JUDGMENT OF THE COURT (Fifth Chamber)
13 November 1997 *

In Case C-236/96,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, 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

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in the same Ministry, acting as Agents, D-53107, Bonn,

defendant,

APPLICATION for a declaration that, by failing to adopt within the periods prescribed the measures necessary to comply with

— Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38) and

* Language of the case: German.

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Directive 91/157 (OJ 1993 L 264, p. 51),

the Federal Republic of Germany has failed to comply with its obligations under the Treaty,

THE COURT (Fifth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida, D. A. O. Edward, J.-P. Puissochet and P. Jann, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 September 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 July 1996, 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 periods prescribed the measures necessary to comply with

— Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38) and

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Directive 91/157 (OJ 1993 L 264, p. 51),

the Federal Republic of Germany has failed to comply with its obligations under the Treaty.

2 Under Article 11(1) of Directive 91/157 and Article 7(1) of Directive 93/86, the Member States were to take the measures necessary to comply with those directives before 18 September 1992 and no later than 31 December 1993, respectively, and forthwith to inform the Commission thereof.

3 When those time-limits expired without its having been informed of any implementing measures taken by the Federal Republic of Germany, the Commission initiated proceedings under Article 169 of the Treaty in respect of failure to fulfil obligations. By letters of 21 December 1992 and 10 February 1994 it called upon the German Government to submit its observations on the absence of the measures necessary to transpose Directives 91/157 and 93/86 into national law.

4 By letter of 9 March 1993 the German Government stated that the German authorities were in the process of preparing the measures necessary for the transposition of Directive 91/157. It also indicated that, in its opinion, such transposition could only be envisaged in the context of the detailed arrangements for the marking system referred to in Article 4(2) of that directive, which were yet to be drawn up at that time.

5 By letter of 28 April 1994 the German Government expressed its regret at the delay in transposing Directive 93/86 and pointed out that it had seemed logical to transpose Directives 91/157 and 93/86 simultaneously.

6 Having received no communication of any official measure transposing those directives, the Commission sent reasoned opinions to the German Government on 15 March 1994 and 3 August 1995 respectively, requesting it to take the necessary measures to comply therewith within two months from the date of notification of those opinions.

7 In response to those reasoned opinions, the German Government submitted, by letter of 21 September 1995, a series of observations on the importance of the programmes provided for in Article 6 of Directive 91/157. It also explained the German system for disposal of batteries which is based on agreements between manufacturers and traders. None the less, it again acknowledged that the directives had still not been formally transposed.

8 On 8 July 1996, not having been informed by the German authorities of any final measure, the Commission decided to bring the present action.

9 In its defence, the German Government does not deny that the directives in question were not transposed within the periods prescribed. It points out, *inter alia*, that it informed the Commission on several occasions of the reasons for the delay in transposing the directives.

10 Since the directives in issue have not been transposed within the periods prescribed, the action brought by the Commission is well founded.

11 It must therefore be held that, by failing to adopt within the periods prescribed the measures necessary to comply with the directives in question, the Federal Republic of Germany has failed to comply with its obligations under Article 11(1) of Directive 91/157 and Article 7(1) of Directive 93/86.

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has failed in its submissions, 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 periods prescribed the measures necessary to comply with

— Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances and

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Directive 91/157,

the Federal Republic of Germany has failed to comply with its obligations under Article 11(1) of Directive 91/157 and Article 7(1) of Directive 93/86;

2. Orders the Federal Republic of Germany to pay the costs.

Gulmann Moitinho de Almeida Edward

Puissochet Jann

Delivered in open court in Luxembourg on 13 November 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber