JUDGMENT OF THE COURT (Sixth Chamber)
16 September 1997 *

In Case C-139/96,

Commission of the European Communities, represented by Klaus Dieter Borchardt, of its Legal Service, 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 the Economy, Bernd Kloke, Oberregierungsrat in the same ministry, and Sabine Maass, Regierungsrätin seconded to the same ministry, acting as Agents, D-53107 Bonn,

defendant,

APPLICATION for a declaration that, by failing to take within the prescribed period the measures necessary to comply with:

— Commission Directive 93/48/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC (OJ 1993 L 250, p. 1),

* Language of the case: German.

— Commission Directive 93/49/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC (OJ 1993 L 250, p. 9) and

— Commission Directive 93/61/EEC of 2 July 1993 setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 92/33/EEC (OJ 1993 L 250, p. 19),

the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and those directives,

THE COURT (Sixth Chamber),

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

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 May 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 April 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty seeking a declaration that, by failing to take within the prescribed period the measures necessary to comply with:

— Commission Directive 93/48/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC (OJ 1993 L 250, p. 1),

— Commission Directive 93/49/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC (OJ 1993 L 250, p. 9) and

— Commission Directive 93/61/EEC of 2 July 1993 setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 92/33/EEC (OJ 1993 L 250, p. 19),

the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and those directives.

2 In accordance with the first subparagraph of Article 10(1) of Directive 93/48, the first subparagraph of Article 8(1) of Directive 93/49 and the first subparagraph of Article 7(1) of Directive 93/61, Member States were to bring into force the laws, regulations or administrative provisions necessary to comply with those directives not later than 31 December 1993 and to inform the Commission forthwith.

3 Not having received any communication concerning the transposition of the directives in issue into German law and not having any other information from which it might be concluded that the Federal Republic of Germany had complied with that obligation, the Commission sent Germany a letter on 10 February 1994 giving it formal notice to submit its observations within two months from receipt thereof, in accordance with Article 169 of the Treaty.

4 By letter of 28 April 1994, the German Government sent the Commission a communication concerning, *inter alia*, the directives in issue. However, that communication contained no information with regard to their transposition into domestic law.

5 Not having received any further communication in that regard, the Commission sent the Federal Republic of Germany a letter on 5 October 1994 containing a reasoned opinion concerning its failure to fulfil the obligations imposed by the directives in issue and requesting it to take the necessary measures to comply within two months from notification thereof.

6 By letter of 14 December 1994, the Federal Government informed the Commission that the Law of 25 November 1993 amending the rules applicable to plant protection and seed (BGBl. I, p. 1917) had established the necessary powers to enable the directives to be transposed into internal law by national regulation. It added, however, that it was first necessary to determine the scope of the directives

more precisely, there being great uncertainty in their interpretation and divergences between the Member States, which could give rise to distortion of competition in the internal market.

7 Not having received any further information from the Federal Government from which it could be concluded that the Federal Republic of Germany had, in the meantime, complied with its obligations under the directives, the Commission brought the present infringement proceedings.

8 The German Government does not deny the failure to fulfil its obligations. It states that the transposition of the directives in issue into internal law has run into difficulties relating to, *inter alia*, the need to clarify their scope. It adds that, despite those difficulties, it is devoting strenuous efforts to ensuring that the transposition procedure progresses.

9 Since the directives were not transposed within the period laid down therein, the Commission's application must be held to be well founded.

10 It must therefore be held that, by failing to take within the prescribed period the measures necessary to comply with the directives in issue, the Federal Republic of Germany has failed to comply with its obligations under the first subparagraph of Article 10(1) of Directive 93/48, the first subparagraph of Article 8(1) of Directive 93/49 and the first subparagraph of Article 7(1) of Directive 93/61.

Costs

11 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 been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by failing to take within the prescribed period the measures necessary to comply with

— Commission Directive 93/48/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC,

— Commission Directive 93/49/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC and

— **Commission Directive 93/61/EEC of 2 July 1993 setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 92/33/EEC,**

the Federal Republic of Germany has failed to comply with its obligations under the first subparagraph of Article 10(1) of Directive 93/48, the first subparagraph of Article 8(1) of Directive 93/49 and the first subparagraph of Article 7(1) of Directive 93/61.

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

Mancini Murray Kakouris

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 16 September 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber