OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 25 January 2007 [1]

1. The chickens of North Carolina must take the credit for having prompted — back in 1946, before the United States Supreme Court [2] — the first legal evaluation of the consequences of aircraft noise and the need to reconcile the general interest linked to the use of air space with the rights of those who in any way suffer the consequences of the noise emissions that are generated during take-off and landing.

2. The present case concerns the adoption, by the Kingdom of Belgium, of the Royal Decree ('the Decree') of 14 April 2002 regulating night flights of certain types of civil subsonic jet aircraft. In the Commission's view, that decree has been adopted in breach of the obligations deriving from Directive 2002/30/EC, [3] as well as the second paragraph of Article 10 EC and the third paragraph of Article 249 EC.

3. The Kingdom of Belgium is alleged to have failed to fulfil its obligations under Community law, as interpreted by the Court of Justice in the decisions it has handed down since its judgment in *Inter-Environnement Wallonie*, [4] on the ground that, during the period allowed for transportation of Directive 2002/30, it implemented measures that were 'liable seriously to compromise the result prescribed by the Directive'.

I — Legislative framework

A — *Community law*

4. Directive 2002/30 was adopted for the purpose of establishing rules applicable within the Community for the introduction of uniform operating restrictions at the airports of the Member States. Those restrictions are designed to limit the noise generated by civil subsonic jet aircraft.

1 — Original language: Portuguese.

2 — *United States* v *Causby*, 328 U.S. 256 (1946).

3 — Directive of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ 2002 L 85, p. 40).

4 — Case C-129/96 [1997] ECR I-7411.

5. Article 2(g) of the Directive defines the balanced approach on which the Community legislation in this area is based as:

'... an approach under which Member States shall consider the available measures to address the noise problem at an airport in their territory, namely the foreseeable effect of a reduction of aircraft noise at source, land-use planning and management, noise abatement operational procedures and operating restrictions'.

6. Article 4(4) establishes the criteria for evaluating aircraft noise emissions as 'determined by the certification procedure conducted in accordance with Volume 1 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993)'. Article 2(d) of the Directive also applies the criteria contained in Volume 1, Part II, Chapter 3 of Annex 16 to the abovementioned Convention to define '[m]arginally compliant aircraft'.

7. The balanced approach represents a compromise — reached at international level — which is designed to reconcile noise reduction policies with the development needs of civil aviation. [5]

8. Article 15 of the Directive provides for the repeal of the regulation which was previously in force, namely Council Regulation (EC) No 925/1999 of 29 April 1999 on the registration and operation within the Community of certain types of civil subsonic jet aeroplanes which have been modified and recertificated as meeting the standards of volume 1, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993). [6]

9. One of the objectives of the new Community Directive was to set aside, as of April 2002, the rules previously in force, before they could produce all of the effects linked to them (as provided for by Article 3 of the abovementioned regulation). [7] The Directive in fact seeks to harmonise the European legislative framework in line with the criteria adopted within the ICAO. Those new international guidelines are defined in Resolution A 33/7 (adopted at the ICAO's 33rd Assembly), and the Directive itself refers to that resolution in the tenth recital in its preamble. [8]

5 — This is quite clear from Appendix C to Resolution A 33/7, which was adopted on the occasion of the 33rd Assembly of the International Civil Aviation Organisation (ICAO).

6 — OJ 1999 L 115, p. 1.

7 — The abovementioned Article 3 introduced a series of strict bans on the use of 'recertificated' subsonic civil jet aircraft.

8 — The position adopted in Resolution A 33/7 in regard to the balanced approach was confirmed in the subsequent Resolution A 35/5, which was adopted on 8 October 2004.

10. The Directive's approach to operating restrictions is without prejudice to the decisions which have already been taken; under Article 7, the following are excluded from the scope of the Directive:

'(a) operating restrictions that were already established on the date of entry into force of this Directive;

(b) minor technical changes to operating restrictions of a partial nature that do not have any significant cost implications for the airline operators at any given Community airport and that have been introduced after the entry into force of this Directive'.

Other exemptions covering specific situations are provided for in Articles 8 and 9.

11. The Directive entered into force on the date of its publication, 28 March 2002. Pursuant to Article 16, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 28 September 2003 at the latest. They were further required to inform the Commission immediately the Directive had been transposed.

B — *National legislation*

12. The Royal Decree of 14 April 2002 was published in the *Moniteur belge* of 17 April 2002.

13. Article 1 of the Belgian Decree provides that:

'During the night, from 11pm to 6am local time, subsonic civil jet aircraft shall be permitted to operate only where such aircraft are flying in clean configuration.'

14. However, Article 2 provides that:

'Article 1 shall not apply:

(1) to aircraft overflying Belgian territory in the course of a flight which has departed from and whose destination is a foreign country;

(2) to subsonic civil jet aircraft which:

(a) are equipped with engines with a by-pass ratio equal to or higher than three and which comply with the standards in Annex 16 to the Convention on International Civil Aviation, Volume 1, Part 2, Chapter 3, third edition (July 1993), or with more stringent standards.

(b) or have from the outset, that is to say, without being recertificated, complied with the standards referred to in paragraph (a) above or with more stringent standards.'

15. According to Article 3 of the Decree, it is to apply without prejudice to the provisions of Regulation No 925/1999.

16. Article 4 lays down the date of entry into force of the Royal Decree, which is set at 1 July 2003, that is to say, three months in advance of the deadline for transposition of the Directive — laid down by the Directive itself, and more than a year after the latter's entry into force.

II — Pre-litigation procedure

17. On 6 June 2002, the Commission asked the Belgian authorities for information concerning the Royal Decree of 14 April 2002. The Commission was basically concerned by the fact that, in determining operating restrictions, the Belgian Decree continued to refer to the criterion of the 'by-pass ratio' utilised in Regulation No 925/1999, bearing in mind that, on the date of the Decree's publication, that regulation had already been repealed and that criterion had not, furthermore, been adopted in the new legislation.

18. The Belgian authorities replied by letter of 28 June 2002. The Commission did not consider that reply to be satisfactory, with the result that, on 24 October 2002, it sent a letter of formal notice on the ground that the measures taken during the period allowed for transposition of the Directive were liable to compromise the achievement of the prescribed result. At paragraph 2(2) of the letter of formal notice, the Commission pointed out that the Decree incorporated the concepts of by-pass ratio and recertification, neither of which was contained in the Directive.

19. In their reply of 23 December 2003, the Belgian authorities set out a number of arguments designed to demonstrate that the Royal Decree of 14 April 2002 merely conferred formal status on a measure that had already been 'established' before the Directive entered into force and that, consequently, the substance of the Decree had to be regarded as being covered by Article 7 of the Directive.

20. To justify the delay in formalising the Decree, the Kingdom of Belgium cited the complex nature of the internal organisation of the Belgian State and the need for coordination and consultation between the different levels of the legislative authority responsible for the administration of airports and air transport.

21. The Commission was not satisfied with the answers provided, and, on 3 June 2003, it issued a reasoned opinion, to which the Kingdom of Belgium responded by letter of 3 August 2003.

22. By an application lodged on 28 November 2005, the Commission finally decided to bring an action pursuant to Article 226 EC.

III — Analysis

23. The Commission contends that the measures adopted by the Royal Decree of 14 April 2002 — and implemented during the period for transposition allowed under the Directive — constitute operating restrictions on aircraft, within the terms of the definition contained in Article 2(e) of Directive 2002/30.

24. In the Commission's view, those restrictions were adopted without taking into account Articles 5 and 6 of the Directive. Articles 5 and 6 lay down a series of rules concerning the assessments to be made when introducing restrictions and withdrawing aircraft which are 'marginally compliant' with the standards laid down in Volume 1, Part II, Chapter 3 of Annex 16. As stated above, the definition of marginally compliant aircraft is set out in Article 2(d).

25. The Commission further submits that those restrictions were introduced without taking account of Article 10 of the Directive. That article requires the Member States to consult interested parties for the application of the restrictions based on Articles 5 and 6, and also places them under a more general duty to ensure the transparency of the decisions which are taken.

26. The Commission concludes its application, at paragraph 43, by stating that the adoption of the Decree 'has a lasting negative impact on the conditions for the transposition and application of the Directive because, as a result of the requirement that various aircraft be withdrawn, the assessment of the problems of noise, for which the Directive provides, will no longer be able to take account of the noise pollution generated by all of the aircraft which are compliant with the rules contained in Chapter 3 of Annex 16 to the Convention on International Civil Aviation and, consequently, it will not be possible to secure optimum improvement in the noise climate in accordance with the Directive'.

A — *The effects of directives during the period allowed for transposition*

27. The Commission's application is based on settled case-law of the Court of Justice, dating from its judgment in *Inter-Environnement Wallonie.*[9]

28. In the Court's view, the combined provisions of a directive in force and of the second paragraph of Article 10 EC and the third paragraph of Article 249 EC:

'require the Member States to which that directive is addressed to refrain, during the period laid down therein for its implementation, from adopting measures liable seriously to compromise the result prescribed'.[10]

29. Hitherto, it has been appropriate to cite that case-law only in the context of references for a preliminary ruling under Article 234 EC. However, the instant case concerns an action under Article 226 EC for failure to fulfil an obligation.

30. The citing of that case-law is linked to the need to assess the legality of domestic provisions in relation to the circumstances pertaining at the time of their adoption, that is to say, to determine whether provisions of Community origin, the period for the transposition of which has yet to expire, preclude the Member States from adopting legislative measures which are incompatible with the obligations laid down by Community law.

31. The scope of that case-law is clear.

32. It is, above all, necessary to distinguish between the entry into force of a directive and the deadline set for its transposition. Article 254(1) EC is clear on that point:

'Regulations, directives and decisions adopted in accordance with the procedure referred to in Article 251 shall be signed by the President of the European Parliament and by the President of the Council and published in the *Official Journal of the European Communities*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.'

9 — Case C-129/96.

10 — *Inter-Environnement Wallonie*, at paragraph 50. That case-law was confirmed in Case C-14/02 *ATRAL* [2003] ECR I-4431; Case C-144/04 *Mangold* [2005] ECR I-9981; Case C-316/04 *Stichting Zuid-Hollandse Milieufederatie* [2005] ECR I-9759; Case C-212/04 *Adeneler* [2006] ECR I-6057; and Case C-138/05 *Stichting Zuid-Hollandse Milieufederatie* [2006] ECR I-8339.

33. In the case of the directive at issue, Article 17 thereof provides:

'This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.'

The directive was published on 28 March 2003.

34. That is the date from which the Directive comes into existence and produces its effects both within the Community legal order and in relation to the Member States, while allowing the latter a period of time within which to implement it, as laid down, in this case, by Article 16 of the Directive. That period is designed, in particular, to allow the Member States the necessary time to adopt transposition measures. [11]

35. It was Advocate General Mancini who broached the issue of the effect of directives during the period allowed for their transposition, in his Opinion dating back to 7 October 1986 in Case 30/85: [12]

'... even where the directive does not contain an express standstill clause, its notification generates a "blocking effect" inasmuch as it prohibits Member States from adopting measures contrary to its provisions ...

Clearly, therefore, the very fact of its adoption places an obligation on the Member States to refrain from introducing new measures which may increase those differences.

... As with all freedoms, however, that freedom too is subject to limits, and primarily to limits dictated by common sense. Thus there is now doubt that it entails the power to retain in force rules and practices which do not comply with the directive. However, as I have just stated, it is equally certain that such freedom does not include the power to aggravate the defect which the directive is intended to remedy. Indeed it may be that measures adopted during the prescribed period must of necessity be measures intended to transpose the Community provisions. Such measures must at least not conflict with the requirements laid down in those provisions.'

36. The Court's case-law confirms that approach in the abovementioned judgment in *Inter-Environnement Wallonie*. Although the Court's decision does not fully endorse

11 — *Inter-Environnement Wallonie*, paragraph 41, and Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraph 68.

12 — Opinion of Advocate General Mancini in Case 30/85 *Teuling* [1987] ECR 2497, point 7.

the approach of Advocate General Mancini, it represents a significant step forward. The Court's decision goes further than Advocate General Jacobs was proposing in his Opinion in that case. [13]

37. The Court defines the effects of directives — during the period allowed for their transposition — with a view to guaranteeing that they are effective as soon as they enter into force, but without thereby imposing on the Member States a duty to act in advance. Moreover, the Court does not go so far as to endorse a general duty on the Member State to refrain from action in the areas governed by the directive in question.

38. As they have been construed, the second paragraph of Article 10 EC and the third paragraph of Article 249 EC require the Member States to refrain from jeopardising the objectives pursued by the Community, as laid down in a directive. The Member State's obligation to act is not subject to control until the deadline for transposition has expired. At the same time, a Community directive seems to be capable of preventing, as from its entry into force, the adoption of national measures which are liable to compromise the achievement of the results prescribed.

39. That approach, which is based on 'good faith' is not so very different from the relevant provision of international law. According to Article 18 of the Vienna Convention on the Law of Treaties, concluded on 23 May 1969:

'[A] State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

...

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.' [14]

40. The Member State retains its legislative and administrative authority; however, that authority must be exercised in a manner consistent with the directive and must not be contrary to the directive or, at least, not be liable to complicate the application of the rules laid down at Community level.

13 — Opinion of Advocate General Jacobs in Case C-129/96.

14 — See Case T-115/94 *Opel Austria* v *Council* [1997] ECR II-39, paragraphs 91 and 76 to 90.

41. The Court requires that, in determining whether there has been a breach by a Member State, an assessment be made as to whether the domestic provision is capable of 'seriously compromising' the objectives of the directive.

42. In that connection, the Court has held that it is necessary to assess the national legislation by considering:

'whether the provisions in issue purport to constitute full transposition of the directive, as well as the effects in practice of applying those incompatible provisions and of their duration in time'. [15]

43. The fact that the provisions at issue are presented as constituting a full transposition of the Directive means that it is necessary to make an advance assessment of whether the Directive has been properly transposed. It would seem very difficult to fulfil an obligation, and to do so within the stipulated time-limit, if the action which has been specifically taken to fulfil that obligation fails to meet the requirement.

44. At the same time, the fact that the national provision under scrutiny does not constitute a measure of transposition does not mean that the provision may be exempt from an assessment of its compatibility with the Community requirement, it being scarcely relevant whether or not the provision of national law adopted after the entry into force of the Directive is designed to transpose the text of the Community legislation. [16]

45. Reviewing the actual effects of applying the national provisions and of their duration in time provides a more specific analysis.

46. National provisions are liable seriously to compromise the result prescribed by a directive whenever they liable to create, on a lasting basis, a situation which is incompatible with the Community objectives.

47. That situation may arise either as a result of the adoption of provisions or as a result of the establishment of *de facto* circumstances which are incompatible with the Community objectives and are difficult to reverse.

15 — *Inter-Environnement Wallonie*, paragraph 47.

16 — *ATRAL*, paragraph 59; *Mangold*, paragraph 60; and *Adeneler*, paragraph 121.

48. It is conceivable that, during the period allowed for transposition of the Community directive, obligations may be imposed, at national level, which are likely to create a particular situation or necessitate decisions which are not easily reversed, going beyond Community requirements and being fundamentally contrary to those requirements.

49. For example: the national provisions may create obligations, the fulfilment of which appears likely to render ineffective the harmonisation set in place at Community level or to impose options which are likely to survive well beyond the deadline for transposition and, in their turn, influence the subsequent development of decisions taken at Community level.

50. That, potentially, could be the position consequent on the Belgian Decree, which could, in the final analysis, compel some airlines operating in Europe to replace their respective fleets.

51. It is also necessary to assess whether the measure adopted may be required on a temporary basis. The Member State may invoke the need for the measure in order to justify the adoption of the provisions which are incompatible with Community requirements. [17]

17 — *Inter-Environnement Wallonie*, paragraph 49.

B — *The Kingdom of Belgium's arguments in defence*

The issue of admissibility

52. In its written observations, the Kingdom of Belgium notes that, in its application based on the second paragraph of Article 226 EC, the Commission points out that, before the period for transposition had expired, the Belgian Government had implemented the Directive at issue by adopting the Royal Decree of 25 September 2003 [18] concerning the introduction of operating restrictions at Brussels-National airport but did not, at the same time, repeal or amend the Decree at issue in this case.

53. At paragraphs 20 to 29 of its statement of defence, the Kingdom of Belgium complains that the Commission has added a further complaint (which was not mentioned in the reasoned opinion) concerning the Kingdom of Belgium's conduct after the expiry of the period for transposing the Directive at issue. According to the Kingdom of Belgium, that complaint is inadmissible, in the light of the Court's settled case-law. [19]

54. In my view, the submission which the Kingdom of Belgium makes in its defence is unfounded.

18 — *Moniteur belge* of 26 September 2003.

19 — Case C-221/03 *Commission* v *Belgium* [2006] ECR I-8307, paragraph 38.

55. In point of fact, no new complaint has been made, nor has any complaint been made concerning the transposition of the Directive at issue into Belgian law. No new complaint has been made.

56. According to the Commission's account, the argument it has put forward is designed merely to make clear that, on conclusion of the period allowed for transposition and in the actual legislation transposing the provision, the measure in question was not repealed and cannot be regarded as a temporary measure. Furthermore, notwithstanding the pre-litigation procedure, the Kingdom of Belgium has failed to amend the national legislation in the manner required by the Commission and in accordance with the obligations which are deemed to flow from Directive 2002/30.

The Kingdom of Belgium's other arguments in defence

57. The Kingdom of Belgium's arguments in response to those of the Commission largely focus — save for the issue of the inadmissibility of the application — on the alleged compatibility of the Royal Decree with the Directive and on the proper application of the Community rules.

58. The Kingdom of Belgium considers that the provisions contained in the Royal Decree of 14 April 2002 must be regarded as existing operating restrictions, within the terms of Article 7 of the Directive.

59. The Kingdom of Belgium contends that the Directive should be construed as meaning that, when the abovementioned Article 7 refers to 'operating restrictions that were already established on the date of entry into force of this Directive', it exempts the provisions of the Royal Decree of April 2002 from the application of the directive, even though those provisions were formalised only after the Directive had entered into force.

60. The Kingdom of Belgium's position is based on the interpretation of the word 'established' ('décidées'). To the end, it cites the differences between the text which was adopted and the text contained in the Commission's proposal for a directive, and also cites the English text in support of its contentions. [20] In the initial version, the English text used the word 'already in force' ('appliquées') rather than 'established' ('décidées'), the term used in the final version.

61. The Belgian Government points out that the measures adopted in the Royal Decree of

20 — COM(2001) 695 final.

14 April 2002 had already been taken by Belgium's central Government on 11 February 2000 (to confirm that fact, it cites the extensive media coverage of the political decision) and that the delay in formalising the measures is the consequence of the particular feature of Belgium's internal organisation and the distribution of responsibilities between the central State and federal bodies.

62. That argument cannot be upheld. It is not necessary to adopt the interpretation the Kingdom of Belgium is proposing in order to perceive a difference between the terms 'already in force' and 'established', which were used in the texts under comparison; the term 'established' refers to a concept which is clearly different from the term corresponding to the concept of a political decision, to which the defendant refers.

63. It is further necessary to repeat that the exemption provided for in Article 7, which is an exception to the generally applicable provisions contained in the Directive and the international agreements on which it is based, must be interpreted strictly. [21]

64. The 18th recital in the preamble to the Directive may help shed light on the meaning of Article 7, and it is worded as follows:

'It is necessary to allow for the continuation of existing airport-specific noise management measures and for certain technical changes to operating restrictions of a partial nature.'

65. That recital emphasises that only restrictions established at the time when the Directive entered into force should be kept in place; Article 7 itself is in fact entitled 'Existing operating restrictions'.

66. Like any instrument laying down provisions of law, the Decree at issue begins to exist within the legal system from the point in time at which it is formally adopted in accordance with domestic requirements; that point in time is inseparably linked to its official publication, following which it begins to produce its effects.

67. It is the Decree itself, published in the *Moniteur belge* of 17 April 2002, which refers to 14 April as the date on which it was adopted. Those are the facts to which the exegete may refer.

21 — Case C-410/04 *ANAV* [2006] ECR I-3303, paragraph 26, and Case C-26/03 *Stadt Halle and RPL Lochau* [2005] ECR I-1, paragraph 46.

68. Legal certainty would be compromised were it possible to cite, for the purpose of establishing exceptions to the application of Community rules, dates relating to political decisions which are not subject to the requirement that they be published in full.

69. In addition, it is settled case-law of the Court of Justice that Member States cannot rely on internal circumstances or practical difficulties to justify a delay in transposition. [22] That case-law may also apply, *mutatis mutandis*, to the situation at issue here.

70. Issues relating to the domestic procedures for their adoption cannot be cited in order to identify policies which a Member State has already established at a particular date. It is, however, necessary to take account of the time at which the decision was adopted, determined by reference to the national laws and official documents in which laws or administrative decisions are published.

71. The exception provided for in Article 7 of the Directive cannot therefore be considered to be applicable to the provisions contained in the Royal Decree of 14 April 2002.

72. In the alternative, the Kingdom of Belgium submits that, should the Court not allow the Decree to be regarded as a measure established prior to the Directive, the Decree is compatible with the objectives which the Directive pursues and, furthermore, fills the legislative void left when Regulation No 925/1999 was repealed.

73. That argument cannot be upheld either.

74. It must be reiterated that one of the aims of the Directive is to replace that regulation, in order to amend Community policy in this field, by replacing the earlier approach with what is described as a 'balanced' approach.

75. For those reasons, the rules introduced by the Decree, which draw on the regulation previously in force, but were adopted after it had been repealed, seem liable seriously to compromise the achievement of the result prescribed by the Directive.

22 — Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739; Case C-150/97 *Commission* v *Portugal* [1999] ECR I-259; Case C-272/97 *Commission* v *Germany* [1999] ECR I-2175; Case C-212/98 *Commission* v *Ireland* [1999] ECR I-8571; Case C-274/98 *Commission* v *Spain* [2000] ECR I-2823; Case C-236/99 *Commission* v *Belgium* [2000] ECR I-5657; Case C-319/99 *Commission* v *France* [2000] ECR I-10439; Case C-423/99 *Commission* v *Italy* [2000] ECR I-11167; Case C-494/99 *Commission* v *Greece* [2001] ECR I-2761; Case C-450/00 *Commission* v *Luxembourg* [2001] ECR I-7069.

76. Regard ought to have been had to the approach taken by the Directive when provisions which were likely to take effect after the regulation had been repealed were adopted.

77. Nor it is possible to accept the view of the Kingdom of Belgium, according to which the adoption of the abovementioned Royal Decree of 25 September 2003 satisfied Community requirements in full.

78. The fact that, as matters stand, only Brussels-National airport experiences traffic in excess of 50 000 subsonic civil jet aircraft annually, and that a decree relating to that airport alone has in effect been adopted, does not make it possible to take the view that the Decree of 14 April 2002 falls outside the scope of the Directive.

79. The Decree of 14 April 2002 is of general scope, since it is in no way limited to airports which fall outside the scope of the Directive. For those reasons, it is likely to compromise the implementation of the obligations arising from the Directive.

80. The duty on the Belgian State to guarantee the transposition of the Directive is, furthermore, a separate issue from that of whether airport activities falling within the scope of the Directive actually exist on Belgian territory.

81. According to the Court's settled case-law — cited again with reference to Directive 2002/30 — the fact that an activity referred to in a directive does not exist in a particular Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive in question are properly transposed. [23]

82. It is also necessary to reject the argument concerning the legal void allegedly created by the repeal of Regulation No 925/1999. In point of fact, the previously applicable national provisions and Directive 92/14/EEC [24] remain in force, and the Member States remain capable of adopting national provisions which are compatible with those of Directive 2002/30.

23 — Judgment of 8 June 2006 in Case C-71/05 *Commission* v *Luxembourg*, not published in the ECR, paragraph 12, and Case C-372/00 *Commission* v *Ireland* [2001] ECR I-10303, paragraph 11.

24 — Council Directive 92/14/EEC of 2 March 1992 on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (OJ 1992 L 76, p. 21).

83. For the reasons set out above, I take the view that the Royal Decree of 14 April 2002 is liable seriously to compromise the result prescribed by Directive 2002/30/EC, since it introduces operating restrictions incompatible with Directive 2002/30 during the period allowed for the transposition of that directive and thereby substantially limits the possibility of operating a particular category of aircraft.

IV — Conclusion

84. In conclusion, I propose that the Court should declare that:

By adopting, during the period allowed for the transposition of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports, the Royal Decree of 14 April 2002 regulating night flights of certain types of civil subsonic jet aircraft, the Kingdom of Belgium has failed to fulfil the obligations incumbent upon it under Directive 2002/30/EC and under the second paragraph of 10 EC and the third paragraph of Article 249 EC.