OPINION OF ADVOCATE GENERAL LÉGER

delivered on 25 June 1998 *

1. In the present proceedings, the Commission of the European Communities seeks a declaration that, by not adopting or communicating to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat, [1] and

— Commission Directive 94/59/EC of 2 December 1994 amending for the third time the Annexes to Council Directive 77/96/EEC on the examination for Trichinae (Trichinella spiralis) upon importation from third countries of fresh meat derived from domestic swine, [2]

the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and those directives.

2. Under Article 3(1) of Directive 93/118, Member States were to adopt the laws, regulations and administrative provisions necessary to comply with that directive, by 31 December 1993 as regards the requirements of the annex thereto and Article 5, as amended, of Directive 85/73, and by 31 December 1994 as regards the other provisions. Member States were accordingly required to inform the Commission immediately of the measures adopted.

3. Under the first subparagraph of Article 2 of Directive 94/59, Member States were to adopt by 1 January 1995 the laws, regulations and administrative provisions necessary to comply with that directive, and to inform the Commission thereof immediately.

4. Finding that the time-limit had expired without its being informed of the existence of

* Original language: French.

1 — OJ 1993 L 340, p. 15.

2 — OJ 1994 L 315, p. 18.

implementing measures taken by Greece, the Commission commenced an action under Article 169 of the Treaty for a declaration that Greece had failed to fulfil its obligations.

5. By letter of 16 May 1995, the Commission gave the Greek Government formal notice to submit its observations on the absence of measures necessary to transpose Directives 93/118 and 94/59 into domestic law.

6. Since the Greek Government did not reply to that letter within the prescribed time-limit, the Commission sent it a reasoned opinion on 24 September 1996 in which it stated that Greece had failed to fulfil its obligations.

7. In its response, the Greek Government stated that it had transposed Directive 94/59 by adopting Presidential Decree No 345/97 'Amending and supplementing the provisions of Presidential Decree No 599/85 on the health conditions to be satisfied by fresh meat and meat-based products imported into Greece from third countries (Official Gazette A 213) in accordance with Commission Directive 94/59 (Official Gazette A 233)', published in the *Official Gazette of the Hellenic Republic* on 25 November 1997.

8. By letter of 10 March 1998, the Commission discontinued its action under Article 169 in so far as it concerned failure to transpose Directive 94/59.

9. In respect of the part of the action concerning failure to transpose Directive 93/118, the Greek Government stated that it had drafted a presidential decree in order to bring national law into line with that directive, but had considered it appropriate to supplement that decree with a view to the transposition of Directive 93/118 at the same time as Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC. [3]

10. Greece does not therefore appear to deny that the said directive has not been transposed within the prescribed time-limit, and so the action brought by the Commission for failure by that State to fulfil its obligations under Directive 93/118 is well founded.

11. Under Article 69(2) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs.

3 — OJ 1996 L 162, p. 1.

12. Under Article 69(5) of those Rules, a party who discontinues or withdraws from proceedings is to be ordered to pay the costs unless the discontinuance or withdrawal is justified by the conduct of the other party.

13. The Commission discontinued part of its action after Greece adopted, following the commencement of proceedings, the measures necessary for the transposition of Directive 94/59 into the Greek legal order.

14. The Commission's partial discontinuance is justified by the conduct of Greece which has, moreover, been unsuccessful in the rest of the action. Greece should therefore be ordered to pay the costs.

Conclusion

15. I propose that the Court:

(1) declare that, by not adopting or communicating to the Commission within the prescribed time-limit the laws, regulations and administrative provisions necessary to comply with Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat, the Hellenic Republic has failed to fulfil its obligations under Article 3(1) of the said directive;

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