

OPINION OF ADVOCATE GENERAL  
GEELHOED

delivered on 5 March 2002 <sup>1</sup>

1. In the present infringement proceedings, the Commission seeks a declaration by the Court that the Kingdom of Belgium has failed to adopt or notify, within the prescribed period, the laws, regulations and administrative provisions necessary to transpose fully Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas.<sup>2</sup> The transposition period laid down in Article 8 of that directive expired on 31 December 1993.

2. According to Article 1, the purpose of Directive 90/641 is to supplement Council Directive 80/836/Euratom of 15 July 1980 amending the directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation,<sup>3</sup> thereby optimising at Community level operational protection arrangements for outside workers performing activities in controlled areas. Directive 80/836 was

repealed with effect from 13 May 2000. The content of that and a number of related directives was revised and laid down in a new directive.<sup>4</sup> However, Directive 90/641 has not been amended and remains fully in force.

3. The directive in question was transposed into Belgian law by the Royal Decree of 25 April 1997 on the protection of workers against the dangers arising from ionising radiation<sup>5</sup> and by the Royal Decree of 2 October 1997 on, *inter alia*, the amendment of the Royal Decree of 28 February 1963 providing generally for the protection of the population and workers against the danger of ionising radiation.<sup>6</sup> The Commission takes the view that that legislation does not fully transpose a number of provisions of Directive 90/641.

4. The Commission's complaints relate, first, to the failure to comply with

1 — Original language: Dutch.

2 — OJ 1990 L 349, p. 21.

3 — OJ 1980 L 246, p. 1.

4 — Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1).

5 — *Moniteur belge* of 12 July 1997, No 1407.

6 — *Moniteur belge* of 23 October 1997, No 2443.

Article 4(2) of and Annexes I and II to Directive 90/641. Under those provisions, the Member States are to set up a radiological monitoring system to ensure that outside workers are afforded protection equivalent to that enjoyed by workers employed on a permanent basis. According to the Commission, the Belgian legislation does not provide for the actual introduction of a radiological monitoring system.

State which is already in possession of the document prescribed by that other Member State.

6. The Belgian Government raised no defence as to the substance of the Commission's complaints. It states that all necessary measures have been taken in order to enable a royal decree amending the aforementioned Royal Decree of 25 April 1997 to enter into force as soon as possible.

5. The Commission's criticism is levelled, second, at the failure to comply with Articles 5 and 6 of Directive 90/641. Those articles deal with the obligations of outside undertakings and of operators with regard to outside workers. The Commission acknowledges that the Belgian legislation contains a provision in respect of outside workers employed by an undertaking established in another Member State where that undertaking does not possess a radiological document recognised by that other Member State. Nevertheless, it claims that the national legislation in question does not take account of outside workers employed by an undertaking of another Member

7. According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion.<sup>7</sup> In the present case, the reasoned opinion — in which the Belgian Government was called upon to notify the Commission, within two months, of the measures to be taken — was issued on 1 August 2000. The Court therefore cannot take account of any changes which may have occurred after 1 October 2000.

<sup>7</sup> — See recent Case C-207/00 *Commission v Italy* [2001] ECR I-4571, paragraphs 27 and 28.

## Conclusion

8. I therefore propose that the Court should:

- declare that, by failing to adopt or notify, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Articles 4(2), 5 and 6 of and Annexes I and II to Council Directive 90/641/Euratom of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas, the Kingdom of Belgium has failed to fulfil its obligations under that directive;
  
- order the Kingdom of Belgium to pay the costs.