

JUDGMENT OF THE COURT (First Chamber)
9 February 1999 *

In Case C-354/97,

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Kareen Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Christina Vasak, Assistant Secretary in the same Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by failing to bring into force within the periods prescribed the laws, regulations and administrative provisions — including, where appropriate, sanctions — necessary to comply with

— Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes (OJ 1993 L 237, p. 23),

* Language of the case: French.

- Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ 1994 L 178, p. 66),
- Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (OJ 1994 L 207, p. 20),
- Commission Directive 95/9/EC of 7 April 1995 amending Directive 94/39/EC (OJ 1995 L 91, p. 35), and
- Commission Directive 95/10/EC of 7 April 1995 fixing the method of calculating the energy value of dog and cat food intended for particular nutritional purposes (OJ 1995 L 91, p. 39),

and/or by failing to notify the Commission thereof, the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74, Article 13 of Directive 94/28, Article 2 of Directive 94/39, Article 2 of Directive 95/9 and Article 3 of Directive 95/10,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, D. A. O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 November 1998,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 14 October 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to bring into force within the periods prescribed the laws, regulations and administrative provisions — including, where appropriate, sanctions — necessary to comply with
 - Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes (OJ 1993 L 237, p. 23),
 - Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species (OJ 1994 L 178, p. 66),
 - Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes (OJ 1994 L 207, p. 20),

- Commission Directive 95/9/EC of 7 April 1995 amending Directive 94/39/EC (OJ 1995 L 91, p. 35), and
- Commission Directive 95/10/EC of 7 April 1995 fixing the method of calculating the energy value of dog and cat food intended for particular nutritional purposes (OJ 1995 L 91, p. 39),

and/or by failing to notify the Commission thereof, the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74, Article 13 of Directive 94/28, Article 2 of Directive 94/39, Article 2 of Directive 95/9 and Article 3 of Directive 95/10.

- 2 Under Article 13 of Directive 94/28, Member States were required to bring into force the measures necessary to comply with the directive by 1 July 1995. Under Article 12 of Directive 93/74, Article 2 of Directive 94/39, Article 2 of Directive 95/9 and Article 3 of Directive 95/10, they were required to adopt the necessary measures no later than 30 June 1995. Those provisions also required the Member States to notify the Commission immediately of the measures adopted.
- 3 Having ascertained that those deadlines had passed without the French Republic notifying it of the adoption of implementing measures, the Commission gave the French Government notice by letter of 27 October 1995, in accordance with the procedure laid down in Article 169 of the Treaty, to submit its observations within two months of receiving that letter.
- 4 Regarding Directive 93/74, the French Government replied by letter of 24 January 1996 that a draft decree had been prepared and was due to be published in April 1996. Subsequently, under cover of a letter of 30 January 1996, the French Govern-

ment forwarded a copy of a draft decree designed to transpose Directive 93/74 into national law. It also advised the Commission that transposition was scheduled for the month of April 1996.

- 5 As regards Directive 94/28, the French Government replied by letter of 24 January 1996 that transposition of that directive into national law was under way and was to be completed during the first four months of 1996.
- 6 As regards Directive 94/39, the French Government informed the Commission by letter of 24 January 1996 that the procedure for transposing that measure into national law was scheduled for completion during the first six months of 1996. Subsequently, by letter of 30 January 1996, it advised the Commission that the directive's transposition into national law was expected to take place in May 1996.
- 7 As regards Directive 95/9, the French Government informed the Commission by letter of 24 January 1996 that transposition into national law was due to take place in April 1996, at the same time as Directive 93/74. Later, by letter of 30 January 1996, the French Government advised the Commission that transposition would take place in May 1996.
- 8 As regards Directive 95/10, the French Government replied by letter of 24 January 1996 that transposition into national law was expected to take place during the first six months of 1996. Later, by letter of 30 January 1996, the French authorities advised the Commission that the directive was due to be transposed into national law in May 1996.
- 9 In the absence of any further notification, the Commission sent the French Republic reasoned opinions setting out its view that, by not adopting the measures necessary for the transposition of the five directives into national law, France had failed

to fulfil its obligations under those directives. The reasoned opinions relating to Directives 93/74, 94/28, 94/39 and 95/9 were sent on 26 November 1996. The reasoned opinion concerning Directive 95/10 was sent on 22 November 1996.

- 10 As regards Directive 94/28, the French Government informed the Commission by letter of 12 March 1997 that a draft law for the transposition of that directive into national law was being debated in the French Parliament. The Commission did not subsequently receive any information as to the outcome of that debate.
- 11 The other reasoned opinions drew no response.
- 12 The Commission therefore decided to bring the present proceedings.
- 13 In its defence, the French Government does not deny that the five directives were not transposed into national law within the periods prescribed. It states, however, that the procedure for implementing the directives has reached an advanced stage and confirms its intention to adopt, without further delay, all the measures necessary for the transposition of the directives into national law.
- 14 Since the transposition of the five directives into national law was not effected within the periods prescribed therein, the action brought by the Commission on that ground must be regarded as well founded.
- 15 It must therefore be held that, by failing to adopt within the periods prescribed the laws, regulations and administrative provisions necessary to comply with Direc-

tives 93/74, 94/28, 94/39, 95/9 and 95/10, the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74, Article 13 of Directive 94/28, Article 2 of Directive 94/39, Article 2 of Directive 95/9 and Article 3 of Directive 95/10.

Costs

- ¹⁶ 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 French Republic has been unsuccessful in its pleadings, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Declares that, by failing to adopt within the periods prescribed the laws, regulations and administrative provisions necessary to comply with

— Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes,

- Council Directive 94/28/EC of 23 June 1994 laying down the principles relating to the zootechnical and genealogical conditions applicable to imports from third countries of animals, their semen, ova and embryos, and amending Directive 77/504/EEC on pure-bred breeding animals of the bovine species,
- Commission Directive 94/39/EC of 25 July 1994 establishing a list of intended uses of animal feedingstuffs for particular nutritional purposes,
- Commission Directive 95/9/EC of 7 April 1995 amending Directive 94/39, and
- Commission Directive 95/10/EC of 7 April 1995 fixing the method of calculating the energy value of dog and cat food intended for particular nutritional purposes,

the French Republic has failed to fulfil its obligations under Article 12 of Directive 93/74, Article 13 of Directive 94/28, Article 2 of Directive 94/39, Article 2 of Directive 95/9 and Article 3 of Directive 95/10;

2. Orders the French Republic to pay the costs.

Jann

Edward

Sevón

Delivered in open court in Luxembourg on 9 February 1999.

R. Grass

P. Jann

Registrar

President of the First Chamber