



C/2024/517

8.1.2024

**Judgment of the Court (Sixth Chamber) of 16 November 2023 — European Commission v Kingdom of the Netherlands**

(Case C-360/22) <sup>(1)</sup>

*(Failure of a Member State to fulfil obligations — Article 258 TFEU — Free movement of workers — Freedom to provide services — Articles 45, 56 and 63 TFEU — Articles 28, 36 and 40 of the Agreement on the European Economic Area — Transfer of the value of pension rights — Supplementary pension accumulated via the employer — Cross-border situation)*

(C/2024/517)

Language of the case: Dutch

**Parties**

*Applicant:* European Commission (represented by: W. Roels, acting as Agent)

*Defendant:* Kingdom of the Netherlands (represented by: M.K. Bulterman, P.P. Huurnink, acting as Agents)

**Operative part of the judgment**

The Court:

1. Declares that, by adopting and maintaining in force the requirements in the area of transfer of pension capital provided for in Article 85(1)(b) and Article 87(2)(f) of the Pensioenwet (Law on pensions), read in combination with Article 19b (2) of the Wet op de loonbelasting 1964 (Law on wages tax 1964), in the version applicable to the present action, by virtue of which a transfer of the value of pension rights to a pension insurance organisation situated in a Member State other than the Kingdom of the Netherlands is not taxable only if the possibilities of redeeming those rights in the form of capital are identical to those provided for by Netherlands law, or stricter than the latter, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 45 TFEU and Article 28 of the Agreement on the European Economic Area of 2 May 1992;
2. Orders the Kingdom of the Netherlands to pay the costs.

---

<sup>(1)</sup> OJ C 318, 22.8.2022.