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

Mr President,
Members of the Court,

1. This Opinion deals with the action brought by the Commission against the Italian Republic seeking a declaration that that Member State has failed to comply with the obligations to provide information imposed on it by certain provisions of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products, [1] and of the Commission's implementing regulations, Regulations (EEC) Nos 3191/82, 1501/83, 3598/83 and 3599/83.

2. The provisions in question, details of the nature and scope of which are given in the Report for the Hearing, require Member States to inform the Commission, with varying frequency, of the withdrawal prices for certain categories of fish fixed by producer organizations, the quantities of products withdrawn from the market, the prices ascertained on representative wholesale markets or in representative ports, and the free-at-frontier prices for fish from non-member countries.

3. The Italian Republic does not dispute the Commission's contention that the information which the defendant sent to it does not comply with the requirements laid down by the Community rules as regards content, form or the time-limits to be observed.

4. However, the Italian Republic states that the difficulties which it is encountering, and which, moreover, it is not alone in encountering in complying with the obligations in question are due to the fact that the Community rules in question are too stringent for them to be capable of practical application and that, at a regional level in any event, the importance of the sector does not justify the establishment of offices, services, or expensive procedures. The complaints made by the Commission, it is claimed, relate only to minor administrative 'malfunctions' which cannot be described as failures to fulfil obligations under the EEC Treaty and consequently held to be so in a judgment given under Article 169.

5. It must be pointed out first in this regard that the question whether certain administrative obligations imposed on Member States by Community regulations entail costs which exceed the advantages which might be gained is a matter for discussion and resolution within the Council or the management committees established by the common organizations of the market. Given that there is no dispute as to the validity of the provisions relied on by the Commission, the Court, for its part, can only take cognizance of the wording of those provisions and, if necessary, declare that they have been infringed.

6. Furthermore, as the Commission correctly pointed out in its reply, the Treaty

* Original language: French.

1 — OJ 1981 L 379, p. 1.

does not allow of any *de minimis* theory which might enable a distinction to be drawn between provisions, non-compliance with which constitutes a failure to fulfil obligations, and other provisions which, by reason of their limited importance, could not give rise to proceedings under Article 169.

7. Consequently, I believe that it is necessary in the present context to apply the 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.[2] More recently, the Court replied in a like manner to a similar argument in its judgment in Case C-48/89 *Commission* v *Italian Republic* [1990] ECR I-2425, where the defendant, as in the present case, had pleaded difficulties in applying the measure under which it was required to supply certain information to the Commission. This judgment confirms the earlier case-law of the Court to the effect that:

'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'.

8. The Italian Republic once again stresses that the failures in question are purely formal in nature and caused no substantive damage to the functioning of the common organization of markets.

9. However, it follows unequivocally from the case-law of the Court that failure to comply with Community provisions is sufficient to constitute the breach, and the fact that such failure has had no negative consequences is therefore not relevant. Thus, the Court has held on several occasions that the fact that legislation which infringes Community law is only seldom applied and that the failure has therefore little substantive significance is not sufficient to nullify the infringement.[3]

10. In similar vein, the Court has ruled that:

'a Member State may not invoke, for the purpose of justifying a failure to fulfil obligations under a harmonizing directive, the argument that the failure to apply that directive has had no adverse effect on the functioning of the common market'.[4]

11. In any case, the Commission pointed out that the absence of adequate statistical data had indeed created problems in the past both with regard to the fixing of guide prices and in respect of the implementation of the safeguard clause in cases where this had been requested by Italy.

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

3 — See, in particular, the judgment in Case 257/86 *Commission* v *Italian Republic* [1988] ECR 3249, paragraph 11.

4 — Judgment in Case 95/77 *Commission* v *Kingdom of the Netherlands* [1978] ECR 863.

Conclusion

12. For these reasons I propose that the Court declare that by failing to adopt the measures provided for under Articles 9(4), 11(1), 15(2), 17(2) and 21(3) of Council Regulation (EEC) No 3796/81, Article 2 of Commission Regulation (EEC) No 3191/82, Article 4 of Commission Regulation (EEC) No 1501/83, Articles 1, 3 and 4 of Commission Regulation (EEC) No 3598/83, and Article 3 of Commission Regulation (EEC) No 3599/83, the Italian Republic has failed to fulfil its obligations under those provisions. It should for that reason also be ordered to pay the costs.