Case C-316/92

Commission of the European Communities
v
Federal Republic of Germany

(Failure of a Member State to fulfil its obligations — Non-implementation of Directive 87/540/EEC)

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Summary of the Judgment

Member States — Obligations — Implementation of directives — Failure to fulfil obligations not contested
(EEC Treaty, Art. 169)

REPORT OF THE JUDGE-RAPPORTEUR
in Case C-316/92 *

I — Facts

1. Council Directive 87/540/EEC of 9 November 1987 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation (OJ 1987 L 322, p. 20) was adopted in connection with the implementation of the common transport policy. That common policy involves the creation of a transport market which requires the coordination of the conditions for access to the occupation of carrier in order to promote freedom to provide services and freedom of establishment.

* Language of the case: German.

2. Under Article 11 of that directive:

'Member States shall bring into force the measures necessary to comply with this directive by 30 June 1988. They shall forthwith inform the Commission thereof'.

3. Since the German Government did not inform it of the measures adopted to implement the directive, the Commission sent a letter of formal notice to that Government on 26 September 1989, requesting it to submit its observations in that regard pursuant to Article 169 of the Treaty.

4. By communication of 24 November 1989, the German Government replied that the legislative procedure for transposing the directive was under way, but it also claimed that there were widely differing approaches to the possible conditions for taking up the occupation of carrier of goods by waterway. It requested the Commission organize formal consultations with the Member States on that issue.

5. Since the Federal Republic of Germany does not deny that it ought to have taken implementing measures, the Commission issued a reasoned opinion on 24 July 1990 noting that the Federal Republic of Germany had failed to fulfil its obligations under the Treaty. The Commission also requested it to take the measures needed to comply with its opinion within two months. As regards the issue raised by the German Government, the Commission considers that, although coordinating implementation between the Member States may be desirable, it is not provided for in the directive and cannot in any way justify exceeding the time-limit for implementation.

6. By letter of 21 September 1990, the German Government stated that the legislative procedure was still in progress.

II — Application and forms of order sought by the parties

7. By application lodged at the Court registry on 20 July 1992, the Commission brought an action in which it claims that the Court should:

— declare that, by failing to adopt the measures needed to comply with Council Directive 87/540/EEC or by failing to communicate those measures to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty;

— order the defendant to pay the costs.

8. The Federal Republic of Germany has not disputed the Commission's claims.

9. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, pursuant to Article 44a of the Rules of Procedure, to adjudicate in the proceedings without opening the oral procedure.

III — Pleas and arguments of the parties

10. The *Commission* points out that Member States are bound, pursuant to the third paragraph of Article 189 and Article 5 of the EEC Treaty, to transpose the provisions of a directive into national law within the time-limit set. Under Article 11 of Directive 87/540, that time-limit is set at 30 June 1988. The Commission considers that the defendant failed to fulfil its obligations under those provisions by not adopting the measures necessary within the prescribed period.

11. The *German Government* does not deny that Directive 87/540 was not transposed within the prescribed period. However, it points out that the legislative procedure has practically been completed.

P. J. G. Kapteyn
Judge-Rapporteur