

JUDGMENT OF THE COURT (First Chamber)

8 March 2001 *

In Case C-316/99,

Commission of the European Communities, represented by K.-D. Borchardt,
acting as Agent, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by W.-D. Plessing and C.-D. Quas-
sowski, acting as Agents,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed
period all the measures necessary to comply with Council Directive 96/43/EC of

* Language of the case: German.

26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of the veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that directive,

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 January 2001,

gives the following

Judgment

- 1 By an application lodged at the Registry of the Court on 24 August 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt, within the prescribed period, all the measures necessary to comply with Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of the veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (OJ 1996 L 162, p. 1), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty and that directive.

- 2 Article 1 of Directive 96/43 provides that the title, the articles and the annexes to Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14) are to be replaced by the text set out in the annex to Directive 96/43. The new title of Directive 85/73 is henceforth to be Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC.

3 Article 4(1) of Directive 96/43 provides as follows in relation to the implementation of Directive 85/73, as amended and consolidated by Directive 96/43:

‘Member States shall bring into force laws, regulations and administrative provisions necessary to comply with:

(i) the provisions of Article 7 and of Chapter I(1)(e) of Annex A by 1 July 1996;

(ii) the provisions of Chapter II, Section II of Chapter III of Annex A and Chapter II of Annex C by 1 January 1997;

(iii) other amendments by 1 July 1997.’

4 The second subparagraph of Article 4(1) of Directive 96/43, however, provides:

‘Member States shall have a further period which can extend to 1 July 1999 within which to comply with the provisions of Section I of Chapter III of Annex A.’

5 Article 4(2) of Directive 96/43 provides:

‘Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.’

6 In accordance with the procedure provided for in the first paragraph of Article 226 EC, the Commission, after giving the Federal Republic of Germany the opportunity to submit its observations, sent a reasoned opinion to that Member State by letter of 7 August 1998 requiring it to take the measures needed to comply with its obligations under Directive 96/43 within two months from notification of that opinion.

7 Since it was clear from the information communicated to the Commission by the German authorities in response to that opinion that the transposition of Directive 96/43 into German domestic law was incomplete, the Commission decided to bring the present action.

8 In its defence, the German Government does not dispute that Directive 96/43 has not been transposed in full, but claims that that is due to the fact that on a number of points the directive is unclear, and indeed inconsistent.

9 For the reason stated by the Advocate General in the final sentence of point 13 of his Opinion, namely that a Member State cannot rely on difficulties in interpreting a directive in order to delay transposing it until after the prescribed period has expired, and in accordance with the case-law to which the Advocate

General refers in that context, the action must be held to be well founded in so far as it relates to the failure by the German authorities to adopt the measures necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Directive 96/43.

- 10 For the reasons set out by the Advocate General in point 10 of his Opinion, on the other hand, the action must be dismissed in so far as it also relates to the failure by those authorities to adopt the measures necessary to comply with the provisions referred to in the second subparagraph of Article 4(1) of Directive 96/43.

- 11 It must therefore be held, first, that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Directive 96/43, the Federal Republic of Germany has failed to fulfil its obligations under that subparagraph; and, second, that the remainder of the action must be dismissed.

Costs

- 12 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 asked that the Federal Republic of Germany be ordered to pay the costs and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Declares that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC, the Federal Republic of Germany has failed to fulfil its obligations under that subparagraph;
2. Dismisses the remainder of the action;
3. Orders the Federal Republic of Germany to pay the costs.

Wathelet

Jann

Sevón

Delivered in open court in Luxembourg on 8 March 2001.

R. Grass

Registrar

M. Wathelet

President of the First Chamber