

JUDGMENT OF THE COURT (Sixth Chamber)

19 February 1998

(Failure by a Member State to fulfil obligations — Directive 90/434/EEC — Failure to transpose)

In Case C-8/97,

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

applicant,

v

Hellenic Republic, represented by Paraskevi Skandalou, Legal Assistant, First Class, in the Special European Community Legal Service of the Ministry of Foreign Affairs, and Nana Dafniou, Legal Assistant, Second Class, in that Service, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that, by failing to adopt or, in the alternative, to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen, P.J.G. Kapteyn, J.L. Murray and G. Hirsch (Rapporteur), Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1997,

gives the following

Judgment

1. By application lodged at the Court Registry on 15 January 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt or, in the alternative, to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) ('the Directive'), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive.
2. Under Article 12(1) of the Directive, Member States were required to bring into force the provisions necessary to comply with it not later than 1 January 1992 and forthwith to inform the Commission thereof.
3. In the absence of any notification of the measures taken to transpose the Directive into Greek law, the Commission, on 6 August 1992, put the Greek Government on formal notice to submit to it its observations on the matter within two months, in accordance with the first paragraph of Article 169 of the Treaty.
4. Not having received any reply to that letter of formal notice, the Commission sent to the Greek Government a reasoned opinion by letter of 15 July 1994 calling on it to comply with its Community obligations within two months of notification.
5. In their letter of reply of 19 September 1994, the Greek authorities acknowledged that they had not transposed the Directive. They pleaded internal difficulties in their legal order and the fact that, at the Community level, the proposal for a Tenth Council Directive based on Article 54(3)(g) of the Treaty establishing the European Economic Community concerning cross-border mergers of public limited companies, submitted by the Commission to the Council on 14 January 1985 (OJ 1985 C 23, p. 11) and the proposal for a Council Regulation on the Statute for a European company, submitted by the Commission to the Council on 25 August 1989 (OJ 1989 C 263, p. 41) had not yet been adopted.
6. In the absence of any further notification from the Greek authorities, the Commission brought the present action.
7. The Hellenic Republic does not deny that it failed to take all the measures necessary to transpose the Directive. It points out, however, that the draft law incorporating the provisions of the Directive in the Greek legal system is about to be adopted by the Greek Parliament.
8. The Court has consistently held that a Member State cannot rely on provisions, practices or situations arising in its own internal legal order to justify its failure to respect the obligations and time-limits laid down by a directive (see, in particular, the judgment of 2 October 1997 in Case C-208/96 *Commission v Belgium* [1997] ECR I-0000, paragraph 9).

9. Since the Directive was not transposed within the period prescribed therein, the action brought in that regard by the Commission must be considered to be well founded.
10. It must for that reason be held that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with the Directive, the Hellenic Republic has failed to fulfil its obligations under Article 12(1) thereof.

Costs

11. 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 requested that the Hellenic Republic be ordered to pay the costs. Since the Hellenic Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth 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 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, the Hellenic Republic has failed to fulfil its obligations under Article 12(1) thereof;**
2. **Orders the Hellenic Republic to pay the costs.**