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JUDGMENT OF THE COURT (Fifth Chamber)

12 January 2006 (*)

(Failure of a Member State to fulfil obligations – Directive 85/337/EEC, as amended by Directive 97/11/EC – Assessment of the effects of projects on the environment – Consents granted without assessment)

In Case C-37/05, ACTION under Article 226 EC for failure to fulfil obligations, brought on 31 January 2005, Commission of the European Communities, represented by M. van Beek, acting as Agent, and F. Louis and A. Capobianco, avocats, with an address for service in Luxembourg,

applicant, v

United Kingdom of Great Britain and Northern Ireland, represented by C. White, acting as Agent, defendant,

THE COURT (Fifth Chamber), composed of J. Makarczyk (Rapporteur), President of the Chamber, R. Silva de Lapuerta and P. Kuris, Judges,

Advocate General: M. Poiares Maduro,

Registrar: R. Grass,

having regard to the written procedure, having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following Judgment

1 By its action, the Commission of the European Communities requests the Court to declare that, in failing to correctly transpose Articles 2(1) and 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) ('Directive 85/337'), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive and under the EC Treaty.

2 Article 2(1) of Directive 85/337 provides:

'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.'

3 Article 4(1) and (2) of Directive 85/337 provides:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States may decide to apply both procedures referred to in (a) and (b).'

4 By virtue of Article 3 of Directive 97/11, the Member States had to adopt the measures necessary to comply with that directive by 14 March 1999 at the latest.

5 Since the Commission considered that, by not providing in national legislation that Crown development was subject to the requirements of Directive 85/337, the United Kingdom had not transposed Articles 2(1) and 4 of Directive 85/337 correctly within the prescribed period, it initiated the infringement procedure provided for in the first paragraph of Article 226 EC. After giving the United Kingdom formal notice to submit its decisions, on 16 December 2003 the Commission issued a reasoned opinion calling on the United Kingdom to take the necessary measures to comply with the opinion within two months of notification thereof. As the Commission took the view that the situation remained unsatisfactory, it decided to bring the present action.

6 The United Kingdom Government acknowledges that it is necessary to transpose Articles 2(1) and 4 of Directive 85/337 by adopting binding national legislation and not by instituting an administrative practice. It has committed itself to taking the measures necessary for such transposition by removing the Crown exemption provided for by national law. It states, however, that those measures cannot be adopted before the end of 2005.

Findings of the Court

7 According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion (see, *inter alia*, Case C-348/99 *Commission v Luxembourg* [2000] ECR I-2917, paragraph 8, and Case C-272/01 *Commission v Portugal* [2004] ECR I-6767, paragraph 29).

8 Since the United Kingdom did not adopt, before expiry of the period set in the reasoned opinion, the measures required in order to bring its legislation into conformity with Community law, the action brought by the Commission must be considered well founded.

9 Consequently, it must be held that, in failing to correctly transpose Articles 2(1) and 4 of Directive 85/337, the United Kingdom has failed to fulfil its obligations under that directive.

Costs

10 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. Since the Commission has applied for costs and the United Kingdom has been unsuccessful, the United Kingdom must be ordered to pay the costs. On those grounds, the Court (Fifth Chamber) hereby:

1. Declares that, in failing to correctly transpose Articles 2(1) and 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;

2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

[Signatures]

* Language of the case: English.

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