therefore be in a position to prepare within the period prescribed the legislative provisions necessary for their implementation. If, nevertheless, the period allowed for the implementation of a directive proves to be too short, the only means of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent Community institution.

4. The right of persons affected to rely in law on a directive as against a Member State which has failed to take the requisite national implementing measures constitutes a minimum guarantee arising from the binding nature of the obligation imposed on Member States by the effect of directives under the third paragraph of Article 189 of the Treaty and cannot justify a Member State's absolving itself from taking in due time implementing measures sufficient to meet the purpose of each directive.

In Case 301/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, assisted by Hendrik van Lier, a member of its Legal Department, 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 the Minister for External Relations, assisted by Robert Hoebaer, Director at the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, and R. Geudens, Conseiller [Adviser] at the Ministry of Finance, and J. Le Brun, Conseiller at the Banking Commission, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins, Résidence Champagne,

defendant,

APPLICATION for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty by failing to bring into force within the prescribed period the provisions necessary to comply with Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (Official Journal 1977, L 322, p. 30),

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 Y. Galmot, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

Council Directive No 77/780 is intended to coordinate the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions.

The directive was notified to the Member States on 15 December 1977. Article 14 (1) provides that the Member States must bring into force the measures necessary to implement the directive in national law by 15 December 1979 at the latest and must inform the Commission thereof.

Observing that by 15 December 1979 the Kingdom of Belgium had not given it any information in that respect, the Commission decided to initiate the procedure under Article 169 of the Treaty and to that end sent a letter dated 29 May 1980 giving formal notice.

By letters dated 2 July 1980 and 29 December 1980 the Kingdom of Belgium informed the Commission that for the purpose of implementing the directive in question a bill had been agreed upon by the Government and would soon be introduced into Parliament.

On 24 March 1981, upon finding that the directive had still not been implemented, the Commission issued the reasoned opinion provided for in the first paragraph of Article 169 of the EEC Treaty and the Kingdom of Belgium was invited to comply therewith within a period of two months.

That reasoned opinion remained unanswered and the Commission lodged the present application at the Court Registry on 30 November 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.

It nevertheless asked the Belgian Government to forward a copy of the bill to which it referred and also to specify, as regards each article of the directive in question, the corresponding provision of national law whereby the article is said already to be in force.

II — Conclusions of the parties

The Commission claims that the court should:

"Declare that, by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 77/780/EEC of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty;

Order the Kingdom of Belgium to pay the costs."

The Kingdom of Belgium contends that the Court should:

"Declare the Commission's application inadmissibile or, in the alternative, unfounded;

Order the Commission to pay the costs."

III — Submissions and arguments of the parties

In the Commission's view, the mandatory nature of directives means that the Member States must observe the time limits which they lay down for the adoption of national implementing provisions. Disregard of those time limits involves a breach of the Treaty, whichever national body is responsible, by its acts or omissions, for the non-implementation. The Member State in question cannot find justification in reasons relating to national provisions or practices or particular circumstances of a national character.

Those principles have consistently been upheld by the Court.

In its statement of defence the Belgian Government commences by emphasizing the great difficulties of a technical, institutional and political nature which explain why in spite of the efforts made by the Belgian Government, the bill incorporating the directive into national law has not yet been lodged before the Parliament.

The Belgian Government considers the Commission's application inadmissible and unfounded in law.

As regards admissibility, the Belgian Government alleges that insufficient reasons are stated both for the application and the reasoned opinion of the Commission. No reference is made to the nature of the national legislative rules to be made to implement the directive, to parts of the directive already implemented in national law, to any national provisions incompatible with the directive, to the measures contemplated by the Belgian Government for incorporating the purport of the directive in wider legislation or to the difficulties encountered by the Belgian State in view

of the necessarily long duration of its legislative process and the specific difficulties confronting Belgium. In addition, the Belgian Government considers that the application and the reasoned opinion contain no evidence to show, not anly a degree of inertia or opposition by the Belgian State to the application of Community law within the prescribed periods, but also a failure in respect of the substantive provisions of the directive.

The Belgian Government also considers that the application is inadmissible on the ground that the time limit fixed by the reasoned opinion was obviously insufficient and unreasonable.

As regards the unfounded nature of the Commission's application, the Belgian Government alleges in the first place that it decided to use the occasion to clarify old rules, modernize the drafting, harmonize existing laws and translate into legislation rules arising from general principles of Belgian administrative law. As a result the bill satisfies an aim going well beyond strict implementation of the Community directive.

