OPINION OF ADVOCATE GENERAL LÉGER

delivered on 6 December 2001 [1]

1. By application dated 22 January 2001, the Commission of the European Communities brought an action, pursuant to Article 226 EC, seeking a declaration that, by failing to draw up and forward to the Commission, by 16 September 1999, the plans, outlines and summary inventories referred to in Articles 11 and 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls [2] and polychlorinated terphenyls (PCB/PCT), [3] the Italian Republic has failed to fulfil its obligations under those provisions.

2. Under Article 1 of the directive, '[t]he purpose of this Directive is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this Directive'.

3. Article 4(1) of the directive provides that '[i]n order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm^3, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this Directive. In the case of power capacitors, the threshold of 5 dm^3 shall be understood as including all the separate elements of a combined set.'

4. Article 11 of the directive provides:

'Member States shall, within three years of the adoption of this Directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

1 — Original language: French.
2 — Hereinafter 'PCBs'.
3 — OJ 1996 L 243, p. 31, 'the directive'.

2. Member States shall communicate these plans and outlines to the Commission without delay.'

5. By letter of 10 April 2000, the Commission, pursuant to Article 226 EC, notified the Italian Republic that, by failing to draw up and forward to the Commission the plans, outlines and summary inventories referred to in Articles 4(1) and 11 of the directive, it had failed to fulfil its obligations under those provisions.

6. The Commission therefore called on the Italian Government to submit its observations within a period of two months from the date of receipt of the letter, drawing its attention to the fact that it would deliver a reasoned opinion if no observation was submitted to it.

7. The Commission, not having received any response to the letter, delivered a reasoned opinion on 3 August 2000. The opinion received no response.

8. In its action, the Commission submits that, by failing to draw up and forward to it, by 16 September 1999 at the latest, the appropriate plans, outlines and summary inventories referred to in Articles 4(1) and 11 of the directive, Italy failed to fulfil its obligations under those provisions.

9. The Italian Government argues firstly that the directive was transposed by legislative Decree No 209 of 22 May 1999.[4] Article 3 of the decree requires holders of equipment with PCB volumes of more than 5 dm^3, including power capacitors, to report biennially. The first deadline therefore was set at 31 December 1999 at the latest. The reports constitute the basis for drawing up the inventories and summaries referred to in Article 4 of the directive. The Italian Government acknowledges that, to date, the requirement to communicate has not been complied with.

10. Secondly, it submits that the delay in relation to the periods laid down in the directive for forward documentation to the Commission, referred to in Article 11 of the directive, is due to the difficulty in drawing up a full inventory of existing PCBs in the absence of standardised methods of establishing analytically the presence of PCBs.

11. In that connection, the Italian Government points out that the standardised methods of analysis, which are essential

4 — GURI No 151 of 30 June 1999, p. 23.

for uniform determination of the presence of substances falling within the Community definition of a PCB, within the meaning of Article 2 of the directive, were adopted only in Commission Decision 2001/68/EC of 16 January 2001 establishing two reference methods of measurement for PCBs pursuant to Article 10(a) of Council Directive 96/59/EC. [5]

12. The Italian Government adds that, pending the adoption of Decision 2001/68, the Ministry of the Environment none the less instructed an organisation to draw up an inventory of the equipment referred to in the obligation to communicate and of the PCBs contained in it. Therefore, it considers that it is in a position to comply with the provisions of Article 4 of the directive as soon as possible and requests the Commission to abandon these proceedings.

13. The Commission replies by emphasising that the Italian Government admits that it has failed to fulfil the obligations in Articles 4(1) and 11 of the directive.

14. The Commission considers that the Italian Government cannot rely, in order to justify the alleged failure to fulfil its obligations, on the fact that, as at 16 September 1999, there was not yet in existence a reference method at European level for establishing the presence of PCBs. On that point, it notes that, under Article 10(a) of the directive, before the Commission fixes the reference methods of measurement to determine the PCB content of contaminated materials, measurements were effected by referring to reference methods in force either in Italy or the United States of America. Therefore, as a result of existing methods, the absence of a European reference method would never have prevented the Member States from drawing up the documentation required by the directive. According to the Commission, the Italian Government was therefore in a position to do so.

15. It should be noted that the Italian Government admits that it has not complied with the obligation to forward to the Commission the summary inventories referred to in Article 4(1) of the directive or the plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein and outlines for the collection and subsequent disposal of equipment which is not subject to inventories referred to in Article 11(1) of the directive.

16. As regards the question whether the delay can be justified, as the Italian Government maintains, by the absence of standardised methods allowing analyses to be carried out uniformly, those methods having been adopted only recently by the

5 — OJ 2001 L 23, p. 31.

Commission, it should be observed that, under Article 10(a) of the directive, measurements effected before the establishment of reference methods remained valid.

17. The directive therefore allowed Member States to carry out the necessary analyses for the performance of tasks required of them by it, without the need to await a European standard to be adopted on this.

18. The plea in law raised by the Italian Government is thus not capable of exempting it from the obligation to draw up and forward to it the appropriate plans, outlines and summary inventories required by the directive. The failure to fulfil obligations alleged by the Commission is therefore proved.

Conclusion

19. Consequently, I propose that the Court should find that:

(1) By failing to draw up the appropriate plans, outlines and summary inventories referred to in Articles 4(1) and 11 of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls, and in failing to forward, by 16 September 1999 at the latest, those documents to the Commission, the Italian Republic has failed to fulfil its obligations under those provisions.

(2) The Italian Republic shall pay the costs.