OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 24 March 2004 [1]

1. This action seeks a declaration that the Kingdom of Spain has failed to fulfil its obligations under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, [2] in not submitting to an environmental impact assessment the 'Valencia-Tarragona railway project, Las Palmas-Oropesa section. Roadbed', forming part of the project known as the 'Mediterranean corridor'.

I — Facts and pre-litigation procedure

2. In May 1999 the Commission of the European Communities received a complaint that the Spanish authorities had misapplied the Directive. The complaint referred to the construction of a 13.2 km railway line crossing the communes of Castellón, Benicassim and Oropesa without a public inquiry being held and without a report on the environmental impact being made. The railway project comprises a new line intended to bypass the commune of Benicassim (7.64 km) and the duplication of the existing tracks between Las Palmas and Oropesa (13.2 km).

3. By letter of 28 October 1999 the Commission requested the Spanish authorities to submit their observations on the complaint.

4. On 13 January 2000 Spain confirmed in a letter that the project had not undergone the procedure for an environmental impact assessment. According to the Spanish authorities, such an assessment was not necessary because the route adopted for the section referred to by the complaint was included in the railway reservation provided for in the 1992 general development plan, which had been the subject of an environmental impact report and had been approved on 17 March 1994 by decision of the Director-General for the Quality of the Environment of the Autonomous Government of Valencia (Spain).

1 — Original language: Portuguese.

2 — OJ 1985 L 175, p. 40 ('the Directive').

5. On 13 April 2000 the Commission sent Spain a letter of formal notice pursuant to Article 226 EC for incorrect application of the Directive, on the ground that a study of the environmental impact of the 'Valencia-Tarragona railway project, Las Palmas-Oropesa section. Roadbed' had not been carried out.

6. In its reply dated 21 June 2000, the Spanish Government observed, first, that the project referred to by the Commission's letter did not entail the construction of a new railway line. It went on to state that the formalities completed for the approval of the general development plan for Benicassim were sufficient. Finally, the Spanish Government indicated that it was prepared to conduct any additional procedure deemed necessary by the Commission.

7. On 26 September 2000 the Commission sent Spain a reasoned opinion requesting it to adopt the measures necessary to fulfil its obligations under the Directive.

8. By letter of 2 January 2001 Spain replied to the reasoned opinion, referring to its previous submissions and stating that a study of the environmental impact of Amendment No 3 to the project in question was to be the subject of a public inquiry. A copy of the notice published in the *Boletín Oficial del Estado* (Spanish Official Journal) of 3 January 2001 by the Directorate-General of Railways announcing a public inquiry concerning the said study was sent to the Commission on 19 January 2001. Amendment No 3 relates mainly to the construction of a viaduct 754.5 m in length.

9. As the Commission was not satisfied with the information provided by Spain, the Commission brought an action before the Court for failure to fulfil obligations.

10. In the course of the written procedure, in reply to the Commission's single complaint that Spain had misapplied the Directive in relation to the 'Valencia-Tarragona railway project, Las Palmas-Oropesa section. Roadbed', Spain repeated its argument that the project did not fall within the ambit of Annex I to the Directive (requiring a mandatory assessment of the impact of the project on the environment). Spain also considers that the formalities which have been carried out ensured in any case that the Directive was applied in full.

11. A hearing took place on 19 February 2004. In particular, the Commission gave details of the scope of its action in reply to a written question sent by the Court on 9 December 2003. The Commission confirmed

that its action related to the whole section between Las Palmas and Oropesa, a total length of 13.2 km.

II — The legal context

12. The object of the Directive is to prevent pollution and other damage to the environment by subjecting certain public and private projects to a preliminary assessment of their effects on the environment. [3] The Directive requires the environmental issues to be taken into account in the decision-making process in relation to numerous projects.

13. The directive in force at the material time was amended by Council Directive 97/11/EC of 3 March 1997. [4] However, the relevant provisions of the Directive, in particular point 7 of Annex I and point 12 of Annex II were not amended by the new text.

14. The Directive distinguishes two classes of projects. The first comprises projects which are likely to have significant effects on the environment and are listed in Annex I to the Directive. For these, the Member States must carry out an assessment of their likely environmental effects before these projects are carried out. [5] For the second class, listed in Annex II to the Directive, the Member States have a discretion to decide whether to carry out a prior assessment of their environmental effects. [6]

15. Therefore classifying a project as falling within class I has important consequences as to the need to carry out a prior assessment of the environmental effects.

16. To give an answer in the present case, it will be necessary first to examine Spain's submissions at the hearing concerning the admissibility of the action and then determine whether the Directive is applicable to the project in question. Finally, if the project falls within the ambit of the Directive, it will be necessary to ascertain whether Spain has correctly applied it in the present case.

3 — Sixth recital of the preamble to the Directive.
4 — OJ 1997 L 73, p. 5.
5 — Article 4(1) of the Directive.
6 — Article 4(2) of the Directive.

III — Assessment

A — *Admissibility of the action*

17. At the hearing Spain objected that the action was inadmissible. It argued that, during the pre-litigation procedure, the Commission had referred only to the new line, 7.64 km in length, intended to bypass the commune of Benicassim, and not the duplication of the tracks over the whole section of 13.2 km between Las Palmas and Oropesa. Therefore Spain considers that the action is inadmissible in so far as it has enlarged the subject-matter of the dispute between the administrative stage and the litigation stage.

18. This argument must be dismissed because the letter of formal notice, the reasoned opinion addressed by the Commission to Spain and also the application to the Court expressly refer to the 'Las Palmas-Oropesa section', which Spain does not dispute is 13.2 km in length. Contrary to Spain's submission, it must therefore be concluded that the subject-matter of the dispute was not changed between the administrative stage and the litigation stage.

B — *Applicability of the Directive to the project in question*

19. It is possible to argue that the Directive applies to the project in question by following two different lines of argument, pursuant either to point 7 of Annex I or point 12 of Annex II to the Directive. The Commission favours the former approach while Spain prefers the latter.

20. Point 7 of Annex I to the Directive refers in particular to 'to the construction of lines for long-distance railway traffic'. Point 12 of Annex II designates 'modifications to development projects included in Annex I'.

21. The Commission considers that the project for the Las Palmas-Oropesa section of the Valencia-Tarragona line should be classified as a railway line within the meaning of point 7 of Annex I to the Directive. Spain, on the contrary, submits that this project is only a modification of an existing project, which as such is subject to point 12 of Annex II because it does not entail the construction of a new line in the sense of a new route between two destinations, but merely the duplication of tracks. According to Spain, point 7 of Annex I refers only to the construction of new railway routes. Spain

also considers that the project in question is not intended for long-distance traffic because it connects two localities which are 13.2 km apart.

1. The definition of line within the meaning of point 7 of Annex I to the Directive

22. To support its argument that point 7 of Annex I to the Directive refers only to new routes, Spain contends that certain language versions of the Directive speak of railway lines, not railway tracks. This language difference must mean that point 7 is to be interpreted as covering only the construction of new railway routes between two destinations which were not previously connected.

23. The Spanish version of point 7 refers to 'vías', the Italian version likewise to 'vie', the Portuguese version to 'vias' and the French version to 'voies'. It seems that only the English version, cited by Spain, might lead to confusion. At the hearing, however, the Commission cited a definition in the *Oxford Dictionary*, which gives the word 'line' the meaning of 'voie' and not a railway route connecting two destinations. Consequently no discrepancy appears to have been established between the different language versions of the Directive.

24. In any case, and according to settled case-law, the need for a uniform interpretation of Community regulations prevents the text of a provision from being considered in isolation, but in cases of doubt requires it to be interpreted and applied in the light of the versions existing in the other languages, all the language versions being equally authentic, in accordance with Article 314 EC. [7] In the event of divergence between them, the provision in question is to be interpreted by reference to the purpose and general scheme of the rules of which it forms part. [8]

25. It follows from the case-law that any difficulty in interpretation due to the language divergence found by Spain concerning point 7 of Annex I to the Directive must be resolved by interpreting that provision in the light of the general scheme and the purpose of the Directive.

7 — Case 19/67 *Van der Vecht* [1967] ECR 345, 354; Case 283/81 *Cilfit and Others* [1982] ECR 3415, paragraph 18; and Case C-219/95 P *Ferriere Nord* v *Commission* [1997] ECR I-4411, paragraph 15.

8 — Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; Case C-72/95 *Kraaijeveldand Others* [1996] ECR I-5403, paragraph 28; and Case C-437/97 *EKW and Wein& Co.* [2000] ECR I-1157, paragraph 42.

26. The Directive aims to prevent pollution and other damage to the environment. According to the sixth recital of the preamble and Article 2, the Directive's fundamental objective is that, before consent is given, projects likely to have significant effects on the environment should be subjected to an assessment. [9] More generally, the objective of the Directive is that no project likely to have significant effects on the environment should be exempt from assessment. [10]

27. Therefore, if the interpretation proposed by Spain were accepted, an environmental assessment would be required only for the construction of railway lines entailing a new route. The construction of new tracks or the conversion of tracks for regional use into tracks for long-distance traffic would not be subject to an environmental assessment, even though they could have significant effects on the environment. To interpret the Directive in this way would be contrary to its fundamental objective.

28. Consequently, it seems that point 7 of Annex I to the Directive must be interpreted as including the construction of tracks and not only the construction of new railway routes.

2. Must a new line and duplication of tracks also be classified as the construction of lines within the meaning of the Directive?

29. I shall examine one after the other the questions of the new line and the duplication of tracks.

30. The Commission observes that the project in question entails the construction of a new double railway track suitable for a speed of 200/220 km/h, whereas previously trains travelled at only 90 km/h, and at the same time necessitates a new line in the commune of Benicassim.

31. The Spanish implementing measures (Real Decreto-Legislativo (Royal Legislative Decree) of 28 June 1986 on the assessment of the environmental impact and the regulation implementing this legislative measure, approved by the Real Decreto (Royal Decree) of 30 September 1988), [11] which are said by Spain to conform with the Directive, require an environmental assessment only in the

9 — Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 52.

10 — Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 45.

11 — BOE 155, 30 June 1986, p. 23733.

case of 'long-distance railway lines comprising a new route'. According to Spain, this provision requires both a new line and a new route. The condition relating to a new line has been discussed in points 22 to 28 of this Opinion.

32. Although the present action does not seek to establish whether the national legislation generally conforms with the Directive, it is necessary to determine whether Spain's reasoning in this particular case conforms with the Directive. [12]

33. The relevant criterion for ascertaining whether a project must undergo a mandatory assessment for its effect on the environment is whether it may have 'significant effects' on the environment pursuant to Article 2(1) of the Directive. However, the construction of a railway line on a new route is by nature likely to have significant effects on the environment because of the changes in the environment which it entails.

34. Therefore the construction of a new railway line requires a prior compulsory assessment under the Directive.

35. Can the duplication of a railway track likewise be included in the definition of 'construction of lines' or is it rather a 'modification' of a project within the meaning of point 12 of Annex II to the Directive? The Commission and the Spanish authorities have opposing views on this subject.

36. The Commission submits that the duplication of tracks falls within point 7 of Annex I to the Directive for two reasons. First, it finds that the duplication of a track entails the construction of a new track, even though it is parallel to an existing track. Second, a different interpretation of the Directive would be contrary to its objectives because the impact assessment provided by Spain shows that the duplication of tracks on the section concerned was likely to have significant effects on the environment. [13]

12 — It may be observed that a judgment has already been given against Spain for incorrectly implementing the Directive (Case C-474/99 *Commission* v *Spain* [2002] ECR I-5293).

