

JUDGMENT OF THE COURT (Fifth Chamber)
12 December 1996 ¹²

In Case C-297/95,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in that Ministry, acting as Agents, D-53107 Bonn,

defendant,

APPLICATION for a declaration that, by failing to adopt within the period prescribed the measures necessary to comply with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty,

¹² Language of the case: German.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón (Rapporteur), D. A. O. Edward, P. Jann and M. Wathelet, Judges,

Advocate General: G. Tesauro,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 7 November 1996,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 15 September 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt within the period prescribed the measures necessary to comply with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40, hereinafter 'the Directive'), the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty.
- 2 Under Article 19(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 30 June 1993 and forthwith to inform the Commission thereof.

3 Since it was not notified of the transposition measures adopted by the Federal Republic of Germany, and in the absence of any other information allowing it to conclude that that State had met its obligation to bring the necessary provisions into force within the period prescribed, the Commission, by letter of 9 August 1993, gave the Federal Republic of Germany notice to submit its observations within a period of two months, pursuant to the first paragraph of Article 169 of the EEC Treaty.

4 By letter of reply of 5 November 1993, the German Government stated that the German authorities were in the process of preparing the measures needed to transpose the Directive.

5 Having been notified solely of the transposition measures adopted in Baden-Württemberg and Bavaria, the Commission, by letter of 22 July 1994, sent a reasoned opinion to the Federal Republic of Germany requesting it, pursuant to the second paragraph of Article 169 of the EC Treaty, to take the measures necessary to comply with the Directive within a period of two months.

6 In a letter of 17 October 1994, the German Government acknowledged that measures had to be adopted in order to transpose the Directive. It added that the *Länder* had competence in this area and that full transposition was to be expected in the course of 1995.

7 The Commission thereupon brought the present action. Referring to the first paragraph of Article 5 and the third paragraph of Article 189 of the EC Treaty, the Commission takes the view that the Federal Republic of Germany has failed to adopt all the measures necessary to transpose the Directive within the period prescribed.

- 8 In its defence, the German Government does not deny that it failed to transpose the Directive into its domestic law within the period set. However, it points out that competence in this regard is vested in the *Länder* and that not all of them have yet effected the required transposition.
- 9 In this regard, it is sufficient to point out that, as the Court has consistently held, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, *inter alia*, the judgment of 17 October 1996 in Case C-312/95 *Commission v Luxembourg* [1996] ECR I-5143, paragraph 9).
- 10 Since the Directive was not transposed within the period prescribed, the action brought by the Commission in that respect must be regarded as well founded.
- 11 It must therefore be held that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with the Directive, the Federal Republic of Germany has failed to fulfil its obligations under Article 19 of that directive.

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. The Commission has asked for the Federal Republic of Germany to be ordered to pay the costs. Since the latter has failed in its defence submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, the Federal Republic of Germany has failed to fulfil its obligations under Article 19 of that directive;
2. Orders the Federal Republic of Germany to pay the costs.

Moitinho de Almeida

Sevón

Edward

Jann

Wathelet

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

J. C. Moitinho de Almeida

Registrar

President of the Fifth Chamber