JUDGMENT OF THE COURT (Sixth Chamber)
5 December 2002 *

In Case C-324/01,

Commission of the European Communities, represented by R. Wainwright and J. Adda, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by C. Pochet, acting as Agent,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to take all the measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive and the third paragraph of Article 249 EC,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

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 28 August 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to take all the measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, hereinafter 'the Directive'), in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive and the third paragraph of Article 249 EC.

The Directive

2 Article 1 of the Directive defines the main concepts used therein. Article 4(5) sets out the system which applies to priority sites placed on the list of sites of Community importance. Article 5(4) defines the system which applies to the sites concerned during the consultation period. Articles 6 and 7 relate to the measures necessary to ensure the protection of special areas of conservation and special protection areas. Articles 12 and 13 concern measures of protection for animal and plant species. Article 14 applies to the taking in the wild of specimens of species of wild fauna and flora. Article 15 prohibits certain indiscriminate means of capture or killing of certain species of wild fauna. Article 16(1) defines the conditions in which the Member States may, for specific purposes, derogate from certain provisions of the Directive. Article 22(b) concerns the introduction into

the wild of non-indigenous species. Article 22(c) requires Member States to promote education and information on the need to protect species of wild fauna and flora and to conserve their habitats, and Article 23(2) requires that the implementation measures adopted by the Member States contain a reference to the Directive or be accompanied by such reference on the occasion of their official publication.

3 Article 23(1) of the Directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification. Since the Directive was notified to the Kingdom of Belgium in June 1992, the prescribed period for its implementation expired in June 1994.

Pre-litigation procedure

4 Since it took the view that the various measures of which it had been informed in connection with the transposition of the Directive into Belgian law were inadequate, in particular with respect to compliance with Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2), the Commission gave the Kingdom of Belgium formal notice on 1 July 1999 to submit its comments in that regard.

5 By letters of 27 September 1999 and 16 February 2000, the Kingdom of Belgium notified the Commission of the position of the Flemish Region and that of the

Ministre-président of the Walloon Government, respectively. The former letter reported the progress in drawing up measures to implement the Directive, while the latter reported a series of decrees considered by the Walloon authorities to ensure the implementation of the Directive.

6 Since it was of the opinion that the comments submitted by the Kingdom of Belgium in reply to its letter of formal notice were not satisfactory, the Commission issued a reasoned opinion on 10 February 2000 in which it observed that, by failing to take all the measures necessary to ensure the full and proper implementation of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of the Directive, in conjunction with Annexes II, IV, V and VI thereto, the Member State had failed to fulfil its obligations under the Directive and under the third paragraph of Article 249 EC.

7 The reasoned opinion was followed by several letters from the Belgian authorities describing the steps being taken to transpose the Directive into national law.

8 Since it considered that the Kingdom of Belgium had not adopted, within the period laid down in the reasoned opinion, the measures required to comply with it, the Commission brought the present action.

Substance

9 First, as regards the Flemish Region, the Commission claims that the regional authorities failed to adopt the measures necessary to ensure the transposition of all the provisions referred to in the application, with the exception of

Article 22(c) of the Directive. The Kingdom of Belgium does not dispute the Commission's complaints in that regard. It acknowledges that the measures currently in force only partially transpose the Directive.

10 Secondly, with respect to the Region de Bruxelles-Capitale, the Commission maintains that the competent authorities have not adopted the measures necessary to ensure the transposition of the second sentence in the first subparagraph of Article 6(4), Article 7 and Article 22(c) of the Directive. The Kingdom of Belgium disputes those claims.

11 Finally, in its reply, the Commission withdrew its complaints against the Walloon Region.

12 It therefore appears that only the complaints based on the failure to transpose certain provisions of the Directive by the Region de Bruxelles-Capitale are disputed by the Kingdom of Belgium.

13 Consequently, the Court need only consider the substance of those complaints.

14 As regards the Flemish Region, since the parties agree that the measures in force at the end of the period laid down in the reasoned opinion do not ensure the full transposition of the provisions of the Directive set out in paragraph 1 of the present judgment, with the exception of Article 22(c), the Commission's application must be held to be well founded, within those limits.

Failure to transpose the second sentence in the first subparagraph of Article 6(4) of the Directive

15 Article 6 of the Directive defines the system which applies to special areas of conservation and sites of Community importance. It is worded as follows:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures...

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species...

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon... shall be subject to appropriate assessment of its implications...

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or

economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

...'

16 According to the Commission, no provision was adopted which requires the competent authorities to inform the Commission of the compensatory measures adopted for the Region de Bruxelles-Capitale pursuant to Article 6(4) of the Directive.