13 — This assessment, which was carried out in 1994 in connection with the adoption of a new development plan (referred to at paragraph 7 of the Commission's reply), identifies the following risks: 'erosion processes and instability of embankments ... loss of arable land, noise pollution ... changes in surface drainage'.

37. The Spanish authorities consider that the project in question is only an improvement of an existing project. Furthermore, the duplication of a railway track would have no effect, or no 'significant' effect, on the environment in addition to those produced by the construction of the original line.

38. As the Commission points out, a literal interpretation of the words 'construction of lines' includes the duplication of existing lines. Moreover, interpretation in the light of the objective and purpose of the Directive leads to the same conclusion.

39. Interpreting point 7 of Annex I to the Directive by reference to the objective and purpose of the Directive means ensuring that projects likely to have significant effects on the environment are made subject to an assessment by the Member States with regard to the effects of those projects. [14]

40. In principle, the possibility cannot be ruled out that the duplication of railway tracks may have significant effects on the environment. The construction of additional tracks may have an environmental impact because there will be changes in the use of the tracks as a result. In this connection it must be observed that the project in question does not consist in the laying of identical tracks, but includes the adaptation of the tracks for high-speed trains. The greater frequency of traffic on the tracks as a result of duplication will also have a significant noise effect: the equivalent noise level will exceed 45 decibels, which is the maximum level recommended by the World Health Organisation for night-time environments. Such a modification in the ultimate use of the tracks therefore entails significant effects on the environment.

41. However, Spain considers that including the duplication of tracks in the definition of 'construction of [railway] lines' would be absurd because, under point 10(d) of Annex II to the Directive, the construction of roads is not subject to a mandatory assessment of the environmental impact.

42. In reality, this interpretation is consistent with the system introduced by the Directive, which distinguishes between projects likely to have significant effects on the environment and other projects. The Directive lays down different rules for the construction of motorways and express roads (mandatory assessment is required by their inclusion in Annex I) and the construction of other roads (included in Annex II). In the same way, only the construction of

14 — See *WWF and Others*, cited above, paragraph 45, and *Linster*, cited above, paragraph 52.

lines for long-distance railway traffic is made subject to a prior mandatory assessment by the Directive.

43. The conversion of a road into a motorway, just like the construction of a motorway where there is no existing road, is a project covered by Annex I to the Directive and, as such, is subject to a prior mandatory assessment. Likewise, the conversion of a railway line used for regional traffic into a line for long-distance traffic will be subject to the conditions of Annex I.

44. Finally, the Spanish authorities submit that, if the Commission really took the view that the duplication of tracks necessitated a prior assessment of the effects on the environment pursuant to point 7 of Annex I to the Directive, the Commission ought to have brought an action for failure to fulfil obligations in relation to the duplication of the entire Valencia-Tarragona line of 251 km.

45. On this point it must be observed that the Commission alone is competent to decide whether it is appropriate to bring proceedings against a Member State for failure to fulfil its obligations and to determine the conduct or omission attributable to the Member State concerned on the basis of which those proceedings should be brought. [15] Therefore Spain's argument concerning the scope of the Commission's action for failure to fulfil obligations must be dismissed.

3. 'Long-distance traffic' within the meaning of point 7 of Annex I to the Directive

46. Spain denies that the project in question can be classified as covered under point 7 of Annex I to the Directive because it does not involve long-distance traffic, but a section of 13.2 km connecting two localities which are close to each other.

47. The Commission's response to this argument is that the new track is laid on a railway line 251 km long between Valencia and Tarragona, forming part of the 'Mediterranean corridor' connecting the region of eastern Spain with Catalonia and the French frontier, so that it was not a question of a local line. According to the Commission, the decisive factor is that the section forms part of a new long-distance railway line.

