# OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 20 March 1997 *

## I — Introduction

1. Where only a small number of provisions of a proposed national law might be classified as 'technical regulations' for the purposes 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] to what extent is the Member State in question obliged to notify the Commission of the proposed law under Article 8 of the Directive? This is the essential question which arises in the present infringement proceedings, to which a preliminary objection of inadmissibility has been made by the defendant Member State.

## II — Facts and procedural background

(a) *Law No 257 of 27 March 1992*

2. By telexes of 2 July 1991 and 26 February 1992, and by letter of 17 October 1991, the services of the Commission notified the Italian authorities that a projected law on the cessation of the use of asbestos constituted a technical regulation within the scope of the Directive. The law was adopted on 27 March 1992 as Law No 257 'laying down rules concerning the cessation of the use of asbestos' (hereinafter 'Law No 257/92' or 'the national law'). [2] While it appears that the text of the draft law was notified to the Commission on 26 February 1992 in the context of the Community provisions on State aids, this notification was subsequently withdrawn, and it is common ground that Law No 257/92 was at no time notified to the Commission for the purposes of the Directive.

3. The most relevant provisions of Law No 257/92 are the following:

'Article 1 — *Purpose*

1. This Law concerns the extraction, importation, processing, use, marketing, treatment and disposal in the national territory, as well

* Original language: English.

1 — OJ 1983 L 109, p. 8; the text cited takes account of the modifications effected by Council Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC (OJ 1988 L 81, p. 75), but not those introduced by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 (OJ 1994 L 100, p. 30) which only came into force on 1 July 1995.

2 — Supplemento ordinario alla *Gazzetta Ufficiale della Repubblica Italiana* No 87 of 13 April 1992, p. 5.

as the exportation, of asbestos and products containing asbestos, and lays down rules for the cessation of the production and trade, extraction, importation, exportation and use of asbestos and products containing asbestos, for the carrying out of measures to decontaminate and reclaim areas affected by asbestos pollution, for research aimed at identifying substitute materials and reconverting production, and for the monitoring of pollution caused by asbestos.

2. With effect from the expiry of a period of 365 days from the date of the entry into force of this Law, and subject to the various time-limits laid down for the cessation of the production and marketing of the products referred to in the table annexed hereto, the extraction, importation, exportation, marketing and production of asbestos, asbestos products and products containing asbestos, including those listed under letters (c) and (g) of the said table, shall be prohibited.

(...)

Article 3 — *Limits*

1. The concentration of inhalable asbestos fibres at workplaces where asbestos is used, processed or disposed of, at sites where reclamation is carried out, at the premises of establishments where asbestos is used and of undertakings or bodies authorized to carry out operations for the processing or disposal of asbestos or for the reclamation of the areas concerned, shall not exceed the limits laid down by Article 31 of Legislative Decree No 277 of 15 August 1991, as amended by this Law.

2. The limits, procedures and analytical methods for the measurement of asbestos pollution, including liquid and gaseous effluent containing asbestos, shall be defined in accordance with Council Directive 87/217/EEC of 19 March 1987. The period for promulgation of the legislative decree implementing that directive, referred to in Articles 1 and 67 of Law No 428 of 29 December 1990, is extended until 30 June 1992.

3. Any updating of or amendments to the limits referred to in paragraphs 1 and 2 of this article shall be enacted, also on a proposal from the commission referred to in Article 4, by decree of the Minister of Health, acting in consultation with the Minister for the Environment and the Minister for Industry, Trade and Crafts.

4. Article 31(1)(a) of Legislative Decree No 277 of 15 August 1991 shall be replaced by the following:

"(a) 0.6 fibre per cubic centimetre for chrysotile."

5. Article 31(2) of Legislative Decree No 277 of 15 August 1991 is repealed.

(...)

Article 8 — *Classification, packaging and labelling*

1. The classification, packaging and labelling of asbestos and products containing asbestos are governed by Law No 256 of 29 May 1974, as subsequently amended and supplemented, and by Presidential Decree No 215 of 24 May 1988.'

