OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 29 January 1998 *

1. The present proceedings concern the failure of the Kingdom of Belgium to notify certain technical regulations in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (hereinafter 'the Directive'). [1]

2. Article 8(1) of the Directive provides in relevant part:

'1. Member States shall immediately communicate to the Commission any draft technical regulation, except where such technical regulation merely transposes the full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a brief statement of the grounds which make the enactment of such a technical regulation necessary, where these are not already made clear in the draft. Where appropriate, Member States shall simultaneously communicate the text of the basic legislative or regulatory provisions principally and directly concerned, should knowledge of such text be necessary to assess the implications of the draft technical regulation.'

3. Article 1(5) defines 'technical regulation' as follows:

'technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities.'

4. In accordance with Article 1(1), the term 'technical specification' covers the following:

'a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as

* Original language: English.

1 — OJ 1983 L 109, p. 8, as amended by Council Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC (OJ 1988 L 81, p. 75). The Directive has subsequently been amended by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 (OJ 1994 L 100, p. 30); the deadline for transposition of these latter modifications expired on 1 July 1995, and they are therefore not relevant to the present case.

regards terminology, symbols, testing and test methods, packaging, marking or labelling ... .'

5. On 9 November 1993, the Government of the Region of Metropolitan Brussels adopted a Decree concerning quality and safety standards for the letting of furnished accommodation. [2] The Commission claims that the following provisions comprise technical regulations giving rise to the obligation to communicate the Decree to it:

Article 12

'Electrical appliances shall comply with the relevant Belgian standards and Royal Decrees. They must bear the mark "CEBEC"';

Article 13(3) and (4)

'Natural-gas installations must comply with standard NBN D51-003: "Installations for combustible gas, lighter than air, distributed by pipes".

Natural-gas installations must comply with the relevant Belgian standards and bear the mark "BENOR"; in the absence of such standards, they must be approved by the Association Royale des Gaziers Belges (A. R. G. B.)';

Article 23(2)

'[Without prejudice to the application of the provisions laid down by statute or regulation concerning fire prevention, the lessor shall take measures to ensure:]

that swift and effective action can be taken against any outbreak of fire, using the necessary equipment for protection against fire. The said equipment, defined in agreement with the Fire Service, must comply with the relevant standards and bear the mark "BENOR".'

6. Belgium has not contested the classification of the contested national provisions as 'technical regulations' and expressly recognises that they should have been notified.

7. It is common ground between the parties that the national provisions in the present case render obligatory certain pre-existing

2 — *Moniteur Belge*, 31 December 1993, p. 29194.

national technical standards; it has not been suggested, for example, that any of the Belgian standards were already binding by virtue of other pre-existing legal provisions. [3] It is true that the contested Decree only concerns the use of electrical, gas and fire-fighting equipment in a defined area (Region of Metropolitan Brussels) and in particular circumstances (rented furnished accommodation); the contested provisions do not require that all such products used in that area or marketed conform to the said technical standards. There is, however, nothing in the case-file to indicate that the Brussels Region is not a 'major part' of the Kingdom of Belgium for the purposes of Article 1(5) of the Directive, rather than a local authority, nor that the prohibition on the use in furnished rented accommodation of equipment other than that specified does not constitute a restriction which is 'capable of hindering, directly or indirectly, actually or potentially, intra-Community trade in goods', within the meaning of the Court's judgment in *Bic Benelux*. [4]

Conclusion

8. In these circumstances, I recommend that the Court:

(1) Declare that, by failing to communicate to the Commission the Decree of the Government of the Region of Metropolitan Brussels of 9 November 1993 concerning quality and safety standards for the letting of furnished accommodation at the draft stage, the Kingdom of Belgium has failed in its obligations under the first subparagraph of Article 8(1) of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations;

(2) Order the Kingdom of Belgium to bear the costs.

3 — See Case C-279/94 *Commission* v *Italy* [1997] ECR I-4743, paragraph 36.

4 — Case C-13/96 *Bic Benelux* v *Belgian State* [1997] ECR I-1753, paragraph 19.