JUDGMENT OF THE COURT (Fifth Chamber)

12 December 1996 *

In Joined Cases C-218/96, C-219/96, C-220/96, C-221/96 and C-222/96,

Commission of the European Communities, represented by G. zur Hausen, Legal Adviser, 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

Kingdom of Belgium, represented by A.-M. Snyers (Cases C-218/96, C-220/96, C-221/96 and C-222/96), General Adviser in the Legal Service of the Ministry of Foreign Affairs, Trade and Development Cooperation, and R. Foucart (Case C-219/96), Director-General in the same service, acting as Agents, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by not adopting or not communicating within the prescribed time-limits the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 92/32/EEC of 30 April 1992 amending for the seventh time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1992 L 154, p. 1),

— Commission Directive 92/69/EEC of 31 July 1992 adapting to technical progress for the seventeenth time Council Directive 67/548/EEC (OJ 1992 L 383, p. 113),

— Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (OJ 1993 L 227, p. 9),

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances (OJ 1993 L 264, p. 51), and

— Commission Directive 93/105/EC of 25 November 1993 laying down Annex VII D, containing information required for the technical dossier referred to in Article 12 of the seventh amendment of Council Directive 67/548/EEC (OJ 1993 L 294, p. 21),

the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

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

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 28 November 1996,

gives the following

Judgment

1 By applications lodged at the Court Registry on 26 June 1996, the Commission of the European Communities brought five actions under Article 169 of the EC Treaty for a declaration that, by not adopting or not communicating within the prescribed time-limits the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 92/32/EEC of 30 April 1992 amending for the seventh time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1992 L 154, p. 1),

— Commission Directive 92/69/EEC of 31 July 1992 adapting to technical progress for the seventeenth time Council Directive 67/548/EEC (OJ 1992 L 383, p. 113),

— Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (OJ 1993 L 227, p. 9),

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances (OJ 1993 L 264, p. 51), and

— Commission Directive 93/105/EC of 25 November 1993 laying down Annex VII D, containing information required for the technical dossier referred to in Article 12 of the seventh amendment of Council Directive 67/548/EEC (OJ 1993 L 294, p. 21) ('the directives at issue'),

the Kingdom of Belgium had failed to fulfil its obligations under those directives.

2 By order of 17 October 1996, the President of the Court of Justice decided to join the five cases for the purposes of the oral procedure and the judgment.

3 In accordance with the penultimate article of each of the directives at issue, Member States were to bring into force the laws, regulations and administrative

provisions necessary to comply with those directives not later than 30 October 1993 (Directive 92/69), 31 October 1993 (Directives 92/32 and 93/67) and 31 December 1993 (Directives 93/86 and 93/105) and to inform the Commission thereof forthwith.

4 Having established that the respective time-limits prescribed by the directives had expired, and having received no notification of any measures taken by the Kingdom of Belgium, the Commission started the procedure for establishing the existence of a failure to fulfil obligations pursuant to Article 169 of the EC Treaty. By letters of 3 December 1993 in Cases C-220/96, C-221/96 and C-222/96, and of 10 February 1994 in Cases C-218/96 and C-219/96, it put the Belgian Government on formal notice to submit its observations on those Treaty infringements.

5 Those letters having remained unanswered, and no transposition measures having been notified to it, the Commission delivered to the Belgian Government, on 29 June 1995 in Case C-219/96, on 10 July 1995 in Cases C-218/96, C-220/96 and C-221/96, and on 3 August 1995 in Case C-222/96, reasoned opinions requiring the Government to take the necessary measures to comply with the directives within two months of the delivery of those opinions.

6 In Cases C-218/96, C-220/96 and C-221/96, the Belgian Government replied, by letters of 5 September 1995, that transposition of the directives into domestic law was in progress, and that a draft royal decree had been prepared. In Case C-222/96, it replied to the opinion on 20 October 1995 by communicating to the Commission the draft royal decree mentioned in connection with Cases C-218/96, C-220/96 and C-221/96. In Case C-219/96, the Belgian Government did not reply to the reasoned opinion.

7 On 21 June 1996, having obtained no fresh and definitive official information from the Belgian Government, the Commission decided to bring these actions.

8 In its defence, the Kingdom of Belgium does not deny that the directives at issue were not transposed within the prescribed time-limits. It merely observes that, in order to transpose Directives 92/32, 92/69, 93/67 and 93/105 into Belgian law, it is necessary to amend the Royal Decree of 24 May 1982 regulating the marketing of substances potentially dangerous to man or the environment, and that transposition of Directive 93/86 requires the adoption of a royal decree. It adds that draft legislation for those purposes has been the subject of consultations provided for in Belgian law and are currently awaiting ministerial signature before submission to the King.

9 Since the directives at issue have not been transposed within the periods prescribed therein, the Commission's actions must be held to be well founded.

10 The Court therefore finds that, by not adopting within the prescribed periods the laws, regulations and administrative provisions necessary to comply with the directives at issue, the Kingdom of Belgium has failed to fulfil its obligations under Article 3 of Directive 92/32, Article 3 of Directive 92/69, Article 8 of Directive 93/67, Article 7 of Directive 93/86 and Article 2 of Directive 93/105.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby rules:

1. By not adopting within the prescribed time-limits the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 92/32/EEC of 30 April 1992 amending for the seventh time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances,

— Commission Directive 92/69/EEC of 31 July 1992 adapting to technical progress for the seventeenth time Council Directive 67/548/EEC,

— Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC,

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances, and

— **Commission Directive 93/105/EC of 25 November 1993 laying down Annex VII D, containing information required for the technical dossier referred to in Article 12 of the seventh amendment of Council Directive 67/548/EEC,**

the Kingdom of Belgium has failed to fulfil its obligations under Article 3 of Directive 92/32, Article 3 of Directive 92/69, Article 8 of Directive 93/67, Article 7 of Directive 93/86 and Article 2 of Directive 93/105.

2. The Kingdom of Belgium is ordered to pay the costs.

Moitinho de Almeida Sevón Gulmann

Puissochet Jann

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber