OPINION OF ADVOCATE GENERAL JACOBS

delivered on 23 September 1999 *

1. Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) [1] was adopted on 19 June 1995. Article 20(1) thereof provides: 'Member States shall adopt the laws, regulations and administrative provisions necessary to implement this Directive not later than 30 June 1996 and shall forthwith inform the Commission thereof.'

2. On 16 January 1997, having received no information concerning such implementation by Italy, the Commission requested the Italian Government to submit its observations in accordance with Article 169 of the EC Treaty (now Article 226 EC).

3. By reply dated 30 April 1997, the Italian Government informed the Commission that Directive 95/21 was listed in Schedule D to the draft Community Law for 1995-1996.

4. On 24 November 1997, considering that no measures had been adopted to implement the Directive, the Commission sent the Italian Government a reasoned opinion in accordance with Article 169 of the EC Treaty, calling on it to adopt such measures within two months.

5. On 13 February 1998, the Italian authorities sent the Commission a draft regulation implementing the Directive; on 26 May 1998, they informed it that Law No 128 [2] had been adopted on 24 April 1998. Directive 95/21 was included in Schedule D to that Law, in a list of

* Original language: English.

1 — OJ 1995 L 157, p. 1.

2 — Referred to as the 'Community Law 1995-1997', Supplemento Ordinario GURI No 88 of 7 May 1998.

directives yet to be implemented by ministerial regulation.

6. On 12 August 1998, the Commission brought the present proceedings, in which it asks the Court to declare that, by not adopting the laws, regulations and administrative provisions necessary to implement Directive 95/21, the Italian Republic has failed to fulfil its obligations under that directive and the EC Treaty, and to order the Italian Republic to pay the costs.

7. In its defence, the Italian Government argues that the obligations arising under the Memorandum of Understanding on Port State Control signed in Paris on 26 January 1982 and the resolutions of the International Maritime Organisation relating thereto, which the Directive in fact embodies, have been complied with in Italy by means of a series of circulars from the Ministry of the Mercantile Marine and the Ministry of Transport and Shipping dating from 1977 to 1998. It further states that the procedure for adopting the draft regulation implementing Directive 95/21 is at an advanced stage.

8. As regards the circulars cited and produced by the Italian Government, the Court has consistently held that mere administrative practices, which by their nature are alterable at will by the administration and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty. [3] The circulars concerned fall within that category and thus cannot be relied upon by the Italian Government in its defence.

9. As regards the draft regulation implementing the Directive and the fact that Directive 95/21 is listed in Schedule D to Law No 128 of 24 April 1998, the Court has further consistently held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing at the end of the period laid down in the reasoned opinion. [4] Thus, even were those measures to have implemented the Directive in any degree, they could not be taken into consideration in the present case.

3 — See, most recently, Case C-316/96 *Commission* v *Italy* [1997] ECR I-7231, paragraph 16 of the judgment.

4 — Ibid., paragraph 14.

Conclusion

10. I therefore conclude that the Court should:

(1) declare that, by not adopting the laws, regulations and administrative provisions needed to implement Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control), the Italian Republic has failed to fulfil its obligations under that directive and under the EC Treaty; and

(2) order the Italian Republic to pay the costs.