JUDGMENT OF THE COURT (Fifth Chamber)

13 September 2001 *

In Case C-417/99,

Commission of the European Communities, represented by G. Valero Jordana, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), the Kingdom of Spain has failed to fulfil one of its obligations under that directive,

* Language of the case: Spanish.

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, D.A.O. Edward (Rapporteur), P. Jann, L. Sevón and C.W.A. Timmermans, 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 3 May 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 October 1999, the Commission of the European Communities brought an application under Article 226 EC for a declaration that, by failing to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), the Kingdom of Spain has failed to fulfil one of its obligations under that directive.

Relevant Community provisions

2 The aim of Directive 96/62 is to define the basic principles of a common strategy to assess and manage ambient air quality.

3 Article 3 of Directive 96/62, entitled 'Implementation and responsibilities', provides:

'For the implementation of this Directive, the Member States shall designate at the appropriate levels the competent authorities and bodies responsible for:

— implementation of this Directive,

— assessment of ambient air quality,

— approval of the measuring devices (methods, equipment, networks, laboratories),

— ensuring accuracy of measurement by measuring devices and checking the maintenance of such accuracy by those devices, in particular by internal quality controls carried out in accordance, inter alia, with the requirements of European quality assurance standards,

— analysis of assessment methods,

— coordination on their territory of Community-wide quality assurance programmes organised by the Commission.

When they supply it to the Commission, the Member States shall make the information referred to in the first subparagraph available to the public.'

4 The first indent of the first subparagraph of Article 4(1) of Directive 96/62 provides that for those atmospheric pollutants listed in Annex I to that directive, the Commission shall submit to the Council proposals for the setting of limit values and, as appropriate, alert thresholds no later than 31 December 1996. On 21 November 1997, the Commission submitted to the Council Proposal for directive 98/C 9/05 relating to limit values for sulphur dioxide, oxides of nitrogen, particulate matter and lead in ambient air (OJ 1998 C 9, p. 6).

5 Article 4(5) of Directive 96/62 provides, in particular, that in accordance with the Treaty, the Council shall adopt the legislation provided for in Article 4(1) of that directive. On 22 April 1999, in pursuance of that article, the Council adopted Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41).

6 Article 11 of Directive 96/62, entitled 'Transmission of information and reports', provides *inter alia* that after adoption by the Council of the first proposal referred

to in the first indent of Article 4(1) of that directive, 'Member States shall notify to the Commission the competent authorities, laboratories and bodies referred to in Article 3'.

7 The first subparagraph of Article 13(1) of Directive 96/62 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months after it comes into force with regard to the provisions relating to Articles 1 to 4 and 12 and Annexes I, II, III and IV, and at the latest on the date on which the provisions referred to in Article 4(5) apply, with regard to the provisions relating to the other Articles'.

8 In that regard, the second subparagraph of Article 13(1) of Directive 96/62 provides:

'When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedures for such a reference shall be adopted by Member States.'

9 In addition, Article 13(2) of Directive 96/62 requires that 'Member States... communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive'.

Facts and pre-litigation procedure

10 Since it had received no notification from the Kingdom of Spain concerning the measures which that Member State was required to take in order to comply with Directive 96/62, the Commission instituted proceedings against it for failure to fulfil its obligations. Having given the Member State notice to submit its observations, by a letter of 25 August 1998 to which the Kingdom of Spain did not reply, the Commission addressed a reasoned opinion to it on 11 December 1998 requesting it to take the measures necessary to comply with its obligations under the directive within two months of notification of that opinion.

11 The Spanish authorities replied by letter of 2 March 1999 that it was not necessary to transpose *inter alia* Articles 1 and 4 or Annex I to Directive 96/62 until the Council had set the limit values and alert thresholds pursuant to Article 4 of that directive. They maintained, moreover, that the obligation to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62 was suspended until the Council adopted the specific rules setting the limit values and alert thresholds for the atmospheric pollutants listed in Annex I to that directive.

12 The Commission was not satisfied by the explanations provided by the Spanish authorities and decided to bring the present action, the subject-matter of which is confined to the designation of the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62.

Arguments of the parties

13 The Commission claims that the Kingdom of Spain has failed to fulfil its obligation under the first paragraph of Article 3 of Directive 96/62. Under the

first subparagraph of Article 13(1) of that directive, it was required to designate the competent authorities and bodies referred to in the first paragraph of Article 3 by 21 May 1998 at the latest.

14 The Spanish Government puts forward two pleas to refute the alleged failure to fulfil its obligations. First it restates the position it adopted during the pre-litigation phase of the proceedings, to the effect that the obligation to designate those authorities and bodies was suspended until the Council has adopted the specific rules setting the limit values and alert thresholds for atmospheric pollutants.

