JUDGMENT OF THE COURT (Fifth Chamber)
29 May 1997 *

In Joined Cases C-313/96, C-356/96 and C-358/96,

Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, and Jean-Francis Pasquier, a national official placed at the disposal of its Legal Service (Case C-313/96), and by Götz zur Hausen, Legal Adviser (Cases C-356/96 and C-358/96), acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Jan Devadder, General Adviser in the Legal Service of the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with:

— Commission Directive 91/410/EEC of 22 July 1991 adapting to technical progress for the fourteenth time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1991 L 228, p. 67);

* Language of the case: French.

— Commission Directive 93/21/EEC of 27 April 1993 adapting to technical progress for the eighteenth time Council Directive 67/548/EEC (OJ 1993 L 110, p. 20), with the exception of the provisions of that directive applicable to mobile gas cylinders containing butane, propane or liquid petroleum gas; and

— Commission Directive 93/90/EEC of 29 October 1993 concerning the list of substances referred to in Article 13(1) (fifth indent) of Council Directive 67/548/EEC (OJ 1993 L 277, p. 33);

and/or by failing to communicate the measures for their implementation, the Kingdom of Belgium has failed to fulfil its obligations under those directives,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur), D. A. O. Edward, J.-P. Puissochet and P. Jann, 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 13 March 1997,

gives the following

Judgment

1 By applications lodged at the Court Registry on 25 September 1996 in Case C-313/96 and on 30 October 1996 in Cases C-356/96 and C-358/96, the Commission of the European Communities brought actions under Article 169 of the EC

Treaty for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with:

— Commission Directive 91/410/EEC of 22 July 1991 adapting to technical progress for the fourteenth time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1991 L 228, p. 67);

— Commission Directive 93/21/EEC of 27 April 1993 adapting to technical progress for the eighteenth time Council Directive 67/548/EEC (OJ 1993 L 110, p. 20), with the exception of the provisions of that directive applicable to mobile gas cylinders containing butane, propane or liquid petroleum gas; and

— Commission Directive 93/90/EEC of 29 October 1993 concerning the list of substances referred to in Article 13(1) (fifth indent) of Council Directive 67/548/EEC (OJ 1993 L 277, p. 33);

and/or by failing to communicate the measures for their implementation, the Kingdom of Belgium has failed to fulfil its obligations under those directives.

2 By order of 18 February 1997, the President of the Court decided to join the three cases for the purposes of the oral procedure and the judgment.

3 Under Article 2 of Directives 91/410 and 93/90, the Member States were to adopt and publish the provisions necessary to comply with those directives before 1 August 1992 and by 31 October 1993 respectively, and to inform the Commission

thereof forthwith. According to Article 2 of Directive 93/21, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive, with the exception of those applicable to mobile gas cylinders containing butane, propane or liquid petroleum gas, by 1 July 1994, and to inform the Commission thereof forthwith.

4 Finding that those time-limits had expired and since it had not been notified of the existence of any measures taken by the Kingdom of Belgium in order to transpose the three directives in question into national law, the Commission initiated infringement procedures under Article 169 of the EEC Treaty, now the EC Treaty. By letters of formal notice of 14 October 1992 in Case C-356/96, of 10 February 1994 in Case C-358/96 and of 20 January 1995 in Case C-313/96, the Commission requested the Belgian Government to submit to it within two months its observations concerning the failure to take the measures necessary to transpose the directives into national law.

5 In Case C-313/96, the Belgian authorities notified the Commission by letter of 22 March 1995 that the measures necessary to comply with Directive 93/21 were in the process of being drawn up. In Cases C-356/96 and C-358/96, the letters of formal notice evoked no response. On 20 October 1995 the Belgian authorities forwarded to the Commission, in response to a reasoned opinion concerning failure to transpose another directive into national law, a draft royal decree designed to implement various directives concerning the classification, packaging and labelling of dangerous substances, including Directives 91/410 and 93/21.

6 However, since no measure implementing the directives in question was subsequently notified to it, the Commission, on 10 July 1995 in Case C-358/96, on 6 February 1996 in Case C-356/96 and on 4 March 1996 in Case C-313/96, addressed to the Belgian Government reasoned opinions requesting it to adopt the measures required in order to comply with the terms of those opinions within a period of two months from the date of their notification.

7 In Cases C-313/96 and C-356/96, the reasoned opinions evoked no response. In Case C-358/96, the Belgian Government replied, by letter of 5 September 1995, that a draft royal decree was in the process of being drawn up in order to implement Directive 93/90 in particular, and that the competent authorities were already applying the provisions in question.

8 Since it had not been notified by the Belgian Government of any definitive implementing measure, the Commission instituted these proceedings.

9 In its defence, the Belgian Government does not dispute that the directives in question were not transposed into national law within the prescribed period. It merely points out that measures for the implementation of the directives in question are to be taken as soon as possible.

10 Since the directives in question were not transposed into national law within the periods prescribed therein, the actions brought by the Commission must be considered well founded.

11 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 91/410, Directive 93/21 with the exception of the provisions applicable to mobile gas cylinders containing butane, propane or liquid petroleum gas, and Directive 93/90, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of each of those directives.

Costs

Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with:**

   — **Commission Directive 91/410/EEC of 22 July 1991 adapting to technical progress for the fourteenth time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances;**

   — **Commission Directive 93/21/EEC of 27 April 1993 adapting to technical progress for the eighteenth time Council Directive 67/548/EEC, with the exception of the provisions of that directive applicable to mobile gas cylinders containing butane, propane or liquid petroleum gas; and**

— **Commission Directive 93/90/EEC of 29 October 1993 concerning the list of substances referred to in Article 13(1) (fifth indent) of Council Directive 67/548/EEC,**

the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of each of those directives;

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

Moitinho de Almeida Gulmann Edward

Puissochet Jann

Delivered in open court in Luxembourg on 29 May 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber