JUDGMENT OF THE COURT,

26 January 1994 *

In Case C-381/92,

Commission of the European Communities, represented by Christopher Docksey, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Ireland, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

defendant,

APPLICATION for a declaration that by failing to bring into force within the time permitted the laws, regulations and administrative provisions necessary to comply with Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (Official Journal 1988 L 194, p. 10), Council Directive 90/120/EEC of 5 March 1990 amending Council Directive 88/407/EEC (Official Journal 1990 L 71, p. 37) and Council

* Language of the case: English.

Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products (Official Journal 1988 L 382, p. 15), Ireland has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: O. Due, President, G.F. Mancini, J.C. Moitinho de Almeida, D.A.O. Edward (Rapporteur), (Presidents of Chambers), R. Joliet, F.A. Schockweiler, G.C. Rodríguez Iglesias, F. Grévisse and M. Zuleeg, Judges,

Advocate General: G. Tesauro,
Registrar: J.-G. Giraud,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 November 1993,

gives the following

Judgment

1 By an application lodged at the Court Registry on 21 October 1992 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to bring into force within the time permitted the laws, regulations and administrative provisions necessary to comply with Council Directive 88/407/EEC of 14 June 1988 laying down the animal health requirements applicable to intra-Community trade in and imports of

deep-frozen semen of domestic animals of the bovine species (Official Journal 1988 L 194, p. 10), Council Directive 90/120/EEC of 5 March 1990 amending Council Directive 88/407/EEC (Official Journal 1990 L 71, p. 37) and Council Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products (Official Journal 1988 L 382, p. 15), Ireland has failed to fulfil its obligations under the EEC Treaty.

2 As regards Directives 88/407 and 90/120, which should have been transposed by 1 January and 1 April 1990 respectively, the Irish Government explained its delay in transposing them by referring to the complexity of the legislative amendments required. It maintained that steps were being taken to bring about their adoption as soon as possible and that in any case they were already being applied in practice, imports into Ireland of deep-frozen bovine semen being already made subject to the requirements laid down in the directives.

3 On 16 September 1993 the Irish Government informed the Commission that it had adopted the European Communities (Trade in Bovine Breeding Animals, their Semen, Ova and Embryos) Regulations 1993 (S.I. No 259 of 1993), which transposes those directives into Irish law.

4 By a letter received at the Court on 24 November 1993, after the Advocate General had delivered his Opinion, the Commission discontinued its action with regard to Directives 88/407 and 90/120, but stated that it would pursue the action with regard to Directive 88/658.

5 It is therefore not necessary to consider the claims regarding Directives 88/407 and 90/120.

6 As regards Directive 88/658, which was to have been transposed by 1 July 1990 at the latest, and by 1 January 1992 in the case of some provisions, the Irish Government maintains that it has been transposed into national law by means of

administrative action, in particular by means of instructions given to the relevant officials, and which it had notified to the Commission on 7 June 1991. It adds that in any case the directive has ceased to be applicable, having been replaced by Council Directive 92/5/EEC of 10 February 1992 amending and updating Directive 77/99/EEC on health problems affecting intra-Community trade in meat products and amending Directive 64/433/EEC (Official Journal 1992 L 57, p. 1), which came into force on 1 January 1993. In those circumstances it considers that it can no longer be charged with having failed to fulfil any of its obligations.

7 The Court observes in the first place that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty (Case C-236/91 *Commission* v *Ireland* [1992] ECR I-5933, paragraph 6 of the judgment).

8 In the second place, it is to be noted that Directive 92/5 has not removed the obligations imposed by Directive 88/658 but has simply updated them. That being so, although Directive 88/658 ceased to have effect on 1 January 1993, only due transposition of Directive 92/5 would have enabled the Court to conclude that Ireland had remedied the failure with which it is charged in these proceedings. However, Ireland does not claim to have transposed the latter directive.

9 Consequently, Ireland must be held to have failed to fulfil its obligations in the terms set out in the Commission's submissions regarding Directive 88/658.

Costs

10 Under the first paragraph of Article 69(5) of the Rules of Procedure a party who discontinues proceedings shall be ordered to pay the costs unless the conduct of the other party justifies ordering the latter to pay them. Since Ireland did not transpose Directives 88/407 and 90/120 until after the commencement of this action, it is appropriate to order it to pay the costs relating thereto. Since it has

been unsuccessful in the remainder of the action, it must also bear the relevant costs pursuant to Article 69(2) of the Rules of Procedure.

On those grounds,

THE COURT,

hereby:

1. **Declares that by failing to bring into force within the time permitted the laws, regulations and administrative provisions necessary to comply with Council Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products Ireland has failed to fulfil its obligations under the EEC Treaty;**

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

Due Mancini Moitinho de Almeida

Edward Joliet Schockweiler

Rodríguez Iglesias Grévisse Zuleeg

Delivered in open court in Luxembourg on 26 January 1994.

J.-G. Giraud O. Due

Registrar President