15 The Commission considers that this first plea is unrelated to the subject-matter of this application, which is the failure to designate those authorities and bodies and not merely the failure to notify such designation to the Commission. In any event, it points out that, despite the adoption of Directive 1999/30, the Kingdom of Spain has still not notified it of any purported designation.

16 Secondly, the Spanish Government explains that, from the constitutional point of view, environmental protection is a responsibility shared by the State and the autonomous communities, in both legislative and executive respects. The designation of the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62 lies within the exclusive competence of the autonomous communities. The central administration of the State, in particular the Directorate-General for Quality and Environmental Assessment at the Ministry of the Environment, is responsible for coordinating measures adopted in this field at national level.

17 According to the Spanish Government, the Kingdom of Spain has complied with its obligation under Article 3 of Directive 96/62, since the competent authorities

and bodies referred to in the first paragraph of Article 3 of that directive exist both at the level of the 19 autonomous communities and at State level.

18 Furthermore, the Spanish Government submits that the 19 autonomous communities have made the designations required under the first paragraph of Article 3 of Directive 96/62, and has produced a table summarising the provisions adopted for that purpose by each of those communities.

19 In the Commission's view, the provisions to which the Spanish Government is referring cannot be regarded as adequate measures to comply with the Community obligation laid down in Article 3 of Directive 96/62. First, since they merely relate to organisational matters, they contain insufficient detail compared with what is required by the designation referred to in that article. Second, none of them designates the laboratories responsible for applying the directive. Last, contrary to the provisions of the second subparagraph of Article 13(1) of Directive 96/62, none of them refers expressly to that directive. In the Commission's view, that omission proves that the provisions were not adopted with a view to complying with the directive.

20 For its part, the Spanish Government contends, first, that, under Spanish law, designation of the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62 was to be made by means of organisational provisions. Second, it denies that that provision requires the designation of laboratories, which will be done by administrative decisions, as part of the responsibilities of each autonomous community. Last, since there is no requirement for Directive 96/62 to be cited expressly in national transposition measures, such a reference does not constitute a necessary precondition for transposition of that directive into domestic law.

Findings of the Court

21 This action for failure to fulfil obligations raises two issues concerning the interpretation of Directive 96/62: first, the period within which the obligation to designate the competent authorities and bodies referred to in the first paragraph of Article 3 must be complied with, and second the requirements which must be met by national measures for transposing the directive.

The period within which the obligation to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62 must be complied with

22 A preliminary point to note is that Articles 3 and 11 of Directive 96/62 impose three separate obligations on Member States. First, the first paragraph of Article 3 states that Member States are required to designate at the appropriate levels the competent authorities and bodies responsible *inter alia* for implementing the directive ('the obligation to designate'). Second, Article 11 requires that Member States inform the Commission of the competent authorities, laboratories and bodies referred to in Article 3 ('the obligation to inform'). Third, the second paragraph of Article 3 provides that Member States must make the information referred to in the first paragraph of that article available to the public at the same time as they supply it to the Commission ('the obligation to make public').

23 In its reply to the reasoned opinion, the Spanish Government maintains that it is clear from the second paragraph of Article 3 of Directive 96/62 that the time-limit for complying with the obligation to designate is linked to that for the obligation to inform and also to that for the obligation to make public. The obligation to designate was therefore, under Article 11 of that directive,

suspended until the Council adopted the first proposal submitted by the Commission under the first indent of Article 4(1) of the directive, that is to say, until 22 April 1999.

24 In that regard, it should be noted that Directive 96/62 was adopted pending the results of the scientific research being undertaken at that time, concerning limit values and alert thresholds applying to certain atmospheric pollutants. Consequently, Article 4(1) and (5) of that directive provides that, once the scientific research has been completed, the Council, acting on a proposal from the Commission, is to set those limit values and alert thresholds.

25 Because the date of that Council decision could not be predicted when Directive 96/62 was adopted, the Community legislature decided to lay down general measures in the directive, which were to be supplemented by specific ones for individual substances (see the ninth recital in the preamble to the directive).

26 It is therefore necessary to determine whether the obligation to designate is of a general nature and so can be complied with within a set period, or whether it is of a more specific nature in that compliance with it is conditional on the setting of limit values and alert thresholds.

27 In that regard, it should be noted, as the Spanish Government pointed out in its reply to the reasoned opinion, that the first subparagraph of Article 13(1) of Directive 96/62 provides for implementation to take place in two stages. In the first stage, Member States were to bring into force the provisions implementing Articles 1 to 4 and 12 of Annexes I, II, III and IV to the directive within 18 months of the entry into force of the directive. During the second stage they were to bring into force all the other provisions for implementing the directive no later

than the date on which the legislation adopted by the Council under Article 4(5) of the directive came into force.

28 It is clear from the foregoing that the obligation to designate provided for in the first paragraph of Article 3 of Directive 96/62 falls within that first stage of transposition. Since Directive 96/62 entered into force on 21 November 1996, the time-limit for fulfilling the obligation to designate expired on 21 May 1998.

