

Action brought on 25 July 2002 by the Commission of the European Communities against the French Republic

(Case C-274/02)

(2002/C 233/25)

An action against the French Republic was brought before the Court of Justice of the European Communities on 25 July 2002 by the Commission of the European Communities, represented by D. Booss and G. Berscheid, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to take the necessary measures to comply with the judgment of the Court of Justice of the European Communities of 13 December 2001 in Case C-1/00 ⁽¹⁾, that the French Republic, by refusing to adopt the measures necessary to comply with Council Decision 98/256/EC of 16 March 1998 concerning emergency measures to protect against bovine spongiform encephalopathy, amending Decision 94/474/EC and repealing Decision 96/239/EC ⁽²⁾, in the version resulting from Commission Decision 98/692/EC of 25 November 1998 ⁽³⁾, in particular with Article 6 and Annex III, and Commission Decision 1999/514/EC of 23 July 1999 ⁽⁴⁾ setting the date on which dispatch from the United Kingdom of bovine products under the date-based export scheme may commence by virtue of Article 6(5) of Decision 98/256, in particular with Article 1, in particular, by refusing to permit the marketing in its territory after 30 December 1999 of products subject to that scheme which are correctly marked or labelled, was in breach of its obligations under those two decisions, in particular their provisions referred to above, the French Republic has failed to fulfil its obligations under Article 228 of the Treaty establishing the European Community,
- order the French Republic to pay into the Commission's 'own resources of the EC' account, a penalty payment of EUR 158 250 per day, for each day's delay in taking the measures necessary to comply with the judgment given by the Court of Justice in Case C-1/00, calculated from the date of delivery of that judgment,
- order the French Republic to pay the costs.

Pleas in law and main arguments

The simple fact that the Court has found that a Member State has failed to fulfil its obligations obliges the Member State to

make good that failure. A Member State may not rely on provisions, practices or circumstances existing in its internal legal order to justify its failure to comply with obligations laid down by Community law. Under no circumstances may it make its compliance with the judgment subject to any conditions whatsoever. The task given to the AFSSA by the French Government's new referral, namely a study whether 'DBES' products and French products are comparable, amounts to casting doubt on the primacy of Community law. The argument based on the alleged complexity of the judgment of 13 December 2001 cannot in any circumstance justify any delay in compliance; moreover, the operative part of the judgment is very clear, namely that the French Republic is required to permit the marketing of correctly marked or labelled 'DBES' products in its territory.

In the alternative: it is not open to a Member State to rely upon the illegality of decisions addressed to it as a defence to an action for failure to fulfil its obligations based on its failure to comply with those decisions, either in proceedings under Article 226 EC, or, *a fortiori*, in proceedings under Article 228 EC.

So far as the amount of the penalty payment is concerned, the Commission refers to its information notices of 21 August 1996 ⁽⁵⁾ and 28 February 1997 ⁽⁶⁾ and applies to the basic amount of EUR 500 a factor of 15 (maximum possible: 20) for the seriousness of the infringement, a factor of 1 (maximum possible: 3) for its duration, and a factor of 21,1 for France's ability to pay.

⁽¹⁾ [2001] ECR I-9989.

⁽²⁾ OJ L 113, 15.4.1998, p. 33.

⁽³⁾ OJ L 328, 4.12.1998, p. 35.

⁽⁴⁾ OJ L 195, 28.7.1999, p. 42.

⁽⁵⁾ OJ C 242, p. 6.

⁽⁶⁾ OJ C 63, p. 2.

Reference for a preliminary ruling by the Court of Appeal (England & Wales) (Civil Division), by order of that court dated 5 July 2002, in the case of Andrew Owusu against 1) N. B. Jackson (trading as Villa Holidays Bal-Inn Villas), 2) Mammee Bay Resorts Ltd, 3) Mammee Bay Club Ltd, 4) The Enchanted Garden Resorts & Spa Ltd, 5) Consulting Services Ltd, 6) Town & Country Resorts Ltd

(Case C-281/02)

(2002/C 233/26)

Reference has been made to the Court of Justice of the European Communities by an order of the Court of Appeal