OPINION OF ADVOCATE GENERAL COSMAS

delivered on 17 October 1995 *

1. In this action brought under Article 169 of the EC Treaty the Commission is seeking a declaration that the Italian Republic has failed to fulfil its obligation to implement in its domestic legal system Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and planting material, other than seed, [1] and Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production [2] (hereinafter 'the Directives').

2. Article 25(1) of Directive 92/33 provides that:

'(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by the Member States.'

Article 26(1) of Directive 92/34 provides that:

'(1) Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive no later than 31 December 1992. They shall forthwith inform the Commission thereof.

When these measures are adopted by the Member States, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be adopted by the Member States.'

3. After the expiry of the abovementioned time-limits, the Commission gave formal

* Original language: Greek.
1 — OJ 1992 L 157, p. 1.
2 — OJ 1992 L 157, p. 10.

notice to the Italian Government in a letter of 12 March 1993 in which it drew to the attention of the Italian Government the fact that it had not yet been notified of the measures implementing the Directives in the Italian legal system and had received no other information. The Commission also invited the Italian Government to submit its observations to it within a period of two months from receipt of that letter.

4. On 1 June 1994 the Commission delivered a reasoned opinion in which it requested the Italian Republic to adopt the necessary measures in order to comply with the Directives within two months of receipt of the reasoned opinion.

5. By letter of 20 September 1994 from the Permanent Representation of the Italian Republic to the European Union the Italian authorities informed the Commission that the procedure for implementing the Directives was under way.

6. The Commission brought the present action by application lodged at the Court's Registry on 4 April 1995.

7. In the defence which it has lodged the Italian Republic does not deny that it has failed to bring into force the measures necessary to transpose the Directives into national law. It merely states that Article 4 of Law No 146/94 (the 'Community' Law for 1993) provides for the transposition of the Directives in the form of a regulation and that the adoption of a regulation in order to implement the Directives is being prepared by the Ministry of Agricultural, Food and Forestry Resources, which has sent it to the Consiglio di Stato (Council of State) for its Opinion. The direct transposition of the Directives into the Italian legal system, as required by Community law, is therefore imminent. To that end, as soon as the regulation is published in the *Gazetta ufficiale della Repubblica italiana*, the Commission will be duly informed in order to dispose of the present proceedings.

8. According to the settled case-law of the Court, 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 the obligations and time-limits laid down in Community directives. [3]

9. Since the Italian Republic has not transposed the Directives into its domestic legal system, it follows from the foregoing that the Commission has established the failure on which it relies.

3 — See Case C-147/94 *Commission* v *Spain* [1995] ECR I-1015, paragraph 5, and Case C-259/94 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5.

10. The application also refers to a failure to fulfil obligations owing to the non-notification to the Commission of the measures transposing the Directives. Even if it were possible, by interpreting the application, to take the view that the Commission is seeking a declaration that there has also been a failure to fulfil obligations in that respect, it is not necessary to consider that question, since the Italian Republic has in any event failed to adopt the necessary measures within the period laid down. [4]

11. Having regard to the foregoing I therefore propose that the Court should:

(1) declare that, by failing to adopt within the prescribed time-limits the necessary laws, regulations or administrative provisions necessary to implement in its domestic legal system Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagation and planting material, other than seed, and Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production, the Italian Republic has failed to fulfil its obligations under Articles 25(1) and 26(1) respectively of the abovementioned directives and under the EC Treaty;

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

4 — See, by way of guidance, Case C-303/93 *Commission* v *Italy* [1994] ECR I-1901, paragraph 6, Case C-365/93 *Commission* v *Greece* [1995] ECR I-499, paragraph 12, and Case C-147/94 *Commission* v *Spain*, cited above, paragraph 7.