JUDGMENT OF THE COURT (Fifth Chamber)
21 January 1999 *

In Case C-347/97,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, 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 Annie 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 and/or communicate, within the prescribed period, all the measures necessary to comply with Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38), the Kingdom of Belgium has failed to fulfil its obligations under that article,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur) and D. A. O. Edward, Judges,

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 July 1998,

after hearing the Opinion of the Advocate General at the sitting on 24 September 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 October 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 and/or communicate, within the prescribed period, all the measures necessary to comply with Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38, hereinafter 'the Directive'), the Kingdom of Belgium has failed to fulfil its obligations under that article.

2 According to Article 1, 'the aim of this Directive is to approximate the laws of the Member States on the recovery and controlled disposal of those spent batteries and accumulators containing dangerous substances in accordance with Annex I'.

3 Article 6 of the Directive provides:

'Member States shall draw up programmes in order to achieve the following objectives:

— reduction of the heavy-metal content of batteries and accumulators,

— promotion of marketing of batteries and accumulators containing smaller quantities of dangerous substances and/or less polluting substances,

— gradual reduction, in household waste, of spent batteries and accumulators covered by Annex I,

— promotion of research aimed at reducing the dangerous-substance content and favouring the use of less polluting substitute substances in batteries and accumulators, and research into methods of recycling,

— separate disposal of spent batteries and accumulators covered by Annex I.

The first programmes shall cover a four-year period starting on 18 March 1993. They shall be communicated to the Commission by 17 September 1992 at the latest.

The programmes shall be reviewed and updated regularly, at least every four years, in the light in particular of technical progress and of the economic and environmental situation. Amended programmes shall be communicated to the Commission in good time.'

4 Under Article 11(1) of the Directive, the Member States were to take the measures necessary to comply therewith before 18 September 1992. They were forthwith to inform the Commission thereof.

5 On 3 July 1995, having been notified of only certain measures adopted by the Flemish Region, the Region of the Capital City of Brussels and the Walloon Region and noting the failure to communicate the measures adopted at federal level to draw up the programmes provided for in Article 6, the Commission placed the Kingdom of Belgium on notice to submit within a period of two months its comments on the matter, in accordance with the procedure provided for in Article 169 of the Treaty. That letter of formal notice remained unanswered.

6 In those circumstances, the Commission sent a reasoned opinion to the Kingdom of Belgium on 27 December 1996 in which it found that it had failed to fulfil its obligations under Article 6 of the Directive and requested it to adopt the measures necessary to comply with that opinion within a period of two months from its notification.

7 On 24 February and 29 April 1997, the Belgian Government forwarded to the Commission the replies drawn up by the Region of the Capital City of Brussels and the Walloon Region respectively, specifying the measures taken by those regions and the results achieved.

8 On 9 July 1997, the Kingdom of Belgium forwarded to the Commission a Royal Decree of 17 March 1997 on batteries and accumulators containing certain dangerous substances, Article 3 of which provides that the federal minister with responsibility for the environment is to draw up programmes in order to achieve the first, second and fourth objectives referred to in the first paragraph Article 6 of the Directive.

9 Not having received any other information from the Belgian Government and considering that not all the measures necessary in order to achieve the first, second and fourth objectives referred to in the first paragraph Article 6 of the Directive had been taken, the Commission decided to bring the present action.

10 In its defence, the Kingdom of Belgium observes, first of all, that, at the time when the programmes were to have been first adopted, the federal authority had no power to draw up programmes in the fields covered by the Directive. Protection of the environment was in principle a matter for the regions. It was not until the institutional reform of 16 July 1993 that the federal authority obtained clear powers over product standards and, thus, over provisions concerning the first, second and fourth objectives of the first paragraph of Article 6 of the Directive.

11 Secondly, the Belgian Government submits that it was necessary to draw up programmes only to the extent that the Directive's objectives were not yet achieved. However, the federal authority considered that the objectives of Article 6 of the

Directive had been achieved and that there was no longer any need for additional measures. The Belgian Government goes on to submit that the wording of Article 3 of the Royal Decree of 17 March 1997 could not be considered to show that the federal ministry had failed to fulfil its obligations, since that article merely repeats the wording of the first, second and fourth indents of the first paragraph of Article 6 of the Directive.

