JUDGMENT OF THE COURT (First Chamber)

8 June 2000 *

In Case C-91/99,

Commission of the European Communities, represented by A.M. Alves Vieira, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

applicant,

v

Portuguese Republic, represented by L. Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and M.J. Carvalho, a lawyer at the Ministry of Agriculture, Rural Development and Fisheries, acting as Agents, 1 Rua da Cova da Moura, Lisbon,

defendant,

APPLICATION for a declaration that, by failing to adopt, within the prescribed period, all the measures necessary fully to comply with Council Directive 96/43/

* Language of the case: Portuguese.

EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Portuguese Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2000,

gives the following

Judgment

1 By an application lodged at the Registry of the Court on 17 March 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to adopt, within the prescribed period, all the measures necessary fully to comply with Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of the veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Portuguese Republic has failed to fulfil its obligations under the EC Treaty.

2 Article 1 of Directive 96/43 provides that the title, the articles and the annexes to Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) are to be replaced by the text set out in the annex to Directive 96/43. The new title of Directive 85/73 is henceforth to be Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC.

3 The first subparagraph of Article 4(1) of Directive 96/43 provides as follows in relation to the implementation of Directive 85/73, as amended and consolidated by Directive 96/43:

'Member States shall bring into force laws, regulations and administrative provisions necessary to comply with:

(i) the provisions of Article 7 and of Chapter I(1)(e) of Annex A by 1 July 1996;

(ii) the provisions of Chapter II, Section II of Chapter III of Annex A and Chapter II of Annex C by 1 January 1997;

(iii) other amendments by 1 July 1997.'

4 The second subparagraph of Article 4(1) of Directive 96/43, however, provides:

'Member States shall have a further period which can extend to 1 July 1999 within which to comply with the provisions of Section I of Chapter III of Annex A.'

5 Article 4(2) of Directive 96/43 provides:

'Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.'

6 Having received no notification of any provision intended to transpose Directive 96/43 into Portuguese law, and in the absence of any other information from which it could conclude that the Portuguese Republic had fulfilled its obligation to do so, the Commission, by letter of 5 November 1997, gave that Member State

two months' formal notice in which to submit its observations, in accordance with the procedure provided for in Article 169 of the Treaty.

7 The Portuguese authorities replied by letter of 25 March 1998, stating that they were preparing the measures necessary in order to transpose Directive 96/43 into national law.

8 On 24 August 1998, the Commission, considering that those measures had not yet been taken, sent a reasoned opinion to the Portuguese Republic requiring it to take the measures needed to comply with its obligations under Directive 96/43 within two months from notification of that opinion.

9 In the absence of any further information relating to the transposition into Portuguese law of Directive 96/43, the Commission decided to bring this action.

10 In its defence, the Portuguese Government did not deny that Directive 96/43 had not been transposed, but contended that the Council of Ministers had approved a draft decree law transposing it and that the law was to be published in the *Diário da República* shortly.

11 On 2 July 1999, that is to say after the written procedure had been closed, the Portuguese authorities filed at the Registry of the Court a copy of Decree Law No 208/99 of 11 June 1999 (*Diário da República* I, Series A, No 134 of 11 June 1999) transposing Directive 96/43.

12 In that connection, it must be observed that in an action under Article 169 of the Treaty, 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 the Court cannot take account of any subsequent changes (see, in particular, Case C-327/98 *Commission* v *France* [2000] ECR I-1851, paragraph 28).

13 It is apparent from the explanations provided by the Portuguese Government that the provisions referred to in the first subparagraph of Article 4(1) of Directive 96/43 were not transposed within the periods prescribed by that article. Consequently, the action brought by the Commission in that connection must be held to be well founded.

14 As regards, on the other hand, the provisions referred to in the second subparagraph of Article 4(1) of Directive 96/43, it should be noted that, according to the wording of that article, Member States are to have a further period, which may extend to 1 July 1999, in which to transpose the provisions in question. Since that period had not yet expired on the date by which the Portuguese Republic was required by the Commission to comply with the reasoned opinion, the action must be dismissed in so far as it also concerns adoption of the measures necessary in order to comply with the provisions referred to in the second subparagraph of Article 4(1) of Directive 96/43.

15 It must therefore be held that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Directive 96/43, the Portuguese Republic has failed to fulfil its obligations under that subparagraph. The remainder of the action must be dismissed.

Costs

16 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 asked that the Portuguese Republic be ordered to pay the costs and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. **Declares that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and**

controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC, the Portuguese Republic has failed to fulfil its obligations under that subparagraph;

2. **Dismisses the remainder of the action;**

3. **Orders the Portuguese Republic to pay the costs.**

Sevón Jann Wathelet

Delivered in open court in Luxembourg on 8 June 2000.

R. Grass

Registrar

L. Sevón

President of the First Chamber