OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 9 October 1990 *

Mr President,
Members of the Court,

1. The Commission has requested the Court in Case C-39/88 to declare that Ireland has infringed a number of provisions which require Member States to supply it with certain information relating to fishery products.

2. I shall only mention the specific provisions on which the Commission relies and would refer to the Report for the Hearing for a description of all the relevant legislative provisions.

The Commission's first complaint

3. The Commission's first complaint relates to the infringement of Article 11(1) of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981 L 379, p. 1), hereinafter referred to as 'the basic regulation', which states that:

'Throughout the period during which the guide price is applicable, Member States shall notify the Commission of the prices recorded on representative wholesale markets or in representative ports for products having the characteristics selected for fixing the guide price.'

4. Details of that obligation are given in Article 1 of Commission Regulation (EEC) No 3598/83, [1] the wording of which [2] is as follows:

'(1) The notifications referred to in Article 11(1) of Regulation (EEC) No 3796/81 shall contain, for each of the products listed in Annex I(A), (D) and (E) to that regulation and for each representative market or port:

(a) the average price on the market day:

(i) of each product

and

(ii) of the product category used for fixing the guide price,

* Original language: French.

1 — Regulation of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (OJ 1983 L 357, p. 17).

2 — As amended by Commission Regulation (EEC) No 3473/85 of 10 December 1985 amending, by reason of the accession of Spain and Portugal in particular, Regulation (EEC) No 3598/83 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (OJ 1985 L 333, p. 10).

weighted according to the quantities marketed;

(b) total quantities landed and marketed of the product and of the category referred to in the second indent of (a);

(c) the total quantity withdrawn from the market.

(2) The notifications shall be sent to the Commission by telex on the 10th and 25th days of each month for periods corresponding to the second and first halves of the month in question and each market day if there is a threat of crisis or market disturbance.'

5. In the case of Ireland, the notifications in question need relate only to the products listed in Annex I(A) to the basic regulation. According to the Commission, the alleged failure arises from the fact that the defendant provides it with the relevant information only once a year instead of twice a month.

6. Ireland does not dispute this allegation, but contends that the information which it sends to the Commission is adequate when account is taken of the purpose of that information, which is to enable the Commission to forward proposals once a year to the Council for fixing the guide prices of the products in question.

7. The defendant also explains that it is not in a position to submit the information in question on a bi-monthly basis owing to the limited number of fisheries inspectors which it has at its disposal and the large number of fishing ports and landing points in Ireland. It states that it has also pointed out on several occasions, during the negotiations on the applicable regulations, that it would have very great difficulty in complying with that obligation.

8. Furthermore, at the hearing Ireland drew the Court's attention to the fact that Regulation No 3598/83 would be replaced, as from 1 January 1991, by Commission Regulation (EEC) No 1106/90 of 18 April 1990 on the communication of information for the purposes of the common organization of the market in fishery products (Official Journal 1990 L 111, p. 50). Article 2 of that regulation provides that Member States must notify the average monthly price for each of the products listed in Annex I(A) to the basic regulation, whereas they were previously required to submit the average market day price every 15 days.

9. This would suggest that bi-monthly notification was not really necessary for the smooth functioning of the market organization. The fact remains, however, that prior to the bringing of this action, Ireland submitted information only once a year, and that it would in any case have failed to meet the obligations laid down in the new regulation if that regulation had already been in force.

10. It cannot in any event be disputed that the obligations arising under the old Commission regulation did apply to Ireland

during the period to which the action relates. Once it has been accepted that the provisions here relied on are valid and applicable, as is the case here, the Court is obliged to take cognizance of their wording and declare that they have not been complied with.

11. Even if it were proven that the breach of obligations did not have any adverse consequences for the functioning of the market organization, such a fact cannot prevent it from being held that the breach occurred. On this point, I would refer to my Opinion delivered today in Case C-209/88 *Commission* v *Italian Republic.*

12. It is therefore necessary to apply the well-established case-law of the Court, according to which:

'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 obligations and time-limits resulting from Community law'.[3]

13. The Court has also recently given a ruling to the same effect in its judgment in Case C-48/89 *Commission* v *Italian Republic* [1990] ECR I-2425, in which the defendant, as in the present case, had pleaded difficulties in applying a measure which required it to supply certain information to the Commission. That judgment confirms the earlier case-law of the Court, according to which:

'practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations'.[4]

The Commission's second complaint

14. The Commission in its application had also referred to an infringement of Article 11(3) of the basic regulation, which provides that:

'Member States shall notify the Commission every quarter of wholesale prices during the previous quarter for the products listed in Annex IV(B) frozen on board and frozen on land'.

15. The detailed rules for the performance of that obligation are laid down in Article 2 of Regulation No 3598/83.

16. The Commission, however, had limited the scope of its complaint to the information concerning products frozen on board. As the defendant had stated that this concerned a 'process [which] has not existed in Ireland or on board any Irish fishing vessel before January 1988', the Commission abandoned this part of its application during the hearing of oral argument.

3 — See in particular the judgment in Case 254/83 *Commission* v *Italian Republic* [1984] ECR 3395.

4 — See in particular the judgments in Case 128/78 *Commission* v *United Kingdom* [1979] ECR 419 and in Case 39/72 *Commission* v *Italian Republic* [1973] ECR 101.

Conclusion

17. I therefore propose that the Court should declare that by failing to provide at the times prescribed the information required under Article 11(1) of Regulation No 3796/81 and Article 1 of Regulation No 3598/83, Ireland has failed to fulfil its obligations under those provisions. Since the Commission is thus entitled to succeed under one head of its submissions, while it has abandoned the second, without such withdrawal being justified by the position taken by Ireland, I believe that the Court ought to order each party to pay its own costs.