

**Judgment of the Court (Third Chamber) of 24 March 2011 –  
Commission v Belgium**

**(Case C-435/09)**

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC —  
Assessment of the effects of certain public and private projects on the  
environment — Selection criteria — Determination of thresholds — Size of the  
project)

1. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Making the projects listed in Annex II subject to assessment — Member States' discretion — Limits — Fixing of thresholds without taking account only of the size of the projects, excluding the other criteria listed in Annex III — Failure to fulfil obligations — Thresholds fixed particularly low — No effect (Council Directive 85/337, as amended by Directive 2003/35, Arts 2(1) and 4(2) and (3), and Annexes II and III) (see paras 48-55, 60-61)*
  
2. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on Commission — Insufficient or inadequate transposition of a directive — No obligation to determine the actual effects of the national implementing legislation (Art. 258 TFEU) (see para. 59)*
  
3. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Assessment procedure — Option for a Member State to use an alternative procedure — Conditions (Council Directive 85/337, as amended by Directive 2003/35, Art. 2(1) and (2)) (see para. 62)*

4. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Competent authorities obliged to carry out the assessment before they issue authorisation — Projects relating to inland waterways and ports for inland-waterway traffic — National legislation providing for a threshold expressed in numbers of ships and not in tonnes — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Art. 4(1), and Annex I, paragraph 8(a)) (see paras 82-83)*
  
5. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Competent authorities obliged to carry out the assessment before they issue authorisation — Projects relating to industrial plants for the production of pulp — National legislation providing for a minimum threshold of 500 tonnes a year in order for the impact study to be obligatory — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Arts 2(1) and 4(1), and Annex I, point 18(a)) (see paras 86-88)*
  
6. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Projects likely to have significant effects on the environment of another Member State — National legislation not laying down the obligation to pass on to the other Member State information regarding the nature of the decision likely to be taken — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Art. 7(1)(b)) (see paras 90-93)*

**Re:**

Failure of a Member State to fulfil obligations – Incorrect and incomplete transposition of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) – Article 4(2) and (3), in conjunction with Annexes II and III (Flemish Community), Article 4(1), in conjunction with Annex I(8)(a) and (18)(a), and Article 7(1)(b)

(Walloon Region) and Article 4(2) and (3) in conjunction with Annexes II and III (Brussels Capital Region) – Thresholds and criteria.

## **Operative part**

The Court:

1. Declares that, by failing to adopt the measures necessary for the correct and complete implementation:

- as regards the Flemish Region, of Article 4(2) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, in conjunction with Annexes II and III thereof;
- as regards the Walloon Region, of Article 4(1), in conjunction with Annex I(8)(a) and (18)(a) of Directive 85/337, as amended by Directive 2003/35, and Article 7(1)(b) thereof; and
- as regards the Brussels-Capital Region, of Article 4(2) and (3), in conjunction with Annexes II and III of Directive 85/337, as amended by Directive 2003/35, and of Annex III itself,

the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2. Orders the Kingdom of Belgium to pay the costs.