4. The remaining provisions of Law No 257/92 were summarized thus by Italy in its defence:

— Articles 4, 5 and 7 establish public bodies and define their powers;

— Articles 3(3), 6 and 12 empower the Ministries of Health and of Industry to adopt implementing measures;

— Article 9(1) lays down information obligations for undertakings using asbestos;

— Articles 9(2), 10 and 12 define the respective tasks of the local health authorities and the regions regarding the decontamination and elimination of asbestos and the cleaning up of buildings;

— Article 11 provides for the cleaning up of a mine and the territory affected by its activities;

— Articles 13 and 14 provide for financial support for technological innovation, restructuring and reconversion of asbestos production; and

— Article 16 lays down provisions on funding.

(b) *The Directive*

5. Article 1(1) of the Directive defines the term 'technical specification' for the purposes of the present proceedings as follows:

'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 ...'.

6. 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.'

7. Article 8(1) and (2) provides:

'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.

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.

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

8. Article 9 provides in relevant part:

'1. Without prejudice to paragraphs 2 and 2a, Member States shall postpone the adoption of a draft technical regulation for six months from the date of notification referred to in Article 8(1) 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 shall report to the Commission on the action it proposes to take on such detailed opinions. The Commission shall comment on this reaction.

2. The period in paragraph 1 shall be 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.

2 a. If the Commission ascertains that a communication pursuant to Article 8(1) relates to a subject covered by a proposal for a directive or regulation submitted to the Council, it shall inform the Member State concerned of this fact within three months of receiving the communication.

Member States shall refrain from adopting technical regulations on a subject covered by a proposal for a directive or regulation submitted by the Commission to the Council before the communication provided for in Article 8(1) for a period of 12 months from the date of its submission.

Recourse to paragraphs 1, 2 and 2a of this Article cannot be accumulative.'

(c) *Pre-litigation procedure*

9. By a letter of formal notice of 18 November 1992, the Commission informed the defendant Member State of its view that Law No 257/92, which it described as a 'national technical measure', came within the scope of application of the Directive, and should therefore have been notified in accordance with Article 8(1); furthermore, it considered that the national law should be suspended until the expiry of the deadlines laid down in Article 9(1), (2) and (2)(a). The Commission added that, because of this procedural defect, 'the technical rule' had no legal effect and was therefore not opposable to third parties, citing its communication 86/C 245/05. [3] Italy was invited to submit its observations in accordance with Article 169 of the EC Treaty within two months.

10. On 23 March 1993, the Italian Permanent Representation informed the Commission that the previous State aids notification had been withdrawn; the telex does not attempt to answer any of the points set out in the Commission's letter of 18 November 1992. The Commission sent Italy a reasoned opinion on 3 November 1993, which variously describes Law No 257/92 as *constituting* a technical regulation within the meaning of the Directive (paragraphs 1 and 4.2) and as *containing* such regulations (paragraph 4.1), using these terms interchangeably. In the absence of any reply, the Commission initiated the present proceedings on 13 October 1994, seeking a declaration that, by adopting Law No 257/92 without having notified the Commission of the draft, Italy has failed to respect the obligations incumbent on it by virtue of the first subparagraph of Article 8(1) of the Directive or, in the alternative, Article 9(1).

11. In accordance with Article 91 of the Rules of Procedure, Italy lodged an objection of inadmissibility; this was joined to the merits by order of the Court of 11 July 1995.

