JUDGMENT OF THE COURT (Fifth Chamber)
14 December 1995 *

In Case C-16/95,

Commission of the European Communities, represented by Blanca Rodríguez Galindo and Enrico Traversa, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by Alberto Navarro González, Director-General of Community Legal and Institutional Coordination, and Miguel Bravo-Ferrer Delgado, Abogado del Estado in the Community Legal Affairs Department, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by disregarding the six-month time-limit for the refund of value added tax to taxable persons not established in the territory of the country, in accordance with Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11), and by failing to comply with the duty of cooperation

* Language of the case: Spanish.

imposed on Member States by Article 5 of the EC Treaty, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida, P. Jann (Rapporteur) and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 October 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 18 January 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by disregarding the six-month time-limit for the refund of value added tax to taxable persons not established in the territory of the country, in accordance with Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country

(OJ 1979 L 331, p. 11), and by failing to comply with the duty of cooperation imposed on Member States by Article 5 of the EC Treaty, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

2 Under Article 7(4) of the directive:

'Decisions concerning applications for refund shall be announced within six months of the date when the applications, accompanied by all the necessary documents required under this directive for examination of the application, are submitted to the competent authority ... Refunds shall be made before the end of the abovementioned period, at the applicant's request, in either the Member State of refund or the State in which he is established. In the latter case, the bank charges for the transfer shall be payable by the applicant.'

3 On receipt of numerous complaints from traders in other Member States concerning delays in the refund of value added tax by the Spanish administration, the Commission forwarded them by letter of 5 March 1991 to the Spanish Permanent Representative's Office, requesting an explanation from the competent authorities. No official reply was received, whereupon the Commission decided, after telexing a reminder, to initiate the infringement procedure; in that connection, it requested the Spanish Government, by letter of 10 November 1992, to submit its observations on the matter within two months. At the request of the Spanish authorities, that time-limit was extended until 10 February 1993. No reply was received and on 28 March 1994 the Commission delivered a reasoned opinion, requesting the Member State to comply with the directive within two months of the date of receiving notification. Again no reply was received and the Commission accordingly lodged the present application.

4 The Commission points out that, under the directive, refunds of value added tax are to be made within six months of the date when applications, supported by all

the necessary documents required for their examination, are submitted. Despite the fact that the directive has been transposed into Spanish law, the Commission notes that refunds to taxable persons not established within the Kingdom of Spain are taking much longer than the prescribed period and may take as long as 12 months.

5 In the Commission's view, therefore, this is a clear case of an infringement of Article 7(4) of the directive.

6 The Spanish Government does not deny the infringement and explains that the delay in refunding value added tax to non-resident taxable persons is due to organizational problems and is not the result of a deliberate discriminatory intent. In that connection it points out that the national authorities are seeking ways of ensuring compliance with the six-month period referred to in the directive.

7 Since the Commission has withdrawn that part of its application concerning the duty of cooperation laid down by Article 5 of the Treaty, there is no need to take a decision on that point.

8 As regards Article 7(4) of the directive, it is established case-law that Member States are obliged to ensure that the provisions of a directive are applied exactly and in full (see, in particular, the judgment in Case C-287/91 *Commission* v *Italy* [1992] ECR I-3515, paragraph 7).

9 It must therefore be held that, by disregarding the six-month time-limit for the refund of value added tax to taxable persons not established in the territory of the

country, the Kingdom of Spain has failed to fulfil its obligations under Article 7(4) of the directive.

Costs

10 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by disregarding the six-month time-limit for the refund of value added tax to taxable persons not established in the territory of the country, the Kingdom of Spain has failed to fulfil its obligations under Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country;

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

Edward Puissochet Moitinho de Almeida

Jann Wathelet

Delivered in open court in Luxembourg on 14 December 1995.

R. Grass

Registrar

D. A. O. Edward

President of the Fifth Chamber