JUDGMENT OF THE COURT (Fifth Chamber)
5 June 1997 *

In Case C-223/96,

Commission of the European Communities, represented by M. Kondou Durande, of its Legal Service, acting as Agent, assisted by J.-J. Evrard, of the Brussels Bar, 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

French Republic, represented by C. de Salins, Deputy Director of the Legal Affairs Directorate at the Ministry of Foreign Affairs, and R. Nadal, Deputy Secretary for Foreign Affairs in the same Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

defendant,

APPLICATION for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), or by not communicating those measures, the French Republic has failed to fulfil its obligations under that directive,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L Sevón (Rapporteur), D. A. O. Edward, P. Jann and M. Wathelet, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 March 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 June 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), or by not communicating those measures, the French Republic has failed to fulfil its obligations under that directive.

2 The purpose of Directive 91/156 is to ensure the removal and recovery of waste and to encourage the adoption of measures to restrict the production of waste, particularly by promoting clean technologies and products which can be recycled and re-used.

3 Article 2(1) of Directive 91/156 provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 1 April 1993 and are to inform the Commission thereof forthwith. Directive 91/156 was notified on 25 March 1991.

4 On the expiry of the prescribed period, the French authorities had not sent the Commission any communication or other information concerning transposition measures. Consequently, on 9 August 1993 the Commission sent a letter of formal notice to the French Government, asking it to submit, within two months, its observations on the absence of the provisions necessary to transpose Directive 91/156 into national law.

5 By letters of 4 November 1993 and 1 April 1994, the French authorities communicated to the Commission a table showing the various measures transposing Directive 91/156 and a draft decree, Article 8 of which transposed Article 12 of Council Directive 75/442/EEC of 15 July 1975 (OJ 1975 L 194, p. 39), as amended by Directive 91/156, only partially.

6 Since it considered that the French Republic had not transposed Directive 91/156 in full, the Commission sent the French Government, by letter of 3 August 1995, a reasoned opinion pursuant to Article 169 of the Treaty.

7 By letter of 25 October 1995, the French Government replied to that reasoned opinion to the effect that, apart from part of Article 12 of Directive 75/442, as amended by Directive 91/156, which was in the course of being transposed, Directive 91/156 had been transposed into French law by Law No 92-646 of 13 July 1992 (*Journal Officiel de la République Française* of 14 July 1992) and by the decrees implementing that Law which had been notified to the Commission and published.

8 When it lodged its application, however, the Commission had still not received any communication with regard to the adoption of the draft decree transposing Article 12 of Directive 75/442, as amended by Directive 91/156.

9 In the defence it submitted to the Court, the French Republic contended, principally, that the application was inadmissible because the complaints against it were imprecisely formulated, both during the pre-litigation procedure and in the application. According to the French Republic, the Commission should have specified the provisions of Directive 91/156 that had not been or had been wrongly transposed into French law.

10 The Commission points out that in their replies of 4 November 1993 and 1 April 1994, the French authorities themselves specified the provision of Directive 91/156 which had not yet been fully transposed, namely Article 12 of Directive 75/442, as amended, and had moreover sent a copy of the draft decree. It therefore considers that the reasoned opinion was sufficiently precise, since it referred expressly to the letter of 4 November 1993 and to the draft decree. The letter of 25 October 1995 from the French Government showed, furthermore, that there was no misunderstanding as regards the subject-matter of the reasoned opinion, since the French authorities refer to the Commission's request 'to take all the measures necessary to comply with Article 12 of the directive ...'. The French Government was therefore in a position to defend itself against the Commission's complaints.

11 The French Republic, on the other hand, considers that the Commission's arguments tend to support its contention since, in order to show that it had properly defined the subject-matter of the action for a declaration that France had failed to fulfil its obligations, the Commission has had to resort to referring to the letters of the defendant Member State.

12 In that connection, it should be noted that, according to the Court's case-law, the reasoned opinion must contain a coherent and detailed statement of the reasons

which persuaded the Commission that the State concerned had failed to fulfil one of its obligations under the Treaty (Case C-247/89 *Commission* v *Portugal* [1991] ECR I-3659, paragraph 22).

13 It is clear from the terms of the reasoned opinion contained in the file on the case that it satisfies the requirements laid down by case-law. The Commission has set out the legal background and the facts which persuaded it that the French Government had failed to fulfil its obligations under Directive 91/156, namely transposition of the directive in full and communication of the measures by which it was transposed. To that end it is irrelevant that, as evidence of the failure, the Commission referred to a letter from the French authorities in which they acknowledged that Directive 91/156 had not been transposed in full.

14 As regards the originating application, it should be pointed out that Article 19 of the Protocol on the EC Statute of the Court of Justice and Article 38(1)(c) and (d) of the Rules of Procedure provide that the application in a case brought before the Court must contain, among other things, the subject-matter of the dispute, the form of order sought and a brief statement of the grounds on which the application is based (Case C-43/90 *Commission* v *Germany* [1992] ECR I-1909, paragraph 7).

15 It is clear from the terms of the application that it complies with the Court's case-law. The Commission did set out the subject-matter of the dispute, the legal background and the course of the pre-litigation procedure, the legal basis of the application, the form of order sought and the grounds on which the application was based.

16 It is not disputed that Directive 91/156 was not transposed within the period prescribed. The action brought in that respect by the Commission must therefore be regarded as well founded.

17 It must therefore be held that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 91/156, the French Republic has failed to fulfil its obligations under Article 2(1) of that directive.

Costs

18 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 has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, the French Republic has failed to fulfil its obligations under Article 2(1) of that directive;

2. Orders the French Republic to pay the costs.

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber