

(b) a different prescription medicine to that which otherwise might have been prescribed to the patient but for the incentive scheme,

where such a different prescription medicine is from the same therapeutic class of medicines used for treatment of the patient's particular condition.

⁽¹⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use OJ L 311, p. 67

Action brought on 13 February 2009 — Commission of the European Communities v French Republic

(Case C-64/09)

(2009/C 90/25)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver and J.-B. Laignelot, Agents)

Defendant: French Republic

Form of order sought

The applicant claims the Court should:

— declare that, by failing to adopt all the laws and regulations necessary to ensure the complete and correct implementation of Article 2(13), Article 4(2)(a), Article 5(3) and (4), Article 6(3), Article 7(1) and Article 8(3) of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, ⁽¹⁾ the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission puts forward seven pleas in law alleging the incorrect implementation into French law of some provisions of Directive 2000/53/EC.

The applicant submits, first of all, that the implementation of the definition in Article 2(13) relating to 'dismantling information' for end-of life vehicles has not been carried out in a sufficiently clear and precise manner in so far as the corre-

sponding national provision is substantially more restrictive in scope than the directive and above all does not mention any connection with the objective of correct and environmentally sound treatment referred to by the Community legislature.

Secondly, according to the applicant, the implementation out of time of Article 4(2)(a) has resulted in vehicles, materials and components, not covered by the exemptions and containing lead, mercury, cadmium or hexavalent chromium, being present on the market for 18 months, since the relevant national provisions were applicable only to vehicles received and classified by type from 31 December 2004, whereas Article 4(2)(a) of the Directive refers, for its part, to 1 July 2003.

The applicant also submits that the procedure laid down in Article 5(3) relating to the issue of a certificate of destruction of an end-of life vehicle has not been correctly reproduced in French law, which might create confusion, in particular for the owners of vehicles from other Member States. The Commission criticises specifically, in that connection, the fact that the certificate of destruction is delivered not at the time of the transfer of the vehicle but only after its physical destruction and that that certificate is delivered not to the holder of the end-of use vehicle but to the prefect of the *département* where the vehicle was registered.

Fourthly, the Commission criticises the implementation of Article 5(4), which prevents that provision from being effective in so far as it allows some of the authorised facilities — the *'démolisseurs agréés'* (the authorised demolishers) — to refuse to accept end-of use vehicles and fails to provide for a system to recompense those demolishers.

Likewise, the implementation of Article 6(3) fails to have regard to the concept of 'stripping', referring to the first stage of the treatment operations of end-of use vehicles, namely that of the removal of those parts which are easily dismantled, prior to the depollution operation.

The applicant also criticises the implementation of Article 7(1) in so far as the French authorities encourage the recycling of vehicle components 'whenever the technical and economic circumstances allow so', whereas the Directive sets out a more binding obligation to recycle 'when environmentally viable'.

Lastly, it stresses that Article 8(3) obliges the Member States to take express measures to ensure vehicle manufacturers and component producers provide dismantling information, in the form of manuals or by means of electronic media, for each type of new vehicle put on the market.

⁽¹⁾ OJ 2000 L 269, p. 34