29 That conclusion is not undermined by the postponement, in accordance with Article 11 of Directive 96/62, of the obligation to inform until a later date. That extended time-limit, which constitutes a derogation, is justified by the specific nature of the obligation to inform. The purpose of Article 11 is not confined to the obligation to inform, but extends to making available information concerning *inter alia* cases where limit values are exceeded and the methods used to make preliminary assessments of ambient air quality during a transitional period.

30 In contrast, the obligation to designate, which constitutes a preliminary step in implementing the general objectives of the directive, is of a purely general nature. Fulfilment of it does not depend on an uncertain future event such as the setting of limit values and alert thresholds. There is nothing, therefore, to justify deferring fulfilment of that obligation beyond 21 May 1998.

31 Moreover, as the Court has already held, the fact that a directive provides for certain details to be decided on in the future cannot, in the absence of express provision to that effect, relieve Member States of their obligation to adopt within the prescribed period the measures necessary to comply with the directive. That

obligation remains, whether or not all the conditions for the application of the provisions of Community law have already been fulfilled (see, in particular, Case C-137/96 *Commission* v *Germany* [1997] ECR I-6749, paragraph 10).

32 In the present case, the reason for implementing a general provision such as that laying down the obligation to designate, an obligation which is well defined and unconditional, is precisely to enable Member States to ensure that the basic principles of a common strategy to assess and manage the ambient air quality can be applied immediately, once the limit values and alert thresholds set for the pollutants listed in Annex I to Directive 96/62 come into effect.

33 Thus, under the first subparagraph of Article 13(1) of Directive 96/62, the Kingdom of Spain was required to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of that directive by 21 May 1998 at the latest. It cannot rely on the extended time-limit provided for in Article 11 of the directive in order to postpone compliance with its obligation to adopt the laws, regulations and administrative measures necessary to make such designation.

The requirements to be met by national measures implementing Directive 96/62

34 It should be noted first of all that 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 and that the Court cannot take account of any subsequent changes (see in particular Case C-207/00 *Commission* v *Italy* [2001] ECR I-4571, paragraph 27).

35 As is clear from the table given in the defence, which summarises the provisions adopted by the autonomous communities for the designation of the authorities and bodies competent in the field covered by Directive 96/62, the majority of those provisions were not adopted or amended until the second half of 1999, that is to say, after the time-limit set in the reasoned opinion had expired.

36 Secondly, it is necessary to consider the claim made by the Commission that those provisions are not sufficiently detailed. In that regard, as the Advocate General stated in point 35 of his Opinion, the first paragraph of Article 3 of Directive 96/62 assigns to the designated competent authorities and bodies, including the laboratories, several specific tasks necessitating different administrative and technical competencies. There may be many authorities and bodies responsible for each of those tasks.

37 It should be noted that, as the Court has already held, each Member State is free to delegate powers to its domestic authorities as it sees fit and to implement directives by means of measures adopted by regional or local authorities. That division of powers does not, however, release it from the obligation to ensure that the provisions of the directive are properly implemented in national law (see Joined Cases 227/85 to 230/85 *Commission* v *Belgium* [1988] ECR 1, paragraph 9, and Case C-131/88 *Commission* v *Germany* [1991] ECR I-825, paragraph 71).

38 In that regard, a directive must be transposed into national law by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations (see in particular to that effect Case C-221/94 *Commission* v *Luxembourg* [1996] ECR I-5669, paragraph 22).

39 In the present case, it is clear that the provisions to which the Spanish Government refers are not sufficiently detailed. For example, Decreto No 256/1995 of the Diputación General de Aragón por el que se aprueba la estructura orgánica del Departamento de Agricultura y Medio Ambiente (Decree No 256/1995 of the Diputación general de Aragón approving the structure of the Department of Agriculture and the Environment) of 26 September 1995 (BOE of Aragon of 11 October 1995) makes no mention of protection against atmospheric pollution. Other provisions concerning 'the quality of the environment' are too general inasmuch as they give no indication of either the specific tasks assigned or the authorities concerned.

40 Consequently, the provisions of the first paragraph of Article 3 of Directive 96/62 cannot be considered to have been implemented by the Spanish provisions with the precision, clarity and transparency required in order to comply fully with the requirement of legal certainty.

41 In those circumstances, it must be held that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary in order to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62, the Kingdom of Spain has failed to fulfil its obligations under that directive.

Costs

42 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 the Kingdom of Spain to pay the costs and the latter has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, the Kingdom of Spain has failed to fulfil its obligations under that directive;**

2. **Orders the Kingdom of Spain to pay the costs.**

La Pergola Edward Jann

Sevón Timmermans

Delivered in open court in Luxembourg on 13 September 2001.

R. Grass A. La Pergola

Registrar President of the Fifth Chamber