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JUDGMENT OF THE COURT (Sixth Chamber)

1 October 2009 (*)

(Failure of a Member State to fulfil obligations – Directive 2006/70/EC – Money laundering and terrorist financing – Failure to transpose within the period prescribed)

In Case C-549/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 10 December 2008,

Commission of the European Communities, represented by P. Dejmek and A.-A. Gilly, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, with an address for service in Luxembourg,

defendant,

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, K. Schiemann and P. Kūris, Judges,

Advocate General: J. Mazák,

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 application, the Commission of the European Communities requests the Court to declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ 2006 L 214, p. 29), or, in any event, by failing to notify those provisions to the Commission, Ireland has failed to fulfil its obligations under that directive.
- 2 Pursuant to Article 5 of Directive 2006/70, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 15 December 2007 at the latest and to inform the Commission thereof.
- 3 Having received no notification concerning the measures adopted by Ireland to transpose Directive 2006/70 into its national law, and in the absence of any other information from which it could

conclude that Ireland had fulfilled its obligation to do so, the Commission initiated the infringement procedure provided for by Article 226 EC and, by letter of 28 January 2008, formally called on Ireland to submit its observations within two months of receipt of that letter.

4 By letter of 19 March 2008, the Irish authorities replied that they were not yet in a position to notify the transposing measures, but that the drafting of a bill had been approved and that a public consultation process had been set in motion. It was hoped to have the transposing legislation published and introduced in Parliament during the summer session.

5 Having received no information confirming that Directive 2006/70 had been transposed, the Commission, by letter of 6 June 2008, sent Ireland a reasoned opinion calling on it to take the measures necessary to comply with the obligations under that directive within two months of receipt of that opinion.

6 By letter of 29 July 2008, Ireland stated that the public consultation process had been concluded, that the legislative process was underway and that the transposing measures in question had been included in the legislative programme for the autumn parliamentary session.

7 Having received no further notification from the Irish authorities concerning the adoption of those transposing measures, the Commission brought the present action.

8 In its defence, Ireland does not contest the allegation that it has failed to fulfil its obligations, but submits that the transposing legislation will be enacted by 31 July 2009. It asks the Court to suspend the proceedings for a period of eight months.

9 The Commission opposes the application for suspension of the proceedings.

10 It is settled case-law that 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-168/03 *Commission v Spain* [2004] ECR I-8227, paragraph 24).

11 In the present case, it is common ground that, at the end of the period laid down in the reasoned opinion, Ireland had not adopted the provisions intended to ensure the transposition of Directive 2006/70.

12 It follows, and without there being any need for the Court to suspend the proceedings, that the action brought by the Commission is well founded.

13 It must therefore be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/70, Ireland has failed to fulfil its obligations under that directive.

Costs

14 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 Ireland has been unsuccessful, Ireland must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby:

- 1. Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, Ireland has failed to fulfil its obligations under that directive;**

2. Orders Ireland to pay the costs.

[Signatures]

* Language of the case: English.