JUDGMENT OF THE COURT (Second Chamber)
13 March 2003 *

In Case C-436/01,

Commission of the European Communities, represented by H. van Lier, acting as Agent, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: Dutch.

APPLICATION for a declaration that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1998 L 330, p. 13), or, in any event, by failing to notify the Commission of those provisions, the Kingdom of Belgium has failed to fulfil its obligations under that directive,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), 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 14 January 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 November 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1998 L 330, p. 13, hereinafter 'the Directive'), or, in any event, by failing to notify it of those provisions, the Kingdom of Belgium has failed to fulfil its obligations under that directive.

2 Under Article 2(1) of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 18 months after the date of its entry into force and forthwith to inform the Commission thereof. The Directive entered into force on 5 December 1998.

3 Under Article 2(2) of the Directive, Member States were to communicate to the Commission the text of the main provisions of national law which they adopted in the field governed by the Directive.

4 Taking the view that the Directive had not been transposed into Belgian law within the period prescribed, the Commission initiated the infringement procedure. On 17 January 2001, having given the Kingdom of Belgium formal notice to submit its observations, the Commission issued a reasoned opinion calling on that Member State to take the measures necessary to comply with the reasoned opinion within two months of its notification.

5 Since the information provided by the Belgian authorities showed that the work of transposing the Directive into Belgian law had not yet been completed, the Commission decided to bring the present action.

6 The Belgian Government does not dispute that it has not transposed the Directive within the period required, but submits that the transposition will soon be completed. The Région de Bruxelles-Capitale (Brussels Capital Region) has already definitively adopted a decree transposing the Directive. As regards the Région wallonne (Walloon Region) and the Région flamande (Flemish Region), they will adopt the provisions necessary for the full transposition of the Directive as quickly as possible.

7 It is settled case-law that 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, *inter alia*, Case C-71/99 *Commission* v *Germany* [2001] ECR I-5811, paragraph 29, and Case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13).

8 In the present case, the Directive was not transposed within the period laid down by the reasoned opinion. Accordingly, the Commission's action must be considered well founded.

9 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Belgium has failed to fulfil its obligations thereunder.

Costs

10 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, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms, the Kingdom of Belgium has failed to fulfil its obligations under that directive;**

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

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 13 March 2003.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber