

ORDER OF THE PRESIDENT OF THE COURT
11 September 2002 *

In Case C-246/99,

Commission of the European Communities, represented by R.B. Wainwright and H.C. Støvlbaek, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by R.V. Magrill, acting as Agent, and A. Robertson, Barrister, with an address for service in Luxembourg,

intervener,

* Language of the case: Danish.

Kingdom of Denmark, represented by J. Molde, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by retaining Paragraph 2(1), in conjunction with Paragraph 1(2), of Decree No 124 of 27 February 1989 on packaging for beer and soft drinks as last amended by Decree No 300 of 30 April 1997, which provides that drinks covered by that decree may be marketed only in returnable packaging, and Paragraph 3 of the decree, which provides that the packaging of imported drinks is not to be made of metal, the Kingdom of Denmark has failed to fulfil its obligations under European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), in particular Article 18 thereof in conjunction with Articles 5, 7 and 9, and under Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC),

THE PRESIDENT OF THE COURT

after hearing Advocate General Ruiz-Jarabo Colomer,

makes the following

Order

- 1 By application lodged at the Court Registry on 1 July 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by retaining Paragraph 2(1), in conjunction with Paragraph 1(2), of Decree No 124 of 27 February 1989 on packaging for beer and soft drinks as last amended by Decree No 300 of 30 April 1997, which provides that drinks covered by that decree may be marketed only in returnable packaging, and Paragraph 3 of the decree, which provides that the packaging of imported drinks is not to be made of metal, the Kingdom of Denmark has failed to fulfil its obligations under European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), in particular Article 18 thereof in conjunction with Articles 5, 7 and 9, and under Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC).

- 2 By letter of 11 July 2002, received at the Court Registry on 15 July 2002, the Commission informed the Court, in accordance with Article 78 of the Rules of Procedure, that it was discontinuing the proceedings and asked for an order of costs against the defendant.

- 3 By letter lodged at the Court Registry on 26 July 2002, the Kingdom of Denmark indicated that it had no observations to make concerning the discontinuance of proceedings, except with regard to costs. It states that it is disposed to accept the Commission's proposal for bringing the present case to a conclusion. However, referring to the form of order sought by it as set out in its defence, it submits that the costs should be borne by the Commission.

- 4 Under the first subparagraph of Article 69(5) of the Rules of Procedure, a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they have been applied for by the other party in his observations on the discontinuance or withdrawal. However, upon application by the party who discontinues or withdraws from proceedings, the costs are to be borne by the other party if this appears justified by the conduct of that party.

- 5 In the present case, the Commission's application and subsequent discontinuance of the proceedings were the result of the conduct of the Kingdom of Denmark since it did not adopt the measures necessary to comply with its obligations until after that application had been made.

- 6 The Kingdom of Denmark should therefore be ordered to pay the costs.

- 7 Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, the United Kingdom of Great Britain and Northern Ireland, which has intervened in the proceedings, is to bear its own costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. Case C-246/99 is removed from the register.
2. The Kingdom of Denmark shall pay the costs.
3. The United Kingdom of Great Britain and Northern Ireland shall bear its own costs.

Luxembourg, 11 September 2002.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President

