

OPINION OF ADVOCATE GENERAL
ALBER

delivered on 13 December 2001 ¹

1. The Commission is bringing the present infringement proceedings against the Kingdom of Belgium for belated or incomplete transposition of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships.² It claims that the Kingdom of Belgium has failed to fulfil its obligations under the directive and under the EC Treaty.

notified it, by letter of 17 October 2000, of the adoption of the decree in December 2000. When the action, which was registered at the Court on 28 March 2001, was brought on 27 March 2001, the Commission had still not been notified of the complete transposition of the directive.

3. The Commission claims that the Court should:

2. Article 14 of the directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this directive not later than 1 July 1998. Since no measures transposing the directive were communicated to the Commission by that date, or even thereafter, it sent a letter of formal notice dated 11 August 1999 to the Belgian Government. In its reply of 27 September 1999 the Belgian Government transmitted the Royal Decree of 12 November 1981 which covered a proportion of the matters dealt with by Directive 98/18. The adoption of a further Royal Decree transposing the directive was notified. On 7 September 2000 the Commission delivered a reasoned opinion in response to which the Belgian Government

(1) declare that, by failing to notify the laws, regulations and administrative measures necessary in order to comply with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships, alternatively to adopt the measures necessary in order to comply therewith, the Kingdom of Belgium has failed to fulfil its obligations under the said directive and under the EC Treaty;

(2) order the Belgian Government to pay the costs.

1 — Original language: German.

2 — OJ 1998 L 144, p. 1.

4. In the pre-litigation procedure and in the proceedings before the Court the Belgian Government referred both to the Royal Decree of 12 November 1981 and a Royal Decree of 9 December 1998 by which the directive had been transposed at least in part. However, both in the pre-litigation procedure and in the proceedings before the Court the Belgian Government conceded that Directive 98/18 had been transposed only partially and that work was under way on a Royal Decree transposing the directive in full.

system of a Member State cannot justify failure to comply with obligations and time-limits laid down in Community directives or, consequently, the belated or incomplete transposition of a directive. Since Directive 98/18 had not been transposed completely into national law by the end of the period laid down in the reasoned opinion, the Kingdom of Belgium failed to fulfil its obligations under Community law.

5. The Court has consistently held³ that the material time for the purpose of determining whether a Member State has failed to fulfil its obligations is the end of the period laid down in the reasoned opinion. In any event, when the two-month period which was laid down in the reasoned opinion of 7 September 2000, and which began to run on notification of the letter containing the opinion, expired, the notified Royal Decree had still not been enacted.

7. The Member State's obligation to transpose the directive arises, firstly, from the directive directly, and, secondly, from the third paragraph of Article 249 EC, read in conjunction with Article 10 EC. Since the Kingdom of Belgium has accordingly failed to fulfil its obligations under Community law, I propose that judgment be given against it in the terms sought in the application.

6. The Court has also consistently held⁴ that practices or circumstances in the legal

3 — See Case C-384/99 *Commission v Belgium* [2000] ECR I-10633, paragraph 16.

4 — Case C-303/92 *Commission v Netherlands* [1993] ECR I-4739, paragraph 9, and Case C-139/97 *Commission v Italy* [1998] ECR I-605, paragraph 10.

8. The decision on costs should be given in accordance with Article 69(2) of the Rules of Procedure.

Conclusion

9. I propose that the Court should:

- (1) declare that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary in order to comply fully with Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships, the Kingdom of Belgium has failed to fulfil its obligations under the said directive and under the EC Treaty.
- (2) order the Kingdom of Belgium to pay the costs.