

**Action brought on 14 February 2003 by the Commission of the European Communities against the Federal Republic of Germany**

(Case C-64/03)

(2003/C 101/33)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 14 February 2003 by the Commission of the European Communities, represented by Jürgen Grunwald, Legal Adviser to the Commission of the European Communities, and Hans Støvlbæk, of the Legal Service of the Commission of the European Communities, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the European Commission's Legal Service, Wagner Centre C 254, Kirchberg.

The applicant claims that the Court should:

1. declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/30/EC<sup>(1)</sup> of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, the Federal Republic of Germany has failed to fulfil its obligations under Article 29 of that directive;
2. order the Federal Republic of Germany to pay the costs of the proceedings.

*Pleas in law and main arguments*

Although the period for transposition of Directive 98/30/EC expired on 10 August 2000, the Federal Republic of Germany has thus far failed to transpose at all or failed to transpose adequately a number of provisions of that directive.

- The Federal Republic of Germany has failed totally to transpose:
  - Article 5 in conjunction with Articles 7(3) and 10(3): it is clear that there have been no notifiable and technically verifiable 'technical rules establishing the minimum technical design and operational requirements' for the 'connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines'. At any rate, no such technical rules have been notified to the Commission, nor is the Commission aware of any such rules;

- Articles 14 to 16: there are no provisions dealing with access to the system. The reference to prohibitions under competition law is not sufficient as these do not contain any rules on access;
- Articles 12 and 13: there are no rules under the laws specifically governing natural gas which deal with the unbundling of the accounts of integrated natural gas undertakings;
- The Federal Republic of Germany has failed adequately to transpose:
  - Article 2: defining provisions contained in a measure of Community law must, inasmuch as they are — as here — necessary for the proper application of the Community provisions by national bodies, be correctly transposed in national law;
  - Articles 7(2) and 10(2): the general competition rules under national law apply only to undertakings in a dominant market position and for that reason do not constitute an adequate transposition of the prohibition of discrimination;
  - Article 15(1) in conjunction with Article 17(1): unlike the position in the electricity sector, German law does not provide for an obligation to state reasons in the event of refusal to grant access to the system;
  - Article 18: no criteria governing the designation of eligible customers have been published or notified to the Commission;
  - Article 21(2): the arbitration authority provided for in Article 21(2) has not been designated.

<sup>(1)</sup> OJ L 204 of 21.7.1998, p. 1.

**Action brought on 19 February 2003 by the Kingdom of Spain against the Commission of the European Communities**

(Case C-73/03)

(2003/C 101/34)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 19 February 2003 by the Kingdom of Spain, represented by S. Ortiz Vaamonde, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the Commission's decision of 11 December 2002 <sup>(1)</sup>, in so far as it finds that the subsidising of loans and guarantees for owners of agricultural holdings and the extension of tax benefits to the transfer of agricultural land and holdings constitute State aid incompatible with the Treaty;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

(The extension of certain tax benefits to transfers of land)

- This does not constitute State aid since certain undertakings or the production of certain goods are not specifically favoured: the measure entails a lower tax burden for the seller of the land and has an impact on the owner (farmer) purchasing land: not as to the amount but as to the greater availability of land for sale because of the lower capital gains tax charge for the seller.
- (in the alternative) The aid is compatible with the Community guidelines for State aid in the agricultural sector: A farmer who invests in the acquisition of land, and is the owner of a priority holding, by definition satisfies the requirements set out in point 4.1 of the Community guidelines as regards the economic viability of the holding and the occupational skill required for the grant of structural aid cofinanced by the EU under the Regulation on improving the efficiency of agricultural structures in force at the material time.

(The subsidising of loans and guarantees for owners of agricultural holdings)

- This does not constitute State aid within the meaning of Article 87 EC since it does not affect trade between Member States: The Spanish measure entailing the subsidising of loans was actually symbolic in the face of a sector which felt that its economic viability was seriously threatened by the exceptional fuel-price increase. It is paradoxical that a palliative measure of such a slight unitary significance should give rise to a decision of incompatibility with the common market when it was adopted as an alternative to a reduction in taxes of a

much larger amount, against which the Commission had publicly advised but which was adopted in other Member States such as France, Germany or Italy. It can in no way be maintained that Spanish operators enjoyed an economic advantage to which those of other Member States did not have access.

- (In the alternative) If State aid is found to exist, it is compatible with the common market in the light of Article 87(2)(b) EC: neither the objective nor the result of the alleged aid was to cover loss suffered by the farmer: the intention was to make it easier for him to obtain a loan from financial institutions so that the loans would make up for the lack of liquidity brought about by the disproportionate increase in costs caused by the steep rises in fuel prices. If, following the Commission's recommendation not to reduce the special tax on fuel oils or value added tax, no alternative measures were adopted, Spanish farmers would become less competitive in their trade by comparison with States which implemented permitted, although not recommended, tax reductions.
- (In the alternative) Compatibility of the measures in the light of Article 87(3)(c) EC.

<sup>(1)</sup> Relating to measures taken by Spain to support agriculture following the fuel price increase.

**Reference for a preliminary ruling by the Østre Landsret by order of that Court of 14 February 2003 in the case of SmithKline Beecham plc against Lægemiddelstyrelsen; interveners being Synthon BV and Genthon BV**

(Case C-74/03)

(2003/C 101/35)

Reference has been made to the Court of Justice of the European Communities by order of the Østre Landsret (Eastern Regional Court) of 14 February 2003, received at the Court Registry on 19 February 2003, for a preliminary ruling in the case of SmithKline Beecham plc against Lægemiddelstyrelsen (Danish Medicinal Products Administration); interveners being Synthon BV and Genthon BV on the following questions: