OPINION OF ADVOCATE GENERAL ELMER

delivered on 6 April 1995 *

1. By application lodged at the Registry of the Court of Justice on 11 May 1994, the Commission in this case seeks a declaration that, by failing to take the measures necessary to comply with Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency, [1] the Italian Republic has failed to fulfil its obligations under that directive.

2. Member States were required under Article 12 of the directive to take the measures necessary to comply with it not later than 24 months after its adoption on 27 November 1989. The Italian Republic was thus required to transpose the directive into its national legal order by no later than 27 November 1991.

Although it does not deny that this was not done, the Italian Government argues that the action should be declared inadmissible on the ground that there was a formal defect in the letter of formal notice.

3. The letter of formal notice was dated 20 May 1992 and referred to an annexed list setting out 49 directives which, in the Commission's view, had not been transposed into Italian law within the specified period. 48 of the directives listed were EEC directives, while the directive at issue in the present case is a Euratom directive. The directive was correctly cited in the list as 'Council Directive of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency (89/618/Euratom)'.

At the conclusion of the letter of formal notice, the Commission stated that, by reason of its failure to transpose the directives set out in the list, the Italian Republic had failed to fulfil its obligations under those directives and under the third paragraph of Article 189 and the first paragraph of Article 5 of the EEC Treaty. The Commission also requested the Italian Government to submit its observations on the matter in accordance with Article 169 of the EEC Treaty and reserved the right to deliver a reasoned opinion.

4. As the Italian Government did not reply to the letter of formal notice, the Commission sent to it, on 25 May 1993, a reasoned opinion regarding its failure to transpose Directive 89/618/Euratom. The Commission

* Original language: Danish.

1 — OJ 1989 L 357, p. 31.

referred in its reasoned opinion to the relevant provisions of the EAEC Treaty.

5. The Italian Government argues that the Commission's letter of formal notice of 20 May 1992 cannot constitute a valid institution of the infringement procedure under Article 141 of the EAEC Treaty in view of the fact that that letter referred solely to the procedure under Article 169 of the EEC Treaty and made no reference to Article 141 of the EAEC Treaty. Even if the letter of formal notice were to be regarded as a valid institution of that procedure, failure to state that the complaint related to breach of obligations under the EAEC Treaty meant that the subject-matter of the complaint specified in the letter of formal notice did not correspond to that of the proceedings subsequently brought before the Court of Justice. The Italian Government accordingly submits that the case should be declared inadmissible.

6. The Commission first points out that in the present case a standardized letter of formal notice was used which referred to a computerized list. This method enables the Commission to deal with Treaty-infringement cases in a rapid and effective manner. The Commission also submits that the purpose of the administrative procedure was respected in this case in so far as the letter of formal notice of 20 May 1992 made the Italian Government fully aware of the Commission's complaints so as to enable it to prepare its defence. The fact that the Commission referred to provisions in the EEC Treaty instead of the EAEC Treaty is no more than an insignificant formal inaccuracy which cannot render the action inadmissible.

The subject-matter of the dispute was thus not altered in relation to the letter of formal notice, since the substantive complaint — the failure to transpose Directive 89/618/Euratom — was the same in the letter of formal notice, the reasoned opinion and in the document instituting proceedings.

7. The wording of Article 141 of the EAEC Treaty is identical to that of Article 169 of the EEC Treaty, for which reason the Court's case-law on the procedure under Article 169 of the EEC Treaty may constitute a guide to the infringement procedure under Article 141 of the EAEC Treaty.

With regard to Article 169 of the EEC Treaty, the Court has declared on numerous occasions, for instance in its judgment in Case 51/83 *Commission* v *Italy*, [2] that the letter of formal notice is intended to define the subject-matter of the dispute and to indicate to the Member State which is invited to submit its observations the factors enabling it to prepare its defence. The opportunity for the Member State concerned to submit its observations constitutes an essential guarantee required by the Treaty and observance of that guarantee is a condition governing the validity of the Treaty-infringement proceedings against the Member State in question.

The Court, in its judgment in Case 274/83 *Commission* v *Italy*, [3] has also ruled,

2 — Judgment in Case 51/83 *Commission* v *Italy* [1984] ECR 2793, paragraphs 3, 4 and 5.

3 — Judgment in Case 274/83 *Commission* v *Italy* [1985] ECR 1077, paragraph 21.

with regard to the requirements of the letter of formal notice under Article 169, that:

'Although it follows that the reasoned opinion provided for in Article 169 of the EEC Treaty must contain a coherent and detailed statement of the reasons which led the Commission to conclude that the State in question has failed to fulfil one of its obligations under the Treaty, the Court cannot impose such strict requirements as regards the initial letter, which of necessity will contain only an initial brief summary of the complaints ...'

8. As already mentioned, the Commission informed the Italian Government in its letter of formal notice that it had to assume, on the basis of the information before it, that the directives set out in the annexed list had not been transposed into Italian law. That list included the directive at issue in the present case, which was expressly referred to as a Euratom directive.

The Commission's failure to cite the relevant provisions in the EAEC Treaty was remedied in its reasoned opinion of 25 May 1993, which referred exclusively to the infringement procedure under Article 141 of the EAEC Treaty and the provisions in the third paragraph of Article 161 and the first paragraph of Article 192 of the EAEC Treaty, which correspond to the third paragraph of Article 189 and the first paragraph of Article 5 of the EEC Treaty. The Commission also refers in the document instituting proceedings to Article 141, the third paragraph of Article 161 and the first paragraph of Article 192 of the EAEC Treaty.

The substantive complaint — failure to transpose Directive 89/618/Euratom — was, however, as the Commission points out, never altered.

9. In my opinion, the Italian Government cannot have been in any doubt as to the Commission's view that there had been a failure to fulfil obligations under the EAEC Treaty by reason of its failure to transpose Council Directive 89/618/Euratom.

The Italian Government had an opportunity to submit its observations on the Commission's allegations but did not reply to the letter of formal notice.

The Commission's procedure in this case in sending a brief standardized letter of formal notice referring to a computerized list of directives, the period for transposition of which had expired without the Commission's being aware of having received the appropriate notification, makes it possible to deal simply and rapidly with a large number of Treaty-infringement cases at this very early stage. This procedure has considerable advantages not only for the Commission but also for the Member States, which can, in one single and often very brief reply, provide an account of the transposition of what can often be a large number of directives, such as the total of 49 in the present case.

It is of course unfortunate that the Commission, in its reference in the letter of formal notice to one of 49 possible Treaty infringements, did not refer to the formally correct provisions. The Italian Republic, however, cannot have been in any serious doubt whatsoever as to the subject-matter of the complaint.

Furthermore, it follows from the above case-law of the Court concerning the administrative procedure that there is nothing to prevent the Commission, in the reasoned opinion, from outlining the legal context of a case in greater detail than in the letter of formal notice, provided that the substantive complaints remain unaltered.

Since the Italian Republic's rights of defence do not therefore appear to have been adversely affected, it would be no more than unnecessarily formalistic — and would constitute a delay in the finding that there had been a breach of the Treaty — to declare the case inadmissible on the basis of the Commission's defective reference.

I accordingly do not find that there are any grounds for upholding the objection of inadmissibility raised by the Italian Government.

10. In view of the fact that the Italian Government has not denied that Council Directive 89/618/Euratom was not transposed into Italian law before the expiry of the period laid down in Article 12 of the directive, it must be held that the Italian Republic has failed to fulfil its obligations under the directive, in particular Article 12 thereof, and under the third paragraph of Article 161 and the first paragraph of Article 192 of the EAEC Treaty.

11. The Commission has requested that the Italian Republic should be ordered to pay the costs of the proceedings. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Conclusion

12. I accordingly propose that the Court rule as follows:

— by failing to take the measures necessary to comply with Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency, the Italian Republic has failed to fulfil its obligations under that directive;

— the Italian Republic is ordered to pay the costs.