

The applicant claims that the Court should:

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose in full Article 9 of Council Directive 75/442/EEC⁽¹⁾ of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Articles 3, 4, 5 and 7 of Council Directive 76/464/EEC⁽²⁾ of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, Articles 3, 4, 5, 7 and 10 of Council Directive 80/68/EEC⁽³⁾ of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, Articles 3, 4, 9 and 10 of Council Directive 84/360/EEC⁽⁴⁾ of 28 June 1984 on the combating of air pollution from industrial plants, and Articles 2 and 8 of Council Directive 85/337/EEC⁽⁵⁾ of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, the Kingdom of Belgium has failed to fulfil its obligations under Article 249 EC and the above directives;

— order the Kingdom of Belgium to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission takes the view that the so-called 'implied authorisation' provided for in the local legislation of Flanders and Wallonia runs counter to the provisions of the directives listed in the forms of order sought. The mechanism of this 'implied authorisation' operates as follows: if the competent authority at first instance does not take a decision on an application for authorisation, the requested authorisation will then be deemed to have been refused (the principle of implied refusal). However, precisely the opposite applies at higher instance. If the appellate authority fails, within the specified period, to take a decision, authorisation will be deemed to have been granted (the principle of implied authorisation). This rule applies even in the case of express or implied refusal of authorisation at first instance.

'Implied authorisation' resulting from the mere fact that the time-limit for taking a decision has passed cannot, however, be treated as constituting express administrative action. The directives cited above require, not a merely formal licensing obligation, but a substantive decision. In addition, the authorisation applied for may be granted only after a prior investigation has been conducted; the mechanism of 'implied authorisation' provides no guarantee that authorisation will be granted only once such an investigation has been completed. Finally, the possibility that, if the competent authority at first instance concludes that the requested authorisation has to be refused, that decision may be overturned at appellate level merely

through expiry of the period within which a decision must be taken should be regarded as constituting a very serious infringement of the above directives.

⁽¹⁾ OJ 1975 L 194, p. 39.

⁽²⁾ OJ 1976 L 129, p. 23.

⁽³⁾ OJ 1980 L 20, p. 43.

⁽⁴⁾ OJ 1984 L 188, p. 20.

⁽⁵⁾ OJ 1985 L 175, p. 40.

Action brought on 13 June 2000 against the French Republic by the Commission of the European Communities

(Case C-233/00)

(2000/C 233/38)

An action against the French Republic was brought before the Court of Justice of the European Communities on 13 June 2000 by the Commission of the European Communities, represented by Götz zur Hausen and Jean-François Pasquier, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, a Member of the Commission's Legal Service, Wagner Centre, Kirchberg.

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

— declare that by not correctly transposing Article 2(a) and Article 3(2), (3) and (4) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment⁽¹⁾ the French Republic has failed to fulfil its obligations under that directive and under the third paragraph of Article 249 of the Treaty;

— order the French Republic to pay the costs.

Pleas in law and main arguments

— Incomplete transposition of the combined provisions of Article 2(a) and Article 3(1) of Directive 90/313/EEC (scope of the duty to communicate): The concept of 'administrative document' used by (French) Law No 78-753 is narrower than that of 'information relating to the environment' contained in the directive, with the result that certain documents held by the administration and containing environmental information likely to be of interest to citizens might not be communicable on the basis of Law No 78-753.

— Incorrect transposition of the first paragraph of Article 3(2) (exceptions to the principle that environmental information is to be communicated): The final indent of Article 6 of Law No 78-753 allows a request for access to information to be refused where consultation or the

communication of a document would 'be generally prejudicial to secrets protected by law'. That concept is not amongst the exhaustive list of exceptions set out in Article 3(2) of Directive 90/313/EEC. It is not the same thing as, and is no less extensive in the area it covers than, the concept in the directive of 'confidentiality of data'. Even though national authorities are required to interpret provisions of domestic law in such a way as to ensure compliance with Community law, the wording of Law No 78-753 is not sufficient objectively to exclude the possibility of a refusal that is not justified under the directive, and, contrary to the obligations which follow from Community law, the legal appearance creates a legal uncertainty which cannot be allowed.

- Failure to transpose the final paragraph of Article 3(2) (partial communication of information): A doctrine set out by the (French) 'Commission on Access to Administrative Documents' is no substitute for the correct transposition of a directive conferring rights on individuals.
- Failure to transpose Article 3(3) (possibility of refusing a manifestly unreasonable request, or one requiring the communication of unfinished or internal documents): Whilst it is true that Article 3(3) of the directive states merely a possibility that is open to Member States and not an obligation, it appears that that possibility of rejecting requests is in fact used by the French administration when faced with certain requests for information, and that individuals are not in a position to discover with the required clarity what the limits of their right of access to information are, since the assessment of the exceptions is carried out only on a case by case basis by the administrative courts.
- Incorrect transposition of Article 3(4) (Possibility of no reasons being given for implied rejection decisions).

⁽¹⁾ OJ L 158, 23.6.1990, p. 56.

Reference for a preliminary ruling by the High Court of Justice (England & Wales), Queen's Bench Division (Crown Office), by order of that court of 1 June 2000, in the case of the Commissioners of Customs and Excise against CSC Financial Services Ltd (formerly Continuum (Europe) Ltd)

(Case C-235/00)

(2000/C 233/39)

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

Justice (England & Wales), Queen's Bench Division (Crown Office) of 1 June 2000, which was received at the Court Registry on 13 June 2000, for a preliminary ruling in the case of the Commissioners of Customs and Excise against CSC Financial Services Ltd (formerly Continuum (Europe) Ltd), on the following questions:

How is the exemption provided by article 13B(d)(5)⁽¹⁾ in respect of 'transactions in securities' to be interpreted? In particular,

- (1) does the term 'transaction in securities' apply only to a transaction in which the parties' legal rights or obligations in respect of the security are altered?
- (2) does the term 'transactions, including negotiation, in securities' apply to a service of providing information to potential investors and receiving and processing applications from investors for the issue of a security (but not including preparing and dispatching the document of title to the security), where that service is provided to a person who has legal rights or obligations under the security by a person who does not have any legal right or obligation under the security?

⁽¹⁾ Of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.06.77, p. 1).

Action brought on 13 June 2000 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-236/00)

(2000/C 233/40)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice on 13 June 2000 by the Commission of the European Communities, represented by Gérard Berscheid, of its Legal Service, 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.

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

- declare that, by failing to bring into force within the prescribed time-limits the laws, regulations and administrative measures necessary in order to comply with:
 - Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector⁽¹⁾, and