission points to first, the content of Article 10 EC and the third paragraph of Article 249 EC, and, secondly, the Court's settled case-law, according to which Member States to which a directive is addressed must bring their legislation into conformity therewith within the period prescribed, and may not rely on provisions, practices, or circumstances in their own legal order to justify failure to comply with that obligation.

10 The French Government contends that fulfilment of Member States' obligations under the articles pleaded by the Commission does not necessarily follow from the formal adoption of a text, but may also result from practical changes in the management of a sector capable of attaining the objectives of a directive.

11 It submits that, with regard to the objectives of the Directive, such as those which appear, for example, in the seventh and ninth recitals in the preamble thereto, it has partially fulfilled its obligations by implementing in practice the liberalisation of the gas sector in France. The direct application of a mechanism having the effect sought by the Directive, for example, third-party access to the gas network, enables a Member State to comply with the objectives set forth in the Directive and therefore to fulfil its obligation of genuine cooperation laid down by Article 10 EC.

12 With regard to the transitional system of access to the gas transmission and distribution network which was put in place, the French Government points out that it has been in effect since 10 August 2000 and that information about it was sent to the Commission on 17 August 2000. That system enables 'eligible customers', within the meaning of Article 18 of the Directive, to have access to the gas system by means of transmission contracts for a minimum term of one year. The general conditions of, and the tariff for, such access have been published by the various economic operators. Furthermore, eligible customers can take advantage, on certain conditions, of a service of temporary storage of gas at various sites on the gas network.

13 According to the French Government, the application of that system has enabled eligible customers to renegotiate their gas supply contracts and even to change supplier. A year after that system was put in place 14% of eligible customers on the French market had already changed supplier and four new economic operators had appeared on that market.

14 In addition, the economic operators have undertaken to account separately for their transmission and trading activities and to ensure complete transparency in the commercial and financial relations between those activities.

15 The French Government adds, in its rejoinder, that the Commission challenges only the method of transposing the Directive and not the efficacity of the measures adopted to put it into effect.

16 It also submits that the liberalisation of the market is accelerating as a result, first, of the progressive adoption of legislation concerning that sector — for example, Article 81 of the amending Finance Law of 31 December 2001 revokes the gas networks' concessionary regime — and, second, of the increased opening-up of the French natural gas market.

Findings of the Court

17 It is appropriate to observe, first of all, that whilst, as the French Government submits, it is clear from the Court's case-law that legislative action on the part of each Member State is not necessarily required in order to implement a directive, the Court has held that such can only be the case if the national law in question effectively guarantees the application in full of the directive concerned, if the legal position under national law is sufficiently precise and clear, and if individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts (see, in particular, Case C-144/99 *Commission* v *Netherlands* [2001] ECR I-3541, paragraph 17).

18 Secondly, it is established case-law that the maintenance of national legislation which is in itself incompatible with Community law, even if the Member State concerned acts in accordance with Community law, gives rise to an ambiguous state of affairs by maintaining, as regards the persons concerned, a state of uncertainty as to the possibility of relying on Community law (Case C-185/96 *Commission* v *Greece* [1998] ECR I-6601, paragraph 32, and the case-law cited).

19 It must, finally, be borne in mind that it is clear from the Court's case-law with regard to the implementation of directives that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the EC Treaty (see, in particular, Case C-394/00 *Commission* v *Ireland* [2002] ECR I-581, paragraph 11).

20 In this case, it is clear both from the correspondence which the French Government exchanged with the Commission in the course of the pre-litigation procedure and from the defence and rejoinder, that the legislative provisions in force in France at the expiry of the period prescribed in the reasoned opinion did not ensure the complete transposition of the Directive.

21 With regard to the practical measures adopted with a view to achieving the Directive's objectives, it suffices to state that if, as is clear from the case-law cited in paragraph 19 of this judgment, mere administrative practices cannot be regarded as constituting the proper fulfilment of obligations under the Treaty *a fortiori*, the same is true of practices which, as in this case, do not emanate from a Member State but have been adopted by the economic operators of a certain sector.

22 In those circumstances, it must be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive, the French Republic has failed to fulfil its obligations under Article 29 thereof.

Costs

23 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 (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, the French Republic has failed to fulfil its obligations under Article 29 thereof;**

2. **Orders the French Republic to pay the costs.**

Schintgen Gulmann Skouris

Macken Colneric

Delivered in open court in Luxembourg on 28 November 2002.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber