JUDGMENT OF THE COURT (Sixth Chamber)
15 October 1998 *

In Case C-326/97,

Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Anni Snoecx, Assistant Adviser in the Directorate General for Legal Affairs, Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders (OJ 1995 L 168, p. 14), the Kingdom of Belgium has failed to fulfil its obligations under that directive and the EC Treaty,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. Hirsch, G. F. Mancini, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 June 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 September 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders (OJ 1995 L 168, p. 14, hereinafter 'the Directive'), the Kingdom of Belgium has failed to fulfil its obligations under the Directive and the EC Treaty.

2 Under the first subparagraph of Article 2(1) of the Directive Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 31 December 1995. Article 2(2) provides

for Member States to communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by the Directive.

3 Since it had not received any communication relating to the transposition of the Directive into Belgian law and had no information to show that the Kingdom of Belgium had fulfilled that obligation, the Commission gave formal notice to that State by letter of 27 February 1996, calling on it to submit its observations within a period of two months.

4 In the absence of any reply from the Belgian authorities, the Commission, on 5 March 1997, sent a reasoned opinion to the Kingdom of Belgium, calling on it to take the measures necessary to comply with its obligations under the Directive within two months of its notification.

5 As no action was taken on that reasoned opinion, the Commission brought the present proceedings.

6 The Kingdom of Belgium does not dispute that the Directive was not transposed within the prescribed period, but explains that its implementation depended on implementation of Council Directive 84/532/EEC of 17 September 1984 on the approximation of the laws of the Member States relating to common provisions for construction plant and equipment (OJ 1984 L 300, p. 111) which has been transposed at regional level, but not at national level. Following the entry into force of the special Law of 16 July 1993 on the completion of the federal structure of the State (*Moniteur Belge*, p. 16774), under which product standards fall within the

competence of the national government, these directives have to be transposed at federal level. However, the Belgian Government points out that the transposition procedure in question has entered its final stage and that the draft royal decrees will shortly be submitted for signature to the Ministers responsible.

7 In that connection, it must be pointed out that, according to settled case-law, 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 the obligations and time-limits laid down in a directive (see, in particular, Case C-298/97 *Commission* v *Spain* [1998] ECR I-3301, paragraph 14).

8 As the Directive was not transposed within the period prescribed therein, the Commission's action must be considered well founded.

9 Accordingly, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Belgium has failed to fulfil its obligations under the 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 Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders, the Kingdom of Belgium has failed to fulfil its obligations under that directive;**

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

Kapteyn Hirsch Mancini

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 15 October 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Sixth Chamber