

Action brought on 22 November 2007 — Commission of the European Communities v Kingdom of Spain

(Case C-516/07)

(2008/C 37/09)

*Language of the case: Spanish***Parties***Applicant:* Commission of the European Communities (represented by: S.Pardo Quintillán, Agent)*Defendant:* Kingdom of Spain**Form of order sought**

- declare that, by failing to identify all the competent authorities for the application of the rules of Directive 2000/60/EC⁽¹⁾ of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) and (7) of the directive; and
- by failing to communicate to the Commission the list of all the competent authorities, the Kingdom of Spain has failed to fulfil its obligations under Article 3(8) of Directive 2000/60/EC;
- order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission's application is based on Article 3 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

According to Article 3(2) and (7) and (8), the Member States are required to identify the competent authorities for the application of the rules of Directive 2000/60/EC and to communicate the list of competent authorities to the Commission within a prescribed period.

⁽¹⁾ OJ 2000 L 327, p. 1.

Action brought on 22 November 2007 — Commission of the European Communities v Federal Republic of Germany

(Case C-518/07)

(2008/C 37/10)

*Language of the case: German***Parties***Applicant:* Commission of the European Communities (represented by: C. Docksey and C. Ladenburger, acting as Agents)*Defendant:* Federal Republic of Germany**Form of order sought**

- declare that the Federal Republic of Germany has failed to fulfil its obligations under the second sentence of Article 28(1) of Directive 95/46/EC⁽¹⁾, by making the supervisory authorities responsible for the monitoring of data processing within the private sector in the *Länder* Baden-Württemberg, Bayern, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Mecklenburg-Vorpommern, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Saarland, Sachsen, Sachsen-Anhalt, Schleswig-Holstein and Thüringen subject to State supervision and thereby incorrectly transposing the requirement of 'complete independence' of the data protection supervisory authorities;
- order Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The second sentence of Article 28(1) of Directive 95/46/EC of the European Parliament and of the Council puts Member States under an obligation to make 'one or more public authorities' responsible for monitoring 'the application ... of the provisions adopted by the Member States pursuant to this Directive', that is to say, of provisions on data protection. The second sentence of Article 28(1) of the directive requires the 'complete independence' of the supervisory authorities responsible. By virtue of its wording, the provision provides that the supervisory authorities are not to be subject to influence from other authorities or from outside of the State administration; the rules of the Member States must therefore preclude external influence from being exercised on the decisions of the supervisory authorities and on the implementation thereof. The wording 'complete' independence implies not only that there should be no dependence on any party, but also that there should be no dependence in any respect whatsoever.

It is thus incompatible with the second sentence of Article 28(1) of the directive to make the supervisory authorities which are responsible for the monitoring of data processing in the private sector subject to technical, legal or administrative supervision by the State, as has occurred in all 16 *Länder* of the Federal Republic of Germany. As the legislation of every *Land* makes the supervisory authority subject to those three types of supervision in varying combinations, the legislation of every *Land* constitutes a failure by the Federal Republic of Germany to fulfil the obligation in the second sentence of Article 28(1) of the

directive to ensure the 'complete independence' of the supervisory authorities. Irrespective of the differences between legal, technical and administrative supervision, all these types of supervision constitute an infringement of the independence required by the directive.

From a teleological point of view, the Community legislature regarded complete independence as necessary so that the functions which the supervisory authority was intended to have under Article 28 of the Directive could be carried out effectively. Furthermore, light is also shed on the concept of 'complete independence' by the legislative background to the provision. The requirement of 'complete independence' of the supervisory authorities of the Member States also fits in systematically with the Community *acquis* existing in the area of data protection law. In addition, Article 8 of the Charter of Fundamental Rights of the European Union requires that compliance with the rules on the protection of personal data must be 'subject to control by an independent authority'.

The concept of relative independence advocated by the Federal Republic of Germany, that is to say, the independence of the supervisory authority only from that which is being supervised, cannot in any event be brought into conformity with the unambiguous, comprehensive wording of the directive, which requires 'complete' independence. In addition, on that interpretation, the second sentence of Article 28(1) would be completely meaningless. Furthermore, the argument that Article 95 EC, as the relevant legal basis for the directive, and the principles of subsidiarity and proportionality suggest a restrictive interpretation of the requirement of 'complete independence' must be rejected. The Court has already held that the directive was adopted in accordance with the areas of competence of the European Parliament and of the Council and that a restrictive interpretation of its provisions in non-economic situations is out of the question. Furthermore, the provision which is at issue does not exceed the limits of that which is necessary to achieve the objectives which the directive, in accordance with Article 95 EC and the principle of subsidiarity, pursues.

(¹) OJ 1995 L 281, p. 31.

Appeal brought on 22 November 2007 by Commission of the European Communities against the judgment delivered on 12 September 2007 by the Court of First Instance (Second Chamber) in Case T-348/03 Koninklijke Friesland Foods NV (formerly Friesland Coberco Dairy Foods Holding NV) v Commission of the European Communities

(Case C-519/07 P)

(2008/C 37/11)

Language of the case: Dutch

Parties

Appellant: Commission of the European Communities (represented by: H. van Vliet and S. Noë)

Other party to the proceedings: Koninklijke Friesland Foods NV (formerly Friesland Coberco Dairy Foods Holding NV)

Form of order sought

- Set aside the judgment under appeal, dismiss the action for annulment of the decision (¹) and order Koninklijke Friesland Foods NV (KFF) to pay the costs of the proceedings before the Court of First Instance and of the present appeal;
- in the alternative, set aside the judgment under appeal in so far as it grants rights to operators in the market — other than Koninklijke Friesland Foods NV — who, as at 11 July 2001, had lodged a request with the Netherlands tax authority for application of the aid scheme in question, and dismiss the action for annulment of the decision in so far as it relates to the grant of rights to operators in the market — other than KFF — who, as at 11 July 2001, had lodged a request for application of the aid scheme in question.

Pleas in law and main arguments

The Commission takes the view that the Court of First Instance has infringed Community law:

- (i) by concluding that KFF has a legal interest in bringing proceedings because, if its action were to succeed, it would have certain claims against the Netherlands authorities in respect of the GFA scheme (judgment under appeal, paragraphs 58 to 73);
- (ii) by concluding that KFF is directly and individually concerned by the decision (judgment under appeal, paragraphs 93 to 101);
- (iii) by annulling the decision on the basis of facts which were not, and could not have been, known to the Commission when it took its decision, namely KFF's actual circumstances (judgment under appeal, in particular, paragraphs 141 to 143);
- (iv) Part 1: by manifestly incorrectly regarding as undisputed — and thus proven — a matter of crucial importance for the Court's reasoning (erroneously proceeding on the basis that the Commission did not dispute that the applicant had taken accounting measures and financial and economic decisions which could not have been amended within a period of fifteen months) (judgment under appeal, paragraph 137);
Part 2: by concluding that an undertaking which has merely lodged a request to be able to benefit from the aid scheme can have legitimate expectations (judgment under appeal, in particular, paragraphs 125 to 140);
- (v) by concluding that KFF is entitled to rely on the principle of equal treatment (judgment under appeal, paragraphs 149 and 150);