## III — Analysis

(a) *Article 8 of the Directive*

12. Both the admissibility and the merits of the present case turn on the extent of the obligation on the Member States to notify the Commission of any 'draft technical regulation' they propose to adopt. In the light of the respective lines of arguments of the parties to this case, it would be useful to consider this matter *in limine*. Italy argues that the Member States are only obliged to notify draft technical regulations within the meaning of the Directive. At the oral hearing, the

3 — Though undated, this was published on 1 October 1986, OJ 1986 C 245, p. 4.

agent for Italy suggested that only rules concerning the characteristics of a product could constitute technical regulations, relying on the judgment in *Semeraro Casa Uno*, where the Court noted that '[the] obligation to notify laid down by the directive does not ... apply to national rules which do not lay down the characteristics required of a product but are confined to regulating the closing times of shops'. [4]

13. For its part, the Commission contends that, where a general measure contains technical regulations, the 'organic whole' of the law must be notified; if this were not the case, it would be more difficult, if not impossible, to evaluate the scope of the technical rules and in particular to make a judgment as to whether they would create barriers to trade.

14. Neither of the interpretations of Article 8(1) which underlie these arguments is in my view correct. In the first place, the concept of 'technical regulation' is broader than simply the characteristics of the product, and includes other listed requirements regarding the production of goods and administrative provisions governing their marketing and use (Article 1(1) and (5) of the Directive). In its judgment in Case C-289/94 *Commission* v *Italy*, the Court rejected a narrow interpretation of 'technical regulation' not dissimilar to that proposed by Italy in the present case; as compliance with the particular compulsory technical specifications had a direct impact on the marketing of the product, the national provisions were deemed to be technical regulations. [5] More generally, in *Bic Benelux*, in the judgment given today, the Court noted that the objective of the Directive is to protect the free movement of goods by preventive supervision, and held that such supervision applies in respect of technical regulations which are 'capable of hindering, directly or indirectly, actually or potentially, intra-Community trade in goods', [6] a formula which was clearly inspired by the test for measures having an effect equivalent to quantitative restrictions laid down in *Dassonville*. [7]

15. Once a national provision falls within the definition of 'technical regulation' laid down in Article 1(5) of the Directive, it must be notified. The Court has had occasion to clarify that the Member States cannot escape the obligation to notify on the grounds that the measure will benefit trade: '[such] an obligation cannot be subject to the unilateral assessment by the Member State which drafted the regulation of the effects which it may have on trade between Member States'. [8]

4 — Joined Cases C-418/93 to C-421/93, C-460/93 to C-462/93, C-464/93, C-9/94 to C-11/94, C-14/94 and C-15/94, C-23/94 and C-24/94, and C-332/94 [1996] ECR-I-2975, paragraph 38 of the judgment.

5 — Case C-289/94 *Commission* v *Italy* [1996] ECR I-4405, paragraph 32 of the judgment.

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

7 — Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837, paragraph 5 of the judgment.

8 — Case C-273/94 *Commission* v *Netherlands* [1996] ECR I-31, paragraph 15 of the judgment.

16. In the second place, as appears from the wording of Article 8(1), the obligation to notify covers not just technical regulations as defined above, but also 'the grounds which make the enactment of such a technical regulation necessary, where these are not already made clear in the draft' and, where appropriate, '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'. It does not follow, in my view, that a Member State is necessarily obliged under this provision to notify the entirety of a national law of general scope which contains both technical regulations and other provisions. In so far as the notification of a particular 'non-technical' provision is necessary to evaluate the legal effects of a technical provision, it is covered by the express terms of Article 8(1). Where, however, compliance with 'non-technical' provisions has no direct impact on the production, marketing or use of goods, it may not be assumed that the Member State is obliged to notify them to the Commission.

17. The point is illustrated by the legislative provisions which were at issue in *CIA Security*. [9] Article 4 of a Belgian law of 1990 provided that only approved security firms could offer security services, while Article 12 provided that only approved alarm systems could be marketed under a procedure to be laid down by royal decree. The Court found that, as Article 4 was limited to laying down the conditions governing the establishment of security firms, it was not a technical regulation. The classification of Article 12 as a technical regulation was held to depend on whether it had legal effects on its own; a national rule with no effects for individuals in the absence of implementing measures did not fall within the Directive, while one which was binding even without such measures fell within Article 8 of the Directive. [10] Nothing in the judgment indicates that the notification requirement extended either to the law considered as a whole or to those provisions which, considered separately, were not capable of creating an obstacle to trade.

