OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 10 November 1987 *

Mr President,
Members of the Court,

1. On 2 February 1982, giving judgment in actions brought by the Commission of the European Communities in Cases 68 to 71/81 ([1982] ECR 153, 163, 169 and 175), the Court held that the Kingdom of Belgium had failed to fulfil its obligations under the Treaty by not adopting within the prescribed periods the provisions needed to comply with the following Council Directives: 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal 1978, L 54, p. 19); 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39); 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23); 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41).

In four applications lodged on 23 July 1985 and joined by the Court by order of 9 October 1985, the Commission now claims that the Court should declare that Belgium has not complied with the aforesaid judgments and has therefore failed to fulfil its obligations under Article 171 of the Treaty.

2. The Belgian Government does not deny the facts complained of by the Commission; just as it did in Cases 68 to 71/81, however, it ascribes them to obstacles of constitutional origin resulting from the entry into force of the Law of 8 August 1980. That important reform transferred to the regions into which Belgium is divided exclusive powers in a number of fields, including those to which the four directives relate. It was therefore for the regional authorities in question to fulfil the obligations laid down in the directives, but their respective legislatures have not yet done so.

This argument is to no avail. As the Court has already stated in the 1982 judgments, the circumstances referred to by the Belgian Government are among the 'provisions, practices or circumstances' in its internal legal system which the Court has repeatedly held are fundamentally incapable of justifying 'failure to comply with obligations under Community directives' (most recently, judgment of 12 February 1987 in Case 69/86 *Commission* v *Italy* [1987] ECR 773, paragraph 7). I would add that, so far as Directive 78/176/EEC is concerned, these circumstances are in any event irrelevant. In the area covered by that provision the Belgian Government itself retains legislative powers but it acknowledges that the measures needed to implement that directive have not yet all been adopted.

The matter could be concluded here. However, there is one delicate subject to which it seems to me expedient to draw the Court's attention. The Belgian Government pointed out at the hearing that in the

* Translated from the Italian.

Belgian legal system — unlike the Italian system (Article 6 of Decree No 616 of the President of the Republic of 24 July 1977) and the Spanish system (Article 155 of the Constitution) — there is no legislation conferring on the State the power to compel the regions to implement Community legislation or to substitute itself for them in order directly to implement legislation in the event of a persistent delay on their part.

The delay of which the Belgian Government is accused has now lasted almost 10 years and prompts me to make two observations. First of all, it should be recalled that the obligations imposed on Member States by the third paragraph of Article 189 of the EEC Treaty (to achieve the result envisaged by the directive within the period it prescribes) and by the first paragraph of Article 5 (to take all appropriate measures to ensure the fulfilment of the obligations arising out of Community measures) are equally binding on all the authorities of Member States, including the courts (judgments of 10 April 1984 in Case 14/83 *Van Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 26, and of 15 May 1986 in Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraphs 51 to 53). It is therefore clear that these obligations are also binding on the regions where, as in the present case, they possess the necessary powers.

Secondly, it should be recalled that the second paragraph of Article 5 of the EEC Treaty provides that the States must abstain from 'any measure (and thus — it should be noted — even a law having constitutional status) which could jeopardize the attainment of the objectives of this Treaty'. To put it even more explicitly, therefore, States are bound 'not to detract, by means of natonal legislation, from the full and uniform application of Community law or from the effectiveness of its implementing measures'; consequently they may not 'introduce or maintain in force measures . . . which may render ineffective (Community) rules' (judgment of 10 January 1985 in Case 229/83 *Leclerc* v *Au blé vert* [1985] ECR 1, paragraph 14).

3. That being so, I can only conclude that the Commission's applications should be upheld. I therefore propose that the Court declare that by not complying with the Court's judgments of 2 February 1982 in Cases 68 to 71/81 the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty.

In accordance with Article 69 (3) of the Rules of Procedure, the defendant should be ordered to pay the costs.