JUDGMENT OF THE COURT (Third Chamber)

14 June 2001 *

In Case C-230/00,

Commission of the European Communities, represented by H. van Lier, acting as Agent, assisted by M.H. van der Woude and T.E.M. Chellingsworth, lawyers, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by A. Snoecx, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to implement fully the following:

* Language of the case: Dutch.

— Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32),

— 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 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),

— Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ 1984 L 188, p. 20), and

— Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40),

the Kingdom of Belgium has failed to fulfil its obligations under Articles 9 of Directive 75/442, 3, 4, 5, and 7 of Directive 76/464, 3, 4, 5, 7 and 10 of Directive 80/68, 3, 4, 9 and 10 of Directive 84/360, 2 and 8 of Directive 85/337 and Article 189 of the EC Treaty (now Article 249 EC),

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), 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 8 March 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 9 June 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to implement fully:

— Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32),

— 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 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),

— Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ 1984 L 188, p. 20), and

— Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40),

the Kingdom of Belgium has failed to fulfil its obligations under Articles 9 of Directive 75/442, 3, 4, 5, and 7 of Directive 76/464, 3, 4, 5, 7 and 10 of Directive 80/68, 3, 4, 9 and 10 of Directive 84/360, 2 and 8 of Directive 85/337 and Article 189 of the EC Treaty (now Article 249 EC).

Legal context

2 Directives 75/442, 76/464, 80/68 and 84/360 require the Member States to take the necessary measures to ensure that the activities or industrial plants which they regulate are subjected to prior authorisation.

3 Article 2 of Directive 85/337 provides that the Member States are to adopt all measures necessary to ensure that projects likely to have significant effects on the environment are made subject to an assessment of such effects prior to the grant of authorisation.

4 The provisions of Belgian law which were intended to implement Directives 75/442, 76/464, 80/68, 84/360 and 85/337 imposed a requirement to seek authorisation. However, some of the provisions, particularly those contained in the rules of the Regions of Flanders and Wallonia, provide for a system of tacit grant and refusal of authorisation.

5 If the first-level competent authority does not determine a request for authorisation, it is deemed to have been refused. On the other hand, at second level, in the absence of a decision by the competent authority within the time allowed, authorisation is deemed to have been granted. Such is, essentially, the system laid down in Articles 34 to 42 and 49 to 55 of the Order of the Flemish Government of 6 February 1991 enacting the regulations concerning environmental consent (*Moniteur belge* of 26 June 1991, p. 14269), and in Article 11 of the Decree of the Walloon Regional Council of 27 June 1996 on waste (*Moniteur belge* of 2 August 1996, p. 20685).

Pre-litigation procedure

6 Taking the view that the Kingdom of Belgium had not properly implemented Directives 75/442, 76/464, 80/68, 84/360 and 85/337, by letter of 6 July 1998, the Commission gave the Member State an opportunity to submit its observations in accordance with the procedure laid down in the Treaty in respect of the failure by a Member State to fulfil its obligations.

7 Since no reply to that letter was received, the Commission sent a reasoned opinion to the Kingdom of Belgium on 18 December 1998.

8 On 6 January 1999 the Commission received a letter from the Belgian Government to which was attached a letter from the Flemish Government of 8 December 1998. In this, the Flemish authorities submitted the observations requested in the Commission's letter of 6 July 1998, emphasising particularly the limited field of application of tacit authorisation and the small number of such authorisations issued. The Flemish Government added that all the competent authorities and all the consultative bodies concerned were well aware of the consequences of the lack of a decision so that they always ensured that every request for authorisation was subjected to a thorough examination.

9 The reply of the Flemish Government to the reasoned opinion, which was received by the Commission on 15 March 1999, repeated the arguments set out in its letter of 8 December 1998. The Regional Government added, however, that tacit authorisation did not imply passive assessment or neglect on the part of the competent authority, as each request for authorisation gave rise to a detailed assessment.

10 Taking the view that the Kingdom of Belgium had not taken all the measures necessary to comply with the reasoned opinion, the Commission decided to bring the present action.

Substance

11 The Commission submits that the Court has already held that a system of tacit authorisation is incompatible with the requirements of Directive 80/68 (Case C-360/87 *Commission* v *Italy* [1991] ECR I-791, paragraph 31). That case-law should also apply to the authorisation referred to in Directives 75/442, 76/464, 84/360 and 85/337.

12 The system of tacit authorisation described in paragraph 5 of this judgment is therefore, according to the Commission, incompatible with the provisions of the directives in question.

13 Without disputing the failure of which it is accused, the Kingdom of Belgium confines itself to pointing out, in its defence, that the Flemish Government is in the process of preparing a draft decree on this subject and that the Walloon Government has adopted two preliminary drafts of orders, as well as various measures implementing the Decree of 11 March 1999 relating to environmental consents (*Moniteur belge* of 8 June 1999, p. 21101).

14 In this respect it should be noted that the Court has held, in respect of Directive 80/68, that it 'requires that after each investigation and in the light of the results thereof an express measure, either prohibition or authorisation, must be adopted' (Case C-131/88 *Commission* v *Germany* [1991] ECR I-825, paragraph 38).

15 Moreover, as was pointed out at paragraph 52 of the judgment in Case C-287/98 *Linster* [2000] ECR I-6917, the essential aim of Directive 85/337 'is that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location should be made subject to an assessment with regard to their effects'.

16 It follows from that case-law that tacit authorisation cannot be compatible with the requirements of the directives referred to in this action because they prescribe, in the case of Directives 75/442, 76/464, 80/68 and 84/360, systems of prior authorisation, and, in the case of Directive 85/337, assessment procedures preceding the grant of authorisation. The national authorities are therefore required under each of those directives to examine individually every request for authorisation.

17 As for the additional implementing measures which the Regions of Flanders and Wallonia are in the course of adopting, it is appropriate to point out that under the third paragraph of Article 189 of the Treaty, directives are binding upon each Member State to which they are addressed as to the result to be achieved. It follows from settled case-law that that obligation requires compliance with the time-limits set by directives (see, among others, Case 10/76 *Commission* v *Italy* [1976] ECR 1359, paragraphs 11 and 12, and Case C-176/00 *Commission* v *Greece* [2001] ECR I-2063, paragraph 7).

18 In those circumstances it must be held that, by failing to adopt the laws, regulations and administrative provisions necessary to implement fully Directives 75/442, 76/464, 80/68, 84/360 and 85/337, the Kingdom of Belgium has failed to fulfil its obligations under Articles 9 of Directive 75/442, 3, 4, 5 and 7 of Directive 76/464, 3, 4, 5, 7 and 10 of Directive 80/68, 3, 4, 9 and 10 of Directive 84/360 and 2 and 8 of Directive 85/337.

Costs

19 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 adopt the laws, regulations and administrative provisions necessary to implement fully:

— Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991,

— Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community,

— Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances,

— Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants, and

— Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment,

the Kingdom of Belgium has failed to fulfil its obligations under Articles 9 of Directive 75/442, as amended by Directive 91/156, 3, 4, 5, and 7 of Directive 76/464, 3, 4, 5, 7 and 10 of Directive 80/68, 3, 4, 9 and 10 of Directive 84/360 and 2 and 8 of Directive 85/337.

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

Gulmann Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 14 June 2001.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber