JUDGMENT OF THE COURT (Fifth Chamber)
27 November 1997 *

In Case C-137/96,

Commission of the European Communities, represented by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Sabine Maaß, Regierungsrätin in that Ministry, acting as Agents, D-53107 Bonn,

defendant,

APPLICATION for a declaration that, by not adopting within the period prescribed all the laws, regulations and administrative provisions necessary for the transposition into domestic law of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, J.-P. Puissochet (Rapporteur) and L. Sevón, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 October 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 April 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting within the period prescribed all the laws, regulations and administrative provisions necessary for the transposition into domestic law of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1; hereinafter 'the Directive'), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty.

2 The aim of the Directive, which was adopted on the basis of Article 43 of the EEC Treaty, is to lay down the rules which Member States may apply concerning the conditions and procedures for the authorization of plant protection products. Article 4(1) of the Directive requires Member States to ensure that a plant protec-

tion product is not authorized unless certain conditions laid down in point (a) are fulfilled — in particular, its active substances must be listed in Annex I — and the product meets the requirements set out in points (b), (c), (d) and (e), pursuant to the uniform principles provided for in Annex VI. Article 10(1) of the Directive lays down the rules resulting from the principle of the mutual recognition of authorizations granted by Member States.

3 Pursuant to Article 23(1) of the Directive, the Member States must bring into force the provisions necessary to comply with the Directive within two years following notification thereof, such measures to contain a reference to the Directive or be accompanied by such reference. However, Article 23(2) provides that Member States need not bring into force the measures implementing Article 10(1), second indent, until one year at the latest following adoption of the uniform principles.

4 Since the Commission did not receive any communication concerning transposition of the Directive in Germany, it sent to the Federal Government on 5 October 1993, in accordance with Article 169 of the Treaty, a letter of formal notice to which the German authorities replied by a communication of 1 December 1993. The Commission then issued a reasoned opinion on 3 October 1994 to the effect that the Federal Republic of Germany had failed to fulfil its obligations and calling on it to take the necessary measures within two months. Finding the German Government's reply of 10 November 1994 unsatisfactory, the Commission brought the present proceedings.

Admissibility

5 The German Government contends that the action is inadmissible in so far as it concerns the failure to transpose Article 10(1), second indent, of the Directive into domestic law. The uniform principles referred to in Article 23 were only laid down by Council Directive 94/43/EC of 27 July 1994 establishing Annex VI to Directive

91/414 (OJ 1994 L 227, p. 31), which was annulled by judgment of the Court of 18 June 1996 in Case C-303/94 *Parliament* v *Council* [1996] ECR I-2943.

6 On that point, suffice it to note that, in the last stage of its written pleadings, the Commission confined the scope of its application to all the provisions of the Directive with the exception of Article 10(1), second indent. Thus circumscribed, the application is therefore admissible.

Substance

7 The German Government does not deny that the Directive has not yet been transposed into domestic law and states that it is making every effort to expedite the adoption of the draft first amendment to the Pflanzenschutzgesetz (Law on Plant Health Protection). It maintains, however, that the version of the Pflanzenschutzgesetz currently in force already contains provisions which broadly overlap with those of the Directive; that completion of the draft amendment has been complicated by certain difficulties of interpretation; and, lastly, that the harmonization of trade in plant protection products, as provided for in Article 10 of the Directive, cannot produce any effects so long as no active substances have been listed in Annex I to the Directive.

8 On the first point, suffice it to note that the German legislation in force cannot in any way be regarded as ensuring transposition of the Directive, which, in Article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that Directive or accompanied by such reference. Moreover, the Federal Government itself acknowledges the need to adopt a new text in order to ensure the Directive's transposition.

9 Secondly, the Commission explained — and the German Government did not demur — that it had been advised of only one difficulty in the way of implementation, concerning a rule laid down in Article 13 of the Directive, which could be settled at national level and which in any case did not in any way prevent or delay transposition of that provision in the other Member States.

10 Lastly, the fact that no active substances have yet been listed in Annex I to the Directive cannot, in the absence of express provision to that effect, relieve Member States of their obligation to adopt within the period prescribed the measures necessary to comply with the Directive. That obligation remains, whether or not all the conditions for the implementation of the provisions of Community law have already been fulfilled. As the Commission was right to observe, the point of transposing the relevant provisions is to ensure that the principle of the mutual recognition of authorizations is implemented as soon as the active substances are listed in Annex I to the Directive.

11 It must therefore be held that, by not having within the period prescribed adopted all the laws, regulations and administrative provisions necessary to ensure that the Directive — with the exception of Article 10(1), second indent, thereof — was transposed into domestic law, the Federal Republic of Germany 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. Since the Federal Republic of Germany has been unsuccessful in its pleadings, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by not having within the period prescribed adopted all the laws, regulations and administrative provisions necessary to ensure that Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market — with the exception of Article 10(1), second indent, thereof — was transposed into domestic law, the Federal Republic of Germany has failed to fulfil its obligations under that Directive;**

2. **Orders the Federal Republic of Germany to pay the costs.**

Gulmann Wathelet Moitinho de Almeida

Puissochet Sevón

Delivered in open court in Luxembourg on 27 November 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber