# JUDGMENT OF THE COURT (First Chamber)
7 November 2002 *

In Case C-352/01,

**Commission of the European Communities**, represented by G. Valero Jordana, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Kingdom of Spain**, represented by L. Fraguas Gadea, acting as Agent, 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 98/8/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) or, in any event, by failing to communicate them to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive,

* Language of the case: Spanish.

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges,

Advocate General: J. Mischo,

Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 19 September 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 98/8/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, the 'Directive') or, in any event, by failing to communicate them to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that Directive.

2 Under Article 34 of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with it not later than 24 months after its entry into force, that is to say 14 May 2000, and forthwith to inform the Commission thereof. In accordance with Article 35, the Directive came into force on 14 May 1998. Thus the time-limit for its transposition expired on 14 May 2000.

3 Having received no communication from the Spanish authorities on measures implementing the Directive, the Commission initiated the infringement procedure. After giving the Kingdom of Spain formal notice to submit its observations, the Commission, on 17 January 2001, sent a reasoned opinion to that Member State requesting it to adopt the measures necessary to comply with the Directive within a period of two months from the date of its notification. As the information sent by the Spanish authorities in response to that reasoned opinion showed that the transposition of the Directive had not been completed, the Commission brought the present action.

4 Pointing to the obligations incumbent on the Member States under Articles 34 and 35 of the Directive, the Commission maintains that the Kingdom of Spain was required to take all measures necessary to comply with the Directive within the prescribed period.

5 The Spanish Government states that the transposition of the Directive into national law must be effected by a royal decree. The procedure for drawing up such a decree is particularly cumbersome in that it requires numerous reports, opinions and consultations as well as a public hearing when the text affects the rights and interests of the public. In addition, in the present proceedings, the fact that two ministries, the Ministry of Health and Consumer Affairs and the Ministry of Agriculture participated in the drawing up of the decree prolonged that procedure.

6 In that regard 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, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

7 In the present case, it is not disputed that the Kingdom of Spain did not adopt the measures necessary in order to comply with the reasoned opinion within the period prescribed for that purpose.

8 Additionally, it is settled case-law that a Member State may not rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period (see, in particular, Case C-276/98 *Commission* v *Portugal* [2001] ECR I-1699, paragraph 20).

9 Accordingly, the action brought by the Commission must be regarded as well founded.

10 Consequently, it must be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary in order to comply with the Directive, the Kingdom of Spain has failed to fulfil its obligations under 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 has applied for costs and the Kingdom of Spain has been unsuccessful, the Kingdom of Spain must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary to comply with 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, the Kingdom of Spain has failed to fulfil its obligations under that Directive;

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

Wathelet Jann Rosas

Delivered in open court in Luxembourg on 7 November 2002.

R. Grass — Registrar

M. Wathelet — President of the First Chamber