JUDGMENT OF THE COURT (Sixth Chamber)
29 May 1997 *

In Case C-311/96,

Commission of the European Communities, represented by Hendrik van Lier, 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

French Republic, represented by Catherine de Salins, Deputy Director in the Legal Department of the Ministry of Foreign Affairs, and Philippe Martinet, Secretary for Foreign Affairs in the same department, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) and, in the alternative, by failing to inform the Commission forthwith of the adoption of such measures, the French Republic has

* Language of the case: French.

failed to fulfil its obligations under the directive and in particular Article 45 thereof,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris, P. J. G. Kapteyn and H. Ragnemalm (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 March 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 September 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 prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of

entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) and, in the alternative, by failing to inform the Commission forthwith of the adoption of such measures, the French Republic had failed to fulfil its obligations under the directive and in particular Article 45 thereof.

2 Article 45(1) of Directive 93/38 provides that Member States are to adopt the measures necessary to comply with the directive by 1 July 1994 and inform the Commission thereof forthwith.

3 As the Commission did not receive notification from the French Government of the measures for implementing Directive 93/38, it initiated the procedure under Article 169 of the Treaty by sending the Government a letter of formal notice on 20 January 1995.

4 That letter having produced no effect, the Commission delivered a reasoned opinion to the French Government on 16 January 1996, requiring it to adopt the necessary measures within two months from the date of notification.

5 By letter of 17 August 1995, the French authorities informed the Commission that a bill had been laid before the Senate.

6 Having received no information to the effect that the legislative process had been completed, the Commission brought the present action.

7 The French Republic does not deny the failure to fulfil its obligations and merely states that a bill together with implementing decrees will be adopted shortly.

8 Since Directive 93/38 has not been transposed within the period prescribed therein, the Commission's action must be held to be well founded.

9 The Court therefore finds that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 93/38, the French Republic has failed to fulfil its obligations under Article 45(1) of that directive.

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, the French Republic has failed to fulfil its obligations under Article 45(1) of that directive;**

2. **Orders the French Republic to pay the costs.**

Mancini Murray Kakouris

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 29 May 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber