OPINION OF ADVOCATE GENERAL ELMER

delivered on 24 October 1995 *

1. In this case the Tribunal de Commerce, Liège (Belgium), has referred to the Court for a preliminary ruling questions concerning the interpretation of Article 30 of the Treaty and 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 [1] (hereinafter 'the Directive') in relation to national rules which contain a requirement that alarm systems and networks must be approved.

The relevant national rules

2. The Belgian rules on type approval for alarm systems are laid down in a Law of 10 April 1990 on caretaking firms, security undertakings and internal caretaking services (hereinafter 'the Law') and in a Royal Decree of 14 May 1991 laying down the procedure for approving the alarm systems and networks referred to in the Law of 10 April 1990 (hereinafter 'the 1991 Decree').

3. Under Article 1(4), the Law covers alarm systems and networks intended to prevent or record crimes against persons or property.

Under Article 4, only persons with prior authorization from the Ministère de l'Intérieur (Home Affairs Ministry) may operate a security firm. Authorization is granted only if the firm meets the requirements laid down in the Law and the conditions concerning financial means and technical equipment prescribed by royal decree.

Article 12 is worded as follows:

'The alarm systems and networks referred to in Article 1(4) and their components may be marketed or in any event made available to users only after prior approval has been granted under a procedure to be laid down by royal decree.

The conditions for installing, maintaining and using the alarm systems and networks referred to in Article 1(4) and their components shall also be determined by royal decree.'

4. The 1991 Decree was adopted on the basis of Article 12 of the Law. Under Article 2 of

* Original language: Danish.

1 — OJ 1983 L 109, p. 8, as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75).

the Decree, no manufacturer, importer, wholesaler or any other natural or legal person may market new equipment or make it available in any other way to users in Belgium if it has not been previously approved by the Equipment Committee. Approved equipment must bear a visible stamp affixed by the person who has requested approval and must refer to the approving body itself.

Under Article 4(1) of the 1991 Decree, the Ministre de l'Intérieur (Minister for Home Affairs) is to draw up the list of bodies specializing in carrying out the tests which may lead to the equipment being approved. Applications for approval of the equipment must be sent directly to one of those bodies, which alone are competent to carry out the tests.

Article 5 is worded as follows:

'Before conducting the tests themselves, the laboratories must examine the equipment.

That examination shall consist in:

(1) identifying the equipment;

(2) checking the electrical circuit against the documents submitted by the manufacturer;

(3) checking the minimum required functions as described in Annex 4 to this decree.'

Article 6 is worded as follows:

'The tests to be carried out on the equipment concern:

(1) functional adequacy;

(2) mechanical aspects;

(3) mechanical and/or electronic reliability;

(4) sensitivity to false alarms;

(5) protection against fraud or attempts to disable the equipment.

To that end, the equipment shall undergo the tests listed in Annexes 3 and 4 to this decree. A detailed description of those tests may be obtained on written request from the bodies referred to in Article 4(1). Those tests may be applied to the various types of components.'

Article 7 provides that 'the tests made on individual parts do not constitute a guarantee that the parts are mutually compatible. The person who has developed the alarm system is wholly responsible in that connection.'

Article 8 of the 1991 Decree states 'If the applicant establishes by means of the necessary documents that his equipment has already undergone tests which are at least equivalent to those described in Article 7 in an authorized laboratory in another Member State of the EEC according to EEC standards and that it has been approved at most three years before the date of the current application, a body referred to in Article 4(1) shall carry out on the equipment only such tests as have not yet been carried out in the other Member State of the EEC.'

Facts of the case

5. The plaintiff in the main proceedings, SA C. I. A. Security International (hereinafter 'C. I. A.'), is a Belgian undertaking which, in 1993, took over SPRL C. I. A. Security, which was in liquidation. Among the operations taken over was a burglar alarm system 'Andromede', which had received a prize at the 42nd 'Salon Mondial de l'Invention, de la Recherche et de l'Innovation Industrielle — Brussels-Eureka '93'. After the take-over, C. I. A. continued to market the Andromede system which, according to information given by C. I. A., is assembled in Belgium from products manufactured in Germany, Italy and Belgium. The parties are in agreement that no type approval for the alarm system in question has been sought in Belgium.

6. The defendants in the main proceedings, SA Signalson (hereinafter 'Signalson') and SPRL Securitel (hereinafter 'Securitel'), are competitors of C. I. A. In their marketing these firms have stated *inter alia* that the prize obtained by the Andromede system was awarded on an improper basis, that the Andromede system does not work, and that the undertaking has not been authorized by the Belgian authorities. Those statements were made in January 1994.

7. Consequently, on 21 January 1994 C. I. A. brought an action in the Tribunal de

Commerce, Liège, claiming that by their conduct Signalson and Securitel were in breach of good commercial practice and thereby infringed Articles 93 and 95 of the Law of 14 July 1991 on Commercial Practices (hereinafter 'the Belgian Law on Commercial Practices'). C. I. A. further claimed that Signalson and Securitel should be fined and that the decision against them should be published. In the course of the proceedings C. I. A. submitted that the Belgian rules on approval of alarm systems and networks in the Law and the 1991 Decree constituted a measure having an effect equivalent to a quantitative restriction and were thus in breach of Article 30 of the Treaty and, moreover, that the rules were invalid since — as is not disputed — they were not communicated to the Commission under the rules of the Directive.

8. In the main proceedings Signalson and Securitel have made a number of counterclaims; these include a claim that C. I. A. had conducted itself in breach of good commercial practice by marketing an alarm system that had not been approved and operating an undertaking that had not been authorized, that the court should order that marketing of the Andromede system should cease and that C. I. A. should be ordered to pay a periodic penalty payment. Further they have claimed that C. I. A. should be ordered to cease any form of advertising in which the Andromede system is described as a Belgian product since, in the view of Signalson and Securitel, it in fact comes from Germany or France.

The relevant Community rules

9. Under Article 30 of the Treaty, quantitative restrictions on imports and all measures having equivalent effect are prohibited.

10. The Directive sets out an information procedure whereby the Member States are to forward all drafts of technical regulations to the Commission.

In Article 1(1), (5) and (6) the terms 'technical specification', 'technical regulation' and 'draft technical regulation' are defined. Those provisions are worded as follows:

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

1. "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 terminology, symbols,

testing and test methods, packaging, marking or labelling and the production methods and procedures for agricultural products as defined in Article 38(1) of the Treaty and for products intended for human and animal consumption and for medicinal products as defined in Article 1 of Directive 65/65/EEC, as last amended by Directive 87/21/EEC;

...

5. "technical regulation", 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;

6. "draft technical regulation", the text of a technical specification including administrative provisions, formulated with the aim of enacting it or of ultimately having it enacted as a technical regulation, the text being at a stage of preparation at which substantial amendments can still be made.'

11. Under Article 5, a Standing Committee is to be set up consisting of representatives appointed by the Member States who may call on the assistance of experts or advisers; its chairman is to be a representative of the Commission.

12. Article 8(1) of the Directive is worded as follows:

'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.'

The Commission shall immediately notify the other Member States of any draft it has received; it may also refer this draft to the Committee referred to in Article 5 and, if appropriate, to the Committee responsible for the field in question for its opinion.

13. The Commission and the Member States may make comments to the Member State which has forwarded a draft technical regulation; under Article 8(2) that Member State shall take such comments into account as far as possible in the subsequent preparation of the technical regulation.

14. Under Article 8(4), the information supplied under Article 8 is to be confidential. However, the Committee and the national authorities may, provided that the necessary precautions are taken, consult, for an expert opinion, natural or legal persons, including persons in the private sector. [2]

15. Under Article 9(1) of the Directive, Member States are to postpone the adoption of a draft technical regulation for six months from the date of the notification if the Commission or another Member State delivers a detailed opinion, within three months of that date, to the effect that the measure envisaged must be amended in order to eliminate or reduce any barriers which it might create to the free movement of goods. The Member State concerned is to report to the Commission on the action it proposes to take on such detailed opinions. Under Article 9(2), the said period is extended from 6 to 12 months if, within three months following the notification referred to in Article 8(1), the Commission gives notice of its intention of proposing or adopting a directive on the subject.

Conversely, it follows from Article 9(1) that a Member State can implement the regulation notified provided neither the Commission nor a Member State has made any objection within the prescribed period of three months.

16. In a communication of 1 October 1986 concerning non-compliance with certain provisions 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, the Commission set out the legal consequences of failure to take account of the notification requirement. [3]

The seventh and eighth paragraphs state as follows:

'It is clear that the failure by Member States to respect their obligations under this information procedure would lead to the creation of serious loopholes in the internal market, with potentially damaging trade effects.

2 — Article 8(4) was, moreover, amended by Directive 94/10/EEC of 23 March 1994 (OJ 1994 L 100, p. 30) to the effect that information would not be confidential except at the express request, supported by reasons, of the notifying Member State. That directive is not, however, applicable to this case.

3 — OJ 1986 L 245, p. 4.

The Commission therefore considers that when a Member State enacts a technical regulation falling within the scope of Directive 83/189/EEC without notifying the draft to the Commission and respecting the standstill obligation, the regulation thus adopted is unenforceable against third parties in the legal system of the Member State in question. The Commission therefore considers that litigants have a right to expect national courts to refuse to enforce national technical regulations which have not been notified as required by Community law.'

17. In a Commission communication concerning the publication in the *Official Journal of the European Communities* of the titles of draft technical regulations notified by the Member States pursuant to Council Directive 83/189/EEC, as amended by Council Directive 88/182/EEC, [4] it is stated that in order to bring draft national technical regulations to the notice of European industry, the Commission had decided to publish a list of notifications received; it took the view that publication of such a list would further strengthen the system for preventing the erection of new barriers established by the Directive.

It is further stated that such publication, which was to be introduced from March 1989 and take place weekly, would include in addition to the titles of the draft regulations, the date on which the three-month standstill period would expire. The communication lists the departments in each Member State from which firms can obtain further information as to the content of a notified draft regulation.

Finally, the Commission refers, in respect of the consequences of failure to notify, to the said communication of 1 October 1986.

18. In specific publications in the *Official Journal of the European Communities* the Commission refers to the said communications and cites paragraph 8 of the 1986 communication which, as stated, deals with the Commission's view of the consequences of failure to notify. [5]

4 — OJ 1989 C 67, p. 3.

5 — For examples of such publications pursuant to the communication reference should be made to OJ 1994 C 3, p. 2, and OJ 1994 C 8, p. 2.

The questions referred for a preliminary ruling

19. By an order of 20 June 1994 the Tribunal de Commerce, Liège, referred the following questions to the Court of Justice:

'(1) Does the Law of 10 April 1990 on caretaking firms, security undertakings and internal caretaking services and, more particularly, Articles 4 and 12 thereof, impose quantitative restrictions on imports or does it contain measures having an effect equivalent to a quantitative restriction prohibited by Article 30 of the EEC Treaty?

(2) Is the Royal Decree of 14 May 1991 laying down the procedure for approving alarm systems and networks, which is referred to in the Law of 10 April 1990, and in particular Articles 2 and 8 thereof, compatible with Article 30 of the Treaty which prohibits quantitative restrictions on imports and all measures having an effect equivalent to a quantitative restriction?

(3) Does the abovementioned Law of 10 April 1990, in particular Articles 4 and 12 thereof, contain technical regulations which should have been communicated to the Commission beforehand in accordance with Article 8 of Directive 83/189/EEC?

(4) Does the Royal Decree of 14 May 1991, in particular Articles 2 and 8 thereof, contain technical regulations which should have been communicated to the Commission beforehand in accordance with Article 8 of Directive 83/189/EEC?

(5) Are the provisions of Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, in particular Articles 8 and 9 thereof, unconditional and sufficiently precise to be relied upon by individuals in proceedings before national courts?

(6) Do Community law and the protection which it affords to individuals require a national court to refuse to apply a national technical regulation which has not been communicated to the Commission by the Member State which adopted it, in accordance with the obligation laid down in Article 8 of Council Directive 83/189/EEC?'

First and second questions

20. By the first and second questions the national court wishes essentially to ascertain

whether Article 30 of the Treaty should be interpreted as meaning that the prohibition against quantitative restrictions on imports and measures having equivalent effect are applicable to national rules such as those contained in the Law, in particular Articles 4 and 12 thereof, and the 1991 Decree, in particular Articles 2 and 8, which lay down a requirement of prior authorization for security firms and prior type approval for alarm systems and networks. Since both questions concern Article 30 et seq. of the Treaty I consider it appropriate to answer these questions together.

21. C. I. A. has claimed that the rules have the necessary effect of restricting trade between Member States.

22. Signalson has claimed that the Law and the 1991 Decree do not fall within the scope of Article 30 of the Treaty, since this is a situation covered by the Court's judgment in Joined Cases C-267/91 and C-268/91 *Keck and Mithouard.* [6]

23. The Belgian Government has stated that implementation of a new Decree of 31 March 1994 has rendered the questions referred to the Court otiose.

24. The Commission has stated that Article 4 of the Law concerns the establishment of undertakings and does not affect free movement of goods to an extent sufficient for Article 30 to apply. Nor would it seem that in the present case there is such a link with free movement of goods that the approval requirements in Article 12 of the Law and Article 2 of the 1991 Decree are in breach of Article 30. Furthermore those rules have a legitimate objective and are not more burdensome than is necessary. On the other hand, Article 8 of the 1991 Decree is contrary to the principle of mutual recognition. The reference in the provision to Article 7 of the 1991 Decree raises doubts as to what tests are covered by mutual recognition. Moreover only tests carried out by laboratories recognized under EEC standards are covered by mutual recognition. Tests carried out by laboratories recognized under national rules are not taken into account. In addition it is a requirement that the product should have been approved in another Member State within the last three years calculated from the date of submission of the application.

25. In my opinion Article 4 of the Law concerns prior authorization of security firms and thus the conditions governing the establishment of undertakings in Belgium. Such a rule must, in principle, be assessed on the basis of Articles 52 and 58 of the Treaty. According to the consistent case-law of the Court, the Treaty's provisions on the right of establishment cannot be applied to activities which are confined in all respects within a

6 — [1994] ECR I-6097.

single Member State. [7] C. I. A. is a Belgian company which operates a business in Belgium and therefore in my view this is a domestic situation that falls outside the scope of application of Articles 52 and 58. It was presumably for that reason that the national court did not find it necessary to refer a question concerning the interpretation of those Treaty provisions.

26. As far as Article 30 is concerned, it should be noted that no evidence has been forthcoming in this case that might indicate that the authorization requirement contained in Article 4 was intended to bring about a situation where Belgian undertakings were prompted to obtain and use domestic products. The indirect effects that national provisions of that kind must have on the free movement of goods are, in my view, much too uncertain and indirect to lead to their being regarded as measures of a nature to hinder trade between Member States. [8] Article 30 of the Treaty must, therefore, I believe, be interpreted as not precluding a rule such as that contained in Article 4 of the Law.

27. Article 12 of the Law and the 1991 Decree concern type approval of alarm systems and networks. The Commission has stated generally with regard to the first two questions and thereby also with regard to those provisions that it does not believe that there is the necessary link with the free movement of goods. The question whether that is so must therefore be examined.

28. In its judgment in Case 286/81 *Oosthoek*, [9] the Court held that the application of the Netherlands legislation to the sale in the Netherlands of encyclopaedias produced in that country was in no way linked to the importation or exportation of goods and did not therefore fall within the scope of Articles 30 and 34 of the Treaty. On the other hand, reference should be made to the judgment in Case 298/87 *Smanor* [10] in which the case before the national court concerned the application of French law to a French company which manufactured and sold deep-frozen yoghurt on the French market. The Court held that it was for the national court to weigh the relevance of the questions referred in the light of the facts of the case before it. [11]

The Court is thus circumspect as regards finding that there is a purely domestic situation which lies outside Article 30 of the Treaty. Such circumspection is, in my view, well founded. A product is often very much a compound. Typically it will consist of a long list of parts or components which may well have been imported from another Member State, making it far more difficult to

7 — See, for example, Joined Cases C-29/94 to C-35/94 *Aubertin and Others* [1995] ECR I-301, paragraph 9, and Joined Cases C-330/90 and C-331/90 *López Brea and Hidalgo Palacios* [1992] ECR I-323, paragraph 7.

8 — See Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 24.

9 — [1982] ECR 4575, paragraph 9. The Court does not appear to have followed up that decision.

10 — [1988] ECR 4489, paragraphs 8 and 9.

11 — In contrast to the *Oosthoek* case, the questions referred to the Court did not raise the question of whether the situation was a purely domestic one. In connection with freedom of movement for persons, the Court has meanwhile dealt with the question on its own motion.

determine the origin of a product than the origin of, for example, a service. It also results in the application by a Member State of a national rule to a product which is assembled in the Member State in question often affecting the import of goods, at least indirectly or potentially. [12]

29. In the present case, according to C. I. A.'s evidence, the product involved is made up of goods manufactured in Germany, Italy and Belgium. It would seem further that in the main proceedings Signalson and Securitel are claiming that C. I. A. should be ordered to cease marketing the Andromede system as a Belgian product, since in their view it is actually of German or French origin. Thus, on the evidence, there is no basis for excluding application of Article 30 of the Treaty on the ground that there is no restrictive effect on trade between Member States.

30. According to the Court's case-law, by measures of equivalent effect prohibited by Article 30 are meant such obstacles to free movement of goods as, in the absence of harmonization of legislation, are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging). That is so even if those rules apply without distinction to all products unless their application can be justified by a public-interest objective taking precedence over the free movement of goods. [13]

31. Under Article 12 of the Law and Article 2 of the 1991 Decree, prior approval of alarm systems and networks is a precondition of their being marketed in Belgium. The aim of such a type approval system is to lay down requirements for the product's composition, external appearance etc. They thus constitute a measure covered by Article 30 of the Treaty, unless the approval requirement is based on grounds of general public interest which take precedence over the free movement of goods. Such grounds include, under Article 36 of the Treaty and the Court's case-law, the protection of consumers and public policy. In laying down rules to ensure that such considerations are complied with, Member States are entitled, provided that they observe the principle of proportionality, to lay down the level of protection desired and, taking into account the principle of mutual recognition, to lay down requirements concerning prior type approval of goods which have already been approved in another Member State. [14]

12 — The Court has consistently held that all rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be regarded as measures having an effect equivalent to quantitative restrictions. See, for example, Case C-412/93 *Édouard Leclerc-Siplec* v *TF1 Publicité and M6 Publicité* [1995] ECR I-179, paragraph 18.

13 — See the judgment in *Keck and Mithouard* cited in footnote 6, at paragraph 15.

14 — See, for example, Case 188/84 *Commission* v *France* [1986] ECR 419, paragraphs 13 to 17.

32. Alarm systems are technically complicated products, the efficient functioning of which depends to a great degree on their reliability — a fact that can be hard for the consumer to establish, since he switches on the alarm when he is actually leaving the area being guarded. It is essential to ensure that the system is in fact activated when entry is made and cannot be deactivated by intruders and, perhaps most important, that the alarm system will not produce false alarms. The latter point is essential, not only to prevent the neighbours or others being disturbed, but also with a view to preventing false alarms causing an unnecessary burden on police alarm centres and so forth. Furthermore, false alarms give rise to a risk that the public will stop reacting adequately to alarms. Lastly, there might be a need to ensure that the user comes to no harm when using the alarm system. In the light of the foregoing it must be assumed that considerations of public policy and the protection of consumers are grounds for laying down requirements concerning the technical details of alarm systems and networks.

33. The question which now falls to be examined is whether a system of prior type approval for alarms systems and networks is compatible with the principle of proportionality, or whether there are other effective means which are less burdensome. An alternative might be a system laying down an obligation to comply with the manufacturing requirements laid down and providing for subsequent random sampling. Regardless whether such a system is a possibility, it would not, however, ensure to the same degree as prior inspection that the equipment complied with the requirements laid down. A type approval system will, presumably, be more effective in preventing the equipment setting off false alarms and other functional failures and thus ensure better protection of the considerations of public order and better protection of consumers. The Community legislature has introduced type approval systems in a number of areas. One example is provided by Council Directive 93/33/EEC of 14 June 1993 on protective devices intended to prevent the unauthorized use of two-or three-wheel motor vehicles. [15] Accordingly I take the view that the provisions on free movement of goods in Article 30 et seq. of the Treaty do not preclude a type approval system for alarm systems and networks such as that provided for in Article 12 of the Law and Article 2 of the 1991 Decree.

34. The national court has also asked whether a national rule such as that contained in Article 8 of the 1991 Decree is compatible with Article 30 of the Treaty.

35. Under the principle of mutual recognition, the Member States are under an obligation to approve imported goods provided they satisfy the requirements in another Member State which, irrespective of whether they are identical, ensure a corresponding (equivalent) level of protection. Furthermore, Member States are required to assist in bringing about a relaxation of controls by taking account of equivalent tests undertaken in another Member State. [16]

15 — OJ 1993 L 188, p. 32.

16 — See, for example, Case 272/80 *Frans-Nederlandse Maatschappij voor Biologische Produkten* [1981] ECR 3277, paragraphs 14 and 15.

36. More generally, I would point out that the requirement of equivalence implies that under Community law there are essential requirements regarding both the quality of tests and the testing laboratory. It might at first glance seem hard to discern a justification for rejecting a test simply because of its age if no changes have been introduced in the meantime which affect the assessment of equivalence. The purpose of a national system of accreditation of test laboratories is, moreover, to verify and monitor the laboratory's quality and capacity to carry out proper tests within specifically delimited areas. The principle of mutual recognition must preclude a test undertaken by such an accredited laboratory being rejected without a prior factual assessment of equivalence. A test should not be rejected simply because it has been undertaken by a laboratory which has not been approved under any Community standards. Lastly, the reference in Article 8 of the 1991 Decree to Article 7 thereof, which does not concern the tests required, gives rise to uncertainty as to which tests are covered by the provision. In the circumstances it is understandable that the Commission has cast doubt on the compatibility of Article 8 of the 1991 Decree with Article 30 of the Treaty.

37. However, it must be a precondition to reliance on the principle of mutual recognition of equivalent tests in a specific case that tests have in fact been carried out on the product in another Member State. No evidence has been produced in this case to indicate that the Andromede system has been subjected to such tests. It is therefore difficult to see how that aspect of the questions referred to the Court is relevant as regards the question to be decided in the main proceedings, namely whether C. I. A. was justified in omitting to apply for approval of the Andromede system. Any reply would thus be very general and hypothetical in character, and for that reason in my view the Court should not answer that part of the question.

38. To summarize, I consider that the reply to the first two questions should be that Articles 30 to 36 of the Treaty should be interpreted as not precluding a system of type approval of alarm systems and networks such as that contained in Articles 4 and 12 of the Law or Article 2 of the Royal Decree.

Third and fourth questions

39. The third and fourth questions invite the Court to state whether Article 8 of Directive 83/189 should be interpreted to the effect that the notification requirement covers national rules such as that contained in the Law, specifically in Articles 4 and 12, and the 1991 Decree, specifically in Articles 2 and 8. I consider it appropriate to answer these questions together as well.

40. C. I. A. has stated that an alarm system may not be marketed in Belgium without satisfying the requirements laid down in the

Law and the 1991 Decree. They are therefore technical specifications within the meaning of the Directive. In that connection it is irrelevant that the actual approval requirement is found in a framework law.

41. Signalson, the Belgian Government and the United Kingdom have stated *inter alia* that the Law is in the nature of a framework law and that Articles 4 and 12 do not contain technical regulations as defined in the Directive, since those provisions do not lay down requirements regarding a product's form, composition and so forth.

42. The Commission has stated that Article 4 of the Law does not contain technical regulations, since the provision contains rules for the establishment of undertakings. The Commission does, however, agree with C. I. A. that Article 12 of the Law and the 1991 Decree, introducing a mandatory type approval procedure for alarm systems and networks, are in the nature of a technical regulation which must be notified.

43. Under Article 4 of the Law, only persons with prior authorization from the Ministère de l'Intérieur may operate a security firm. In that provision rules are laid down for the establishment of undertakings, whereas the Directive covers technical regulations for products. National regulations concerning the establishment of undertakings must be regarded as covered by the Directive only to the extent that requirements concerning products are laid down in those regulations. Article 4 of the Law evidently does not contain such requirements. Therefore in my view those provisions fall outside the scope of the Directive.

44. Under Article 8(1) there is a duty to communicate to the Commission any draft technical regulation. Under Article 1(5) that term covers 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. Under Article 1(1), 'technical specifications' includes the characteristics required of a product such as levels of quality, performance, safety or dimensions, testing and test methods and labelling. The Commission should further be informed of the text of the basic legislative or regulatory provisions principally and directly concerned. The Directive thus ensures that the Commission and the other Member States can assess the provision in context and thus assess the actual implications of the draft.

45. The Law and the 1991 Decree introduced a type approval procedure for alarm systems and networks. Article 12 of the Law laid down, as stated, the actual requirement of prior approval of alarm systems and networks. At the hearing the Belgian Government explained that even without the 1991 Decree Article 12 of the Law would not be without legal effect. The provision is

thus not merely an enabling provision, [17] but is on the contrary a significant substantive regulation. Article 8 of the Directive can hardly, in my view, be interpreted to the effect that such a general requirement concerning prior approval should be exempted from the obligation to inform the Commission, inasmuch as it can stand alone. Irrespective of its general character, such a requirement concerns the product's properties. Furthermore, its enforcement would *per se* create great uncertainty on the part of traders and thus give rise to not insignificant obstacles to trade. A provision such as that contained in Article 12 of the Law must therefore, in my view, be regarded *per se* as a technical regulation which must be notified.

46. The 1991 Decree implies that a number of tests must be carried out, the purpose of which is to establish that the equipment satisfies the technical requirements laid down. Those requirements in respect of the product concern *inter alia* mechanical properties, reliability, tests and protection against misuse. Such requirements which lay down the characteristics required of the alarm systems and networks product group are, in my view, in the nature of technical specifications within the meaning of the Directive, which specifically include requirements of quality, performance and safety. Furthermore, under the Decree satisfaction of those requirements is a precondition of the equipment's being lawfully marketed in Belgium. A set of rules such as that contained in the 1991 Decree is therefore a technical regulation as defined in Article 1(5) of the Directive.

17 — See the situation in Case C-317/92 *Commission* v *Germany* [1994] ECR I-2039, paragraph 26.

47. In the light of the foregoing, I consider that the reply to the third and fourth questions should be that Article 8 of the Directive must be interpreted as meaning that provisions and specifications concerning prior type approval of alarm systems and networks such as those contained in Article 12 of the Law and Article 2 of the 1991 Decree are covered by the requirement of notification under that provision.

Fifth and sixth questions

48. By its fifth and sixth questions, the national court seeks to ascertain whether the provisions in the Directive, in particular Articles 8 and 9, are unconditional and sufficiently precise so that they can be relied upon by individuals before a national court and whether the national court should decline to apply a national technical regulation which has not been notified in accordance with Article 8 of the Directive.

49. C. I. A. and the Commission have stated that the Directive, in particular Articles 8 and 9, impose precise and unconditional obligations on the Member States and that technical regulations that have not been notified are not enforceable (see the Commission's 1986 communication).

The Commission has, in addition, referred to the fact that, in its view, an analogy may be drawn with Article 93(3) of the Treaty, concerning State aid. That provision introduces a procedure whereby the Commission is to be informed of plans to grant aid in order that it may undertake an investigation and submit its comments. The Member State in question may not implement the planned measures before the investigation procedure has terminated in a decision. Article 8 of the Directive, according to which draft technical regulations are to be notified, and Article 9, which requires the Member State in question to postpone implementation until certain time-limits have expired, constitute a system which corresponds to Article 93(3).

C. I. A. has stated that, if applicable, there is no question of the Directive imposing obligations on individuals. The Commission, in answering an inquiry relating to that point, referred to the fact that in this case what is at issue is the trader's legal position in relation to the State under national rules which were implemented without complying with the notification procedure laid down in the Directive.

50. In its observations Signalson did not comment on that question.

51. The Netherlands and German Governments and the United Kingdom have stated that the Directive contains merely procedural rules which govern the relationship between the Community and the Member States. The provisions of the directive are not unconditional and sufficiently precise so as to have direct effect. Rather, in the event of any infringement of the obligation to notify, the Commission may bring proceedings under Article 169 of the Treaty and individuals should rely on Article 30 of the Treaty before national courts. In this connection the United Kingdom and the Netherlands Government referred to the fact that in the 16th recital in the preamble to its proposal for amending the Directive, [18] the Commission proposed that the Directive should lay upon the Member States clear and unconditional obligations and enable individuals to enforce those obligations before the courts. That part of the recital was, however, left out when Directive 94/10 was finally adopted. [19] Directive 94/10 is silent as to the consequences of failure to notify and does not confer rights on individuals; it does not affect the Member States' right ultimately to adopt the technical regulation once it has been notified. According to the United Kingdom, an analogy with Article 93(3) of the Treaty is misconceived, since the Member State's ultimate implementation of a measure in the case of State aid is conditional on the Commission's prior express or implied approval. Non-compliance with the obligation to notify does not necessarily mean that the provision is substantively in breach of the Treaty. If obstacles were put in the way of enforcement of non-notified regulations, that would in many cases affect regulations which were substantively compatible with Community law. It could weaken

18 — Proposal submitted on 27 November 1992 for a Council directive amending for the second time Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1992 C 340, p. 7.

19 — See footnote 2.

controls on dangerous products to the detriment of the individual.

52. Under the Court's consistent case-law, after expiry of the time-limit for implementing a directive, an individual may rely, against the State, on provisions of that directive which appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, in so far as they define rights which individuals are able to assert against the State. [20] Provisions in a directive which have direct effect take precedence over contrary provisions in national legislation. [21] A directive cannot, however, of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. [22] The Court pointed out that the case-law on the possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to 'each Member State to which it is addressed'. [23]

53. Article 8(1) of the Directive imposes an obligation on the Member States to notify the technical regulations defined in the Directive. Article 9(1) and (2) contains a number of suspensory provisions. The Commission and the Member States thus have a period of three months to investigate and deliver a detailed opinion to the effect that the measure envisaged should be amended in order to eliminate or reduce any barriers which it might create to the free movement of goods. If such an opinion is delivered, final adoption is postponed for a further six months calculated from notification. If the Commission gives notice of its intention of proposing or adopting a directive on the subject, the period is extended to 12 months from notification. Those obligations are, in my view, unconditional and sufficiently precise so as to be capable of having direct effect. The question is accordingly whether those provisions in Articles 8 and 9 confer rights on individuals.

