JUDGMENT OF THE COURT
15 DECEMBER 1982 [1]

Commission of the European Communities v Kingdom of the Netherlands

(Failure of a Member State to fulfil its obligations — Directive 73/239/EEC)

Case 160/82

1. *Member States — Obligations — Implementation of directives — Absence — Justification on grounds based on the internal legal system — Not possible*
   (EEC Treaty, Arts. 169 and 189, third paragraph)

2. *Measures adopted by institutions — Directives — Implementation by the Member States — Implementation by means of administrative practices — Not sufficient*
   (EEC Treaty, Art. 189, third paragraph)

1. A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.

2. Mere administrative practices, which by their nature may be changed according to the whim of the authorities and which lack appropriate publicity cannot be regarded as constituting a valid implementation of the duty imposed on Member States by the third paragraph of Article 189 of the Treaty.

In Case 160/82,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, assisted by Pieter Jan Kuyper, a member of the Commission's Legal Department, with an address for service at the office of Oreste Montalto, a member of the Legal Department of the Commission of the European Communities, Jean Monnet Building, Kirchberg,

applicant,

v

1 — Language of the Case: Dutch

KINGDOM OF THE NETHERLANDS, represented for the purposes of this application by Adriaan Bos, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, with an address for service at the Embassy of the Netherlands, 5 Rue C.-M.-Spoo, Luxembourg,

defendant,

APPLICATION for a declaration that the Kingdom of the Netherlands, by not bringing into force within the period specified the provisions necessary to transpose into national law the provisions of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (Official Journal L 228, p. 3), has failed to fulfil one of its obligations under the EEC Treaty.

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, A. O'Keeffe and U. Everling (Presidents of Chambers), Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions and arguments of the parties may be summarized as follows:

I — Facts and procedure

Article 35 (1) of Directive 73/239 requires the Member States to amend

their national provisions to comply with the directive not later than 31 January 1975 and to inform the Commission thereof forthwith.

Having noted that by that date the Kingdom of the Netherlands had given it no information in that regard the Commission, by letter of 11 February 1977, initiated the procedure provided for by Article 169 of the Treaty.

By letter of 12 May 1977 the Permanent Representation of the Netherlands submitted observations in which it stated, first, that some of the essential provisions of the directive, those having direct effect, were applied in practice in the Netherlands, and secondly that the parliamentary procedure for approval of the legislation necessary for the adoption of the provisions of the directive was already at a relatively advanced stage.

The Commission therefore temporarily suspended the procedure for failure to adopt the provisions of the directive. Since the results of the parliamentary procedure had still not been notified to it in 1980 the Commission decided to reopen the procedure and sent a letter to that effect to the Government of the Netherlands on 29 October 1980.

By letter of 30 January 1981 the Permanent Representation of the Netherlands confirmed that the measures necessary to adopt the provisions of the directive into national law had not yet been adopted and informed the Commission of the progress made in the relevant parliamentary procedure.

On 18 November 1981 the Commission issued the reasoned opinion referred to in the first paragraph of Article 169 of the EEC Treaty and invited the Kingdom of the Netherlands to comply with its terms within 60 days.

By letter of 8 February 1982 the Permanent Representation of the Kingdom of the Netherlands replied that the Government of the Netherlands regretted the delay which had occurred in transposing the directive into national law, which it attributed to the need to make a complete revision of its legislation and to its desire to extend the revision of the law to include a certain number of problems outside the scope of the directive. The Government of the Netherlands undertook to give the highest priority to expediting parliamentary consideration of the relevant draft law.

The Commission found that the Kingdom of the Netherlands had failed to take the measures necessary to comply with the reasoned opinion within the time allowed it, and therefore brought this action which was lodged at the Court Registry on 27 May 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The Commission claims that the Court should:

"Declare that the Kingdom of the Netherlands, by not bringing into force within the period specified in Article 35 of the directive the laws, regulations and administrative provisions needed to comply with the provisions of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations

and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance, has failed to fulfil its obligations under the EEC Treaty;

Order the Kingdom of the Netherlands to pay the costs."

The Kingdom of the Netherlands is content to leave the matter to the Court.

