

OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 5 December 1996 *

1. The Commission has brought the present infringement proceedings pursuant to Article 169 of the EC Treaty. By application of 17 June 1996, it seeks a declaration that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (hereinafter 'the Directive'),¹ the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

2. Member States were required by Article 9(1) of the Directive to 'adopt and publish the provisions necessary to comply with' the Directive by 1 January 1993 and to inform the Commission forthwith. Belgium has not informed the Commission of any measures it has taken to comply with the Directive.

3. Belgium has not disputed its failure to implement the Directive, which it attributes to institutional difficulties arising from the necessity to organize coordination, on the one hand, between the Regions, in so far as they are responsible for the matters concerning the rational use of energy, and, on the other hand, between the Regions and the Federal Government, which is responsible for regulating the marketing of the boilers in question.

4. Article 189 of the Treaty obliges Member States to adopt the measures necessary to ensure the attainment of the objectives of each directive. This specific requirement is reinforced by their general duty pursuant to Article 5 of the Treaty 'to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community'. It is undisputed that the Directive was not implemented by Belgium within the prescribed time-limit. The Court has consistently held that Member States may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down by a directive.²

* Original language: English.

1 — OJ 1992 L 167, p. 17.

2 — See, for example, Case C-312/95 *Commission v Luxembourg* [1996] ECR I-5143, paragraph 9 of the judgment.

Conclusion

5. I therefore recommend that the Court:

- (1) declare that, by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty;
- (2) order the Kingdom of Belgium to pay the costs of these proceedings.