JUDGMENT OF THE COURT (Second Chamber)

27 February 2002 *

In Case C-140/01,

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

applicant,

v

Kingdom of Belgium, represented by A. Snoecx, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ 1998 L 144, p. 1), or to adopt the measures necessary to comply therewith, the Kingdom of Belgium has failed to fulfil its obligations under that directive and under the EC Treaty,

* Language of the case: French.

THE COURT (Second Chamber),

composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges,

Advocate General: S. Alber,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 December 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 27 March 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to notify the Commission of the laws, regulations and administrative provisions necessary to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships (OJ 1998 L 144, p. 1), or to adopt the measures necessary to comply therewith, the Kingdom of Belgium has failed to fulfil its obligations under that directive and under the EC Treaty.

Legislative background and pre-litigation procedure

2 The purpose of Directive 98/18 is, according to Article 1 thereof, to introduce a uniform level of safety of life and property on new and existing passenger ships and high speed passenger craft, when both categories of ships and craft are engaged on domestic voyages, and to lay down procedures for negotiation at international level with a view to a harmonisation of the rules for passenger ships engaged on international voyages.

3 Article 14 of the said directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1998.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by Member States.

3. The Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.'

4 The Belgian Government sent the Commission, as a legislative implementing measure, the Royal Decree of 9 December 1998 implementing Directive 98/18 (*Moniteur belge*, 25 December 1998, p. 41217, hereinafter 'the Royal Decree of 9 December 1998').

5 Article 1 of that decree provides that it applies to passenger ships, whose keels have been laid, or which are at an equivalent stage of construction, on or after 1 July 1998.

6 Since it considered that the Kingdom of Belgium had only partially transposed Directive 98/18, the Commission sent it, on 11 August 1999, a letter giving it formal notice to submit its observations, in accordance with Article 226 EC.

7 In its reply of 27 September 1999, the Belgian Government sent the Commission the Royal Decree of 12 November 1981, concerning the rules for passenger ships not undertaking international voyages and sailing exclusively in a restricted navigation zone along the coast (*Moniteur belge*, 4 February 1982, p. 892, hereinafter 'the Royal Decree of 12 November 1981'). It also announced the adoption of a new Royal Decree in the field in point.

8 On 7 September 2000 the Commission sent the Belgian Government a reasoned opinion, calling on it to take the measures necessary to comply with that opinion within two months of its notification.

9 In response the Belgian Government announced, on 17 October 2000, that a Royal Decree would be adopted during the month of December 2000.

10 Up to 27 March 2001, the date on which this action was brought, the Commission received no further information from the Belgian Government about the transposition of Directive 98/18.

The action

11 The Commission claims, in its application, that the Belgian Government has still not notified it of the provisions of national law adopted in all the areas governed by Directive 98/18. In addition, the Commission has no other information enabling it to conclude that the Kingdom of Belgium has complied with that directive and, in particular, with Article 14 thereof. It therefore finds itself obliged to conclude that the Kingdom of Belgium has failed to fulfil its obligations under Community law.

12 The Belgian Government states that, as a first stage, so far as concerns new passenger ships, Directive 98/18 was implemented by the Royal Decree of 9 December 1998, which referred to that directive.

13 So far as the other ships covered by Directive 98/18 are concerned, the Belgian Government points to the substantial restrictions resulting from the Royal Decree of 12 November 1981. It also wishes to draw the Court's attention to the large amount of work involved in the complete transposition of that directive, in the amendments of the provisions of the Royal Decree of 12 November 1981 and in the revocation of the Royal Decree of 9 December 1998.

14 The Belgian Government attached to its defence a draft Royal Decree intended to ensure the complete transposition of Directive 98/18.

15 In that regard, it must be recalled that, 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-384/99 *Commission* v *Belgium* [2000] ECR I-10633, paragraph 16). At the end of the period of two months laid down by the reasoned opinion of 7 September 2000, the Royal Decree which the Belgian Government announced, and whose utility for the purpose of completely transposing Directive 98/18 it acknowledged, had in any event still not been adopted.

16 It is also settled case-law of the Court of Justice that a Member State cannot rely on provisions, practices or circumstances existing in its internal legal order to justify its failure to comply with the obligations and time-limits laid down by Community directives, nor therefore the late or incomplete transposition of a directive (see, in particular, Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9, and Case C-139/97 *Commission* v *Italy* [1998] ECR I-605, paragraphs 9 to 11).

17 Accordingly, it must be held that, by failing to adopt all the measures necessary to comply with Directive 98/18, the Kingdom of Belgium has failed to fulfil its obligations under that directive.

Costs

18 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 Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Declares that, by failing to adopt all the measures necessary to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

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

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 27 February 2002.

R. Grass
Registrar

N. Colneric
President of the Second Chamber