OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 11 October 2001 [1]

1. The European Commission is seeking a declaration from the Court of Justice that the Kingdom of Belgium has failed to fulfil its obligation to transpose into national law Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ('the directive'). [2]

I — Legal framework

2. According to Article 1, the directive is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner.

3. More specifically, the directive imposes on Member States the obligation to ensure that the operators of certain industrial establishments take all measures necessary to prevent major accidents and to limit their consequences (Article 5(1)), draw up prevention policies (Article 7(1)), produce safety reports (Article 9(1)), and draw up emergency plans (Article 11(1)).

4. Article 24 grants Member States a maximum period of 24 months, from the date on which the directive entered into force, [3] to adopt the laws, regulations and administrative provisions necessary to comply with the directive and to inform the Commission thereof. In accordance with Article 25, the directive entered into force on 3 February 1997, so that the period in question therefore expired on the same date in 1999.

II — Facts

5. On 3 February 1999, the European Commission had still not been informed

1 — Original language: Spanish.
2 — OJ 1997 L 10, p. 13.
3 — The 20th day following that of its publication in the *Official Journal of the European Communities* (Article 25).

by the Kingdom of Belgium of the measures adopted pursuant to Article 24; nor did the Commission have the information necessary to ascertain whether or not the Member State had complied with its obligation under that provision.

6. In those circumstances, the Commission concluded that the defendant Member State had not brought the requisite measures into force, in breach of its obligations. Accordingly, by letter of 20 August 1999, the Commission gave the Belgian Government two months' notice to submit observations. The Belgian Government replied to the Commission on 27 October 1999, enclosing an order which had been adopted by the Government on 4 March 1999, and a Decree-Law which had been adopted by the Brussels-Capital Regional Council on 22 April 1999. [4] The aforementioned provisions listed, pursuant to Article 4 of the Decree-Law of 5 June 1997, [5] the Class IA, IB, II and III installations for which an 'environmental authorisation' is required.

7. The Commission deemed the reply inadequate and therefore sent a reasoned opinion on 21 January 2000 requesting the Belgian Government to adopt the measures necessary to remedy the situation within two months from the date of its notification. The Belgian authorities replied on 5 April, enclosing the response of the Walloon Government and informing the Commission that the replies of the federal government and the other two regions would be forthcoming shortly.

8. The Walloon authorities enclosed with their reply a copy of the cooperation agreement between the federal government and the three Belgian regional authorities on the control of major-accident hazards involving dangerous substances ('the cooperation agreement'). That agreement had been approved by a decree on which the Walloon Parliament had voted on 8 December 1999 and which, according to the reply, would be published in the *Moniteur belge* soon, whereupon the Commission would be notified immediately. The Walloon Government also informed the Commission that, on 11 March 1999, it adopted the decree on environmental authorisations, the implementing provisions of which were in an advanced stage of drafting which meant, in the Walloon Government's opinion, that the block of legislation on environmental protection could reasonably be expected to be in force by January 2001.

9. By letter of 6 June 2000, the Belgian authorities sent the Commission a communication from the Flemish Minister for

4 — These were published in the *Moniteur belge* on 7 (p. 29713) and 5 (p. 29209) August 1999, respectively.

5 — *Moniteur belge*, 26 June 1997, p. 17055.

the Environment and Agriculture, which referred to the cooperation agreement and set out the reasons why that agreement should be regarded as sufficient to transpose the directive into national law. However, the minister pointed out that the agreement would take effect only after approval by the four contracting parties, adding that the relevant approval procedures were at an advanced stage.

10. At a bilateral meeting, held on 8 September 2000, the Belgian Government, despite its earlier view on the transposition of the directive in the Walloon Region, stated that it considered the cooperation agreement to be sufficient to ensure that effect would be given to the directive in that region.

11. Finally, by letter of 26 September 2000, the Belgian authorities communicated to the Commission the Decree of the Flemish Parliament of 17 July 2000, which approved the cooperation agreement.

12. As the Commission was not satisfied by the information which it had received, it concluded that it had not been notified of all the measures which were necessary to transpose the directive appropriately, officially and definitively into national law, and thus brought this action.

III — Forms of order sought and procedure before the Court of Justice

13. The Commission is seeking a declaration from the Court of Justice that the Kingdom of Belgium has infringed the directive in that it failed to bring into force the measures necessary to transpose the directive into national law, or, at least, to inform the Commission of its implementation.

14. In the defence, the Kingdom of Belgium states that, pursuant to paragraph 3(b) of Article 92A of the Special Law of 8 August 1980 on institutional reforms, [6] in order to transpose the directive, the federal government and the three regions were required to enter into a cooperation agreement, signed on 21 June 1999 and published in the *Moniteur belge* on 12 October 2000. [7]

6 — *Moniteur belge*, 15 August 1980, p. 9434.
7 — Page 34451.

15. Furthermore, in accordance with the first paragraph of Article 92A, that agreement would not take full effect until it had been approved by all the parties, which the Walloon Region did on 16 December 1999, [8] the Flemish Region on 17 July 2000, [9] and the Brussels-Capital Region on 20 July 2000. [10]

16. The Belgian Government stated in the defence that, at federal level, the bill ratifying the agreement was currently passing through parliament and that, when the bill was adopted, the Court of Justice would be notified. In the rejoinder, the Kingdom of Belgium stated that the bill in question had been approved by the Senate on 15 of March 2001 and passed to the Chambre des députés the following day, adding that the Court would be informed when the bill became law.

17. In view of the foregoing, the defendant Member State submits, both in the defence and in the rejoinder, that the Commission's application has become devoid of purpose.

18. On 19 June 2001, the Belgian Government's agent lodged at the Court a copy of the Law of 22 May 2001 [11] approving the cooperation agreement, together with a letter addressed to the Commission to the effect that the action should be withdrawn in the light of the aforementioned law.

19. By letter of 23 July, the Commission informed the Court that it did not intend to withdraw the action because, in its opinion, the cooperation agreement fails to give proper effect to Articles 12, 13(5) and 16 of the directive.

20. The parties waived the right to a public hearing.

8 — *Monteur belge*, 12 October 2000, p. 34450.

9 — *Monteur belge*, 11 August 2000, p. 27564.

10 — *Monteur belge*, 7 September 2000, p. 30614.

11 — *Moniteur belge*, 16 June 2001, p. 20783.

IV — The infringement

21. The defendant Member State has altered to some extent the line of its defence in the judicial stage vis-à-vis the arguments it put forward in the pre-litigation stage. In the pre-ligation stage, in addition to the cooperation agreement, it cited certain regional measures relating to activities for which an 'environmental authorisation' is required. In these proceedings, however, the Kingdom of Belgium's defence has centred exclusively on the agreement between the federal government and the three regions, without any reference to the aforementioned measures, thereby implicitly admitting that the agreement is not sufficient to fulfil the requirements of the directive, which is precisely the Commission's claim. The case before the Court of Justice is restricted to the main head of claim relating only to the cooperation agreement.

22. The directive required the Member States to bring into force, by 3 February 1999, the measures necessary to transpose into their domestic legal systems the obligations imposed thereunder, and to notify the European Commission when they had done so.

23. Irrespective of the scope which the cooperation agreement may have in respect of the aforementioned purpose, the fact is that when the period prescribed in the reasoned opinion expired, [12] that agreement had not yet entered into force so that, on that date, the defendant was undeniably in breach of its obligations and the Court must so hold since any subsequent changes are irrelevant and, like the special institutional features of the Kingdom of Belgium, and the ensuing difficulties in bringing the cooperation agreement into force, cannot be taken into account. [13]

V — Costs

24. Since the Commission's application must be upheld, the defendant must be ordered to pay the costs, in accordance with Article 69(2) of the Rules of Procedure.

12 — According to the case-law of the Court of Justice, this is the moment by reference to which the question of whether a Member State has failed to fulfil its obligations must be determined (see, *inter alia*, the judgments in Case C-96/98 *Commission* v *France* [1999] ECR I-8531, paragraph 19, and in Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16).

13 — The case-law of the Court also stipulates that a Member State may not plead practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see point 15 of the Opinion I delivered in *Commission* v *Portugal*, cited above, and the case-law referred to therein).

VI — Conclusion

25. In view of the foregoing considerations, I propose that the Court of Justice should uphold this action and declare that, by not bringing into force, within the period laid down in Article 24, the requisite laws, regulations and administrative provisions, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances and order the defendant Member State to pay the costs.