JUDGMENT OF THE COURT (Third Chamber)

12 February 2004 *

In Case C-406/02,

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

applicant,

v

Kingdom of Belgium, represented by E. Dominkovitz, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to communicate to it, within the prescribed period, the reports in respect of the Bruxelles-Capitale Region required under Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23), Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1) and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43) as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48), the Kingdom of Belgium has failed to fulfil its obligations under the said directives,

THE COURT (Third Chamber),

composed of: C. Gulmann, acting for the President of the Third Chamber, J.-P. Puissochet (Rapporteur) and F. Macken, Judges,

Advocate General: C. Stix-Hackl,
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 13 November 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to communicate to it, within the prescribed period, the reports in respect of the Bruxelles-Capitale Region required under Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23), Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1) and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43) as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48), the Kingdom of Belgium has failed to fulfil its obligations under the said directives.

Legal framework

2 Council Directive 91/692 seeks to achieve the standardisation and rationalisation of reports on the implementation of certain directives relating to the environment. Its purpose is to harmonise and to supplement the provisions relating to the reports under these directives to make them more consistent and more complete on a sectoral basis. It provides for a single report.

3 Article 2(1) of Directive 91/692 provides that the provisions listed in Annex I are to be replaced by the following:

'At intervals of three years the Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral report which shall also cover other pertinent Community Directives. This report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC.... The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be sent to the Commission within nine months of the end of the three-year period covered by it.

The first report shall cover the period from 1993 to 1995 inclusive.

The Commission shall publish a Community report on the implementation of the Directive within nine months of receiving the reports from the Member States.'

4 The directives covered by these new provisions are, inter alia:

— Directive 76/464;

— Directive 78/659;

— Directive 80/68.

5 The questionnaires, on the basis of which the report was to be drawn up, were prepared by the Commission with the assistance of a committee and were addressed to the Member States by Commission Decision 92/446/EEC of 27 July 1992 concerning questionnaires relating to Directives in the water sector (OJ 1992 L 247, p. 10), six months before the opening of the period covered by the aforementioned report.

Pre-litigation procedure

6 As by 30 September 1996, being the time-limit under the prescribed obligations, it had not received the report provided for by Article 2(1) of Directive 91/692 for the years 1993 to 1995 in respect of the Bruxelles-Capitale and Wallonia Regions, the Commission held the Kingdom of Belgium to be in breach of its obligations.

7 Accordingly, on 30 June 1998, the Commission sent the Kingdom of Belgium a letter of formal notice.

8 By letters of 30 July and 11 September 1998, the Belgian Permanent Representative sent to the Commission the observations of the Wallonia Region and those of the Bruxelles-Capitale Region.

9 In the light of those observations, the Commission maintained its complaint against the Bruxelles-Capitale Region only.

10 On 22 December 1998, the Commission issued a reasoned opinion to the Kingdom of Belgium calling on it to take the measures necessary to comply with the obligations arising under Directives 76/464, 78/659 and 80/68, as amended by Directive 91/692 (hereinafter 'Directive 76/464', 'Directive 78/659' and 'Directive 80/68') within two months of its notification, and, in that regard, to communicate to it the information required by the said directives in respect of the Bruxelles-Capitale Region.

11 By fax of 17 May 2000, confirmed by letter of 13 June 2000, the Kingdom of Belgium sent to the Commission a reply to the reasoned opinion, stating that the measures intended to ensure the collecting of the data required for the preparation of the report which was to be sent, would be in place from 2001.

12 By letter of 10 July 2000, the Commission, which took the view that that period was too long, requested the Belgian authorities to take all appropriate measures to ensure that the infrastructure required for the collecting of the requisite data was set up as soon as possible.

13 By fax of 19 June 2001, confirmed by letter of 20 June 2001, the Belgian authorities submitted additional observations to the Commission in reply to the reasoned opinion.

14 However, since the Commission did not regard this information as satisfactory, it decided to bring the present action.

The infringement

15 The Commission has withdrawn its application in so far as it relates to the information to be communicated under Directive 80/68. It accepts that, despite the fact that it was sent late, the Kingdom of Belgium had provided adequate information.

16 It considers none the less that the Kingdom of Belgium has failed to communicate, within the prescribed period, the information required under Directives 76/464 and 78/659.

17 In its defence, the Kingdom of Belgium maintains, first, that it has proceeded to implement, in its legislation, the various directives providing for the reports sought by the Commission, and, secondly, that on 17 January 2003 it sent to the Commission the reports referred to in Directives 76/464 and 78/659 for the periods 1993 to 1995, 1996 to 1998 and 1999 to 2001.

18 The Kingdom of Belgium argues that, contrary to what the Commission claims, the report issued for the period 1993 to 1995, that is to say the report whose late delivery is the basis of the alleged infringement, contains detailed information for each year concerned, as Directive 91/692 requires.

19 That Government also claims that the abovementioned report includes all the data that are available, and that the questions to which it has not provided an answer for the year 1993 could not be answered, given the recent nature of the questionnaire. It notes in that regard that Commission Decision 95/337/EC of 25 July 1995 amending Decision 92/446 (OJ 1995 L 200, p. 1) anticipates that it may be impossible to answer the questionnaire as regards investments made in relation to water purification infrastructure.

20 Nevertheless, the fact, assuming it to be the case, that the report sent should be held to be satisfactory, does not affect the infringement, which relates only to the Belgian Government's delay in communicating it to the Commission.

21 That Member State does not deny that it did not communicate the information prior to 30 September 1996, which was the time-limit under Directive 91/962, and, moreover, that it did not provide the information within the period laid down in the reasoned opinion.

22 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, among others, Case C-83/02 *Commission* v *Greece* [2003] ECR I-5639, paragraph 10).

23 Therefore, by failing to communicate to the Commission, within the prescribed period, the report in respect of the Bruxelles-Capitale Region required under Article 2(1) of Directive 91/692, the Kingdom of Belgium has failed to fuflfil its obligations under that directive.

Costs

24 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 Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber),

hereby:

1. **Declares that, by failing to communicate to the Commission, within the prescribed period, the report in respect of the Bruxelles-Capitale Region required under Article 2(1) of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, the Kingdom of Belgium has failed to fulfil its obligations under that directive;**

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

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 12 February 2004.

R. Grass V. Skouris

Registrar President