OPINION OF ADVOCATE GENERAL MISCHO

delivered on 1 July 1999 *

1. By the present action for failure to fulfil obligations brought against the Italian Republic on 9 October 1998, the Commission seeks from the Court a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (13th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1993 L 307, p. 1, hereinafter 'the Directive'), or at least by failing to communicate them to the Commission, the Italian Republic has failed to fulfil its obligations under the Treaty and the Directive. The Commission also seeks an order requiring the Italian Republic to bear the costs of the proceedings.

2. In its application the Commission retraces the various stages of the precontentious procedure laid down by Article 169 of the EC Treaty (now Article 226 EC). As regards the merits of its action, the Commission argues that, by failing to adopt the necessary implementation measures, the Italian Republic has infringed Article 13(1) of the Directive, which allowed it until 23 November 1995 to adopt those measures, the third paragraph of Article 189 of the EC Treaty (now Article 249 EC) and Article 5 of the EC Treaty (now Article 10 EC).

3. In its defence, lodged on 29 January 1999, the Italian Republic neither disputes that the precontentious procedure was properly followed nor denies the infringement.

4. It merely states that it was not possible to initiate the process to implement the Directive until May 1998 when Community Law 1995/97 came into force, and that this implementation process is at present ongoing.

5. The Commission has taken the view that there is no need to lodge a reply, and both parties have waived their right to an oral hearing.

6. In those circumstances, I can only propose that the Commission's action be upheld in its entirety, albeit that it seems to me that a simple finding of infringement of Article 13 of the Directive would be sufficient.

* Original language: French.

Conclusion

7. I therefore suggest that the Court:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), and/or by failing to inform the Commission thereof, the Italian Republic has failed to fulfil its obligations under that directive;

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