54. The Court has previously had occasion in certain cases to assess the extent to which individuals may rely on Community law procedural provisions. Its judgment in Case 174/84 *Bulk Oil* [24] concerned a provision in a Council decision whereby Member States contemplating a change in the state of liberalization in trade with third countries were obliged to inform the other Member States and the Commission. After notification, consultation would then take place before final adoption. No detailed procedural rules or time-limits were laid down in that connection. The Court held that the provisions in question concerned only the institutional relationship between a Member State and the Community and the other Member States and did not create individual rights which national courts must protect. [25]

20 — See, for example, Case 8/81 *Becker* [1982] ECR 53, paragraphs 24 and 25.

21 — See, for example, Case 190/87 *Moormann* [1988] ECR 4689, paragraph 23.

22 — See, most recently, Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraph 20.

23 — See Case C-91/92 *Faccini Dori*, cited in footnote 22, paragraph 22.

24 — [1986] ECR 559.

25 — See paragraph 62.

55. The judgment in Case 380/87 *Enichem Base and Others* [26] concerned Article 3(2) of Directive 75/442, [27] pursuant to which the Member States were obliged to inform the Commission of any draft rules concerning measures *inter alia* to encourage the prevention, recycling and processing of waste.

In his Opinion, at point 14, Advocate General Jacobs stated that when assessing the consequences of a failure to inform the Commission a comparison between Directive 83/189 and Directive 75/442 on waste was instructive. In contrast with Directive 75/442, Directive 83/189 contained a number of detailed provisions enabling the Commission and other Member States to make comments on the notified drafts and required Member States in certain circumstances to postpone the adoption of the drafts for certain periods. The Advocate General pointed out that since Directive 75/442 did not prescribe any procedure for suspension of introduction of the measure, or for Community control, it could not be maintained that a failure to inform the Commission had the effect of rendering the measures unlawful.

The Court, which came to the same conclusion as the Advocate General, held that the Member States were merely required to inform the Commission in good time of any relevant draft rules. The provision did not, however, lay down any procedure for Community monitoring of the planned rules or make their implementation conditional on agreement by the Commission or its failure to object. [28] Hence neither the wording nor the purpose of the provision of the directive in question could provide any support for the view that it gave rise to any right for individuals. [29]

56. On the other hand, reference should be made to the Court's case-law concerning Article 93(3), which is worded as follows: 'The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.'

The Court has held that the prohibition on implementation in the last sentence in Article 93(3) has direct effect and confers rights for individuals. [30] In its judgment in Case 120/73 *Lorenz*, [31] the Court stated that the objective pursued by Article 93(3), which was to prevent the implementation of aid contrary to the Treaty, meant that a Member

26 — [1989] ECR 2491.

27 — Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 47).

28 — See paragraph 20.

29 — See paragraphs 22 and 23.

30 — See, for example, Case C-44/93 *Namur-Les Assurances du Crédit* [1994] ECR I-3829, paragraphs 16 and 17; Case C-120/73 *Lorenz* [1973] ECR 1471, paragraph 8; and Case 6/64 *Costa* v *ENEL* [1964] ECR 585.

31 — See footnote 30, at paragraph 4.

State should await the result of the Commission's assessment as to whether a measure is incompatible with the common market. Notification thus has suspensory effect. The Court further stated that the direct effect of the prohibition extended to all aid which had been implemented without being notified. [32]

57. From that case-law it can be concluded that a rule which merely lays down an obligation to notify a draft national rule without linking that obligation to a subsequent formal procedure does not of itself confer rights on individuals. If, however, the obligation to notify is linked to a procedure under which the draft must be examined at Community level and the Member States are bound not to implement a notified draft before that procedure has been terminated, rights will ensue that can be relied upon by individuals. In that connection no requirement can be implied that the procedural provision in question should expressly confer rights on individuals. It is the content and object of the provision in question that are decisive.

58. According to the fifth recital in the preamble to the Directive, the Commission and the other Member States are to be allowed the opportunity to propose amendments to a contemplated measure, in order to remove or reduce any barriers which it might create to the free movement of goods. If the Commission or the other Member States submit comments on a draft, under Article 8(2) the Member State which has notified the measure is to take such comments into account as far as possible in the subsequent preparation of the regulation. The actual implementation of that part of the procedure is ensured by the fact that the Member State is bound to postpone the adoption of the regulation for three months calculated from the date of notification. Further postponements of six and 12 months calculated from the same date follow, if the Commission or a Member State delivers a detailed opinion to the effect that the measure envisaged should be amended, or the Commission gives notice of its intention to propose or adopt a directive on the subject. If a detailed opinion is delivered, the Member State which has notified the regulation must, under Article 9(1), report to the Commission on the action it proposes to take on that detailed opinion. The Commission is to comment on that reaction. The Directive thus introduces a Community procedure whereby the adoption of national regulations may be suspended for up to 12 months. The Community legislature considered it necessary to lay down those suspensory provisions despite the fact that the Commission is empowered to bring Article 169 proceedings on the basis of Article 30 or submit a proposal for a directive should it take the view that a technical regulation that has been notified is incompatible with the free movement of goods.

59. In contrast to the provisions which were at issue in the *Bulk Oil* and *Enichem Base* judgments cited above, the Directive establishes a formal procedure for the period after notification which is aimed at preventing a measure that is a barrier to trade entering into force at all. In that connection it should be mentioned that in the *Enichem Base* judgment the Court expressly referred to the fact

32 — See paragraph 8.

that Article 3(2) of Directive 75/442 does not contain any procedure for the examination of drafts at Community level. In the light of the remarks of the Advocate General, who used Directive 83/189 for the purposes of comparison, it would seem appropriate to assume that the Court found it necessarily to be the case that the procedure contained in Articles 8(1) and 9 of the Directive should be regarded as having direct effect.

60. Differences between national technical regulations continue to constitute a significant source of obstacles to free movement of goods. Those obstacles can either be eliminated by harmonization measures or limited by making the principle of mutual recognition more effective. In my view care should be taken not to underestimate the Directive's significance in that connection. The Directive's requirement that there should be prior formalized discussions between the Member States and the Commission form a specific basis for giving effect to that principle. Furthermore, it opens up the possibility that in the light of the comments submitted a Member State will amend a regulation which, regardless of its possible compatibility with Article 30 et seq. of the Treaty, has an effect on free trade in goods. It is thus not necessarily the case that an obstacle to trade which is eliminated by way of the procedure under the Directive could also be removed on the basis of Article 30 of the Treaty.

61. The Commission's Report of 14 March 1993 on the Community Internal Market contains the following table showing the number of notifications and comments submitted in the context of the notification procedure in the years 1990 to 1993. [33]

Year	Notifications	Comments		Detailed Opinions		Intention to propose	
		Member State	COM	Member State	COM	Art. 9.2	Art. 9(2a)
1990	386	224	172	104	168	14	5
1991	435	167	176	119	139	47	7
1992	362	184	165	65	121	19	25
1993	385	104	80	64	88	4	5

It is clear that the number of notifications in that period was relatively constant, at about 380 per annum. It is also clear that both the Commission and the Member States often submit comments and detailed opinions with regard to drafts notified. The number declined over the period. A possible reason might be that the Member States are becoming ever more aware of the obligations arising from the Treaty provisions on the free movement of goods. In 1993, 385 drafts were notified. The Commission made comments in 80 and detailed opinions in 88 cases. The corresponding figures for the Member States were 104 and 64 respectively. The extent to which those comments and detailed opinions had an effect on the drafts is not apparent.

62. It must be assumed that trade organizations and undertakings play an important role, especially with regard to the comments

33 — COM(94) 55 final, p. 68.

submitted by the Member States. The scope and consequences of a notified regulation can best be judged by those who will be affected by the regulation in practice. Trade organizations and undertakings are made aware of the existence of the draft by the Commission's notices in the *Official Journal of the European Communities* before the expiry of the three month period. Thus individuals are ensured of a real opportunity to submit their comments to the competent authorities in the Member State in which they are established. If a regulation is not notified, they are deprived of that opportunity to affect the set of rules which they will encounter in export markets. If Articles 8(1) and 9 of the Directive were held not to have direct effect, undertakings would have no possibility of preventing such an infringement. It will be noted that the provision concerning confidentiality in Article 8(4) of the Directive does not prevent Member States from consulting natural and legal persons in the private sector. Furthermore, to all appearances those provisions have not been strictly complied with in practice. Thus it is clear from the Commission's 1989 communication [34] that undertakings can obtain further information concerning a notified draft from specified authorities.

63. Substantial considerations as regards protecting the rights of individuals and ensuring that the Member States comply with the Directive militate in my view decisively in favour of the Directive having direct effect. Individuals are, it is true, able to claim, when a case is being heard before a national court, that a technical regulation is in breach of Article 30. That possibility does not, however, ensure that a measure's effect as an obstacle to trade is averted before it is implemented. Nor does it ensure that the Commission will bring an action for infringement of the Treaty as a result of failure to notify. Once a regulation has been introduced in breach of the Treaty undertakings will have to conform to it until a judgment has been delivered in any case that might be brought. Damage that will be difficult to redress as regards the trader will therefore often have been incurred before judgment is delivered. Many individuals would, in my view, on that ground alone refrain from bringing an action in the national courts and instead adapt themselves to the regulation in question. In that way the trader does not risk jeopardizing his relationship with the national authorities. In addition, the Directive's notification procedure might also result in obstacles to trade which are compatible with the Treaty being reduced or eliminated.

64. In interpreting the Directive no weight can be attached to the assertions of certain Member States concerning the background to any amendments which might have been made in proposals for a directive while they were being discussed in the Council. Under the Court's consistent case-law, views and declarations which have not been expressly reproduced in the text adopted have no legal significance when the Court is interpreting a legal measure. [35] That must be especially true where, as in this case, the legal measure referred to was adopted after the point in

34 — See footnote 4.

35 — See Case C-306/89 *Commission* v *Greece* [1991] ECR I-5863, paragraph 8; Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 18; and Case 143/83 *Commission* v *Denmark* [1985] ECR 427, paragraph 12.

time when the facts at issue in the main proceedings arose. In my view, on technical grounds of law it is right not to import comments into a directive concerning a difficult question of interpretation which it falls to the Court to decide.

65. The United Kingdom and the Netherlands Government also mentioned that it would be detrimental to private individuals if a non-notified regulation could not be enforced. Their reasoning was that such an effect could weaken the protection of consumers since a provision which has not been notified is not necessarily substantively in breach of Community law. On this point I would point out that nor is a provision which has been notified necessarily substantively in breach of Community law. The duty to notify covers any draft technical regulation. The object is to bring that draft into the light of day. It cannot be completely excluded that failure to notify is in some cases due to a pure oversight. It should not, however, be forgotten that failure to notify might also be regarded as an indication that the authorities in question do not wish the draft to undergo prior examination, because they know it will not stand up to scrutiny in the light of day. The likelihood that a non-notified regulation is substantively in breach of Community law is thus no less than the likelihood that a notified regulation would be, rather the contrary. To accept the views of the United Kingdom and the Netherlands Government would therefore imply a situation favouring Member States which did not follow the rules. But why reward Member States who create covert obstacles to trade? The Court, by way of its case-law, should instead contribute to the greatest extent possible to impelling them into the open.

66. If notification has taken place, Article 9(3) of the Directive enables the suspensory provisions to be waived in urgent cases. [36] Thus the interest of the consumer cannot justify a Member State's omission to notify a regulation. Failure to approve a product in accordance with a non-notified regulation is, moreover, by no means tantamount to the product being a danger to the consumer. The Member State in which the product is manufactured or put into free circulation will typically have drawn up safety requirements. If a consumer product is involved, it follows from the product safety directive that the Member States are to ensure that only safe products are placed on the market. [37] If there is an actual safety risk in relation to consumer products action can be taken on the basis of the product safety directive. [38] In other areas specific action may be taken by virtue of Article 36 of the Treaty and the general interests recognized by the Court.

36 — At the hearing the Commission stated that that exemption is applied in some 10% of notifications.

37 — See Council Directive 92/59/EEC of 29 June 1992 on general product safety, OJ 1992 L 228, p. 24, Article 5.

38 — Under Article 6(1)(h) of that directive, Member States can even require products that have already been placed on the market to be withdrawn.

67. In summary, I consider that the notification rule and suspensory provisions in Articles 8(1) and 9 of the Directive confer rights on individuals and are unconditional and sufficiently precise so that they may be relied upon by an individual before a national court; accordingly technical regulations which have not been notified will not be enforceable in relation to individuals. A non-notified regulation will consequently not furnish a basis for imposing a penalty on a trader or prevent him from marketing a product which does not comply with the regulations.

68. Consideration must, however, be given to the question whether the direct effect of the notification procedure in the Directive can be relied upon in a case such as that in the main proceedings, where the action is between two individuals. Under the Court's case-law [39] a directive cannot, as stated, of itself impose obligations on an individual. A provision in a directive cannot therefore be relied upon as such against an individual, in the same way as the Community may not issue rules in the form of a directive which impose obligations on an individual. [40] On the other hand, when applying national law, national courts must interpret national legal provisions, as far as possible, in the light of the wording and purpose of the directive so as to achieve the result it has in view. [41] That obligation applies both to provisions in a law which has been specifically introduced in order to implement the directive and to provisions in other legislation, [42] and it applies regardless whether the legislation preceded the directive or vice versa. [43]

69. In the main proceedings Signalson and Securitel have claimed that C. I. A. should cease marketing the Andromede system since it has not received type approval under the provisions contained in the Law and 1991 Decree. They have further claimed that C. I. A. should be ordered to pay a periodic penalty payment as a result. Those claims are based on national regulations which have not been notified in accordance with the Directive, namely the Law and the 1991 Decree. On the basis of the Belgian Law on Commercial Practices it is claimed that those regulations should be enforced in relation to a trader by way of an order that he cease marketing and pay a periodic penalty. Such enforcement must, in my view, be contrary to the direct effect of the notification procedure set out in Articles 8(1) and 9 of the Directive. That would, under the Court's case-law hitherto, be clear without more if it was the State which, as prosecutor, consumer ombudsman or similar had brought proceedings against C. I. A. The fact that the question in this case has been raised in the context of a private action, however, in my view can make no difference whatsoever. It is the State which lays down rules on penalties, prohibitions on marketing, etc. and it is the courts which must impose such sanctions regardless of who, under the national rules on procedure, might have brought the case.

39 — See, most recently, the judgment cited in footnote 22, Case C-91/92 *Faccini Dori*, at paragraph 20.

40 — Ibid., at paragraphs 24 and 25.

41 — See, for example, ibid., paragraph 26 and Case C-334/92 *Wagner Miret* [1993] ECR I-6911, paragraph 20

42 — See Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraph 12.

43 — See Case C-91/92 *Faccini Dori*, cited in footnote 39, paragraph 26.

70. In the main proceedings C. I. A. claimed that Signalson and Securitel should be fined for having acted in breach of good commercial practice by stating that the Andromede system was not approved in accordance with regulations contained in the Law and the 1991 Decree. That claim is based on the fact that C. I. A. was not obliged to seek type approval since the Belgian regulations had not been notified in accordance with the Directive. The question might be raised whether it can be said that if C. I. A.'s claim is upheld that would amount to allowing the Directive to impose obligations on individuals (in this case Signalson and Securitel).

71. The notification procedure in the Directive imposes a number of obligations on the Member States. The Directive does not, however, on its wording, aim to impose duties on individuals and therefore no question arises as to whether the Directive should have direct effect as far as individuals' obligations are concerned. The Directive is thus essentially different from Directive 85/577/EEC which was at issue in Case C-91/92 *Faccini Dori*. [44]

72. C. I. A.'s claim is itself based on national law. The purpose of the reference to the Court would appear, in the light of C. I. A.'s claims, to obtain the necessary basis for the national court's interpretation of the Belgian Law on Commercial Practices. I would refer to what was stated above concerning the national court's duty, as far as possible, to interpret national law in the light of Community law. Such interpretation of national law in the light of Community law can naturally indirectly be of significance for the claims relating to Signalson and Securitel, but that is no different from the situation in other cases, whether the Court has indicated the rule of interpretation to be applied (see, for example, Case C-106/89 *Marleasing* [1990] ECR I-4135).

73. If it were held that C. I. A. was not able to point to the incompatibility of the Belgian regulations with Community law in its claims against Signalson and Securitel that would, in my view, create an unsatisfactory and incomprehensible situation where Community law would on the one hand be seeking to prevent a Member State from prosecuting an individual who had not complied with a non-notified technical provision, but on the other hand would debar the same individual from relying on the same circumstance in a case against a competitor who had stated that the individual in question had conducted himself unlawfully by not complying with the (unlawful) national regulation.

It might be useful to illustrate what such a legal situation could entail by means of an example based on the Court's leading case on the direct effect of provisions in a directive, Case 8/81 *Becker*. [45] It would mean that

44 — See footnote 22.

45 — See footnote 19.

Ursula Becker, a self-employed credit negotiator, on the one hand by reference to the direct effect of Article 13 of the Sixth VAT Directive could rely on the State's VAT demand being unlawful, but on the other hand would be debarred from claiming the same right not to pay VAT in an action against a competitor who claimed that she was acting in breach of good commercial practices in not paying the VAT under national law.

74. The question whether, in the context of the national court's interpretation of national law in the light of Community law, C. I. A.'s claims against Signalson and Securitel should be upheld is naturally wholly a question for the national court. It is, for example, national law which lays down the consequences under criminal law and otherwise of possible mistakes of law concerning the relationship between the national Belgian regulations and the Directive.

75. In summary, I consider that the fifth and sixth questions should be answered to the effect that Articles 8(1) and 9 of the Directive confer rights on individuals and are unconditional and sufficiently precise so that they may be relied on by individuals before a national court which should thus decline to apply a national technical regulation which has not been notified in compliance with the Directive.

Conclusion

76. In view of the foregoing, I suggest that the Court should give the following replies to the questions referred to it by the Tribunal de Commerce, Liège:

(1) Article 30 of the Treaty should be interpreted as not precluding a system of type approval of alarm systems and networks such as that contained in Articles 4 and 12 of the Law of 10 April 1990 on caretaking firms, security

undertakings and internal caretaking services or in Article 2 of the Royal Decree of 14 May 1991 laying down the procedure for approving the alarm systems and networks referred to in the Law of 10 April 1990.

(2) 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 must be interpreted as meaning that provisions and specifications such as those contained in Article 12 of the Law of 10 April 1990 on caretaking firms, security undertakings and internal caretaking services and in Article 2 of the Royal Decree of 14 May 1991 laying down the procedure for approving the alarm systems and networks referred to in the Law of 10 April 1990 are covered by the requirement of notification under that provision.

(3) Articles 8(1) and 9 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 confer rights on individuals that are unconditional and sufficiently precise so that they may be relied on by individuals before a national court which should thus decline to apply a national technical regulation which has not been notified in compliance with the Directive.