OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 27 November 1985 *

Mr President,
Members of the Court,

1. The Commission complains that Belgium did not adopt within the time prescribed all the provisions necessary for compliance with Council Directive No 75/362 of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal, L 167, p. 1), and Council Directive No 75/363 of the same date concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (Official Journal, L 167, p. 14).

This case raises few difficulties. It is not disputed that Belgium, at the expiry of the period of 18 months laid down for implementation in Article 25 (1) of the first directive and Article 9 (1) of the second, had only partly fulfilled its obligations under the directives.

It was only on 4 April 1980 that Belgium adopted a law concerning 'delegation of powers to ensure implementation of the directives of the Council of the European Communities concerning the medical, nursing, paramedical and veterinary professions' (*Moniteur belge* of 21 May 1980) on the basis of which was adopted, after the reasoned opinion of 7 February 1983, Royal Decree No 83-1108 of 8 June 1983 amending the Royal Decree of 10 November 1967 concerning the exercise of the medical, nursing and paramedical professions and the medical commissions (*Moniteur belge* of 1 July 1983), complemented by two ministerial decrees, Nos 83-1321 and 1322 of 20 July 1983 (*Moniteur belge* of 6 August 1983).

In its application, the Commission considers that those legislative provisions still leave certain lacunae in the implementation of the two directives at issue since Belgium has not yet transposed either Articles 8, 10, 11, 13, 15, 18 and 19 of Directive No 75/362 or Article 5 of Directive No 75/363.

2. During the proceedings, the Commission was obliged to redefine the purpose of its action. It admitted that neither Article 18 nor Article 19 of Directive No 75/362 required any special implementing measures in Belgium because that State does not regulate use of professional titles nor does it require its nationals to take an oath or make a solemn declaration before engaging in the activities referred to in the directive.

3. On the other hand, with regard to Directive No 75/362, the Commission considers, *and the Kingdom of Belgium does not contradict it*, that the latter:

has not laid down, as required by Article 8 (2), the arrangements for the taking into account by the host Member State of

* Translated from the French.

specialized training periods already completed by nationals of Member States in another Member State where those periods correspond to those required in the host Member State for the specialized training in question;

has not adopted measures ensuring that nationals of Member States have the right, laid down in Article 10, to make use of the academic title or the abbreviation thereof granted by the Member State of origin or the Member State from which they come, in the languages of that State;

did not, as it is required to do by Article 11, accept as sufficient evidence a certficate of good character or good repute required of persons taking up for the first time any activity referred to in the directive issued by a competent authority in the Member State of origin or in the Member State from which the person comes;

has not designated, as required by the second paragraph of Article 13, the authority competent in Belgium to issue the certificate of physical or mental health which may be required in another Member State of persons wishing to take up the activities referred to in the directive;

has not fixed the period (which, according to Article 15, may not be longer than three months) within which the procedure for authorizing persons to take up one of the activities referred to in the directive must be completed.

4. With regard to Directive No 75/363, the defendant State has rightly been criticized for not complying with the minimum length of four years laid down for specialized training in tropical medicine (Article 5). It is true, however, that Belgium has asked to be removed from the list to be found in Article 7 (2) of Directive No 75/362 and composed of the Member States providing training in that specialty. The failure to fulfil the obligations imposed by the directive none the less exists. It will only cease to exist when the Council has amended the directive in that regard.

5. In regard to each of those provisions, the defendant State has undertaken to amend the rules in force. It is none the less true that those rules, in their present state, are incomplete. As I have already indicated, the fact remains that Belgium has not complied with the time-limits expressly laid down in Directives Nos 75/362 and 75/363 for the implementation of the obligations which they lay down. Let me join with the Commission in mentioning that the Court, in its judgments of 12 October 1982 in Cases 136, 148, 149 and 151/81, decided that

'the governments of the Member States participate in the preparatory work for directives and must therefore be in a position to prepare, within the period prescribed, the draft legislative provisions necessary for their implementation'.

For that reason, the Commission's application must be granted.

6. In my opinion, therefore, the Court should find that the Kingdom of Belgium, by not adopting within the time prescribed all the provisions necessary for compliance with Directive No 75/362 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services and Directive No 75/363 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors, has failed to fulfil its obligations under the provisions of the Treaty in conjunction with those of the aforementioned directives.