



Reports of Cases

Judgment of the Court (Tenth Chamber) of 16 October 2014 — Commission v Germany

(Case C-100/13)¹

(Failure of a Member State to fulfil obligations — Free movement of goods — Rules of a Member State requiring that certain construction products bearing the ‘CE’ conformity marking conform to additional national standards — Lists of construction rules (‘Bauregellisten’))

1. *Actions for failure to fulfil obligations — Application initiating proceedings — Statement of subject-matter and pleas in law — Formal requirements — Identification of specific complaints — Admissibility (Art. 258 TFEU; Statute of the Court of Justice, Art. 21, first para.; Rules of Procedure of the Court of Justice, Art. 120(c)) (see paras 32-34)*
2. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on Commission — Presumptions — General claim of failure to fulfil obligations leading to a structural or systematic infringement of a Community law measure — Not permissible (Art. 258 TFEU; Council Directive 89/106, Arts 4(2) and 6(1)) (see paras 36, 37, 39, 42)*
3. *Approximation of laws — Construction products — Directive 89/106 — Essential requirements — Implementation by harmonised norms — Products bearing the CE marking — Presumption of being apt for use — Obligation to comply with the procedures for calling into question the harmonised standards provided for in the directive — Adoption by a Member State of unilateral national measures restrictive of the free movement of construction products compliant with the harmonised standard — Failure to fulfil obligations (Council Directive 89/106, Arts 4(2), 5, 6(1) and 21) (see paras 51-58)*
4. *EU law — Implementation by Member States — Criteria for assessment — Area subject to exhaustive harmonisation by an act of secondary legislation — Assessment on the sole basis of the harmonisation measure (Art. 34 TFEU) (see paras 62)*

¹ — OJ C 114, 20.4.2013

Operative part

The Court:

1. Declares that, by imposing, through lists of construction rules referred to in the Construction Codes established by the *Länder*, on construction products covered by the harmonisation measures EN 681-2:2000, 'Elastomeric Seals — Materials requirements for pipe joint seals used in water and drainage applications — Part 2: Thermoplastic elastomers', EN 13162:2008, 'Thermal insulation products for buildings — Factory made mineral wool (MW) products — Specification' and EN 13241-1, 'Industrial, commercial and garage doors and gates — Product standard — Part 1: Products without fire resistance or smoke control characteristics', and bearing the 'CE' marking, additional requirements for effective market access of those products and their use on German territory, the Federal Republic of Germany has failed to fulfil its obligations under Articles 4(2) and 6(1) of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Regulation No 1882/2003 of the European Parliament and of the Council of 29 September 2003;
2. Orders the Federal Republic of Germany to pay the costs.