ORDER OF THE PRESIDENT OF THE COURT
29 September 2000 *

In Case C-290/98,

Commission of the European Communities, represented by C. Tufvesson and V. Kreuschitz, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Republic of Austria, represented by C. Stix-Hackl, Gesandte in the Ministry of Foreign Affairs, and P. Erlacher, Ministerialrat in the same ministry, acting as Agents, with an address for service in Luxembourg at the Austrian Embassy, 3 Rue des Bains,

defendant,

* Language of the case: German.

APPLICATION for a declaration that, by

— limiting the prohibition on money laundering contained in Paragraph 165 of the Strafgesetzbuch (Penal Code) to assets having a value of over ATS 100 000;

— not requiring customer identification when a securities account is opened as from 1 January 1994 (the date on which the Agreement on the European Economic Area entered into force), but only as from 1 August 1996;

— not requiring customer identification for all transactions into or out of an existing securities account, but only, under Paragraph 40(5) of the Bankwesengesetz (Bank Law), requiring that the customer's identity be established for deposits and purchases of securities for a securities account;

— not requiring customer identification whenever a savings account is opened on or after 1 January 1994;

— not requiring customer identification for all operations relating to a savings account book, whether opened before or after 1 January 1994,

the Republic of Austria has failed to fulfil its obligations under the EC Treaty and under Articles 2 and 3(1), (5) and (6) of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ 1991 L 166, p. 77),

THE PRESIDENT OF THE COURT,

after hearing Advocate General Saggio,

makes the following

Order

1 By application lodged at the Court Registry on 28 July 1998, the Commission of the European Communities brought an action, pursuant to Article 169 of the EC Treaty (now Article 226 EC), for a declaration that, by

— limiting the prohibition on money laundering contained in Paragraph 165 of the Strafgesetzbuch (Penal Code) to assets having a value of over ATS 100 000;

— not requiring customer identification when a securities account is opened as from 1 January 1994 (the date on which the Agreement on the European Economic Area entered into force), but only as from 1 August 1996;

— not requiring customer identification for all transactions into or out of an existing securities account, but only, under Paragraph 40(5) of the Bankwesengesetz (Bank Law), requiring that the customer's identity be established for deposits and purchases of securities for a securities account;

— not requiring customer identification whenever a savings account is opened on or after 1 January 1994;

— not requiring customer identification for all operations relating to a savings account book, whether opened before or after 1 January 1994,

the Republic of Austria has failed to fulfil its obligations under the EC Treaty and under Articles 2 and 3(1), (5) and (6) of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ 1991 L 166, p. 77).

2 By document lodged at the Court Registry on 19 July 2000, the Commission, in accordance with Article 78 of the Rules of Procedure, informed the Court that it was discontinuing the proceedings and applied, pursuant to the first subparagraph of Article 69(5) of the Rules, for the costs to be borne by the Republic of Austria.

3 By letter lodged at the Court Registry on 21 August 2000, the Republic of Austria took formal note of the Commission's discontinuance of the proceedings and informed the Court that it did not find it necessary to submit observations on that decision to discontinue.

4 Accordingly, it is appropriate to order the removal of the present case from the register.

5 The first subparagraph of Article 69(5) of the Rules of Procedure provides that a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they have been applied for in the other party's pleadings. However, upon application by the party who discontinues or withdraws from proceedings, the costs are to be borne by the other party if this appears justified by the conduct of that party.

6 In this case, the Commission's application and subsequent discontinuance of the proceedings were the result of the attitude of the Republic of Austria, since the Republic of Austria did not adopt the measures necessary to fulfil its obligations until after the application had been made.

7 The Republic of Austria must therefore be ordered to pay the costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. Case C-290/98 is removed from the register.

2. The Republic of Austria shall pay the costs.

Luxembourg, 29 September 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President