In the second place, the Belgian Government submits that no provisions of law, regulation or general Belgian practice in force are contrary to the provisions of the directive. In addition, even before the directive was adopted Belgium amended its law to take account of certain provisions contained in the proposed directive submitted by the Commission to the Council. Even as regards the provisions of the directive which so far do not have their equivalent in national legislation properly so called, it is necessary to take account of the fact that the competent authorities already apply the requirements of those provisions on the basis of administrative rules of a general character and those administrative rules have been given sufficient publicity.

It is therefore the opinion of the Belgian Government that the Community rules in question are already being observed and that the Belgian Government has incorporated them into a bill solely for reasons of formal coherence.

In the third place, the Belgian Government emphasizes that Council Directive 77/780 raises problems of interpretation with regard to the very nature of the obligations which it imposes on Member States and with regard to the directly applicable nature of certain provisions. Those difficulties were expressly raised at a meeting which the Commission held in Brussels on 17 and 18 March 1980 in order to consider the problems involved in the implementation of the directive. The Belgian Government mentions in particular difficulties concerning the interpretation of the first and second subparagraphs of Article 2 (2) of the directive.

In the fourth place, the Belgian Government mentions the particular difficulties arising in relation to the implementation of the directive with regard to public credit institutions and states that the Belgian Government decided not to have recourse to the possibilities of exemption or deferred application but to bring them in their entirety within the scope of the directive.

Lastly, the Belgian Government maintains that the initial period of 24 months given for implementing the directive was patently inadequate. The negotiators of the directive were conscious thereof when they provided in Article 2 (4) (a) of the directive for a

special system for institutions fulfilling certain conditions "no later than the date when the national authorities take the measures necessary to translate this directive into national law". The inadequate nature of the period allowed was again confirmed by the problems of interpretation which arose in the Community in 1980, that is to say outside the periods laid down by the directive.

In addition the Belgian Government emphasizes that the period allowed by the reasoned opinion (two months) was also too short and reveals a mechanical application of procedures incompatible with the aims pursued by the Treaty in conferring upon the Commission the power which it seeks to exercise in the present case.

From the foregoing the Belgian Government concludes that in bringing the present proceedings the Commission has not taken account of the difficulties encountered by the Belgian Government, the absence of contradication between Community and Belgian law, the limited if not formal nature of the amendments coming within the power of the legislature, the Belgian Government's efforts to work out a set of rules implementing not only all the rules of the directive but sometimes going beyond the Community obligations.

In its reply the Commission contests the Belgian Government's arguments to the effect that the application is inadmissible and, in any event, unfounded.

As regards the submission that the reasoned opinion and the application do not contain a sufficient statement of the reasons on which they are based, the Commission states first of all that it has never considered that there was or could have been inertia or opposition on the part of the Belgian Government. In any event such inertia or opposition is not, in the Commission's view, a precondition for the admissibility of an action under Article 169. The admissibility of such an action is based solely on the objective factor of a State's failure to fulfil its obligations.

Further, the Commission considers that the grounds of the application and reasoned opinion cannot be regarded as inadequate for failing to stipulate the scope of the implementing measures which ought to have been taken. Since the directive was quite clear in that respect, the measures required were perfectly well known to the Belgian Government, which had never considered, before the action was brought, that its obligation was unclear. The Government has moreover expressly recognized that it was able to prepare a bill to submit to Parliament. In any event, the Commission considers that the reasoned opinion and the application are perfectly explicit and contain a sufficient statement of the reasons on which they are based, since they mention the defendant's obligation to implement the directive and its failure to fulfil that obligation.

As regards the submission of inadmissibility which the Belgian Government makes on the ground that the period of two months laid down by the reasoned opinion was unreasonable, the Commission considers that there is some confusion between the period laid down by the reasoned opinion and the period allowed by the directive. The latter period, which was 24 months, was fixed by the Council following a unanimous decision and cannot be regarded as unreasonable or inadequate. As for the period laid down in the reasoned

opinion, it is not a period for implementing the directive but simply a period in which those responsible for the failure were invited to make it good. In any event, the Commission emphasizes that the defendant in fact had some 48 months to implement the directive before the Commission brought the matter before the Court of Justice. The expiry of that period makes such an argument on this subject futile.

As regards the arguments the arguments put forward by the Belgian Government in support of dismissal of the action, the Commission contends first of all that the alleged inadequacy of the period for implementing the directive cannot affect the merits of the action brought by the Commission, since, as the Court stated in its judgment in Case 52/75 *(Commission* v *Italy* [1976] ECR 277), in such a situation the only course of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent Community institution.

In the second place, the Commission argues that the decision to make the aim of the Belgian bill wider than strict implementation of the directive is a choice which was clearly open to the Government but is not capable of justifying the delay in implementing the directive.

In the third place, the Commission denies that the Community rules are already substantially observed. The defendant itself has drafted a bill and recognized in its statement of defence that amendments to the rules governing credit institutions are necessary in order to implement the directive. Moreover, the examples cited by the defendant in support of its argument that the Community rules are already substantially observed are not convincing.

Be that as it may, the Commission submits that the defendant is in any event bound to take the proper measures to translate the principles of the directive into formal provisions of national law and thus satisfy the requirements of legal certainty. It refers in that respect to the judgment of the Court of 6 May 1980 in Case 102/79 *(Commission* v *Belgium*, [1980] ERC 1473, at p. 1486).

The Commission further states that even if Belgian administrative practice implements certain of the requirements of the directive, such a position in no way meets the requirement of legal certainty referred to above. In that respect it refers again to the above-mentioned judgment of the Court of 6 May 1980.

As regards the difficulties of interpretation alleged by the defendant, the Commission, without denying that there may be difficulties of interpretation on one or other point, maintains that no substantial divergence of opinion was observed at the meeting on 17 and 18 March 1980 organized by the Commission in order to consider the application of the directive.

In any event, the Commission emphasizes that, even if the defendant were to establish that there were difficulties in determining the directly applicable nature of certain provisions of the directive, as it alleges, that would not exempt it from the obligation to adopt formal measures to receive the directive into the national legal system (aforesaid judgment of the Court of 6 May 1980).

Finally, as regards the special difficulties of a technical and political nature which

the Belgian Government is alleged to have encountered, the Commission states that, according to numerous decisions of the Court, the defendant cannot justify its failure on grounds relating to national provisions and practices or special circumstances of an internal nature.

In its rejoinder, the Belgian Government maintains that the "standard" grounds stated in the reasoned opinion and the Commission's application are inadequate inasmuch as they do not specify how the laws, regulations and administrative provisions in force in Belgium fail to satisfy the requirements of the directive and do not specify the provisions of the directive which are not being applied in Belgium. On that issue the Belgian Government cites the judgment of the Court in Case 7/61 *(Commission* v *Italy,* [1961] ECR 317).

As regards the inadequate period allowed it, the Belgian Government states that, contrary to what the applicant thinks, the Belgian Government is not confusing the period allowed by the directive and that allowed by the reasoned opinion. It is the period of two months given by the reasoned opinion which it considers inadequate and unreasonable, especially as no allowance is made for the general context in which the problem of the implementation of the directive arose for all the Member States. In that respect, the Belgian Government refers to the view expressed by several academic writers that the period laid down in a reasoned opinion must be reasonable and must take account both of the nature of the breach and of the action necessary to terminate it.

As regards the Belgian Government's decision to incorporate provisions concerning other aspects of policy in relation to credit institutions and their control into the bill implementing the directive, the Belgian Government insists that although such a procedure takes more time it is more logical and ultimately more in keeping with the spirit of Community law, which should fit harmoniously into a coherent national legal system. No objection can therefore be made to it.

As regards its argument that the Community rules are already observed by the existing Belgian law, the Belgian Government contends first of all that, contrary to what the Commission seems to think, the existence of a bill is no evidence that Belgian law does not comply with Community law. In the present case the bill makes it possible to coordinate scattered texts, to clarify the law, to improve it and to supplement it on certain points not covered by the directive. However, that does not mean that the bill must be passed in order to prevent contradiction between Community law and national law.

The Belgian Government maintains that the examples given in its statement of defence show that Belgian law complies with Community law, contrary to the contentions of the applicant, who does not discuss in detail the examples given.

As regards more particularly the principle of legal certainty, the Belgian Government declares that it does not

understand, and contends that the applicant has not shown, how Belgian law fails in that respect. It is, moreover, wrong to claim that Belgium is satisfied with administrative practices to implement the directive. In the present case it is a question, not of administrative practices, but of administrative rules of a general nature which have received adequate publicity.

The Belgian Government maintains that implementation of the directive raises problems of interpretation. It states that, in its opinion, the arguments put forward by the Commission in its reply in relation to the directly applicable provisions are not such as to apply to the difficulties encountered in considering the directive.

As regards the argument based on the difficulties raised by the application of the directive to public credit institutions in Belgium, the Belgian Government maintains that the Commission underestimates the difficulties which it is encountering in that sphere, even if as regards those institutions, just as in the case of the private institutions, the bill in preparation merely consolidates or clarifies applicable rules which are consistent with the directive.

In conclusion the Belgian Government, after stating that a final opinion from the Conseil d'État has been given in respect of the above-mentioned bill, which is now placed before Parliament, reiterates that the application is inadmissible and, in any event, unfounded.

On 11 October 1982, in response to a request from the Court, the Belgian Government lodged a document at the Court Registry listing the various national provisions which, in its view, ensure the application of the directive in Belgian law.

IV — Oral procedure

At the sitting on 26 October 1982 oral argument was presented as follows: for the Kingdom of Belgium, R. Hoebaer, a Director at the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, R. Geudens, Conseiller at the Ministry of Finance, and J. Le Brun, Conseiller at the Banking Commission; for the Commission of the European Communities, its Legal Adviser, A. Abate, and H. van Lier, a member of its Legal Department.

In its observations the Belgian Government maintained its submission that the application was inadmissible and, referring to the document which it had lodged, contended that, in any event, the application for a declaration that it had failed to fulfil its obligations was unfounded. The Commission maintained that the application was admissible, since the reasoned opinion contained a sufficient statement of the reasons on which it was based, in view of the Belgian Government's reply to the Commission's letter giving formal notice, a reply which implicitly recognized the failure to fulfil obligations. As to whether its application was well founded, the Commission stated that, in spite of the arguments put forward in the document lodged by the Belgian Government and explained at the sitting, the Commission had shown that there was a failure by the Kingdom of Belgium as claimed.

The Advocate General delivered her opinion at the sitting on 8 December 1982.

Decision

1 By application lodged at the Court Registry on 30 November 1981 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (Official Journal 1977, L 322, p. 30), the Kingdom of Belgium failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.

2 The case must be considered in the light of the background to the directive and the events which preceded the commencement of these proceedings.

3 Council Directive 77/780 constitutes the first stage in the harmonization of banking structures and the supervision thereof. The purpose of such harmonization is to permit the gradual attainment of freedom of establishment for credit institutions and the liberalization of banking services. In that respect the directive introduces certain minimum conditions for the authorization of credit institutions which all Member States must observe. In order to facilitate the taking up and pursuit of business as a credit institution the directive aims in particular to reduce the discretion enjoyed by certain supervisory authorities in authorizing credit institutions.

4 Article 14 (1) of the directive provides that Member States must bring into force the measures necessary to comply therewith within 24 months of its notification. That period expired in the present case on 15 December 1979. As a result of the directive a bill was prepared in Belgium but had not yet been introduced into the Belgian Parliament when the action for a declaration was brought by the Commission.

5 In its defence the Belgian Government emphasized first of all the extent of the technical, institutional and political difficulties which explain why, in spite of the efforts it has made, it has not yet been possible to place the bill

incorporating the directive into national law before Parliament. Moreover, special problems are said to have arisen from the fact that it was decided to use the directive as an occasion for recasting the Belgian banking legislation in relation to all credit institutions.

6 Although those circumstance may explain the difficulties in applying the directive, they cannot expunge the Kingdom of Belgium's failure to fulfil its obligations. The Court has consistently held that a Member State may not plead provisions, practices or circumstances in its internal legal order to justify a failure to comply with obligations under Community directives.

7 The Belgian Government also considers that insufficient grounds are given both in the reasoned opinion and in the Commission's application, in so far as there is no reference to the difficulties entailed by the application of the directive or to any degree of inertia or opposition on the part of the Belgian State in that regard. Further, it is argued that the period allowed in the reasoned opinion is inadequate.

8 In that respect it must be observed that the admissibility of an action based on Article 169 of the Treaty depends only on an objective finding of a failure to fulfil obligations and not on proof of any inertia or opposition on the part of the Member State concerned. As the Court has already stated, the opinion referred to in Article 169 must be considered to contain a sufficient statement of reasons to satisfy the law when it contains a coherent exposition of the reasons which led the Commission to the conviction that the State concerned had failed to fulfil an obligation under the Treaty. To that extent the Commission was not required to refer to any difficulties entailed by the application of the directive in the Member State concerned.

9 Finally, the directive allowed the Member States a period of 24 months for the adoption of implementing measures. The period of two months laid down in the reasoned opinion merely constitutes an additional period in which the Member State is invited to put an end to the failure with which it

is charged. Further, the Commission waited almost two years after sending the reasoned opinion before bringing the matter before the Court. It is therefore futile for the Kingdom of Belgium in those circumstance to challenge the period of two months laid down in the reasoned opinion.

10 The Belgian Government further submits that the action is unfounded because the period of 24 months for implementing the directive is patently inadequate. It also argues that Council Directive 77/780 raises problems of interpretation with regard to the very nature of the obligations which it imposes upon Member States and the directly applicable nature of certain provisions.

11 In that respect attention should be drawn to the fact that the governments of the Member States participate in the preparatory work for directives and must therefore be in a position to prepare within the period prescribed the legislative provisions necessary for their implementation. If, nevertheless, the period allowed for the implementation of a directive proves to be too short, the only means of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent Community institution.

12 As for the difficulties in interpreting the directive, they cannot have been such as to sanction the Belgian Government in exceeding the periods it had accepted, especially as it had other means to enable it to determine the scope of its obligations.

13 Moreover, even if certain provisions of the directive were directly applicable, that does not exempt the Belgian State from its obligation of implementing the directive by adopting national provisions. As the Court has already observed in the judgment of 6 May 1980 in Case 102/79 *(Commission* v *Belgium* [1980] ECR 1487), the right of persons affected to rely in law on a directive as against the defaulting Member State constitutes a minimum guarantee arising from the binding nature of the obligation imposed on Member States by the effect of directives under the third paragraph of Article 189 and cannot justify a Member State's absolving itself from taking

in due time implementing measures sufficient to meet the purpose of each directive.

14 Finally, in its statement of defence the Belgian Government observes that the requirements of the directive are already satisfied in national legislative provisions properly so called or in administrative rules of a general nature which have received sufficient publicity. In its rejoinder the Belgian Government states that those provisions cannot be regarded simply as administrative practices but are in fact administrative rules. It was only after a request addressed to it by the Court that the Belgian Government lodged, on 11 October 1982, at the Court Registry a document to which were annexed the various national provisions which, in its view, ensure implementation of the directive in Belgian law.

15 However, the Belgian Government invoked that argument only during the course of the action before the Court and confined itself during the procedure prior to action to stating that for the purpose of implementing the directive in question legislation was in preparation.

16 That manner of proceeding does not comply with the obligation imposed by Article 14 (1) of Directive 77/780, which requires Member States immediately to supply the Commission with all necessary information concerning the measures which have been taken to comply with the directive.

17 However, the action brought by the Commission seeks solely a finding that the Kingdom of Belgium failed to fulfil its obligations under the EEC Treaty "by failing to bring into force within the prescribed period the provisions necessary to comply with Council Directive 77/780/EEC" and thus does not concern the obligation under Article 14 of the directive to supply information. It is thus within those limits that the Belgian Governments's submission must be answered.

18 The submission must nevertheless be rejected. Various clear breaches of the directive may be cited here by way of example. In the first place, there appears to be no law at present in force embodying various obligations,

imposed *inter alia* by Articles 3 (7), 8 (5) and 9 (2) of the directive, to notify decisions taken by the Belgian supervisory authorities.

19 As regards the performance of the obligation upon the competent authorities of the Member States to supply one another with all information likely to facilitate supervision of credit institutions (Article 7 of the directive), the Kingdom of Belgium submits that such an obligation is laid down by Article 40 of Royal Decree No 185 of 9 July 1935. It is true that that article releases members of the Banking Commission and auditors from the duty of professional secrecy which binds them when they communicate information to a foreign supervisory authority, but it imposes no obligation on the Belgian authorities to collaborate with the authorities of the other Member States.

20 Furthermore, the document supplied by the Belgian Government does not mention any provision implementing Article 5 of the directive relating to the right of branches of credit institutions to use the same name as they use in the Member State in which their head office is situated. Finally, certain provisions relating to the withdrawal of authorization (Article 8) do not have any equivalent in Belgian law. That is true of the provision which empowers the authorities to withdraw authorization if the institution does not carry on business within 12 months.

21 It is therefore proper to declare that, by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 77/780 of 12 December 1977, the Kingdom of Belgium failed to fulfil its obligations under the Treaty.

Costs

22 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

23 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, by not adopting within the prescribed period the provisions necessary to comply with Council Directive 77/780 of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (Official Journal 1977, L 322, p. 30), the Kingdom of Belgium failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the defendant to pay the costs.**

Mertens de Wilmars Pescatore O'Keeffe

Everling Mackenzie Stuart Bosco Galmot

Delivered in open court in Luxembourg on 1 March 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS

(see Case 300/81, p. 458)