JUDGMENT OF THE COURT
2 FEBRUARY 1982 [1]

Commission of the European Communities v Kingdom of Belgium

(Failure of a State to fulfil its obligations — Non-implementation of a directive on the disposal of waste oils)

Case 70/81

Member States — Obligations — Implementation of directives — Failure to comply — Justification — Not possible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

In Case 70/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, René-Christian Béraud, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department of the Commission, Jean Monnet Building, Kirchberg,

applicant,

v

KINGDOM OF BELGIUM, represented by Robert Hoebaer, a director in the Ministry for Foreign Affairs, Foreign Trade and Cooperation and Development, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy,

defendant,

1 — Language of the Case: French.

APPLICATION for a declaration that by not implementing within the prescribed period Council Directive 75/439 of 16 June 1975, on the disposal of waste oils (Official Journal L 194, p. 23), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty,

THE COURT

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

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. Council Directive 75/439 of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 23), is one of various Community measures which are based on Articles 100 and 235 of the Treaty and fall within the Community policy on the protection of the environment.

As is apparent from the recitals in its preamble, the aim of the directive is on the one hand to eliminate disparities between the laws of the Member States likely to have a direct effect upon the functioning of the Common Market and on the other hand to protect the environment against the harmful effects caused by the discharge, deposit or treatment of waste oils and to encourage their recycling.

Article 17 of the directive provides that the Member States are to implement the measures necessary to comply with the directive within twenty-four months of

its notification, and are forthwith to inform the Commission thereof. Since the directive was notified to the Kingdom of Belgium on 18 June 1975, that period expired on 18 June 1977.

2. Since the Commission was not informed of the adoption of the provisions needed to adapt Belgian law, it considered that the Kingdom of Belgium had failed to fulfil its obligations under the Treaty. By a letter dated 3 July 1979 it invited the Belgian Government, pursuant to the first paragraph of Article 169 of the Treaty, to submit its observations within a period of two months.

By a letter dated 14 November 1979 the Belgian Government informed the Commission that the failure of Belgium to implement certain directives on the environment was not due to a lack of will on its part but was an indirect effect of the fundamental reform of the institutions in progress. Having regard to the period necessary to launch the new institutions a further period of one year would be necessary to implement the directives on the environment.

On 19 May 1980 the Commission delivered the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty. In that opinion, which was delivered to the Belgian Government by letter of 28 May 1980, the Commission invited the Kingdom of Belgium to comply with the opinion within a period of two months from the date of its notification.

Since the Commission received no further communication from the Belgian authorities on the subject it brought this action, which was lodged at the Court Registry on 3 April 1981.

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:

1. Declare that by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 75/439 of 16 June 1975 on the disposal of waste oils, the Kingdom of Belgium has failed to fulfil one of its obligations under the EEC Treaty;

2. Order the Kingdom of Belgium to pay the costs.

The *Kingdom of Belgium* has not presented any formal conclusions.

III — Submissions and arguments of the parties

The *Commission* argues that the binding nature of directives means that the Member States must comply with the time-limits prescribed therein for bringing into force provisions adapting national law. In particular compliance with the provisions of the Treaty or secondary Community law cannot depend on difficulties encountered in the alteration of the distribution of powers between central government and the regional or local authorities. There is an infringement of the Treaty by a Member State whatever the institution of the State whose acts and omissions have led to the failure to perform the obligation.

Those principles are confirmed by now well-settled case-law of the Court.

The *Belgian Government* observes that Directive 75/439 is at present partially implemented by a Law of 26 March 1971 and a Royal Decree of 3 October 1975.

Nevertheless, the complete implementation of the directive has met with difficulties connected with the fundamental reform of the institutions in progress in Belgium. Implementation of the directive depends on the powers not only of the national institutions, but also of the regional institutions whose powers have been established by the special Law on institutional reforms of 8 August 1980. However, on 15 July 1981 a coordinating system was set up for the purposes of ensuring the implementation of rules of Community law. That can be done once the competent institutions created as the result of the reform have come into operation.

The Belgian Government admits that according to the case-law of the Court a Member State may not plead internal difficulties to justify disregard of periods laid down by Community law. In that respect it nevertheless refers to the impossibility of adopting new rules before the new legislative powers of a federal nature are set up and come into operation. That exceptional situation ought in its opinion to be taken into account by the Community authorities.

IV — Oral procedure

The parties presented oral argument at the sitting on 12 November 1981.

The Advocate General delivered his opinion at the sitting on 2 December 1981.

Decision

1 By application lodged at the Court Registry on 3 April 1981 the Commission of the European Communities brought an action for a declaration under Article 169 of the EEC Treaty that by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 75/439 of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 23), the Kingdom of Belgium has failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.

2 By virtue of Article 17 of the directive Member States were to implement the measures needed to comply with the directive within twenty-four months of its notification and that period expired in this case on 18 June 1977.

3 The Belgian Government has stated that the directive has already been the subject of certain measures which implement it in part. Nevertheless, it does not deny that the Kingdom of Belgium has not fulfilled its obligations to implement the directive fully within the period provided.

4 Essentially, the Belgian Government justifies its failure by the fact that important institutional reforms concerning the redistribution of powers and responsibilities between the national and regional institutions are in progress, especially in the area covered by the directive in question. So long as the new institutions are not yet in a position to exercise their powers it will not be possible to implement the directive fully.

5 Although those circumstances may explain the difficulty in applying the directive they do not expunge the failure of the Kingdom of Belgium to fulfil its obligations. According to established case-law of the Court a Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

6 It should also be pointed out that, in order that the exceptional situation referred to by his Government should be taken into account, the Belgian Minister for Public Health and the Environment, in answer to the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty, requested the Commission on 14 November 1979 to grant to the Kingdom of Belgium an additional period of one year to adopt the measures of national law needed to implement the directive. Those measures ought to have entered into force in June 1977, and in fact it was only on 3 April 1981 that the Commission brought the matter before the Court under the second paragraph of Article 169 of the Treaty.

7 It must therefore be held that by not adopting within the prescribed period the provisions needed to comply with Council Directive 75/439 of 16 June 1975 the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

Costs

8 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs if they have been asked for. Since the defendant 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 period the provisions needed to comply with Council Directive 75/439 of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 23), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty;**

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

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 2 February 1982.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber,
acting as President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 68/81, p. 159)