JUDGMENT OF THE COURT
10 March 1993 *

In Case C-186/91,

Commission of the European Communities, represented by X. Lewis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of R. Hayder, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by J. Devadder, Adviser at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, with an address for service in Luxembourg at the Belgian Embassy, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that, by not bringing into force the laws, regulations and administrative provisions necessary to transpose into its national law the obligation set out in Article 11 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide (OJ 1985 L 87, p. 1), the Kingdom of Belgium has failed to fulfil its obligations under that Article and under Article 189 of the EEC Treaty,

THE COURT,

composed of: O. Due, President, C. N. Kakouris and G. C. Rodríguez Iglesias (Presidents of Chambers), R. Joliet, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

* Language of the case: French.

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 10 November 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 July 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by not bringing into force the laws, regulations and administrative provisions necessary to transpose into in its national law the obligation set out in Article 11 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide (OJ 1985 L 87, p. 1, hereinafter 'the Directive'), the Kingdom of Belgium has failed to fulfil its obligations under that Article and under Article 189 of the EEC Treaty.

2 Article 2 of and Annexes I and II to the Directive fix the limit value and guide values for atmospheric concentrations of nitrogen dioxide.

3 Under Article 4 of the Directive, Member States may, in certain conditions, fix lower values than those laid down in Annexes I and II. A Member State intending to use that possibility in a region near the border with one or more other Member States is obliged by Article 11(1) to hold prior consultations with the Member States concerned. Article 11(2) requires those same Member States to hold

consultations, with a view to remedying the situation, if the limit value or the lower values fixed in accordance with Articles 4 and 11(1) above are exceeded or are likely to be exceeded following significant pollution which originates or may originate in another Member State. Article 11 requires that, in any event, the Commission is to be informed and may attend such consultations.

4 Under Article 15 of the Directive, Member States were required to adopt the laws, regulations and administrative provisions necessary to comply with the Directive by 1 January 1987 at the latest.

5 Accordingly, the Belgian Government enacted the Royal Decree of 1 July 1986, fixing air quality standards for nitrogen dioxide (*Moniteur Belge*, 23 September 1986, p. 12867, hereinafter 'the Royal Decree').

6 However, the Commission claims that the Belgian Government failed to transpose the provisions of Article 11 of the Directive in the Royal Decree, and thereby failed to enact into law either the obligation to consult the authorities of neighbouring Member States, in the circumstances defined in Article 11(1) and (2), or the obligation to inform the Commission so as to allow it to attend such consultations if it wished to do so.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The Commission argues that, without the consultations required by Article 11(1) and (2), it would be impossible to ensure either the useful effect of the values fixed under Article 4 of the Directive or the Directive's general purpose of protecting the environment and human health. It considers that Article 11 of the Directive lays down precise and detailed rules, conferring rights and obligations on individuals.

9 The Belgian Government does not deny that Article 11 has not been transposed, but argues that the omission is justified because the Belgian authorities do not intend to take measures within the scope of that Article. In particular, it argues that, if the Belgian authorities were to change their mind, the consultations in question would necessarily have to take place, since measures of the type envisaged could not attain their objective unless neighbouring States adopted similar measures. Such consultations would be arranged in accordance with the provisions of the Belgian Constitution. Finally, the Belgian Government maintains that the obligation to consult in Article 11 does not in any case oblige neighbouring States to adopt similar measures, and cannot therefore confer rights on individuals.

10 It should be observed at the outset that, as the Commission says, the obligations in Article 11 of the Directive are the corollary of the right which Article 4 confers on Member States to fix lower values than those laid down in Annexes I and II to the Directive.

11 Secondly, to ensure full and effective protection of the atmosphere against excessive nitrogen dioxide concentrations in border areas, it is essential that the Member State concerned should legislate expressly for the prior consultation required by Article 11(1) of the Directive to take place before measures affecting border areas are taken. It is also essential that such legislation should provide expressly for the consultation required by Article 11(2) of the Directive to take place in cases where

there is significant pollution originating in a neighbouring Member State, so that the Member States concerned can remedy the situation.

12 A transposition into national law of Article 4 of the Directive, which confers a discretion on Member States, therefore constitutes an incomplete transposition of the Directive if it does not at the same time transpose Article 11, which imposes an obligation relating to the exercise of that discretion.

13 With regard to the defendant's argument based on the provisions of the Belgian Constitution regarding the respective powers of national authorities, on the one hand, and regional authorities, on the other, when dealing with neighbouring States, it is enough to point out that the Belgian Constitution nowhere imposes a duty to hold consultations such as those required by Article 11 of the Directive.

14 Having regard to the above considerations, it must be held that, by not adopting, within the prescribed time-limits, all the legislative, regulatory and administrative measures necessary to comply with the provisions of Article 11 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by not adopting, within the prescribed time limits, all the legislative, regulatory and administrative measures necessary to comply with the provisions of Article 11 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide (OJ 1985 L 87, p. 1), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty;**

2. **Orders the Kingdom of Belgium to pay the costs.**

Due Kakouris Rodríguez Iglesias

Joliet Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 10 March 1993.

J.-G. Giraud O. Due

Registrar President