JUDGMENT OF THE COURT (Seventh Chamber)

9 June 2011 *

In Case C-361/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Belgium), made by decision of 9 July 2010, received at the Court on 19 July 2010, in the proceedings

Intercommunale Intermosane SCRL,

Fédération de l'industrie et du gaz

v

État belge,

THE COURT (Seventh Chamber),

composed of D. Šváby, President of the Chamber, R. Silva de Lapuerta (Rapporteur) and G. Arestis, Judges,

* Language of the case: French.

Advocate General: E. Sharpston,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Intercommunale Intermosane SCRL, by J. Bourtembourg, avocat,

— the Belgian Government, by J.-C. Halleux and T. Materne, acting as Agents,

— the Republic of Austria, by C. Pesendorfer, acting as Agent,

— the European Commission, by M. Patakia and G. Zavvos, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1 and 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18; 'Directive 98/34').

2 The reference has been made in proceedings between Intercommunale Intermosane SCRL and the Fédération de l'industrie et du gaz, a non-profit-making association, on the one hand, and the État belge (Belgian State), on the other, concerning legislation on the minimum safety requirements for certain old electrical installations at places of work.

Legal context

European Union legislation

3 Article 1 of Directive 98/34 provides:

'For the purposes of this Directive, the following meanings shall apply:

1. "product", any industrially manufactured product and any agricultural product, including fish products;

…

3. "technical specification", 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 regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

…

4. "other requirements", a requirement, other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment, and which affects its life cycle after it has been placed on the

market, such as conditions of use, recycling, reuse or disposal, where such conditions can significantly influence the composition or nature of the product or its marketing;

…

11. "technical regulation", technical specifications and other requirements or rules on services, including the relevant administrative provisions, the observance of which is compulsory, de jure or de facto, in the case of marketing, provision of a service, establishment of a service operator or use in a Member State or a major part thereof, as well as laws, regulations or administrative provisions of Member States, except those provided for in Article 10, prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service, or establishment as a service provider.

…

…

This Directive shall not apply to those measures Member States consider necessary under the Treaty for the protection of persons, in particular workers, when products are used, provided that such measures do not affect the products.'

4 The first subparagraph of Article 8(1) of Directive 98/34 is worded as follows:

'Subject to Article 10, Member States shall immediately communicate to the Commission any draft technical regulation, except where it 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 statement of the grounds which make the enactment of such a technical regulation necessary, where these have not already been made clear in the draft.'

National legislation

5 Articles 8 to 13 of the Royal Decree of 2 June 2008 concerning the minimum safety requirements for certain old electrical installations at places of work (*Moniteur belge* of 19 June 2008, p. 31631, 'the Royal Decree') provide:

'*Article 8.*

Electrical installation shall be carried out in such a way as to protect workers against risks due to direct contact and indirect contact, against the effects of overvoltage due inter alia to faulty insulation, operations and atmospheric influences, against burns and other health risks and also against non-electrical risks due to the installation of electricity.

If it does not seem possible to eliminate the abovementioned risks by measures relating to design or collective protection, access to those installations must be exclusively limited to workers with Code BA4 or BA5 competence as stipulated in Article 47 of [the general regulation on electrical installations].

Article 9.

Electrical installation shall be carried out in such a way as to:

(1) avoid arcs and dangerous surface temperatures;

(2) avoid overheating, fire and explosion.

Article 10.

(1) Each circuit shall be protected by at least one safety device which cuts off an overload current before heating can occur which may damage the insulation, connections, leads or the environment.

Each circuit shall be protected by a safety device which cuts off a short circuit current before dangerous effects are caused.

(2) By way of derogation from the provisions of paragraph (1), it is permissible not to protect certain circuits against excess current, provided that the conditions and procedure set out in Articles 119, 123 and 126 of [the general regulation on electrical installations] are observed.

Article 11.

(1) In order to carry out work with the power off, it must be made possible to cut off the electrical installation or individual electrical circuits securely and reliably.

(2) The functional control shall be effected in a secure and reliable manner.

(3) The effects of drops in voltage or the disappearance of voltage and its reappearance shall not compromise the safety of workers.

Article 12.

Electrical installation shall be carried out with electrical equipment designed in such a way as not to compromise the safety of persons where installation and maintenance are correct and use is in accordance with the intended purpose.

Where appropriate, the equipment shall comply with the provisions of decrees transposing relevant Community directives.

Article 13.

The electrical equipment used shall either by virtue of its design or by virtue of additional protection be suitable for external influences and existing or reasonably foreseeable conditions of use.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

6 The applicants in the main proceedings, by an application lodged on 18 August 2008 before the national court, applied for the annulment of the Royal Decree.

7 In support of their application, the applicants in the main proceedings raise inter alia an infringement of Directive 98/34 on the ground that the Royal Decree contains technical regulations, the draft of which should have been communicated to the Commission, in accordance with Article 8 of that directive.