18. None of the cases cited by the Commission in relation to its 'organic whole' thesis concerned national legislative measures of general scope, as in the present case, or supports the broad conclusion it proposes. The national provisions at issue in Case C-139/92 *Commission* v *Italy* were rules for the definition and verification of the maximum output, the construction and installation of engines for pleasure craft, [11] while in Case C-317/92 *Commission* v *Germany* the Court expressly held that the regulation of the German

9 — Case C-194/94 [1996] ECR I-2201.

10 — Case C-194/94, cited above, paragraphs 29 and 30 of the judgment, citing Case C-317/92 *Commission* v *Germany* [1994] ECR I-2039, paragraph 26.

11 — [1993] ECR I-4707.

Minister for Health was a 'technical specification'. [12] The four decrees at issue in Case C-289/94 *Commission* v *Italy* were similarly restricted in scope. [13]

19. Nor does the judgment in *Semeraro Casa Uno* [14] provide any assistance for the contentions of Italy. The national rules at issue, which concerned closing times for shops, clearly did not fall within any definition of 'technical regulation' for the purposes of the Directive; the use of the term 'the characteristics required of a product' may be taken as an abbreviated reference to the complex concept of technical regulation, rather than a restriction of this notion to product specification.

(b) *Admissibility*

20. Italy contends that the Commission's application is inadmissible on three grounds: that the letter of formal notice did not sufficiently define the breach of the Directive which was alleged, that the reasoned opinion raised new arguments and maintained the uncertainty surrounding the object of the infringement being pursued, and that in its application the Commission has modified the substance of the claim made in the reasoned opinion.

21. According to the consistent case-law of the Court, 'the purpose of the letter of formal notice is to delimit the subject-matter of the dispute and to indicate to the Member State, which is invited to submit is observations, the factors enabling it to prepare its defence'. [15] The Court has recognized that the letter 'cannot contain anything more than an initial brief summary of the complaints'. [16] In the present case, the letter indicated clearly the Commission's view that the national law came within the scope of the Directive, that the law had not been notified to the Commission and that this set of circumstances gave rise to a breach of Articles 8(1) and 9 of the Directive. Furthermore, given that the very title and the subject-matter of the national law in question indicated that a notification under the Directive might be required, and that the Commission services contacted the Italian authorities informally on three occasions before the letter of formal notice was sent, I am of the view that this was sufficient in the circumstances 'to inform the State to which it is addressed of the essential points of the breach of the obligations with which it is charged'. [17]

12 — Cited in footnote 10 above.

13 — Cited in footnote 5 above.

14 — Cited in footnote 4 above.

15 — Case C-289/94, cited in footnote 5 above, paragraph 15 of the judgment; see also Case 274/83 *Commission* v *Italy* [1985] ECR 1077, paragraph 19 and Case 229/87 *Commission* v *Greece* [1988] ECR 6347, paragraphs 11 and 12.

16 — Case C-289/94 *Commission* v *Italy*, cited in footnote 5 above, paragraph 16 of the judgment.

17 — Case 353/85 *Commission* v *United Kingdom* [1988] ECR 817, paragraph 19 of the judgment.

22. Italy challenges the reasoned opinion on the grounds that it identifies three technical rules in the national law which were not mentioned in the letter of formal notice, and that, by describing its examination of Law No 257/92 as 'non-exhaustive', the Commission maintained the uncertainty which arose from the letter of formal notice as to the scope of the infringement alleged.

23. Having argued that the letter of formal notice did not sufficiently identify the alleged breach of the Directive, I find it somewhat anomalous that Italy should then complain that the reasoned opinion sets out the specific reasons for which the Commission considers an infringement of the Directive has occurred. As the Court noted in Case C-289/94 *Commission* v *Italy*, 'the reasoned opinion provided for in Article 169 of the Treaty must contain a coherent and detailed statement of the reasons which led the Commission to conclude that the State in question failed to fulfil one of its obligations under the Treaty'. [18] The Commission was therefore not only entitled but obliged to specify the grounds on which it had taken the view that Italy should have notified Law No 257/92 in draft form.

24. On the other hand, it does not appear to me that the reasoned opinion is sufficient to establish even a prima facie case that Italy was obliged in accordance with Article 8(1) of the Directive to notify any provisions of Law No 257/92 other than those specified therein, viz. Articles 1, 3 and 8. For the reasons set out above, [19] it may not be assumed that such an obligation arises in respect of the entirety of a national law of general scope containing both technical and non-technical provisions. It may be, as the Commission has argued, that in some circumstances the obligation to notify does indeed embrace the whole legislative text; however, the Commission must demonstrate in the reasoned opinion that such circumstances exist, [20] and, with the exception of the specified provisions, it has not done so in the present case.

25. It does not follow, however, that the application should be rejected as inadmissible in its entirety, as Italy has contended; the application may in my view be admitted, though only in so far as the Commission is claiming that the obligation to notify applied to the provisions of the national law identified in the reasoned opinion. Italy has itself argued that provisions of such a law of general scope are autonomous as regards the obligation to notify under the Directive, and can therefore have been in no doubt that the Commission took the view that at least those three provisions should have been notified. It follows that, by specifying those provisions of the national law which the Commission considered to be technical regulations, the reasoned opinion sufficiently clarified the

18 — Cited in footnote 5 above, paragraph 16 of the judgment.

19 — Paragraphs 16 to 18 of the present Opinion.

20 — 'The proper conduct of the pre-litigation procedure constitutes an essential guarantee required by the Treaty ... so as to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter' (Case C-266/94 *Commission* v *Spain* [1995] ECR I-1975, paragraphs 17 and 18 of the order).

scope of the action. The fact that the Commission formulated its claim as being that the national law should be notified because it contained Articles 1, 3 and 8, rather than as one that the three articles should be notified has not in any way hindered the presentation by Italy of its defence, either as regards the admissibility or the merits of the action.

26. The third ground of inadmissibility upon which Italy relies is also unfounded. Italy contends that the allegation, even in the alternative, that it committed an autonomous breach of Article 9(1) was different from the allegation in the reasoned opinion. Even if this were true, it would only affect the admissibility of any claim the Commission were making of a breach of Article 9(1); the Commission has however withdrawn that claim.

(c) *The merits of the Commission's application*

27. It only remains for me to examine whether the three provisions identified by the Commission constitute technical regulations for the purposes of the Directive. Italy did not deal in its written statement in defence with the question of whether these provisions could be so considered, though it did contest the classification of Article 3 of the national law as a technical regulation in its preliminary objection on admissibility. At the oral hearing, its agent denied that any of the provisions of Law No 257/92 were subject to the notification procedure.

28. Article 1(2) of Law No 257/92 prohibits, *inter alia*, the production and marketing of asbestos, asbestos products and products containing asbestos with effect from one year after the law comes into force; in so far as these products come within the definition of 'product' laid down in Article 1(7) of the Directive, Article 1(2) of the national law manifestly constitutes a technical regulation which Italy should have notified in accordance with Article 8(1) of the Directive.

29. In its application, the Commission described Article 3(4) of the national law as laying down limit-values on asbestos content, and stated that Article 3 also defined the procedures and methods of measuring these values. Article 3(4) of the national law amends Article 31(1)(a) of Legislative Decree No 277 of 15 August 1991, which seeks to implement a number of Council directives on the protection of workers from the dangers of exposure to certain chemical, physical and biological agents at the workplace. [21]

21 — Supplemento ordinario alla *Gazzetta Ufficiale della Repubblica Italiana* No 200 of 21 August 1991, p. 3.

Article 31(1)(a) fixes the limit-values of exposure of workers to asbestos dust in the air. Article 3(4) does not therefore fix the maximum asbestos content of products, impose any condition to be fulfilled for the production or marketing of goods, or have a direct impact on trade in goods between Member States. While this provision might arguably be said to be capable of having some impact on the use of asbestos, the Commission has not sought to show that this is in fact the case. It has also failed to show that this provision is not covered by the exemption in Article 8(1) of the Directive for national regulations which transpose the full text of European standards. As the exemption constitutes a material limitation on the scope of the obligations which arise for the Member States under Article 8(1), I take the view that the Court must examine this point, even if Italy only relied on the more general line of defence, that Article 3 is not a technical regulation because it concerns worker protection. In these circumstances, I am of the view that Article 3(4) of the national law has not been shown to come within the definition in the Directive of 'technical regulation'.

30. Article 3(2) of Law No 257/92 concerns '[the] limits, procedures and analytical methods for the measurement of asbestos pollution' which fall prima facie within the definition of a 'technical specification' of Article 1(1) and hence within that of a 'technical regulation' in Article 1(5). However, the national provision in question merely states that these limits, procedures and analytical methods 'shall be defined in accordance with Council Directive 87/217/EEC of 19 March 1987'. Once again, the Commission has not shown that Italy's failure to notify Article 3(2) was not justified by the necessity to comply with other Community obligations and therefore constitutes a breach of Article 8(1) of the Directive.

31. Article 8 of Law No 257/92 concerns the classification, packaging and labelling of asbestos and products containing asbestos. As 'requirements applicable to the product as regards ... packaging, marking or labelling' are expressly included within the definition of 'technical specification' in Article 1(1), such rules are prima facie technical regulations within the meaning of Article 8(1) of the Directive. In this case, Italy expressly relied at the oral hearing on the declaratory character of Article 8 of Law No 257/92, and on the exception in Article 8(1) of the Directive for national measures which transpose European standards, albeit without specifying which particular measure it had in mind.

32. The notification system of Article 8 of the Directive is clearly intended to apply only to technical measures at the stage of their introduction into the national legal system. Article 8 of Law No 257/92 merely declares that '[t]he classification, packaging

and labelling of asbestos and products containing asbestos' are governed by two existing legislative measures. Of these, Law No 256 of 29 May 1974 concerns the packaging and labelling of dangerous substances and preparations, [22] including carcinogenic substances and preparations, the list of which was to be drawn up by the Minister for Health; Presidential Decree No 215 of 24 May 1988 restricts the marketing and use of asbestos and asbestos products. [23] It therefore appears that Article 8 of the national law is merely declaratory of the existing legal provisions and does not purport to make any change. In these circumstances, it is incumbent on the Commission to demonstrate that this provision does in fact constitute a new technical regulation which should therefore have been notified. [24] The Commission has not sought to do so, and has therefore failed to prove a breach of Italy's obligations under the Directive in this regard.

(d) *Costs*

33. It follows that in my view the Commission's claim should only be admitted as regards Articles 1, 3 and 8 of the national law, and should only be successful as regards Article 1. Should the Court follow my recommendation on the disposal of the case, I would further recommend that each of the parties be ordered to bear its own costs, in accordance with Article 69(3) of the Rules of Procedure, as each of the parties will have succeeded on some grounds and failed on others.

## IV — Conclusion

34. In the light of the foregoing, I recommend that the Court:

— declare the Commission's application inadmissible except as regards Articles 1, 3 and 8 of Law No 257 of 27 March 1992 laying down rules concerning the cessation of the use of asbestos;

22 — *Gazzetta Ufficiale della Repubblica Italiana* No 178 of 9 July 1974, p. 4543.

23 — Supplemento ordinario alla *Gazzetta Ufficiale della Repubblica Italiana* No 143 of 20 June 1988, p. 5.

24 — '[I]n proceedings under Article 169 of the [EC] Treaty ... it is for the Commission to prove that the allegation has not been fulfilled ... in so doing it may not rely on any presumption' (Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 6 of the judgment).

— declare that, by adopting Article 1(2) of Law No 257/92 without having previously notified the draft of this provision to the Commission, the Italian Republic has failed to fulfil 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;

— for the rest, dismiss the application as unfounded;

— order each of the parties to bear its own costs.