

OPINION OF ADVOCATE GENERAL
LÉGER

delivered on 16 December 1997 *

1. By application lodged at the Court Registry on 17 October 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty seeking a declaration that, by failing to bring into force within the prescribed period all the laws, regulations and administrative provisions necessary to transpose into its domestic law:

mental plant propagating material and ornamental plants;²

— Commission Directive 93/62/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed;¹

— Commission Directive 93/64/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production;³

— Commission Directive 93/78/EEC of 21 September 1993 setting out additional implementing provisions for lists of varieties of ornamental plant propagating material and ornamental plants, as kept by suppliers under Council Directive 91/682/EEC;⁴

— Commission Directive 93/63/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 91/682/EEC on the marketing of orna-

— Commission Directive 93/79/EEC of 21 September 1993 setting out additional implementing provisions for lists of varieties of fruit plant propagating material

* Original language: French.

1 — OJ 1993 L 250, p. 29.

2 — *Ibid.*, p. 31.

3 — *Ibid.*, p. 33.

4 — OJ 1993 L 256, p. 19.

and fruit plants, as kept by suppliers under Council Directive 92/34/EEC,⁵ and

- Commission Directive 94/3/EC of 21 January 1994 establishing a procedure for the notification of interception of a consignment or a harmful organism from third countries and presenting an imminent phytosanitary danger,⁶

the Federal Republic of Germany has failed to comply with its obligations under the EC Treaty and those directives.

2. In accordance with Articles 6(1) of Directives 93/62, 93/63 and 93/64, 3(1) of Directives 93/78 and 93/79 and 7(1) of Directive 94/3, Member States were to bring into force the laws, regulations or administrative provisions necessary to comply with these directives and to inform the Commission forthwith. Under those same articles, the period prescribed for adopting these provisions expired on 30 June 1994 in the case of Directives 93/62, 93/63, 93/64, 93/78 and 93/79 and 5 May 1994 in the case of Directive 94/3.

3. On 9 August 1994, having received no communication from the German Government of any transposition measures and having no other information from which it might be concluded that the Federal Republic of Germany had complied with the obligation to bring into force the necessary provisions, the Commission, in pursuance of Article 169 of the Treaty, requested the German Government to submit its observations.

4. In a communication of 6 October 1994, transmitted by letter from the Permanent Representation of Germany of 25 October 1994, the German Government informed the Commission that the Law of 25 November 1993 amending the rules applicable to plant protection and seed⁷ (hereinafter the 'Law of 25 November 1993') had provided the necessary powers to enable Directives 93/62, 93/63, 93/64, 93/78 and 93/79 to be transposed and that this would be done by regulation. The German Government further stated that Directive 94/3 was to be transposed by a regulation on exchanges of information on plant protection.

5. Having received no communication from the German Government of any provision adapting domestic law to the directives, the Commission sent a reasoned opinion to the German Government on 25 September 1995 requesting it to take the necessary measures within two months.

5 — Ibid., p. 25.

6 — OJ 1994 L 32, p. 37.

7 — BGBl. I, p. 1917.

6. On 24 May 1996 the German Government sent the Commission the report of 12 April 1996 on the situation regarding the transposition of directives, addressed to the Bundestag committee responsible for European Union affairs, in which it acknowledged that the measures to transpose the directives into domestic law still had not been adopted. The report stated, however, that the procedure for transposing Directive 94/3 was under way, while that for Directives 93/62, 93/63, 93/64, 93/78 and 93/79 had run into difficulties in interpreting the provisions concerning the scope of these directives.

7. Not having received any further information from the German Government from which it could be concluded that the Federal Republic of Germany had, in the meantime, complied with its obligations under the directives, the Commission decided to bring the present action.

8. In its defence, the German Government points out that Directive 94/3 has been transposed by Paragraph 38a of the Law of 15 September 1986 on plant protection, re-enacted in Paragraph 1(14) of the Law of 25 November 1993, and provides the Commission with all the information required to verify this.

9. Moreover, the German Government does not deny that Directives 93/62, 93/63, 93/64,

93/78 and 93/79 have not been transposed into domestic law, but states that they should be transposed at the same time as Commission Directives 93/48/EEC,⁸ 93/49/EEC⁹ and 93/61/EEC;¹⁰ the failure to transpose these directives within the period prescribed is the subject of Case C-139/96.¹¹ Repeating the arguments put forward in that case, the German Government states that the transposition of the directives in issue into domestic law has run into difficulties in regard, *inter alia*, to the need to clarify their scope.¹² It adds that, despite those difficulties, it is endeavouring to achieve progress in the transposition of the directives in issue.¹³

10. On 10 February 1997, in accordance with Article 78 of the Rules of Procedure, the Commission informed the Court that it was discontinuing the proceedings with respect to Directive 94/3 and, pursuant to Article 69(5) of the said Rules of Procedure, asked the Court to order the Federal Republic of Germany to pay the costs. However, it has not abandoned the complaints concerning the other directives.

