JUDGMENT OF THE COURT (First Chamber)

13 December 2001 *

In Case C-372/00,

Commission of the European Communities, represented by M. Wolfcarius, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D.J. O'Hagan, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6), Ireland has failed to fulfil its obligations under that directive,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ 1996 L 235, p. 6, 'the directive'), Ireland has failed to fulfil its obligations under that directive.

2 The object of the directive is, in particular, to improve the interlinking and interoperability of national high-speed networks and also access thereto.

3 Article 23(1) of the directive provides that the Member States are to adopt the laws, regulations and administrative provisions necessary in order to comply with the directive no later than 30 months after its entry into force, and forthwith to inform the Commission thereof.

4 Article 25 of the directive provides that it is to 'enter into force on the 21st day following that of its publication in the *Official Journal of the European Communities*'. Since the directive was published on 17 September 1996, it entered into force on 8 October 1996 and the transposition period expired on 8 April 1999.

5 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having given Ireland the opportunity to submit its observations, sent a reasoned opinion to that Member State, by letter of 27 January 2000, inviting it to take the measures necessary to fulfil its obligations under the directive within two months of notification of the opinion.

6 By letter of 14 April 2000 Ireland stated that the directive would be transposed into national law by 31 August 2000. Since the directive was not, however, transposed by that date, the Commission brought these proceedings.

7 The Commission maintains that, by failing to adopt the measures necessary to transpose the directive, Ireland has failed to fulfil its obligations under the first paragraph of Article 10 EC and the third paragraph of Article 249 EC and under the directive.

8 Ireland acknowledges that it has not transposed the directive within the period therein prescribed.

9 The Irish Government points out, however, that no high-speed train is currently operational in Ireland, or will be in the foreseeable future. Furthermore, the technical specifications for interoperability (TSIs) referred to in Chapter II of the directive have not yet been approved or finalised.

10 It must be stated that, as the Irish Government has acknowledged, the directive has not yet been implemented in Ireland.

11 As the Advocate General has pointed out in point 6 of his Opinion, it is irrelevant that no high-speed train is currently operational in Ireland. The fact that an activity referred to in a directive does not exist in a particular Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed (see, to that effect, Case C-214/98 *Commission* v *Greece* [2000] ECR I-9601, paragraph 22).

12 It is necessary that all persons subject to the law in Ireland, like other persons subject to the law within the Community, should know what their rights and duties are if and when a high-speed rail system is created and operated in that Member State.

13 It is only where transposition of a directive is pointless for reasons of geography that it is not mandatory (see, to that effect, Case 420/85 *Commission* v *Italy* [1987] ECR 2983, paragraph 5). That is not so in the case of Ireland, as may be seen from map 3.7 in Annex I to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ 1996 L 228, p. 1).

14 As regards the TSIs, it is not apparent from the terms of the directive and, in particular, of Article 23 thereof that preparing TSIs is a pre-condition for the implementation of the directive.

15 It follows that the fact that the TSIs have not yet been adopted is irrelevant for the purposes of determining whether or not Ireland has failed to fulfil its obligations.

16 Since the directive has not been transposed into national law within the period prescribed, the action brought by the Commission must be regarded as well founded.

17 In consequence, it must be declared that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the directive, Ireland has failed to fulfil its obligations under the directive.

Costs

18 Under Article 69(2) of 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 Ireland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, Ireland has failed to fulfil its obligations under that directive;**

2. **Orders Ireland to pay the costs.**

Jann Sevón Wathelet

Delivered in open court in Luxembourg on 13 December 2001.

R. Grass

Registrar

P. Jann

President of the First Chamber