OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 19 March 2002 [1]

1. The European Commission seeks a declaration by the Court that, by failing to adopt the necessary measures within the prescribed period, the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (hereinafter 'the Directive'). [2]

2. That provision requires Member States to ensure that establishments where dangerous substances are present in certain quantities [3] draw up internal emergency plans and supply the necessary information so that the competent authorities may draw up external emergency plans.

3. Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 4 February 1999. [4]

4. The defendant Member State has admitted, both in the administrative procedure [5] and before the Court, [6] that spe-

1 — Original language: Spanish.

2 — OJ 1997 L 10, p. 13. Although in the application the Commission cites failure to fulfil obligations under the Directive as a whole, 'and Article 11 thereof in particular', in its reply it specifies that 'the subject of the claim is the failure to transpose Article 11'.

3 — Article 9, in conjunction with Article 2(1).

4 — Article 24 allowed them a maximum period of 24 months from the time the Directive came into force. Under Article 25, the Directive entered into force on 3 February 1997, so that the prescribed period expired on the same date in 1999.

5 — Communication of 20 July 2000, sent in a letter dated 3 August 2000 (see document VI of the annexes to the application).

6 — See point 2 of the defence to the application.

cific measures to implement Article 11 of the Directive in national law were not adopted within the period prescribed in the reasoned opinion as regards the Länder of Mecklenburg-Vorpommern, Lower Saxony, Rhineland-Palatinate, Saxony, Sachsen-Anhalt and Schleswig-Holstein.

5. The German Government's acceptance of the facts of the case means that there is no dispute as to the alleged failure to fulfil obligations, so that it is irrelevant that the procedures for drawing up the provisions necessary for transposition have now reached an advanced stage, since the question whether a Member State has failed to fulfil its obligations must be determined by reference to the end of the period laid down in the reasoned opinion. [7]

6. That assessment is not undermined by the arguments put forward in its defence by the Federal Republic of Germany.

7. The complexity of the measures required for transposition of the Directive at both the federal level and the level of the Länder and the fact that the German Government on numerous occasions reminded the regional authorities of the urgency of the task are irrelevant.

8. First, those difficulties have already been taken into consideration by the Community legislature when prescribing the period within which Member States are to implement the Directive, a process in which the Federal Republic of Germany was involved, so that it was aware of the time-limit for incorporating the Directive into national law.

9. Second, a Member State may not, in order to exonerate itself from fulfilling its obligations, cite difficulties encountered in implementing Community law [8] or its own institutional peculiarities. [9]

7 — See, *inter alia*, the judgments in Case C-96/98 *Commission* v *France* [1999] ECR I-8531, paragraph 19, and Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16.

8 — See the judgments in Case 128/78 *Commission* v *United Kingdom* [1979] ECR 419, paragraph 10; Case C-374/89 *Commission* v *Belgium* [1991] ECR I-367, paragraph 10; and Case C-327/98 *Commission* v *France* [2000] ECR I-1851, paragraph 21.

9 — See the judgments in Case C-259/94 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5; Case C-214/96 *Commission* v *Spain* [1998] ECR I-7661, paragraph 18; Case C-166/97 *Commission* v *France* [1999] ECR I-1719, paragraph 13; Case C-166/97 *Commission* v *France* [1999] ECR I-1719, paragraph 13; and Case C-423/00 *Commission* v *Belgium* [2002] ECR I-593, paragraph 16.

10. Thus, the 'special features' of the case cited by the defendant Government cannot justify an application of Article 10 EC and of the principle of genuine cooperation that underlies it to the extent claimed in the defence to the application. The Commission and the Member States must work together in good faith whilst fully observing the Treaty provisions and secondary legislation, which prohibit individual derogations to the advantage of a Member State from the obligations that apply to all. [10] The Court has applied that principle when dealing with the implementation of specific decisions of the Commission with a single addressee, [11] but to my knowledge it has never done so for the benefit of one of several persons subjet to the same act or provision.

11. From the preceding observations, it can be seen that the Federal Republic of Germany has failed to fulfil its obligations as alleged and that the application should therefore be upheld.

12. In accordance with Article 69(2) of the Rules of Procedure, the defendant Member State should be ordered to pay the costs. [12]

10 — Moreover, the Commission could hardly derogate, even for only a single Member State, from a provision approved by the Council.

11 — See the judgments in Case 94/87 *Commission* v *Germany* [1989] ECR 175, paragraph 9; Case C-404/97 *Commission* v *Portugal* [2000] ECR I-4897, paragraph 40; and Case C-261/99 *Commission* v *France* [2001] ECR I-2537, paragraph 24.

12 — Codified version published in OJ 2001 C 34, p. 1.

Conclusion

13. I propose that the Court should uphold the application and:

(1) declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances by failing to bring into force within the period prescribed in Article 24 the laws, regulations and adminstrative provisions necessary to implement it in national law;

(2) order the Federal Republic of Germany to pay the costs.