8 — of 23 June 1993, setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Article 4 of Council Directive 92/34/EEC (OJ 1993 L 250, p. 1).

9 — of 23 June 1993, setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Article 4 of Council Directive 91/682/EEC (*ibid.*, p. 9).

10 — of 2 July 1993, setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed, pursuant to Council Directive 92/33/EEC (*ibid.*, p. 19).

11 — giving rise to the judgment of 16 September 1997, *Commission v Germany* [1997] ECR I-4845.

12 — See points 2 and 3 of its defence.

13 — *Ibid.*, point 8.

11. Since the Commission has informed the Court that it was discontinuing the proceedings with respect to Directive 94/3, there is no longer any need to rule on the non-transposition of this directive within the time-limit.

12. So far as Directives 93/62, 93/63, 93/64, 93/78 and 93/79 are concerned, it must be noted, as regards the argument that these directives could not be transposed because of difficulties in interpreting their scope, that the German Government did not mention these difficulties until after the period prescribed for transposing the directives had expired,¹⁴ in other words at a time when they were already in force. In circumstances such as these — directives already adopted and in force — I consider that requests made by a Member State to the Commission for assistance in interpreting a Community concept which is the subject of dispute can in no way defer, suspend or justify in law the failure to fulfil obligations under the Treaty constituted by non-transposition, since otherwise a Member State could easily avoid its obligation to transpose a directive within the prescribed time-limit by raising doubts, alleged or real, on the interpretation of that directive.¹⁵

13. Moreover, the German Government seems to admit that the transposition measures can be adopted as they stand as it states

that, despite these difficulties, it is currently endeavouring to achieve progress in the transposition procedure.¹⁶

14. It should also be pointed out that the Federal Republic of Germany does not deny that the measures necessary to transpose Directives 93/62, 93/63, 93/64, 93/78 and 93/79 into domestic law have not yet been adopted within the period prescribed in those directives.

15. Consequently, the Commission's application should be allowed and it should be held that, by failing to adopt within the prescribed period the measures necessary to comply with the directives in issue, the Federal Republic of Germany has failed to fulfil its obligations under Articles 6(1) of Directives 93/62, 93/63 and 93/64 and 3(1) of Directives 93/78 and 93/79.¹⁷ Under Article 69(2) of the Rules of Procedure of the Court, the Federal Republic of Germany should also be ordered to pay the costs. Furthermore, in view of the conduct of that State, which only belatedly communicated the national measure transposing Directive 94/3, it must bear the costs relating to the Commission's partial discontinuance of the proceedings, under Article 69(5) of those same Rules of Procedure.

14 — Letter of 10 October 1994 under cover of which the German Government sent the Commission a memorandum on the deregulation of EC directives concerning protection measures and the entry into free circulation of plants and propagating material (Annex 2 to the defence of the Federal Republic of Germany in the aforementioned Case C-139/96).

15 — See, to this effect, the Commission's application (point 19, paragraph 2).

16 — See point 8 of its defence and point 7 of its rejoinder.

17 — See, *inter alia*, the judgment in *Commission v Germany*, cited above, and the judgment of 13 November 1997 in *Commission v Germany* (C-236/96 [1997] ECR I-6397, paragraphs 10 and 11).

Conclusion

16. Consequently, I propose that the Court should:

- (1) declare that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to transpose into its domestic law Commission Directive 93/62/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed; Commission Directive 93/63/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 91/682/EEC on the marketing of ornamental plant propagating material and ornamental plants; Commission Directive 93/64/EEC of 5 July 1993 setting out the implementing measures concerning the supervision and monitoring of suppliers and establishments pursuant to Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production; Commission Directive 93/78/EEC of 21 September 1993 setting out additional implementing provisions for lists of varieties of ornamental plant propagating material and ornamental plants, as kept by suppliers under Council Directive 91/682/EEC, and Commission Directive 93/79/EEC of 21 September 1993 setting out additional implementing provisions for lists of varieties of fruit plant propagating material and fruit plants, as kept by suppliers under Council Directive 92/34/EEC, the Federal Republic of Germany has failed to comply with its obligations under Articles 6(1) of Directives 93/62, 93/63 and 93/64 and 3(1) of Directives 93/78 and 93/79;
- (2) order the Federal Republic of Germany to pay the costs of these proceedings and the costs consequent upon the Commission's partial discontinuance of the proceedings.