OPINION OF ADVOCATE GENERAL LÉGER
delivered on 20 March 1997 *

1. By application lodged at the Registry on 26 June 1996, pursuant to Article 169 of the EC Treaty, the Commission claimed that the Court should:

'1) declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, [1] or by not communicating those measures, the French Republic had failed to fulfil its obligations under that directive;

2) order the French Republic to pay the costs.'

2. Article 2 of the Directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply therewith not later than 1 April 1993 and forthwith to inform the Commission thereof.

3. On 9 August 1993, having received no communication or other information from the French Government, the Commission initiated the procedure for failure to fulfil Treaty obligations by sending a letter of formal notice requesting the Government to submit its observations within two months.

4. In reply, the French authorities, by letters of 4 November 1993 and 1 April 1994, communicated to the Commission an inventory of the French provisions in force pursuant to which the Directive could be applied and informed the Commission that a decree concerning the collection and transport of waste and the activities of dealers and brokers was being prepared for the purpose of transposing Article 12 of the Directive. [2]

5. In the absence of any fresh communication regarding the further transposition of the directive into French law, the Commission issued a reasoned opinion on 3 August

* Original language: French.

1 — OJ 1991 L 78, p. 32 (hereinafter 'the Directive').

2 — The provision referred to is in fact Article 1 of the Directive, which amends Article 12 of Directive 75/442 as follows: 'Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorization, shall be registered with the competent authorities.'

1995 requesting the French Government to take the necessary measures within two months of notification thereof.

6. By letter of 30 October 1995 the French Government confirmed that the adoption of the decree completing the transposition of the Directive was proceeding.

7. Since it received no further communication from the French authorities, the Commission brought this action, in support of which it maintains that, pursuant to the third paragraph of Article 189 and the first paragraph of Article 5 of the EC Treaty, the Member States to which a directive is addressed are required, within the time prescribed, to achieve the results provided for therein, namely to transpose its provisions into national law in such a way that it takes full effect upon expiry of the time prescribed for transposition.

8. In its defence, the French Republic contends, primarily, that the application is inadmissible owing to the imprecise formulation of the complaints made against it during the pre-litigation procedure and in the application. In the alternative, the Government, whilst informing the Court of the position regarding the transposition of the Directive into French law, concedes that Article 12 remains to be transposed by a decree due to be signed and published before the end of 1996.

9. The Commission contests the objection of inadmissibility. In its reply it claims that the pre-litigation procedure was conducted in conformity with its objective as defined in the case-law of the Court of Justice, which is to provide the Member State concerned with the opportunity to comply with its obligations under Community law and to put forward its defence against the complaints formulated by the Commission. In that regard, at the formal notice stage, when the Commission, in the absence of any communication from the French authorities, still did not know whether any measures had been adopted to transpose the Directive, the authorities were able to give an account of the measures adopted and inform the Commission that only Article 12 called for measures to complete the transposition of the Directive. The Commission points out that it therefore took account of that acknowledgement by the French Government in its reasoned opinion, which, by referring expressly to the Government's letter setting out the measures still to be adopted, was sufficiently precise.

10. In its rejoinder, the French Government considers that the Commission's arguments against the objection of inadmissibility in

fact support the Government's case. It is paradoxical that the Commission should only be able to prove that it correctly defined the subject-matter of the action by referring to the documents submitted by the defendant Member State.

11. The objection of inadmissibility raised by the French Government must be dismissed.

12. First, as the Commission has explained, the French authorities were fully aware, both during the pre-litigation procedure and during the proceedings before the Court, of the infringement of which they were accused, since they stated in their defence that the adoption of the decree transposing Article 12 into domestic law was proceeding smoothly; they thus clearly identified Article 12 as the provision which had not been transposed into national law. Moreover, the Commission clearly referred in its reasoned opinion to the fact that '... the French authorities are in the process of preparing the necessary measures still to be taken to comply with the directive concerned' [3] and those 'measures' unambiguously indicate the draft decree mentioned by the French authorities. [4]

13. Secondly, the infringement alleged also concerns the failure to communicate the implementing measures within the time prescribed in Article 2 of the Directive.

14. The Commission therefore clearly set out the subject-matter of the alleged infringement both during the pre-litigation stage and in the context of its action.

15. It is common ground that the French Government had not communicated the measures to transpose the Directive within the prescribed time or completed the procedure for the adoption of those measures.

16. The Court should therefore uphold the Commission's application and, in accordance with Article 69(2) of the Rules of Procedure, order the unsuccessful party to pay the costs.

3 — Paragraph III(2).

4 — Referred to expressly in paragraph II.

Conclusion

17. Accordingly, I propose that the Court should:

(1) declare that, by not adopting within the prescribed time the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, or by not communicating those measures, the French Republic has failed to fulfil its obligations under Article 2 of that directive;

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