JUDGMENT OF THE COURT (Second Chamber)
16 October 2003 *

In Case C-489/01,

Commission of the European Communities, represented by C. Tufvesson, acting as Agent, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by G. Amodeo, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply, as regards the territory of Gibraltar, with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22) or, in any case, by not notifying the measures to the Commission, the United Kingdom

* Language of the case: English.

of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 15 of that directive,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, V. Skouris and N. Colneric (Rapporteur), Judges,

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

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 December 2002, the Commission of the European Communities brought an action under Article 226

EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply, as regards the territory of Gibraltar, with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22) ('the Directive') or, in any case, by not notifying the measures to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 15 of that directive.

2 Under Article 2(1) of the Directive each Member State is to ensure that within its territory one or more investor-compensation schemes are introduced and officially recognised.

3 Article 15(1) of the Directive provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 26 September 1998. They are forthwith to inform the Commission thereof.

4 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having given the United Kingdom the opportunity to submit its observations, sent it a reasoned opinion, by letter of 2 February 2001, requesting it to take the measures necessary to comply with the Directive within two months of notification of the opinion.

5 In its defence before the Court, the United Kingdom admitted that the Directive also applied to Gibraltar and that it has not yet been implemented in that territory. The legislative procedure to implement the measures necessary to transpose the Directive in Gibraltar was under way.

6 As the Court has consistently held, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in that Member State as it stood at the end of the period laid down in the reasoned opinion (see, in particular, Case C-71/99 *Commission* v *Germany* [2001] ECR I-5811, paragraph 29; and Case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13).

7 In this case, the Directive was not transposed in the territory of Gibraltar within the period prescribed in the reasoned opinion. Accordingly, the Commission's action must be considered to be well founded.

8 Therefore it must be held that by failing to adopt the laws, regulations and administrative provisions necessary to comply, as regards the territory of Gibraltar, with the Directive the United Kingdom has failed to fulfil its obligations under Article 15 of the Directive.

Costs

9 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 United Kingdom has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply, as regards the territory of Gibraltar, with Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 15 of that directive;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass
Registrar

V. Skouris
President