JUDGMENT OF THE COURT (Sixth Chamber)
14 July 1994 *

In Case C-61/93,

Commission of the European Communities, represented by H. Van Lier, Legal Adviser, and V. Melgar, a French civil servant on secondment to the Legal Service of the Commission, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of the Netherlands, represented by J. W. de Zwaan and T. Heukels, Assistant Legal Advisers at the Ministry of Foreign Affairs in the Hague, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

defendant,

APPLICATION for a declaration that, by adopting the decrees of 16 January 1989 concerning kilowatt-hour meters, of 24 August 1988 concerning strength requirements for soft-drinks bottles and of 21 October 1988 concerning the composition, classification, packaging and labelling of pesticides, without having notified them to the Commission at the drafting stage, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 8 and 9 of Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8),

* Language of the case: Dutch.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, M. Diez de Velasco (Rapporteur), C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 April 1994,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 11 March 1993, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by adopting the decree of 16 January 1989 concerning kilowatt-hour meters, the decree of 24 August 1988 concerning strength requirements for soft-drinks bottles and the decree of 21 October 1988 concerning the composition, classification, packaging and labelling of pesticides, without having notified them to the Commission at the drafting stage, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 8 and 9 of Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8, hereinafter 'Directive 83/189').

2 The first subparagraph of Article 8(1) of Directive 83/189 provides that:

'Member States shall immediately communicate to the Commission any draft technical regulation, except where such technical regulation merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a brief statement of the grounds which make the enactment of such a technical regulation necessary, where these are not already made clear in the draft.'

3 The provisions of Article 9(1) and (2) are as follows:

'1. Without prejudice to paragraph 2, Member States shall postpone the adoption of a draft technical regulation for six months from the date of the notification referred to in Article 8(1) if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged must be amended in order to eliminate or reduce any barriers which it might create to the free movement of goods.

2. The period in paragraph 1 shall be twelve months if, within three months following the notification referred to in Article 8(1), the Commission gives notice of its intention of proposing or adopting a directive on the subject.'

4 When it learned that the Netherlands authorities had adopted the abovementioned decrees of 16 January 1989, 24 August 1988 and 21 October 1988, the Commission decided to initiate proceedings under Article 169 of the Treaty against the Kingdom of the Netherlands. It considered that those decrees were technical

regulations covered by Directive 83/189 and that they ought, therefore, to have been notified to the Commission at the drafting stage.

5 By letters dated 16 October 1989, 27 October 1989 and 9 February 1990 respectively, the Commission gave the Netherlands Government formal notice to submit its observations concerning those decrees, claiming that obvious non-compliance with the obligations imposed on the Member States by the said directive was involved, requiring the immediate suspension of the measures. In the same letters, the Commission also pointed out that as a result of those breaches of the directive the technical regulations at issue were unenforceable against third parties.

6 In a letter of 17 November 1989, the Netherlands authorities acknowledged that the decree of 16 January 1989 contained technical standards covered by Directive 83/189 and that they had failed to notify the Commission of the draft amendment. They pointed out, however, that the decree had been sent to the Commission, annexed to a letter of 22 May 1989 giving that institution information on the privatization of the weights and measures authorities.

7 Finding that Directive 83/189 had still not been implemented, the Commission sent reasoned opinions to the Netherlands Government by letters dated 30 October 1991 for the decree of 16 January 1989 and 2 April 1991 for the other two decrees, requesting it to notify them at the drafting stage and to suspend their adoption for the periods provided for in the directive. In those reasoned opinions the Commission also made it clear that the technical regulations concerned could not be enforced against third parties.

8 By letters dated 13 January 1992 and 9 July 1991, the Netherlands Government replied that the technical regulations in question should indeed have been notified to the Commission and that the national authorities would in future endeavour to avoid such oversights.

9 The Commission commenced this action by application of 9 March 1993.

10 It is not disputed that in accordance with Article 8 of the directive the draft decrees of 16 January 1989, 24 August 1988 and 21 October 1988 ought to have been notified forthwith to the Commission at the drafting stage and that such notification was not given.

11 Furthermore, the Netherlands Government has from the start of the administrative stage of this procedure acknowledged the failure to fulfil its obligations.

12 In those circumstances, it must be held that, by adopting the decree of 16 January 1989 concerning kilowatt-hour meters, the decree of 24 August 1988 concerning strength requirements for soft-drinks bottles and the decree of 21 October 1988 concerning the composition, classification, packaging and labelling of pesticides, without notifying them to the Commission at the drafting stage, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 8 of Directive 83/189.

Costs

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

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by adopting the decree of 16 January 1989 concerning kilowatt-hour meters, the decree of 24 August 1988 concerning strength requirements for soft-drinks bottles and the decree of 21 October 1988 concerning the composition, classification, packaging and labelling of pesticides, without notifying them to the Commission at the drafting stage, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations;**

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

Mancini Diez de Velasco Kakouris

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 14 July 1994.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber