

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 waste from the titanium dioxide industry)

Case 68/81

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

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

In Case 68/81

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 78/176 of 20 February 1978 on waste from the titanium dioxide industry (Official Journal L 54, p. 19), 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'Keefe, 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 78/176 of 20 February 1978 on waste from the titanium dioxide industry (Official Journal L 54, p. 19), is one of the 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.

The aim of that directive, as stated in Article 1 thereof, is the prevention and progressive reduction, with a view to its elimination, of pollution caused by waste from the titanium dioxide industry.

Article 15 of the directive provides that the Member States are to bring into force the measures needed to comply with the directive within twelve months of its notification and are forthwith to inform the Commission thereof. Since the directive was notified to the

Kingdom of Belgium on 22 February 1978 that period expired on 22 February 1979.

2. The Commission took the view that provisions adapting Belgian law were necessary but since it had not been informed that such provisions had been adopted it invited the Belgian Government by letter dated 1 October 1979, pursuant to the first paragraph of Article 169 of the Treaty, to submit its observations within a period of two months.

By letter dated 11 January 1980 the Belgian Government informed the Commission essentially that the measures required for compliance were being considered. A draft Law on the management of waste was to be submitted to the Parliament in the course of 1980. That draft provided a legal means enabling the directive to be implemented by Royal Decree. The Belgian Government nevertheless stated that such action pre-supposed prior consultation between the regions on the one hand and the regional and national authorities on the other. Since reform of the institutions had not been completed, the procedure would remain uncertain and difficult and would take longer than was desirable.

On 16 July 1980 the Commission delivered the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty. That opinion, which was forwarded to the Belgian Government by letter dated 18 July 1980, invited the Kingdom of Belgium to comply therewith within a period of two months.

By letter dated 28 July 1980 the Belgian Government confined itself to acknowledging receipt of the reasoned opinion and by telex message of 22 September 1980 requested an additional period of two months to reply to the opinion.

Since the Commission received no further communication from the Belgian authorities on this 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 bring into force within the prescribed period the provisions needed in order to comply with the Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty;
2. Order the Kingdom of Belgium to pay the costs.

The *Kingdom of Belgium* has not presented 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 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 established case-law of the Court.

The *Belgian Government* observes that there are already measures partially implementing the directive in question but its complete implementation is impeded by 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, and although their powers have been established by the special Law

on institutional reforms of 8 August 1980 the regional authorities are not yet functioning. It is an exceptional situation which stems from the impossibility of adopting new rules before the new legislative powers of a federal nature are established and come into operation.

IV — Oral procedure

At the sitting on 12 November 1981 the Commission, represented by its Legal Adviser, René-Christian Béraud, and the Kingdom of Belgium, represented by its Agent, Robert Hoebaer, presented oral argument.

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 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal L 54, p. 19), the Kingdom of Belgium has failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.
- 2 Article 15 of the directive provides that Member States are to bring into force the measures needed to comply therewith within twelve months of notification thereof which expired in this case on 22 February 1979.

- 3 The Belgian Government does not deny that it has not fulfilled that obligation. Although the Belgian Government has asked the Court "to take note that the directive in question has already been partially implemented", 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 78/176.
- 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, according to the Belgian Government, to implement the directive fully.
- 5 Although those circumstances may explain the difficulty in implementing 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 must therefore be held that by not adopting within the prescribed period the provisions needed to comply with Council Directive 78/176 of 20 February 1978, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

Costs

- 7 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to 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 the Council Directive 78/176 of 20 February 1978 on waste from the titanium dioxide industry (Official Journal L 54, p. 19), 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