

Case C-301/95

Commission of the European Communities

v

Federal Republic of Germany

(Failure by a Member State to fulfil its obligations —
Incorrect transposition of Directive 85/337/EEC)

Opinion of Advocate General Mischo delivered on 12 March 1998	I - 6138
Judgment of the Court (Sixth Chamber), 22 October 1998	I - 6154

Summary of the Judgment

- 1. Actions for failure to fulfil obligations — Purpose and consequences different from those of requests for preliminary rulings
(EC Treaty, Arts 169, 171 and 177)*
- 2. Environment — Environmental impact assessment for certain projects — Directive 85/337 — Obligation on Member States to communicate relevant provisions of national law — Scope
(Council Directive 85/337, Art. 12(2))*
- 3. Environment — Environmental impact assessment for certain projects — Directive 85/337 — National implementing measures granting exemption from the assessment requirement in the case of consent procedures commenced after the expiry of period prescribed for transposition — Not permissible — Failure by a Member State to fulfil its obligations — Failure already found in an earlier judgment — New finding of failure — Whether appropriate — Criteria
(EC Treaty, Art. 169; Council Directive 85/337, Art. 12(1))*

4. *Environment — Environmental impact assessment for certain projects — Directive 85/337 — Assessment requirement in respect of projects of the classes listed in Annex II — Discretion of Member States — Limits — Meaning of ‘classes of projects’ — Failure by a Member State to fulfil its obligations*
(Council Directive 85/337, Arts 2(1) and 4(2))

1. An action for failure to fulfil obligations under Article 169 of the Treaty differs in both its purpose and its consequences from a request for a preliminary ruling. The purpose of such an action is to obtain a formal finding that a Member State has failed to fulfil its obligations under Community law, which is a prerequisite for the initiation, where appropriate, of the procedure provided for in Article 171 of the Treaty. Moreover, the Commission, given its role as guardian of the Treaty, is alone competent to decide whether it is appropriate to bring proceedings against a Member State for failure to fulfil its obligations.

2. Under Article 12(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, Member States are to communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by the Directive. The obligation thus placed on Member States covers all the relevant provisions, and no distinctions may be drawn according to whether a Member State has a federal or centralised structure or according to the legislative technique which it employs. More particularly, in the case of a federal State, the finding that it has failed to fulfil its obligation to communicate provisions cannot be affected by the

consideration that the provisions of a federal Law, communicated to the Commission, take precedence over provisions adopted at a more local level but not communicated.

3. A Member State fails to fulfil its obligations under Article 12(1) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment if it does not require an environmental impact assessment for all projects on which such an assessment had to be carried out in compliance with the Directive, where the consent procedure was commenced after expiry of the period within which the Directive was to be transposed.

The question whether it is appropriate to make such a finding on the basis of the adoption by the Member State concerned of an ad hoc statutory provision cannot be affected by the fact that in another judgment the same Member State has already been found to have failed to fulfil its obligations in the same field, if the subject-matter of the previous judgment was different because the finding concerned a failure to comply with the environmental impact assessment requirement in a specific case relating to a specific project.

4. Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment provides that projects of the classes listed in Annex II to the Directive are to be made subject to an assessment where Member States consider that their characteristics so require and that to that end Member States may specify certain types of project as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes concerned are to be subject to an assessment. That provision must be interpreted as not empowering the Member States to exclude generally and definitively from possible assessment one or more of the classes in question.

The term 'classes', in that context, does not refer to the 12 categories of project listed in that annex but to all the projects

listed, under different letters of the alphabet, as subdivisions of those categories. Any other interpretation would negate the effectiveness of the rule laid down in Article 2(1) of the Directive, that projects likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location are to be made subject to an environmental impact assessment, and would leave Member States free to apply Annex II as they saw fit.

Consequently, if it does not include in the scope of its implementing Law all the subdivisions listed in Annex II to the Directive and thereby excludes in advance from the environmental impact assessment requirement whole classes of projects, a Member State fails to fulfil its obligations under Articles 2(1) and 4(2) of the Directive.