JUDGMENT OF THE COURT (First Chamber)

30 May 2002 *

In Case C-376/01,

Commission of the European Communities, represented by R. Wainwright, 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,

APPLICATION for a declaration that, by failing to adopt, by 14 May 2000, the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1), or in any event by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under that directive,

* Language of the case: English.

THE COURT (First Chamber),

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

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 September 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt, by 14 May 2000, the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1), or in any event by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under that directive.

2 Under Article 34 of Directive 98/8, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive not later than 24 months after its entry into force, that is, by 14 May 2000, and inform the Commission thereof forthwith.

3 Since it received no information from the Irish authorities concerning the implementation of Directive 98/8, the Commission initiated the infringement procedure. After giving Ireland formal notice to submit its observations, and in the absence of any reply from it, the Commission, on 31 January 2001, sent a reasoned opinion requesting that Member State to adopt the measures necessary to comply with the aforementioned directive within two months from the date of notification of that opinion.

4 By letter of 29 March 2001, the Irish authorities informed the Commission that every effort was being made to advance the transposition as rapidly as possible and that the Commission would be kept informed. By letter of 11 July 2001, they informed the Commission in particular that transposition efforts were being carried out and would be complete before November 2001.

5 Since it subsequently received no information that the transposition of Directive 98/8 had been completed, the Commission brought the present action.

6 Recalling the obligations of Member States under the third paragraph of Article 249 EC, the Commission submits that Ireland was required to take the measures necessary to comply with Directive 98/8 within the period laid down in Article 34 thereof.

7 The Irish Government maintains that the Directive was transposed by means of a statutory instrument entitled 'The European Community (Authorisation, Placing on the Market, Use and Control of Biocidal Products) 2001', adopted on 18 December 2001. It therefore requests the Court to stay the proceedings for a period of three months from the date of the defence, thereby enabling the Commission to examine the measures adopted by Ireland and, if appropriate, to discontinue the proceedings.

8 On that point, it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

9 In the present case, it is common ground that Ireland has not adopted the measures necessary in order to comply with the reasoned opinion within the period prescribed for that purpose.

10 The action brought by the Commission is therefore well founded.

11 Consequently, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/8, Ireland has failed to fulfil its obligations under that directive.

Costs

12 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 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market, Ireland has failed to fulfil its obligations under that directive;**

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

Jann Wathelet Rosas

Delivered in open court in Luxembourg on 30 May 2002.

R. Grass

Registrar

P. Jann

President of the First Chamber