JUDGMENT OF THE COURT (Second Chamber)
17 January 2002 *

In Case C-423/00,

Commission of the European Communities, represented by G. zur Hausen, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by C. Pochet, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13) and, 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,

* Language of the case: French.

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, 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 11 October 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 16 November 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13) and, 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.

2 Under the first subparagraph of Article 24(1) of Directive 96/82, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 24 months after its entry into force and forthwith to inform the Commission thereof.

3 Pursuant to Article 25, Directive 96/82 entered into force on the 20th day following that of its publication in the *Official Journal of the European Communities*. As publication took place on 14 January 1997, the directive entered into force on 3 February 1997 and the period laid down in the first subparagraph of Article 24(1) of the directive expired on 3 February 1999.

4 Since, upon the expiry of the latter period, the Commission had not been informed of the provisions adopted by the Kingdom of Belgium in order to comply with Directive 96/82 and did not have any other information from which to conclude that the Kingdom of Belgium had adopted the provisions necessary for that purpose, it took the view that the Kingdom of Belgium had failed to fulfil its obligations under the directive and, by letter of 20 August 1999, gave the Belgian Government formal notice to submit its observations within a period of two months.

5 As the Commission was not satisfied by the Belgian Government's reply to that letter of formal notice, it sent a reasoned opinion to the Kingdom of Belgium on 21 January 2000, inviting it to adopt the measures necessary to comply with its obligations under Directive 96/82 within a period of two months from service of that opinion.

6 In reply to the reasoned opinion, the Belgian authorities sent to the Commission, by letter of 5 April 2000, a statement from the Walloon Government and stated that the replies from the federal authorities and from the Flemish Region and the Brussels-Capital Region would be sent to it very shortly.

7 In its statement the Walloon Government informed the Commission of the approval by the Walloon Parliament of the cooperation agreement between the Federal State, the Flemish and Walloon Regions and the Brussels-Capital Region concerning the control of major-accident hazards involving dangerous substances (hereinafter 'the cooperation agreement'), which was intended to implement the directive in Belgian law and which was to be published in the *Moniteur Belge* without delay and to be brought to the Commission's attention.

8 By letter of 6 July 2000, the Belgian authorities sent to the Commission a statement by the Flemish Minister for the Environment and Agriculture in which he referred to the cooperation agreement and explained why the agreement was considered to ensure implementation of Directive 96/82. The statement also explained that the agreement would become effective only after approval by the four contracting parties and that the approval procedures had been completed or were on the point of being completed in the three regions and at federal level.

9 By letter of 26 September 2000, the Belgian authorities sent to the Commission the Decree of the Flemish Parliament of 17 July 2000 approving the cooperation agreement, as it had been published in the *Moniteur Belge* on 11 August 2000.

10 Taking the view that the Belgian Government had not notified to it all the measures approving the cooperation agreement which were necessary to ensure the implementation of Directive 96/82 in Belgian law, the Commission brought the present action.

11 The Kingdom of Belgium does not dispute that all the measures necessary for the implementation of Directive 96/82 in national law have not been adopted within the period laid down. In its defence it has merely stated that, in accordance with

the Special Law of 8 August 1980 on institutional reforms, such implementation required the conclusion of a cooperation agreement between the Federal State and the Flemish, Walloon and Brussels-Capital Regions. However, such an agreement will not enter into force until all the parties have assented to it.

12 The Kingdom of Belgium also stated that the cooperation agreement, approved on 16 December 1999 by the Walloon Region, on 17 July 2000 by the Flemish Region and on 20 July 2000 by the Brussels-Capital Region, was the subject of a draft law of approval which was adopted by the Senate on 15 March 2001 and sent to the Chambre des députés on the next day.

13 By letter of 19 June 2001, the Kingdom of Belgium informed the Court of the publication of the Law of 22 May 2001 approving the cooperation agreement of 21 June 1999 between the Federal State and the Flemish, Walloon and Brussels-Capital Regions on the control of major-accident hazards involving dangerous substances (*Moniteur Belge* of 16 June 2001, p. 20783).

14 It should be observed that it is settled law that the question whether a Member State had failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, in particular, Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16, and Case C-111/00 *Commission* v *Austria* [2001] ECR I-7555, paragraph 13).

15 It is not disputed that the Kingdom of Belgium had not adopted, before the expiry of the period of two months laid down in the reasoned opinion, the measures necessary to implement Directive 96/82 in national law.

16 Furthermore, according to settled case-law, a Member State may not plead provisions, practices or situations in its internal legal order, including those resulting from its federal organisation, in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see Case C-236/99 *Commission* v *Belgium* [2000] ECR I-5657, paragraph 23, and *Commission* v *Austria*, cited above, paragraph 12).

17 In those circumstances, it must be held that the action brought by the Commission is well founded.

18 Accordingly, it must be held that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 96/82, the Kingdom of Belgium has failed to fulfil its obligations under that directive.

Costs

19 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, all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, 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 17 January 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber