

Case C-226/97 Lemmens [1998] ECR I-3711

Facts: The applicant had been caught driving under the influence of alcohol. The Dutch regulations on breath-analysis apparatus had failed to comply with EU laws on notification.

Held: Using the breath analysis machine was not unlawful. The regulation was a technical regulation within meaning of Directive, and it was irrelevant that products were intended to be used to determine criminal proceedings. Failure to notify technical regulations renders such regulations inapplicable in as much as they hinder the use or marketing of a product not in conformity with those regulations. However, where the use of the product was by a public authority, there was no risk of creating an obstacle to trade which could have been avoided by complying with notification procedure.