III — Submissions and arguments of the parties

In its application the Commission points out that since directives are binding Member States have an obligation to observe the time-limits laid down by them for the adoption of national implementing provisions, and that the State concerned may not plead provisions, practices or circumstances existing in its internal legal system to justify the failure to observe such time-limits. Moreover, the implementation of the provisions of a directive which are directly applicable cannot justify a Member State's failure to adopt in due time the appropriate implementing measures required for the purposes of each directive.

Those three principles are well-established in the case-law of the Court.

In its defence, the Government of the Kingdom of the Netherlands concedes that Directive 73/239 was not implemented by the date specified, 31 January 1975. It deeply regrets the delay, which it attributes to the fact that owing to the complexity of the provisions and the particular structure of the directive it found it necessary to draw up entirely new legislation, and to the fact that the draft legislation includes a number of other matters which, strictly speaking, fall outside the scope of the directive.

The Government of the Kingdom of the Netherlands also indicates the stage which has been reached in approving the draft legislation and declares that it will do its utmost to expedite the procedure as far as possible.

Lastly, it points out once again that the directive is already implemented without restriction in practice as regards all undertakings which have their head offices either in the Netherlands or in another Member State of the EEC and seek to rely on the provisions of the directive.

In its reply, the Commission notes that the Government of the Kingdom of the Netherlands has acknowledged the failure to implement its obligations under Directive 73/239 by the date specified. It also lays emphasis on the fact that, on the Netherlands' own admission, the current legislation will require numerous amendments.

The Commission expresses disquiet as to the progress of the Netherlands draft law and urges the Netherlands Government to expedite its procedure as much as possible.

Finally, as regards the submission of the Netherlands Government that the directive is applied, in practice, for all undertakings whose head offices are in

the Netherlands or in another Member State and who seek to rely upon the provisions of the directive, the Commission refers to the *dicta* of the Court in Case 102/79 *Commission of the European Communities* v *Kingdom of Belgium* [1980] ECR 1473, to the effect that mere administrative practices, which by their nature may be changed according to the whim of the authorities and which lack appropriate publicity, cannot in these circumstances be regarded as constituting a valid implementation of the duty imposed by Article 189 on Member States to whom directives are addressed.

As to the possibility of any justification on the ground that directives are directly applicable the Commission submits that such direct applicability constitutes a minimum guarantee based on the binding nature of the obligation imposed on the Member States by means of the directives, and cannot serve to justify a Member State's failure to adopt in due time appropriate measures to implement the provisions of each directive.

The Kingdom of the Netherlands, referring to the submissions contained in its defence, did not lodge a rejoinder.

IV — Oral procedure

The Commission, represented by P. J. Kuyper, a member of its Legal Department, and the Government of the Netherlands, represented by J. W. De Zwaan, presented oral argument at the sitting on 16 November 1982.

The Advocate General delivered his opinion on 24 November 1982.

Decision

1 By an application lodged at the Court Registry on 27 May 1982 the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by not adopting within the specified period the provisions needed to comply with Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (Official Journal L 228, p. 3), the Kingdom of the Netherlands had failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.

2 The first paragraph of Article 35 of the directive requires Member States to amend their national provisions to comply with the directive within

18 months of its notification and to inform the Commission thereof forthwith. The period thus specified expired on 31 January 1975.

3 The Government of the Kingdom of the Netherlands does not deny that it has failed to comply with that obligation. It explains that the delay in implementing the directive was due to its need to draft new legislation covering also a number of questions outside the scope of the directive. It also states that the directive is already applied without restriction, in practice, for all undertakings whose head offices are in the Netherlands or in another Member State of the EEC and which seek to rely upon its provisions.

4 Such circumstances cannot expunge the failure to fulfil its obligations with which the Kingdom of the Netherlands is charged. According to well-established case-law first, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives, and secondly mere administrative practices, which by their nature may be changed according to the whim of the authorities and which lack appropriate publicity cannot be regarded as constituting a valid implementation of the duty imposed on Member States by the third paragraph of Article 189 of the Treaty.

5 The Court must therefore declare that by failing to adopt within the specified period the provisions necessary to comply with Council Directive 73/239/EEC of 24 July 1973 the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty.

Costs

6 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Kingdom of the Netherlands, by failing to adopt within the specified period the provisions necessary to implement Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance, has failed to fulfil its obligations under the EEC Treaty;**

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

Mertens de Wilmars Pescatore O'Keeffe

Everling Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 15 December 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President