8 In those circumstances the Conseil d'État (Belgian Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Do national provisions such as Articles 8 to 13 of [the Royal Decree], which lay down requirements relating to the carrying out of electrical installations, the design of electrical equipment and forms of protection attached to that equipment in order to ensure the safety of workers, constitute technical regulations

within the meaning of Article 1(11) of Directive [98/34], the drafts of which must be notified in accordance with the first subparagraph of Article 8(1) of the same directive?

2. Are national provisions such as Articles 8 to 13 of [the Royal Decree] measures within the meaning of the final subparagraph of Article 1 of Directive [98/34] which the Member States consider necessary for the protection of persons, in particular workers, when products are used, and which do not affect the products?'

Consideration of the questions referred

The first question

9 By its first question, the national court asks, in essence, whether Article 1(11) of Directive 98/34 must be interpreted as meaning that national provisions such as those at issue in the main proceedings amount to technical regulations, within the meaning of that provision, the drafts of which must be the subject of the communication provided for in the first subparagraph of Article 8(1) of that directive.

10 It is settled case-law that Directive 98/34 is designed to protect, by means of preventive monitoring, the free movement of goods, which is one of the foundations of the European Union, and that this control serves a useful purpose in that technical regulations falling within the scope of that directive may constitute obstacles to trade in goods between Member States, such obstacles being permissible only if they are

necessary to satisfy compelling requirements relating to the public interest (see Case C-194/94 *CIA Security International* [1996] ECR I-2201, paragraphs 40 and 48, and Case C-303/04 *Lidl Italia* [2005] ECR I-7865, paragraph 22).

11 In this context, it should be recalled that, according to the case-law, it follows from Article 1(11) of Directive 98/34 that the definition of 'technical regulation' can be broken down into three categories: first, the 'technical specification' within the meaning of Article 1(3) of that directive; second, the 'other requirements', as defined in Article 1(4) of that directive; and, third, the prohibition of the manufacture, importation, marketing or use of a product referred to in Article 1(11) of the directive (see Case C-267/03 *Lindberg* [2005] ECR I-3247, paragraph 54, and Case C-20/05 *Schwibbert* [2007] ECR I-9447, paragraph 34).

12 Assuming that the electrical installations at issue in the main proceedings may be classified as a 'product' within the meaning of Article 1(1) of Directive 98/34, it is appropriate to examine whether the national provisions at issue in the main proceedings fall within one of those three categories.

13 In that regard, it is sufficient, firstly, to note at the outset that those provisions do not fall within the third category of technical regulations provided for in Article 1(11) of Directive 98/34, since they do not include a prohibition of the manufacture, importation, marketing or use of a product within the meaning of that provision.

14 Secondly, it must be determined whether the national provisions at issue in the main proceedings fall within the first category of technical regulations provided for in Article 1(11) of Directive 98/34, that is to say the concept of 'technical specification'.

15 It follows from the case-law that that concept, which is defined in Article 1(3) of the directive, presupposes that the national measure necessarily refers to the product or its packaging as such and thus lays down one of the characteristics required of a product (see *Schwibbert*, paragraph 35 and case-law cited).

16 As regards the national provisions at issue in the main proceedings, it must be noted that the minimum requirements relating to the carrying out of certain electrical installations provided for by those provisions seek to ensure the safety of those installations in order to protect the workers using them.

17 It must be noted that those minimum requirements include requirements and general objectives in relation to safety and protection, without necessarily referring to the product concerned or its packaging as such and thus without laying down the characteristics of that product.

18 Consequently, the national provisions at issue in the main proceedings do not contain technical specifications within the meaning of Directive 98/34.

19 Thirdly, it is appropriate to determine whether those provisions fall within the second category of technical regulations provided for in Article 1(11) of Directive 98/34, that is the concept of 'other requirements'.

20 According to the case-law, in order to be classified as 'other requirements' within the meaning of Article 1(4) of Directive 98/34, the minimum requirements laid down by the provisions at issue must constitute 'conditions' which can significantly influence the composition or nature of the product concerned or its marketing (see, to that effect, *Lindberg*, paragraph 72).

21 Taking account of the general nature of the said requirements, they cannot amount to such conditions or, consequently, be classified as 'other requirements', within the meaning of Article 1(4) of the directive.

22 In light of the considerations set out above, the answer to the first question is that Article 1(11) of Directive 98/34 must be interpreted as meaning that national provisions such as those at issue in the main proceedings do not amount to technical regulations, within the meaning of that provision, the drafts of which must be the subject of the communication provided for in the first subparagraph of Article 8(1) of that directive.

The second question

23 Taking account of the answer given to the first question, it is not necessary to answer the second question.

Costs

24 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, must be interpreted as meaning that national provisions such as those at issue in the main proceedings do not amount to technical regulations, within the meaning of that provision, the drafts of which must be the subject of the communication provided for in the first subparagraph of Article 8(1) of that directive.

[Signatures]