

JUDGMENT OF THE COURT (Fifth Chamber)  
18 December 1997\*

In Case C-360/95,

**Commission of the European Communities**, represented by Dimitrios Goulousis, Legal Adviser, and Blanca Vilá Costa, a national civil servant on secondment to its Legal Service, acting as Agents, 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

**Kingdom of Spain**, represented by Alberto José Navarro González, Director General of Community Legal and Institutional Affairs, and Rosario Silva de Lapuerta, Abogado del Estado, of the Community Litigation Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/371/EEC of 20 June 1991 on the implementation of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance (OJ 1991 L 205, p. 48) or, in the alternative, by failing to inform the Commission

\* Language of the case: Spanish.

thereof, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

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

Advocate General: A. La Pergola,  
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 17 June 1997,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 23 November 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 and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to

comply with Council Directive 91/371/EEC of 20 June 1991 on the implementation of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance (OJ 1991 L 205, p. 48; hereinafter 'the Directive') or, in the alternative, by failing to inform the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

- 2 The first paragraph of Article 1 of the Directive requires the Member States to amend their national provisions to comply with the Agreement between the European Economic Community and the Swiss Confederation (hereinafter 'the Agreement') within a period of 24 months following the notification of the Directive and immediately to inform the Commission thereof.
- 3 On 5 October 1993, not having been informed of the measures adopted by the Kingdom of Spain in order to comply with the Directive, the Commission sent a letter calling upon the Kingdom of Spain to submit its observations within two months.
- 4 On 31 October 1994, not having received any communication from which it could conclude that the Kingdom of Spain had complied with its obligations under the Directive, the Commission addressed a reasoned opinion to the Kingdom of Spain, requesting it to take the measures necessary for compliance within two months.
- 5 By letter of 18 January 1995, the Spanish authorities stated that they were in the process of drafting the measures necessary for compliance with the Directive.

- 6 Not having received any communication subsequent to that letter from which it could conclude that the Kingdom of Spain had complied or was about to comply with its obligations under the Directive, the Commission brought the present proceedings.
  
- 7 It is clear from the Commission's application and oral submissions that this action concerns a failure to transpose the Directive within the period prescribed or, in the alternative, a failure to communicate the measures transposing it.
  
- 8 The Kingdom of Spain denies any such failure and submits that, in order to determine whether the Directive has been transposed, account must be taken not only of Law No 30/1995 of 8 November 1995, entitled Ordenación y Supervisión de los Seguros Privados (organization and monitoring of private insurance) (BOE No 268, 9 November 1995, p. 32480), which transposes the content of the Directive into Spanish law, and in particular the 16th additional provision thereof which defines the rules applicable to Swiss insurance undertakings, but also of Article 87 of Law No 30/1995, Article 9 of the Reglamento de Ordenación del Seguro Privado (Regulation on the organization of private insurance) approved by Royal Decree No 1348/85 of 1 August 1985 (BOE No 185, 3 August 1985), the provisions of which that are compatible with Law No 30/1995 remain in force, and the Protocol relating to collaboration between supervisory authorities of the Contracting Parties of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life insurance.
  
- 9 The Commission replies that, in the 16th additional provision to Law No 30/1995, the Spanish legislature merely provided that Articles 87, 88 and 89 thereof, which relate to the activities in Spain of insurance undertakings having their seat in non-member countries, were not to apply to Swiss undertakings. Such transposition,

which is not merely tardy but also very incomplete, was effected by an insecure legislative measure and is inadequate because it fails to take account of the inherent scheme of the Agreement.

- 10 The Commission submits that the fact that the general arrangements laid down in Articles 87, 88 and 89 of Law No 30/1995 for undertakings having their seat in non-member countries remains applicable, except in the cases covered by the 16th additional provision (under which those articles are not to apply to Swiss undertakings), demonstrates the limited nature of the transposing measures adopted, since they do not cover everything provided for in Articles 11, 12, 13 and 14 of the Agreement, which specify the conditions required for administrative approval and the procedure allowing insurance undertakings to operate in Spain.
- 11 As regards, first, the provisions of the Directive which the Kingdom of Spain claims were transposed by Law No 30/1995, it must be borne in mind that the Court has consistently held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-289/94 *Commission v Italy* [1996] ECR I-4405, paragraph 20).
- 12 In the present case, Law No 30/1995 was adopted after the end of the period laid down in the reasoned opinion and thus cannot be taken into account by the Court.

It must therefore be held that the articles of the Agreement which the Kingdom of Spain claims were transposed by Law No 30/1995 were not in fact transposed.

- 13 As regards, second, the provisions of the Directive which the Kingdom of Spain considers to have been transposed by rules in force before the end of the period laid down by the Commission, it must be observed that, as the Commission has rightly pointed out, it is necessary in this case to adopt a specific measure transposing the Directive, since the second paragraph of Article 1 of the Directive expressly requires Member States to ensure that their measures transposing the Directive include a reference to it or that such reference is made when they are officially published (see, to the same effect, Case C-137/96 *Commission v Germany* [1997] ECR I-6749, paragraph 8). The measures on which the Kingdom of Spain relies, however, mentioned in paragraph 8 above, do not meet that requirement.
- 14 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Spain has failed to fulfil its obligations under the Directive.

### Costs

- 15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. The Commission has applied for costs against the Kingdom of Spain. Since the latter has been unsuccessful, 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 prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/371/EEC of 20 June 1991 on the implementation of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance, the Kingdom of Spain has failed to fulfil its obligations under that directive;**
- 2. Orders the Kingdom of Spain to pay the costs.**

Gulmann

Wathelet

Moitinho de Almeida

Jann

Sevón

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass

C. Gulmann

Registrar

President of the Fifth Chamber