12 Thirdly, the Belgian Government lists a series of measures which have been introduced or developed and which should suffice in order to achieve the first, second and fourth objectives of the first paragraph of Article 6 of the Directive. It refers to a voluntary agreement drawn up with battery manufacturers in 1989 with the aim of reducing the heavy metal content, in particular mercury, as well as to voluntary programmes developed by the European manufacturers in order to reduce the quantities of dangerous substances or find less polluting substitutes. In April 1990, an agreement was signed with the Fédération de l'Électricité et de l'Électronique (FEE — Electricity and Electronics Federation) and Fabrimétal to adopt the Code of Good Practice of 1 January 1988 in order to reduce the amount of mercury in primary electric batteries marketed in Belgium.

13 Finally, the Belgian Government states that the Law of 16 July 1993, amended by that of 7 March 1996, introduced an eco-tax at federal level. Batteries and accumulators are covered thereby and a distinction is drawn between different types of batteries and accumulators according to function and composition. Under that legislation, battery manufacturers and importers set up in August 1995 Bebat ASBL, which manages a fund financed by manufacturers and importers, the purpose of which is to ensure collection and recycling of spent batteries. On 17 June 1996, Bebat ASBL signed a draft agreement with the three regions. It goes on to state that, each year, a considerable amount of resources are allocated to research and development.

14 In its rejoinder, the Belgian Government submits, furthermore, that the concept of 'programme' in the Directive has no precise formal legal content. Any group of

measures intended to attain the objectives laid down by the Directive, whatever their legal and formal nature, should be regarded as a programme, if it suffices in order to achieve those objectives. Such is the case of the sectoral agreements. It states that those agreements may be regarded as programmes, inasmuch as they provide for undertakings made by both the sector concerned and the public authorities as well as for the measures to implement them.

15 The Court has consistently held that 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-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9, and Case C-298/97 *Commission* v *Spain* [1998] ECR I-3301, paragraph 14).

16 Next, Article 6 of the Directive requires Member States, in order to achieve its objectives, to draw up programmes and then to review them and update them regularly.

17 In that respect, it is important that the Member States under such an obligation notify the Commission of the measures which they intend to adopt or carry out in the sectors concerned. It is only in the light of such specific figures and timetables that the Commission can then assess whether the measures envisaged in pursuance of the Directive actually contribute to implementing the programmes designed to attain the objectives of the Directive (see Case C-255/93 *Commission* v *France* [1994] ECR I-4949, paragraph 25).

18 It follows from the wording of Article 6 and the general scheme of the Directive that the various problems posed by specific waste such as batteries and accumulators are to be resolved according to a precise timetable. In this respect, it must be pointed out that, even if certain results relating to the objectives of the Directive have been achieved before the expiry of the period prescribed thereby for the implementation of programmes, that does not excuse a Member State from drawing up the programmes required.

19 In the present case, the Kingdom of Belgium has not drawn up programmes relating to the first, second and fourth objectives referred to in the first paragraph of Article 6 of the Directive.

20 Since the agreements relied upon by the Belgian Government do not provide that they must be reviewed and updated regularly, at least every four years, and communicated to the Commission, they do not comply with Article 6 of the Directive inasmuch as they do not contain a precise timetable for review of the programmes in step with technical progress and the economic and environmental situation.

21 As regards the measures which have been taken in the context of the eco-tax scheme, the fact that those economic measures may indirectly have a positive impact with regard to the objectives referred to in Article 6 of the Directive is not sufficient for them to be regarded as programmes enabling those objectives to be achieved.

22 Moreover, the fact that the Bebat ASBL budget allocates extensive funds for research does not necessarily mean that there also exists a research programme relating to the fourth objective referred to in the first paragraph of Article 6 of the Directive.

23 In view of the foregoing considerations, it must be stated that, although the Belgian Government has taken positive measures in relation to the objectives set out in the first paragraph of Article 6 of the Directive, they constitute no more than a series of legislative provisions or ad hoc measures which do not possess the characteristics of an organised and coordinated system of objectives such as to make it possible to regard them as programmes within the meaning of Article 6.

24 It must therefore be held that, by failing to adopt, within the prescribed period, all the measures necessary to comply with Article 6 of the Directive, the Kingdom of Belgium has failed to fulfil its obligations under that article.

Costs

25 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 (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt, within the prescribed period, all the measures necessary to comply with Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, the Kingdom of Belgium has failed to fulfil its obligations under that article;**

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

Puissochet Jann Moitinho de Almeida

Gulmann Edward

Delivered in open court in Luxembourg on 21 January 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber