OPINION OF ADVOCATE GENERAL ELMER

delivered on 14 September 1995 *

1. By application lodged at the Registry of the Court of Justice on 16 September 1994, the Commission has sought a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/685/EEC of 11 December 1991 amending Directive 80/217/EEC introducing Community measures for the control of classical swine-fever [1] and with Council Directive 91/688/EEC of 11 December 1991 amending Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries, [2] the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2. Member States were required under Article 2 of each of those directives to bring into force the laws, regulations and administrative provisions necessary to comply with them not later than 1 July 1992.

In view of the fact that the Italian Republic had not, by the expiry of the prescribed period, informed the Commission that it had transposed the directives, the Commission, by way of a letter of formal notice of 14 October 1992, instituted the procedure under Article 169 of the Treaty for failure to fulfil obligations. In the absence of a reply from the Italian Government, the Commission restated its views in a reasoned opinion of 11 May 1993. No reply to this reasoned opinion was forthcoming from the Italian Government either, and it is for this reason that the Commission has brought the present proceedings.

3. The Italian Government does not deny that it is under an obligation to transpose the directives in question into Italian law and that this was not done within the period laid down in the directives.

The Italian Government has, however, pointed out in its submissions to the Court that Directive 91/688 was transposed by a Ministerial Decree of 26 July 1994 [3] and that Directive 91/685 is expected to be implemented by '1993 legislation transposing Community law' (*Legge comunitaria* 1993). A draft version of this legislation has already been sent to the Italian Council of State for its opinion.

* Original language: Danish.

1 — OJ 1991 L 377, p. 1.

2 — OJ 1991 L 377, p. 18.

3 — Published in *Gazzetta Ufficiale della Repubblica Italiana* No 217 of 16 September 1994.

The Italian Government submits in the light of this that the case should be dismissed with regard to Directive 91/688 and it requests the Commission to abandon its claim that there has been a failure to fulfil obligations with regard to Directive 91/685.

4. In view of the transposition of Directive 91/688 by way of the Ministerial Decree of 26 July 1994, the Commission, in its reply, abandoned its claim that there had been a failure to transpose that directive but still maintained its claim that there had been a failure to fulfil obligations with regard to Directive 91/685.

5. The Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with its obligations under Community law. [4]

Since the Italian Republic has not denied that Directive 91/685 was not transposed into Italian law before the expiry of the period laid down in Article 2, it must be held that the Italian Republic has, as contended by the Commission, failed to fulfil its obligations under the EC Treaty.

6. The Commission has requested that the Italian Republic pay the costs of the proceedings, including the costs for that part of the proceedings relating to Directive 91/688.

Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(5), a party who discontinues proceedings is required to pay the costs. However, upon application by the party who discontinues proceedings, the costs are to be borne by the other party if this appears justified by the conduct of that party.

In view of the fact that the Italian Government did not immediately inform the Commission when it transposed Directive 91/688 into Italian law in July 1994, the Commission's application of 16 September 1994 also related to this directive. The Italian Government first pointed out in its statement of defence that the directive had already been transposed, after which the

4 — See most recently the judgment in Case C-147/94 *Commission* v *Spain* [1995] ECR I-1015.

Commission discontinued that part of the proceedings. The fact that the Commission brought proceedings regarding the failure to transpose Directive 91/688 and subsequently discontinued those proceedings is thus attributable solely to the conduct of the Italian Government, and I accordingly agree with the Commission that the Italian Republic should also bear the costs relating to that part of the proceedings.

Conclusion

7. In the light of the above, I propose that the Court should:

(1) Declare that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/685/EEC of 11 December 1991 amending Directive 80/217/EEC introducing Community measures for the control of classical swine-fever, the Italian Republic has failed to fulfil its obligations under the EC Treaty;

(2) Order the Italian Republic to pay the costs of the proceedings.