JUDGMENT OF THE COURT (Fourth Chamber)

11 October 2001 *

In Case C-111/00,

Commission of the European Communities, represented by N. Yerrell and C. Ladenburger, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Austria, represented by C. Pesendorfer, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt and/or notify to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work

* Language of the case: German.

(OJ 1997 L 335, p. 17), the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that directive,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, A. La Pergola (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 5 April 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 March 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt and/or notify to the Commission the laws,

regulations and administrative provisions necessary to comply with Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (OJ 1997 L 335, p. 17, hereinafter 'the directive'), the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that directive.

2 According to Article 2(1) of the directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 30 June 1998 and immediately inform the Commission thereof.

3 As it had received no communication from the Austrian Government concerning measures implementing the directive, by letter of 25 August 1998 the Commission sent the Austrian Republic formal notification to submit its observations in this regard within two months.

4 By letters of 15 September, 22 September and 11 November 1998 and 8 April 1999, the Austrian authorities informed the Commission that some of the measures necessary to implement the directive had been adopted, in particular the Verordnung der Bundesministerin für Arbeit, Gesundheit und Soziales über den Schutz der Arbeitnehmer/innen gegen Gefährdung durch biologische Arbeitsstoffe (Regulation issued by the Federal Minister for Labour, Health and Social Affairs concerning the protection of workers from risks related to exposure to biological agents, BGBl. II, 1998, No 237), adopted on the basis of the Law on the protection of workers, and in respect of agriculture, the basic provisions of Federal law aimed at implementing the directive, while the legislation for their application at the level of the *Länder* (Regions) was in the process of being drawn up.

5 As for the adoption of measures to implement the directive with regard to the civil service, the Austrian authorities stated that, although it had been planned to adopt a regulation based on the Law for the protection of Federal civil servants, the *Länder* have considerable powers in that field and only some of them had adopted the requisite implementing measures, such as the Verordnung der Wiener Landesregierung über den Schutz der Bediensteten der Dienststellen der Gemeinde Wien gegen Gefährdung durch biologische Arbeitsstoffe (Regulation issued by the Government of the *Land* of Vienna concerning the protection of the municipal employees of Vienna from risks related to exposure to biological agents, Vienna LGBl. 1999, No 6).

6 As it was not satisfied with the content of the replies of the Austrian authorities to the abovementioned letter of formal notice, the Commission sent to the Republic of Austria a reasoned opinion on 8 September 1999 calling on it to take the measures necessary to comply with its obligations under the directive within two months of notification of the aforementioned opinion.

7 By letter of 10 November 1999, the Austrian Government notified the Commission of the entry into force of the Verordnung der Bundesregierung über den Schutz der Bundesbediensteten gegen Gefährdung durch biologische Arbeitsstoffe (Regulation of the Federal Government concerning the protection of employees of the Federal State from risks related to exposure to biological agents, BGBl. II, 1998, No 415). However, according to that letter, the procedures for adopting the laws or regulations necessary to implement the directive at *Länder* level were not yet completed.

8 Since the directive was not completely implemented into Austrian law before the expiry of the two-month period prescribed in the reasoned opinion, the Commission has brought the present action.

9 In its application, the Commission claims that not all the measures necessary for the implementation of the directive have been taken yet in respect of all the sectors concerned and at all levels of the State or, at the very least, it has not received any notification to that effect from the Austrian Government.

10 The Austrian Government does not deny that it has failed to fulfil its obligation to adopt and/or notify to the Commission, within the period prescribed in the reasoned opinion, the laws, regulations and administrative provisions necessary to comply with the directive. It simply states that, as a result of the distribution of powers under the Federal Constitution, those powers are 'split to a particularly high degree' between the Federal State and the *Länder* so far as concerns the adoption of national provisions to implement the directive in the various sectors.

11 Furthermore, in its rejoinder, the Austrian Government argues that, as a result of the adoption of certain legislative amendments, the directive has been fully implemented at federal level. It also mentions that several implementing regulations have been adopted with regard to the *Länder*.

12 In that connection, it should be recalled that, according to the Court's settled case-law, a Member State may not plead situations in its internal legal order, including those resulting from its federal organisation, in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-298/95 *Commission* v *Germany* [1996] ECR I-6747, paragraph 18, and Case C-236/99 *Commission* v *Belgium* [2000] ECR I-5657, paragraph 23).

13 Moreover, the Court has repeatedly held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and that the Court may not take account of any subsequent

changes (see, *inter alia*, Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16, and Case C-266/99 *Commission* v *France* [2001] ECR I-1981, paragraph 38).

14 It is apparent from the documents before the Court that the Republic of Austria admits that it had not adopted, prior to the expiry of the period of two months set by the reasoned opinion, the measures necessary to implement the directive fully in national law. In accordance with the case-law cited in the previous paragraph, the various measures which, the Republic of Austria states, were adopted after the expiry of that period, even if they constitute proper implementation of the directive, are not relevant in the context of the present action.

15 In those circumstances, the action brought by the Commission must be considered well founded.

16 Accordingly, it must be declared that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with the directive, the Republic of Austria has failed to fulfil its obligations under Article 2(1) thereof.

Costs

17 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 Republic of Austria has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work, the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that directive;

2. Orders the Republic of Austria to pay the costs.

von Bahr La Pergola Timmermans

Delivered in open court in Luxembourg on 11 October 2001.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber