OPINION OF ADVOCATE GENERAL MISCHO

delivered on 30 April 2002 [1]

1. The purpose of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [2] (hereinafter 'the Directive') is to put in place the necessary environmental and safety standards for biocides to ensure that their placing on the market does not cause harm to the environment or to human health.

2. Article 34 of the Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 24 months after its entry into force and to inform the Commission thereof forthwith.

3. Article 35 of the Directive states that it is to enter into force on the 20th day following its publication in the *Official Journal of the European Communities*. As it was published on 24 April 1998, the Directive entered into force on 14 May 1998.

4. Member States were thus to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 14 May 2000 at the latest.

5. Since the Commission received no information enabling it to conclude that Ireland had adopted the necessary measures, it lodged this action for a declaration of failure to fulfil obligations.

6. The applicant asks the Court to declare that by failing to adopt, by 14 May 2000, the laws, regulations and administrative provisions necessary to comply with the

1 — Original language: French.
2 — OJ 1998 L 123, p. 1.

Directive, or in any event to communicate these to the Commission, Ireland has failed to fulfil its obligations under the Directive.

7. The Irish authorities consider that they have fully implemented the Directive by means of a statutory instrument entitled 'The European Community (Authorisation, Placing on the Market, Use and Control of Biocidal Products) 2001', made on 18 December 2001. They therefore request the Court to stay the proceedings for three months from the date of the defence, providing time for the Commission to examine the measures adopted by Ireland and, if appropriate, to discontinue the proceedings.

8. It is, however, settled case-law that the question whether a Member State has failed to fulfil its obligations is determined by reference to the end of the period laid down in the reasoned opinion. [3] In the present case, a reasoned opinion was sent to Ireland on 31 January 2001, setting a time-limit of two months for compliance.

9. The defendant does not deny that it failed to adopt any measure to implement the Directive within the prescribed period. It recognises that its first measure, the designation of the Department of Agriculture, Food and Rural Development as the competent authority for Ireland, under Article 26 of the Directive, was not taken until 11 July 2001 and that the instrument implementing the Directive was adopted on 18 December 2001.

10. The failure to fulfil obligations, as claimed by the Commission, which has not indicated that it wishes to withdraw its action despite the Irish Government's request for a stay, is thus established, and it is appropriate to grant the form of order sought.

3 — See, for example, Case C-119/00 *Commission* v *Luxembourg* [2001] ECR I-4795.

Conclusion

11. On those grounds, it is proposed that the Court:

— declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under that Directive;

— order Ireland to pay the costs.