15 — Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph 22; Case C-476/98 *Commission* v *Germany* [2002] ECR I-9855, paragraph 38; and Joined Cases C-20/01 and C-28/01 *Commission* v *Germany* [2003] ECR I-3609, paragraph 30.

48. As a railway line 251 km long is constructed in stages, if Spain's reasoning were followed it would mean that a specific project would never be regarded as involving long-distance traffic because the successive sections of the line would all cover small distances and would connect neighbouring places. Adopting this interpretation of the Directive would be likely to restrict its scope considerably and to jeopardise the attainment of its objective.

49. The Commission's reasoning on this point cannot be said to be contradictory, as it merely assesses the conditions for applying point 7 of Annex I to the Directive by ascertaining, first, that the project in question concerns the construction of 'railway lines' and, second, that the lines in question are intended for 'long-distance traffic'. The length of the lines when completed is not a relevant criterion for determining whether the Directive is applicable to the project in question. The classification of the project is determined by the use of the line for long-distance traffic.

50. Consequently, the project in question ought, pursuant to Article 4(1) of the Directive, to have been the subject of an environmental impact assessment in accordance with the requirements of Articles 5 to 10 of the Directive.

C — *Failure in the obligation to carry out an assessment*

51. The Commission contends that Spain did not adhere to the procedure for assessing environmental effects laid down in Articles 5 to 10 of the Directive. More specifically, Spain is said to have failed in its obligations arising from Articles 5(2) and 6(2) of the Directive.

52. Article 5(2) lists the minimum information to be provided by the developer. This includes 'a description of the project comprising information on the site, design and size of the project'.

53. Article 6(2) lays down disclosure requirements relating to the assessment procedure. It provides that 'any request for development consent and any information gathered pursuant to Article 5 are to be made available to the public' and adds that the public concerned are to be given 'the opportunity to express an opinion before the project is initiated'.

54. Spain contends that it fulfilled all the obligations arising from the Directive. First, it asserts that the review of the 1992 general development plan for Benicassim was preceded by an impact assessment which was the subject of a public inquiry and by a report concerning the effects on the environment. According to Spain, this submission is confirmed by the reasoning adopted by the Tribunal Superior de Justicia de la Communidad Valenciana (Spain) on 26 October 1998.[16] Second, Spain pleads its good faith and its acceptance of the Commission's argument concerning Amendment No 3 to the project.

55. Regarding the review of the general development plan for Benicassim, it is clear from the file produced to the Court that the plan lacks details in two respects: it considers the route of the railway only briefly and it does not include the locality of Oropesa, where the construction of the track may also have an impact on the environment.

56. Under Article 5(2) of the Directive, the information provided by the developer must include at least a description of the site, design and size of the project in question.

16 — This judgment confirmed that the environmental procedure which had been followed in accordance with national law was sufficient, without construing the legislation in accordance with the Directive.

57. Therefore, as the general development plan for Benicassim does not meet the minimum conditions laid down by the Directive, I consider that Spain has not fulfilled its obligations arising from the Directive.

58. Regarding Amendment No 3 to the project, it is sufficient to observe that the environmental assessment procedure initiated by Spain took place after the construction work had begun.

59. Although the environmental impact assessment of Amendment No 3 provided by Spain dates from February 1999 for a project authorised on 26 November 1999, the public notice was not published in the *Boletín Oficial del Estado* until 3 January 2001, well after the work began in March 1999.

60. As this procedure does not conform with Article 6(2) of the Directive, which requires the public to be notified before the project is initiated, I think it has been shown that Spain failed to fulfil its obligations under the Directive with regard to the procedure followed for Amendment No 3 to the project.

IV — Conclusion

61. Therefore I propose that the Court:

(1) declare that the Kingdom of Spain has failed to fulfil its obligations arising from Articles 2, 3, 5(2) and 6(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, by reason of the fact that it did not carry out an environmental impact assessment of the 'Valencia-Tarragona railway project, Las Palmas-Oropesa section. Roadbed';

(2) order the Kingdom of Spain to pay the costs.