JUDGMENT OF THE COURT (Sixth Chamber)
7 November 1996 *

In Case C-262/95,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, 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

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent, D-53107 Bonn,

defendant,

APPLICATION for a declaration that, by not adopting the necessary measures to comply with:

— Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry (OJ 1982 L 81, p. 29);

* Language of the case: German.

— Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (OJ 1983 L 291, p. 1);

— Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ 1984 L 74, p. 49);

— Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane (OJ 1984 L 274, p. 11); and

— Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC (OJ 1986 L 181, p. 16),

and in particular with Article 3 of each of those directives, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray (Rapporteur), C. N. Kakouris, P. J. G. Kapteyn and H. Ragnemalm, Judges,

Advocate General: P. Léger,
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 September 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 4 August 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting the necessary measures to comply with:

— Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry (OJ 1982 L 81, p. 29);

— Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (OJ 1983 L 291, p. 1);

— Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ 1984 L 74, p. 49);

— Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane (OJ 1984 L 274, p. 11); and

— Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC (OJ 1986 L 181, p. 16) (hereinafter 'the directives at issue'),

and in particular with Article 3 of each of those directives, the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty.

2 On the basis of Article 6 of 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), the Council adopted the directives at issue laying down, in respect of various substances, limit values which the emission standards laid down by the Member States for the discharge of substances must not exceed.

3 Under Article 3(1), worded identically in Directives 82/176, 83/513, 84/156 and 84/491, the limit values, the time-limits by which they must be complied with and the monitoring procedure for discharges are laid down in Annex I to each of those directives. As regards Directive 86/280, the same information appears under heading A of the annexes. The Member States are required to bring into force, within the time-limit prescribed by each directive, the measures necessary to comply therewith. The time-limit for transposition expired on 1 July 1983 for Directive 82/176 (Article 6(1)), on 28 September 1985 for Directive 83/513 (Article 6(1)), on 18 March 1986 for Directive 84/156 (Article 7(1)), on 1 April 1986 for Directive 84/491 (Article 6(1)) and on 1 January 1988 for Directive 86/280 (Article 7(1)).

4 However, under Article 3 of Council Directive 90/656/EEC of 4 December 1990 on the transitional measures applicable in Germany with regard to certain Community provisions relating to the protection of the environment (OJ 1990 L 353, p. 59), amended by Commission Directive 93/80/EEC of 23 September 1993

(OJ 1993 L 256, p. 32), the Federal Republic of Germany was authorized in respect of industrial installations in the new *Länder* to apply the provisions laid down in the directives at issue only from 31 December 1995.

5 The Commission examined the measures to transpose Directive 86/280 and considered them inadequate. On 18 October 1989 it therefore sent a letter of formal notice to the Federal Republic of Germany pursuant to the first paragraph of Article 169 of the Treaty.

6 In its reply of 26 February 1990, supplemented by letters of 4 September 1990 and 7 November 1991, the Federal Republic of Germany claimed in particular that Directive 86/280 had been adequately transposed by administrative directions given by the Federal and *Länder* authorities.

7 As regards the transposition of Directives 82/176, 83/513, 84/156 and 84/491, the Federal Republic of Germany forwarded to the Commission general administrative provisions (Allgemeine Verwaltungsvorschriften), adopted on the basis of Article 7a(1) of the Wasserhaushaltsgesetz (Law on the use and protection of water), which, in its view, transposed the directives at issue into the national legal system. Moreover, the Federal Government referred to numerous notices, circulars and administrative provisions published by the *Länder* in order to transpose those directives.

8 Since it considered such transposition to be inadequate, on 29 September 1992 the Commission gave the Federal Republic of Germany formal notice to submit its observations within two months.

9 In its reply of 11 December 1992, the Federal Republic of Germany referred to a letter in which it set out the steps it had taken in order to transpose directives on the environment as required by the case-law of the Court. It further pointed out that it intended, within the framework of the Wasserhaushaltsgesetz, to confer the power to adopt regulations. However, since the transposition measures could not be taken until 1994, it requested the Commission not to pursue the procedure.

10 By a letter of 30 October 1993 the Commission sent the Federal Republic of Germany a reasoned opinion and called upon it to adopt the requisite measures to comply with that opinion within two months of its notification.

11 In its reply of 26 January 1994, the Federal Government referred to the arguments contained in the letter of 11 December 1992 and announced that the necessary amendment to the Wasserhaushaltsgesetz would take place during 1994. It therefore asked the Commission to suspend the infringement procedure.

12 The Commission, however, lodged the present application.

13 The Commission observes at the outset that the application does not relate to the transposition of the directives at issue in the new *Länder*.

14 It submits that the directives at issue must be transposed in such a way as to guarantee their full application in a sufficiently clear and precise manner so that the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before national courts. So far as concerns the fixing of limit values for pollution based on directives relating to the protection of the

environment, the Court has already noted the need to adopt provisions whose binding nature is undeniable. Finally, the Commission adds that the Federal Republic of Germany does not deny that it has not adopted legally binding general measures to transpose the directives at issue.

15 In its defence, the Federal Republic of Germany notes that the Commission's complaint relates exclusively to the form of the transposition. Having regard to the case-law of the Court, it abandons its argument that transposition by way of administrative circulars is adequate. In order to achieve transposition by way of statutory provisions, the legislative bodies are to include in the Wasserhaushaltsgesetz a provision conferring power to adopt regulations, which will enable the Federal Republic of Germany to transpose the directives at issue by means of regulations. The Federal Republic of Germany announced that such a law was to be adopted in spring 1996. However, the Federal Republic of Germany claims that, in substance, the directives at issue are already effectively transposed into German law.

16 In the present case, the Federal Republic of Germany does not deny that it has not adopted legally binding general measures to transpose the directives at issue.

17 In any event, it is settled case-law that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-236/95 *Commission* v *Greece* [1996] ECR I-4459, paragraph 18).

18 Since, on the expiry of the time-limits for the transposition of the directives at issue, the Federal Republic of Germany had not yet adopted measures to implement them, it must be held that, by not adopting, within the prescribed time-limits, the necessary measures to comply with the directives at issue and, in

particular, with Article 3 of each of those directives, the Federal Republic of Germany has failed to fulfil its obligations under those directives.

Costs

19 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by not adopting, within the prescribed time-limits, the necessary measures to comply with:

— Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry,

— Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges,

— Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry,

— Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane, and

— Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC,

and in particular with Article 3 of each of those directives, the Federal Republic of Germany has failed to fulfil its obligations under those directives;

2. Orders the Federal Republic of Germany to pay the costs.

Mancini Murray Kakouris

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 7 November 1996.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber