OPINION OF ADVOCATE GENERAL ALBER

delivered on 16 July 1998 *

A — Introduction

1. These proceedings concern an action for failure to fulfil Treaty obligations brought against the Republic of Portugal for its failure to transpose Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States. [1] The Commission claims that the Court should

— declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply fully and correctly with Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and the combined provisions of Article 13 of that directive, Article 395 of and Annex XXXVI to the Act of Accession, [2]

— in the alternative, declare that, by not informing the Commission of those measures forthwith, the Portuguese Republic has failed to fulfil its obligations under those provisions;

— order the Portuguese Republic to pay the costs.

2. The Portuguese Republic contends that the Court should,

— allow until 30 October 1997 for the legislation improving and completing the transposition of Directive 79/869/EEC to be passed, and thereafter declare the case closed;

— order the Commission to pay the costs of the proceedings.

* Original language: German.
1 — OJ 1979 L 271, p. 44.
2 — OJ 1985 L 302, p. 397.

B — Analysis

3. Under Article 13 of Directive 79/869 the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive within two years of its notification and forthwith to inform the Commission thereof. Notification took place in October 1979.

4. Under the combined provisions of Article 395 of and Annex XXXVI(III)(5) to the Act of Accession, the Portuguese Republic had until 1 January 1989 to transpose the directive.

5. The Portuguese Republic adopted Decree-Law No 74/90 of 7 March 1990 to transpose the directive. However, the Commission takes the view that the directive was not fully and correctly transposed into Portuguese law. It considers that the Portuguese Republic did not fulfil its obligations deriving from Article 3(3) of the directive in conjunction with columns C, D and E of Annex I to the directive, Article 4(2) and Article 5 of the directive and footnote No 10 of Annex I to the directive.

6. The Portuguese Republic does not dispute those allegations. However, it submits that Decree-Law No 74/90 is under review, that review procedure being in its final stage. It has therefore asked the Court of Justice to await publication of that Decree-Law, which was anticipated on 30 October 1997.

7. The Portuguese Republic has undeniably failed to fulfil the above obligations within the period of two months prescribed in the reasoned opinion of 10 June 1996. The Court has consistently held that this is the date to be taken into account to determine whether a Member State has failed to fulfil its obligations. [3]

8. The parties have decided not to hold the oral procedure originally planned.

9. In the light of all the foregoing obserations the Commission's application should be granted.

Costs

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

3 — See Case C-361/95 *Commission* v *Spain* [1997] ECR I-7351, paragraphs 13 and 14, Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 42, and Case C-123/94 *Commission* v *Greece* [1995] ECR I-1457, paragraph 7.

C — Conclusion

10. I therefore propose that the Court should:

(1) declare that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply fully and correctly with Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and the combined provisions of Article 13 of that directive, Article 395 of and Annex XXXVI to the Act of Accession;

(2) order the Portuguese Republic to pay the costs of the proceedings.