OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 4 October 2001 [1]

1. The action before the Court, brought by the Commission of the European Communities, seeks a declaration that the Italian Republic has failed to fulfil its obligation to forward the reports on the implementation of various directives relating to the protection of the environment within the prescribed period.

I — Legal background

2. The object of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, [2] as stated in Article 1 thereof, is to 'rationalise and improve on a sectoral basis the provisions on the transmission of information and the publication of reports concerning certain Community directives on the protection of the environment.'

3. Article 5 provided a new wording for the following two provisions, among others:

(a) Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils [3] (hereinafter 'the Waste Oils Directive'), as amended by Directive 87/101/EEC. [4]

(b) Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste [5] (hereinafter 'the Waste Directive'), as amended by Directive 91/156/EEC. [6]

4. The new wording of the two articles is as follows:

'At intervals of three years Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral report which shall also cover other pertinent Community Directives. The report shall be drawn up on the basis either of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC. The

1 — Original language: Spanish.
2 — OJ 1991 L 377, p. 48.
3 — OJ 1975 L 194, p. 23.
4 — OJ 1987 L 42, p. 43.
5 — OJ 1975 L 194, p. 39.
6 — OJ 1991 L 78, p. 32.

questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be made to the Commission within nine months of the end of the three-year period covered by it.

The first report shall cover the period 1995 to 1997 inclusive.

The Commission shall publish a Community report on the implementation of the Directive within nine months of receiving the reports from the Member States.'

II — Facts of the case

5. The Commission noted that the Italian Republic had not sent the reports corresponding to the three-year period in question, and so, under cover of a letter to the Italian Republic of 20 July 1999, asked it to submit its observations within two months. The Italian authorities did not reply to that letter.

6. On 26 January 2000 the Commission delivered a reasoned opinion in which, after demonstrating that the Italian Republic had infringed its obligations under, among other provisions, the aforementioned Article 18 of the Waste Oils Directive and Article 12 of the Waste Directive, both as worded in Article 5 of Directive 91/692, it requested the Italian authorities to take the necessary measures to remedy the situation within two months.

7. The Commission received no explanation from the Italian authorities concerning the absence of reports on the implementation of the aforementioned directives, and thus brought the present action.

III — Claims of the parties and proceedings before the Court of Justice

8. In its application, the Commission claims that the Court of Justice should declare that the Italian Republic has failed to fulfil its obligations under Article 18 of the Waste Oils Directive and Article 12 of the Waste Directive in their new wording.

9. In its defence to the application, the Italian Government acknowledged that it was unable to fulfil its obligations in time owing to difficulties in compiling the data. It added that, despite that fact, the reports have now been sent, albeit late. In the light

of the above it trusts that the Commission will discontinue the proceedings.

10. The Commission, in its reply, discontinued the proceedings as regards the failure to fulfil the obligations under the Waste Directive, but maintained them as regards the Waste Oils Directive, as the data sent to it were incomplete, a fact which was acknowledged by the Italian Government in its rejoinder.

11. Neither of the parties has requested an oral procedure.

IV — The failure to fulfil obligations

12. The withdrawal by the Commission of its claim concerning the Waste Directive leaves the dispute limited to the failure to fulfil the obligation to provide information within the period prescribed in the Waste Oils Directive.

13. The infringement is acknowledged by the defendant government, which not only admits that it did not comply with the obligation to send the Commission the report on the implementation of the directive before the expiry of the period laid down in the reasoned opinion,[7] but also acknowledges that it has subsequently only sent an incomplete report.

14. That incomplete fulfilment of obligations, since it was late, is irrelevant and cannot be taken into consideration by the Court.[8] The efforts made by the Italian authorities to remedy the situation are also of no consequence. The failure to send the pertinent information on the implementation of the Waste Oils Directive to the Commission within the period laid down is objective and occurred when the period expired without the report having been sent, irrespective of the difficulties which arose in the implementation and the particular internal circumstances of the Member State which may have been an obstacle to it.[9]

15. In the light of the foregoing considerations, I propose that, by failing to send the necessary report on the implementation of the Waste Oils Directive to the Commission by the expiry of the period in the reasoned

7 — That is to say, the moment when, according to the case-law of the Court of Justice, the question whether a Member State has failed to fulfil its obligations must be determined (see, in particular, Case C-96/98 *Commission* v *France* [1999] ECR I-8351, paragraph 19, and Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16.

8 — See *Commission* v *Portugal*, cited above, paragraph 16.

9 — See my Opinion in *Commission* v *Portugal*, point 15, and the judgments cited therein.

opinion, the Italian Republic has failed to fulfil its obligations under Community law.

V — Costs

16. The Commission discontinued the proceedings in relation to one of the infringements complained of initially and did so without making any submissions concerning the costs relating to the subject of the discontinuance. Nor did the defendant government make any submission on this matter. Consequently, in accordance with Article 69(2) and (5) of the Rules of Procedure, the defendant must be ordered to pay one half of the costs, while for the rest the parties must bear their own costs.

VI — Conclusion

17. For the reasons set out above, I propose that the Court should:

(1) hold that the Commission has withdrawn its application so far as concerns the failure to fulfil the obligation to provide information laid down in Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Directive 91/156/EEC, and as worded in Article 5 of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment;

(2) declare that, by failing to forward within the period prescribed the report on the implementation of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Directive 87/101/EEC, the Italian

Republic has failed to fulfil its obligations under Article 18 of that directive, as worded in Article 5 of Directive 91/692;

(3) order the Italian Republic to pay one half of the costs and declare that, in respect of the other half, the parties are to bear their own costs.