JUDGMENT OF THE COURT
13 March 1992 *

In Case C-43/90,

Commission of the European Communities, represented by Ingolf Pernice, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Ernst Röder and Joachim Karl, acting as Agents, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 20-22 Avenue Émile Reuter,

defendant,

APPLICATION for a declaration that by not duly implementing and correctly applying the provisions of Article 5(2) in conjunction with Article 23(1) of Council Directive 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (Official Journal 1979 L 259, p. 10), the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty,

* Language of the case: German.

THE COURT,

composed of: O. Due, President, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, M. Díez de Velasco, M. Zuleeg and J. L. Murray, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 8 October 1991,

after hearing the Opinion of the Advocate General at the sitting on 5 November 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 February 1990, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by not duly implementing and correctly applying the provisions of Article 5(2) in conjunction with Article 23(1) of Council Directive 79/831/EEC of 18 September 1979 amending for the sixth time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty.

2 The failure to fulfil its obligations which is alleged against the Federal Republic of Germany concerns in substance two points.

3 First, the Commission maintains that the German regulation on dangerous substances of 26 August 1986 (BGB1 I, p. 1470), as amended, imposes specific requirements as to labelling on a whole series of 'old' substances, namely substances which were first put on the market before 18 September 1981, although the second subparagraph of Article 5(2) of the abovementioned Council Directive 67/548/EEC, as amended by Directive 79/831/EEC, provides that those substances are to be labelled by the manufacturer on his own responsibility.

4 Secondly, the Commission considers that Germany has also failed to fulfil its obligations concerning certain carcinogenic substances, as to which the German Government maintains that, in accordance with the procedure provided for in Article 23(1) of Directive 67/548, as amended by Directive 79/831, it informed the Commission that it had provisionally taken measures concerning their labelling. The alleged failure of Germany to fulfil its obligations arises from the fact (a) that there was no formal notification of those substances, in accordance with the provision in question, and (b) that the German regulation at issue does not expressly mention the provisional nature of the national measure.

The first issue

5 In order to restrict the scope of the first issue in the complaint, it is essential to ascertain the full list of substances in respect of which the Commission considers that the requirement of special labelling, imposed by the German legislation in question, is contrary to the second subparagraph of Article 5(2) of Directive 67/548, as amended by Directive 79/831.

6 The application, far from containing such a list, repeatedly refers at times to the letter of formal notice and the reasoned opinion and at times to only one of those documents, in support of the conclusion that 'it is accordingly inappropriate for the regulation on dangerous substances to require special labelling for all the substances referred to at points 3 to 5 of the letter of formal notice and at points 5 to 8 and 11 of Part II of the reasoned opinion'.

7 Article 19 of the Protocol on the Statute of the Court of Justice of the EEC and Article 38(1)(c) and (d) of the Rules of Procedure provide that the application in a case brought before the Court must contain, among other things, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the application is based.

8 As the Court held in its judgment in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, at paragraphs 26 to 30, an application does not satisfy that requirement if the Commission's complaints are not accurately set out in it and simply appear by way of reference to 'all the reasons set out in the letter of formal notice and in the reasoned opinion'.

9 The action is accordingly inadmissible as to the first ground of the Commission's complaint.

The second issue

10 As for the second ground of the Commission's complaint, the German Government, while admitting that it had provisionally required special labelling nationally in respect of certain substances considered to be carcinogenic, points out that it had initiated the relevant procedure under Article 23(1) of Directive 67/548, as amended by Directive 79/831, by sending the Commission on 14 July 1989 and 29 August 1989 two lists setting out 21 and 42 substances respectively.

11 The Commission, while acknowledging that it had received those two notifications, maintains that the procedure laid down in the provision in question was not correctly followed, because first it did not receive the notification of

29 August 1989 through official channels and secondly the German rules in question did not expressly mention the provisional nature of the contested national measures.

12 The first argument of the Commission cannot be accepted. The Community provision in question contains no specific formal requirement and provides solely that the Member State concerned must immediately notify the Commission and the other Member States of any national measures provisionally adopted.

13 The second argument concerning the failure expressly to mention, in the disputed rules, their provisional nature is not well founded. Article 23 of Directive 67/548, as amended by Directive 79/831, imposes no such obligation either expressly or implicitly. Furthermore, any such reference in the national rules would serve no purpose whatever, given that the provisional nature of protective measures of that kind is inherent in the procedure laid down by the provision in question and that the length of the period for which they are valid is a matter for the Commission, which is responsible for applying that procedure.

14 The application must accordingly be dismissed as inadmissible in part and as unfounded in part.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;

2. Orders the Commission to pay the costs.

Due Grévisse Kapteyn Mancini

Kakouris Moitinho de Almeida Díez de Velasco Zuleeg Murray

Delivered in open court in Luxembourg on 13 March 1992.

J.-G. Giraud
Registrar

O. Due
President