# OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 6 December 1990 *

*Mr President,*
*Members of the Court,*

1. The primary purpose of this action is to obtain a declaration that the defendant has infringed Article 1 of Council Directive 76/491/EEC of 4 May 1976 regarding a Community procedure for information and consultation on the prices of crude oil and petroleum products in the Community (OJ 1976 L 140, p. 4).

2. The Commission submits that between the fourth quarter of 1980 and the third quarter of 1986 the Belgian authorities repeatedly failed to communicate to it, within the prescribed time-limits, all the information required by Article 1 of Directive 76/491. The same failure recurred from the end of 1988 onwards. Since the allegation is not denied by the Belgian Government, it is clear that it failed to fulfil its obligations under that directive.

3. However, the action also seeks a declaration that there was an infringement of Article 5 of the Treaty.

4. In that connection the Commission submits that the conduct of the defendant, which gave numerous undertakings to comply with its obligations but honoured them only while the various pre-litigation procedures and proceedings before the Court commenced by the applicant were pending, cannot be considered to have facilitated the achievement of the Community's tasks, as the defendant was bound to do under the second paragraph of Article 5 of the Treaty.

5. In the circumstances of this case, I propose that the Court should uphold the Commission's claim. Although the Court has, in the past, held that no purpose is served by considering whether a Member State which has failed to fulfil its obligations arising under specific provisions of a directive has thereby also failed to fulfil its obligations under Article 5 of the EEC Treaty,[1] I nevertheless take the view that the situation here is different and that a separate breach is in evidence.

6. The only conclusion to be drawn is that the defendant State fulfilled its obligations only when faced with the direct threat of legal proceedings or a judgment of the Court, and that it disregarded them again once that threat appeared to have passed. In particular, it ceased communicating the information in the requisite manner very shortly after the Court had made the order for the removal of the case from the Register in the proceedings brought earlier by the Commission on the same grounds as

* Translated from the French

1 — Judgment in Case C-48/89 *Commission* v *Italy* [1990] ECR I-2425, paragraph 14

in the present case, proceedings which it discontinued after the defendant had given it the impression of putting an end to the infringement (Case 277/86).

7. It is clear that such conduct is in breach of the duty of 'genuine cooperation and assistance' [2] which, according to case-law, Article 5 imposes on the Member States, and that it cannot be identified simply as a failure to observe the obligations arising under Article 1 of the Directive.

8. I should also like to point out that, in two recent judgments, the Court has held the consistent refusal of a Member State to supply the Commission with documents or further particulars in the course of legal proceedings or pre-litigation procedures to be contrary to Article 5. [3] That demonstrates that in some circumstances a failure to comply with Article 5 may constitute a further infringement.

9. In conclusion, therefore, I propose that the Court should declare that, by repeatedly failing to notify within the prescribed time-limits all the information on the prices of crude oil and petroleum products required under Article 1 of Directive 76/491, in spite of the initiation of several pre-litigation procedures and the commencement of proceedings before the Court, Belgium has failed to fulfil its obligations under the said directive and Article 5 of the EEC Treaty; I further propose that the Court should order the defendant to pay the costs.

2 — See in particular the judgments in Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255 and Case 44/84 *Hurd* v *Jones* [1986] ECR 29.

3 — See the judgments in Case 272/86 *Commission* v *Greece* [1988] ECR 4875 and Case 35/88 *Commission* v *Greece* [1990] ECR I-3125.