17 The Belgian Government, which does not deny the Commission's claim, nevertheless contends that the transposition of the second sentence of the first subparagraph of Article 6(4) of the Directive cannot be achieved by legislation. The provision has no normative scope since it does not create either rights or obligations for a general category of individuals.

18 In that respect, it should be recalled that, according to settled case-law, each of the Member States to which a directive is addressed is obliged to adopt, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective it pursues (see in particular Case C-336/97 *Commission* v *Italy* [1999] ECR I-3771, paragraph 19; Case C-97/00 *Commission* v *France* [2001] ECR I-2053, paragraph 9; and Case C-478/99 *Commission* v *Sweden* [2002] ECR I-4147, paragraph 15).

19 In the present case, the second sentence of the first subparagraph of Article 6(4) of the Directive requires the Member State to inform the Commission of the compensatory measures adopted.

20 The purpose of that requirement to inform is to enable the Commission to consider whether the compensatory measures adopted are such as to ensure that the overall coherence of Natura 2000 is protected and, depending on the circumstances, to draw the appropriate conclusions.

21 In the absence of a provision in national law which lays down adequate detailed rules concerning information on the compensatory measures adopted by the Region de Bruxelles-Capitale, it is not possible to ensure that the second sentence of the first subparagraph of Article 6(4) of the Directive has full effect and attains its objective. Uncertainty at the domestic level concerning the procedure to be followed in order to comply with the obligation to inform is likely to hinder compliance with that obligation and, consequently, the attainment of its objective, as recalled in paragraph 20 of the present judgment.

22 Therefore, the complaint alleging failure to transpose the second sentence of the first subparagraph of Article 6(4) of the Directive is well founded.

Failure to transpose Article 7 of the Directive

23 Article 7 of the Directive provides that:

'Obligations arising under Article 6(2), (3) and (4) of this directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly

recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.'

24 The Commission claims that the Region de Bruxelles-Capitale failed to adopt the measures necessary to ensure the implementation of Article 7 of the Directive.

25 The Belgian Government does not deny that fact. However, it contends that Article 7 need not be transposed into national law. The absence of transposition is merely the consequence of the fact that the Region de Bruxelles-Capitale does not consider it necessary to implement Article 6 in national law.

26 It should be recalled that Article 7 of the Directive provides that the system for protecting special areas of conservation defined in Article 6(2), (3) and (4) of the Directive is to replace the system of protection arising from the first sentence of Article 4(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) as regards the special protected areas created pursuant to that directive.

27 However, in the absence of any national measure requiring the application to special protected areas created pursuant to Directive 79/409 of the system of protection for special areas of conservation defined in Article 6(2), (3) and (4) of the Directive, the attainment of the objective set out in Article 7 cannot be satisfactorily ensured. In order to ensure the full application of that provision in

law and not only in fact and to satisfy the requirement of legal certainty, the Member States must provide a precise legal framework for the field in question (see, to that effect, Case C-360/87 *Commission* v *Italy* [1991] ECR I-791, paragraphs 11 and 13).

28 It follows that the complaint relating to failure to transpose Article 7 of the Directive is well founded.

Failure to transpose Article 22(c) of the Directive

29 Article 22 of the Directive provides:

'In implementing the provisions of this Directive, Member States shall:

...

(c) promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats.'

30 The Commission maintains that the Region de Bruxelles-Capitale did not notify it of any laws, regulations or administrative provisions that would form the basis for the implementation of Article 22(c) of the Directive.

31 The Belgian Government states that the Region de Bruxelles-Capitale has complied with the obligations arising from Article 22(c) of the Directive through various agreements financing nature education programmes.

32 In that regard, it should be observed that Article 22(c) of the Directive requires Member States to promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats.

33 However, while the Belgian authorities maintain that they guarantee the financing of nature-related education programmes and that agreements to that effect have been concluded with the bodies concerned, no measure which is likely to ensure the implementation of Article 22(c) of the Directive in the Region de Bruxelles-Capitale has been notified to the Commission.

34 In those circumstances, the complaint alleging failure to transpose Article 22(c) of the Directive must be held to be well founded.

35 Accordingly, it must be held that, by failing to adopt all the laws, regulations and administrative measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of the Directive, in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive.

Costs

36 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 asked that the Kingdom of Belgium be ordered to pay the costs and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that by failing to adopt all the laws, regulations and administrative measures necessary to ensure the full and proper transposition of Articles 1,**

4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Annexes II, IV, V and VI thereto, the Kingdom of Belgium has failed to fulfil its obligations under the Directive;

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

Puissochet Gulmann Macken

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 5 December 2002.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber