JUDGMENT OF THE COURT
19 February 1991 *

In Case C-374/89,

Commission of the European Communities, represented by Michel van Ackere-Pietri, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director of Administration at the Ministry of Foreign Relations, Foreign 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 the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community (OJ 1976 L 140, p. 4), and also under Article 5 of the EEC Treaty,

THE COURT,

composed of O. Due, President, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

* Language of the case: French.

having regard to the Report for the Hearing,

after hearing the parties at the sitting of the Court on 28 November 1990, at which the Kingdom of Belgium was represented by Jan Devadder, Adviser in the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent,

after hearing the Opinion of the Advocate General delivered at the sitting on 6 December 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 December 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by repeatedly failing to notify it within the prescribed time-limits of all the information on the prices of crude oil and petroleum products, notwithstanding the commencement of several pre-litigation procedures and proceedings before the Court, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community (OJ 1976 L 140, p. 4) and also under Article 5 of the EEC Treaty.

2 Article 1(1) of the Directive requires Member States to communicate to the Commission within the first 45 days of each quarter information on the prices of crude oil and petroleum products during the preceding quarter. Article 10 provides that the Member States had to comply with the Directive no later than 1 January 1977. Pursuant to Commission Decision 77/190/EEC of 26 January 1977 implementing Directive 76/491, adopted on the basis of Article 7 of the Directive, the relevant information had to be supplied in the form of five tables.

3 On 25 April 1983 the Commission sent the Belgian Government formal notice under Article 169 of the EEC Treaty in respect of its failure to communicate information for the fourth quarter of 1980. By letter dated 9 September 1983 the Belgian Government informed the Commission that the information requested would be forwarded as soon as possible and that the department concerned would do everything possible in future to forward the information required within the prescribed time-limits. Since that undertaking was not honoured the Commission served on the Belgian Government a reasoned opinion under Article 169 of the Treaty. In view of the Belgian Government's reply of 26 October 1984 and information supplied at a meeting on 26 November 1984, the Commission decided to postpone bringing the matter before the Court.

4 By letter dated 5 August 1985 the Commission initiated a fresh procedure under Article 169 of the Treaty on the ground that the Kingdom of Belgium had still not adopted all the provisions necessary to ensure that the undertakings whose activity came within its jurisdiction forwarded the relevant information as required by Article 2 of the Directive. Since the necessary ministerial orders were published on 17 December 1985 the second procedure was closed at the end of January 1986.

5 When, however, it observed that the Belgian Government persisted in forwarding the requisite information very irregularly and in an incomplete form in spite of all the promises of improvement, the Commission decided to pursue the first procedure and, by an application lodged at the Court Registry on 13 November 1986 (Case 277/86), brought the matter before the Court. When however the Belgian Government amended its practice and later regularly forwarded the information required under the Directive, the Commission informed the Court by letter of 8 July 1988 that it was not pursuing its action. By order of 27 October 1988 the Court removed Case 277/86 from its register and ordered the Kingdom of Belgium to pay the costs.

6 Since then the Belgian Government has resumed its previous practice of failing to communicate certain information and forwarding other information with delays of two to three months; consequently, by letter of 31 March 1989, the Commission gave formal notice to the Belgian Government to comply with its obligations within a period of three weeks. There being no reply to that letter within the requisite period, the Commission on 24 May 1989 sent the Belgian Government a reasoned opinion requiring it to ensure that the failures observed would no longer be repeated and to adopt measures for that purpose within a period of one month.

Since those measures were not adopted the Commission brought the present action.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The Commission asks the Court to find that the Kingdom of Belgium has failed to fulfil its obligations under Directive 76/491, in particular Article 1, and under Article 5 of the Treaty.

The failure to comply with Directive 76/491

9 The Belgian Government does not deny its failure to comply with the directive. It states that, after it had adopted two ministerial orders in order to ensure that the requisite information was gathered, the whole petroleum industry, through the intermediary of the Fédération pétrolière belge (Belgian Petroleum Federation), made known its considerable misgivings concerning the statistics which the Commission was assembling. It adds that with a view to meeting the requirements of the directive it has set up a procedure for direct contact with each importing petroleum company in order to ensure transmission of the data within the prescribed time-limits.

10 That fact cannot excuse the failure complained of. As the Court has consistently held, a Member State may not plead internal circumstances in order to justify a failure to comply with obligations and time-limits resulting from Community law. Moreover, it has been held that practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to choose not to fulfil its obligations (see most recently the judgment of 27 November 1990 in Case C-39/88 *Commission* v *Ireland* [1990] ECR I-4271, paragraph 11).

11 It must therefore be held that, by repeatedly failing to notify within the prescribed time-limits all the information on the prices of crude oil and petroleum products, notwithstanding the commencement of several pre-litigation procedures and proceedings before the Court, the Kingdom of Belgium has failed to fulfil its obligations under the directive.

Failure to fulfil obligations under Article 5 of the Treaty

12 The Commission considers that by its conduct the Kingdom of Belgium, which on several occasions undertook to fulfil its obligations but nevertheless honoured its undertakings only during the various pre-litigation procedures or Court proceedings instituted by the Commission, has failed to facilitate the achievement of the Community's tasks and has therefore failed to fulfil its obligations under the first paragraph of Article 5 of the Treaty.

13 In its judgment in Case C-48/89 *Commission* v *Italy* [1990] ECR I-2425 the Court held that, since the defendant had failed to fulfil its specific obligations under a directive, no purpose was served by considering the question whether it had thereby also failed to fulfil its obligations under Article 5 of the Treaty. However, in the present case the Commission complains of a distinct failure, namely a refusal to assist the Commission in the achievement of its task. It is therefore necessary to consider whether that complaint is well-founded.

14 It should be noted that the Kingdom of Belgium fulfilled its obligations under the directive only under the direct threat of an application to the Court and that it acted in breach of them as soon as the threat appeared to have passed. In particular it ceased to forward information as required very soon after the Court ordered the removal from the register of Case 277/86, which the Commission had brought for the same reasons as it brought the present action and which it withdrew on the ground that in view of the practice adopted for some years the Belgian Government seemed to have brought its failure to a definitive end.

15 By those acts and omissions, which impeded the achievement of the Commission's task, the Belgian Government failed to fulfil its obligation of loyal cooperation and assistance which, as the Court has consistently held, Article 5 requires of all Member States.

16 It must therefore be held that the Kingdom of Belgium has failed to fulfil its obligations under Article 5 of the Treaty.

17 It follows from all the above considerations that, by repeatedly failing to forward to the Commission within the prescribed time-limits all the required information on the prices of crude oil and petroleum products, notwithstanding the commencement of several pre-litigation procedures and proceedings before the Court, the Kingdom of Belgium has failed to fulfil its obligations arising both under Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community and under Article 5 of the Treaty.

Costs

18 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by repeatedly failing to forward to the Commission within the prescribed time-limits all the required information on the prices of crude oil and petroleum products, notwithstanding the commencement of several pre-litigation procedures and proceedings before the Court, the Kingdom of Belgium has failed to fulfil its obligations arising both under Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for infor-

mation and consultation on the prices of crude oil and petroleum products in the Community and under Article 5 of the Treaty;

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

Due O'Higgins Rodríguez Iglesias Díez de Velasco

Slynn Kakouris Joliet Schockweiler Kapteyn

Delivered in open court in Luxembourg on 19 February 1991.

J.-G. Giraud
Registrar

O. Due
President