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 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States)

Case 73/81

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 73/81

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

1 — Language of the Case: French.

Development, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy,

defendant,

APPLICATION for a declaration that by not implementing within the prescribed period Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (Official Journal L 194 of 25 July 1975, p. 26), 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 75/440/EEC of 16 June 1975 is based both on Articles 100 and 235 of the EEC Treaty and aims on the one hand to put an end to disparities between the laws of the Member States concerning the quality required of surface water intended for the abstraction of drinking water which may create unequal conditions of competition and thus directly affect the functioning of the common market and

on the other hand by wider regulations to achieve one of the aims of the Community in the sphere of protection of the environment and improvement of the quality of life.

Article 10 of the directive provides: "Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this directive within two years of its notification. They shall forthwith 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.

At that date provisions adapting national law had not yet been adopted by the Kingdom of Belgium. In any event the Commission had received no information to that effect.

2. By a letter dated 9 January 1979 the Commission invited the Belgian Government to submit within a period of two months its observations pursuant to the first paragraph of Article 169 of the Treaty.

By a letter dated 13 July 1979 the Permanent Representation of Belgium, whilst informing the Commission of the provisions which the Belgian legislation already contained concerning the protection of the quality of water, stressed that the implementation of the directive was encountering difficulties arising from the continuing uncertainty as to the exact nature of the devolution of powers which would result from the institutional reforms in the country and referred to the considerable arrears of work which had accumulated in the parliament, which had been unable to work for several weeks.

On 23 July 1979 the Commission delivered the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty. The opinion stated "that in not adopting the laws, regulations and administrative provisions needed to comply with Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, the Kingdom of Belgium has failed to fulfil its obligations under the directive". On 27 July 1979 the opinion was transmitted to the Belgian Government which was invited to comply with its terms within a period of two months.

On 1 August 1979 the Permanent Representation of Belgium acknowledged receipt of the reasoned opinion. By a letter dated 14 November 1979 the Belgian Minister for Public Health and the Environment requested an additional period of one year to incorporate the directive into the national legal system because of the reform of the institutions which was in progress and which gave, at least partly, powers to the regions to determine water policy.

Finding that, more than 16 months after that letter, the provisions for adapting national law to the directive still had not been adopted, the Commission brought the present application which was lodged at the Court Registry on 6 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 bring into force within the prescribed period the provisions needed in order to comply with Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty;

2. Order the defendant to pay the costs.

The *Kingdom of Belgium* lodged a defence but presented no formal conclusions.

III — Submissions and arguments of the parties

The *Commission* argues that the binding nature of directives means that the Member States must observe the time-limits provided therein for bringing into force provisions adapting the national law. According to now well-established case-law of the Court, as laid down *inter alia* in Cases 52/75 ([1976] ECR 277), 10/76 ([1976] ECR 1359), 163/78 ([1979] ECR 771), 42/80 ([1980] ECR 3635) and 43/80 ([1980] ECR 3643) 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. In the present case the failure on the part of Belgium is confirmed by the absence of precise information regarding the period within which the Belgian authorities will be in a position to adopt the provisions needed to implement the directive.

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 for implementation of directives. It nevertheless stresses that the exceptional situation with which it is confronted ought to be taken into account by the Community authorities in so far as the failure is due to the impossibility of adopting new rules before the competent administrative bodies arising from the reform of the institutions have begun to function.

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 6 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 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (Official Journal L 194, p. 26), the Kingdom of Belgium has failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.

2 Article 10 of the directive provides that Member States are to bring into force the measures needed in order to comply with the directive within two years of notification thereof. That period expired, in this case, on 18 June 1977.

3 The Belgian Government does not deny that it has not fulfilled that obligation. Although the Belgian Government asked the Court "to take note that the directive in question has already been the subject of measures implementing it in part", it is clear from the particulars subsequently given by that Government that the measures which it has adopted are not designed to implement Council Directive 75/440.

4 Essentially, the Belgian Government justifies its failure by the fact that important institutional reforms concerning redistribution of powers and responsibilities between 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, according to the Belgian Government, to implement the directive.

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 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 the Kingdom of Belgium an additional period of one year to adopt the measures of national law needed to implement the directive. These measures ought to have entered into force in June 1977, and in fact it was only on 6 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 75/440/EEC 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 75/440/EEC of 16 June 1975 concerning the quality required of surface water**

intended for the abstraction of drinking water in the Member States (Official Journal L 194, p. 26), 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

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)