

The applicant claims that the Court should:

1. Declare that by failing to adopt and to notify to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 84/360/EEC on the combating of air pollution from industrial plants the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty;
2. Order the Hellenic Republic to pay the costs.

Contentions and main arguments adduced in support:

Under the third paragraph of Article 189 of the Treaty establishing the European Economic Community Directives are binding, as to the result to be achieved, upon each Member State to which they are addressed. According to the first paragraph of Article 5 of the Treaty, the Member States must take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by institutions of the Community.

The period for compliance by the Member States with Directive 84/360/EEC expired on 30 June 1987, but the Hellenic Republic had not informed the Commission of measures taken in order to comply. In reply to the reasoned opinion issued by the Commission, the Greek Government stated that the provisions of Law 1650/86 'on protection of the environment' brought Greek legislation into conformity with most provisions of Directive 84/360/EEC and that full incorporation of the Directive in the Greek legal order would be effected by the promulgation of a general ministerial decision. The Commission considered, after examining Law 1650/86, that it did not make specific provision for combating air pollution from industrial plants, as required by the Directive, but referred, for the adoption of those measures, to a general decision of the Minister for Regional Planning, the Environment and Construction. That decision, however, has not yet been adopted, despite the assurances of the Greek authorities that on 31 January 1989 it was already at the stage of signature by the responsible ministers.

Action brought on 16 August 1989 by Cosimex GmbH against the Commission of the European Communities

(Case 259/89)

(89/C 238/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 16 August 1989 by Cosimex GmbH, represented by Achim von Winterfeld,

Rechtsanwalt, 4 Hülchrather Straße, D-5000 Cologne 1, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérèse, L-2010 Luxembourg.

The applicant claims that the Court should:

1. Declare void the decision of the Commission of the European Communities of 7 June 1989 in Case IV/32.724 — Moll (Cosimex)/Vichy, contained in the letter of 7 June 1989 from the Directorate-General for Competition in so far as the application contained in the complaint of 13 May 1988 for a finding that Société d'Hygiène Dermatologique de Vichy, F-Asnières had infringed Article 85 (1) of the EEC Treaty by exerting pressure on wholesalers in France and Belgium not to supply the applicant with Vichy products, and for Société d'Hygiène Dermatologique de Vichy to terminate the infringement so found, was rejected;
2. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

— Infringement of Article 85 (1) of the EEC Treaty. The statement of reasons given by the Commission for rejecting the complaint, that is to say, that there was no proof of a refusal to supply following an agreement to that effect, is clearly inaccurate. Vichy operates a selective distribution system in the Community (retail sale in pharmacies), which however in France and Belgium is incomplete and in France was relaxed following a judicial decision. The refusal to supply, and the pressure exerted to that end, fit in with the contractual, albeit incomplete, overall system which Vichy maintains with its customers.

The purpose of the Vichy distribution system, which is to restrict the retail sale of Vichy products to pharmacies, is incompatible with Article 85 (1) of the Treaty. The issue concerns cosmetics, which are not pharmaceutical products. Furthermore, in the German market the consequence of restricting retail distribution to pharmacies is that 'decorative cosmetics', the sale of which in pharmacies is prohibited by statute in the Federal Republic of Germany, are excluded from the market.

— Incorrect use of powers: the Commission incorrectly used its powers when using the notifications of Vichy's distribution contracts, which in part had not yet even been given, as a reason to reject the applicant's complaint without regard to the duration and outcome of the exemption proceedings.