OPINION OF ADVOCATE GENERAL ELMER

delivered on 7 May 1996 *

1. In these infringement proceedings the Commission seeks a declaration that, by failing to adopt and communicate the measures necessary to implement Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste-incineration plants [1] and Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste-incineration plants [2] within the prescribed periods, the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2. Under Article 12(1) of Directive 89/369 and Article 10(1) of Directive 89/429, the Member States were to bring into force the measures necessary to comply with the directives by 1 December 1990 and to inform the Commission immediately they had done so.

Since the Italian Republic had not informed the Commission that it had implemented the directives by the expiry of the prescribed period, by a letter of formal notice of 25 April 1991 the Commission initiated infringement proceedings pursuant to Article 169 of the Treaty. By a letter of 11 July 1991 to the Commission, Italy's Permanent Representative to the European Communities stated that the Italian authorities were in the course of drafting the rules necessary to comply with the directives and that they would be transposed by way of the 'Legge Comunitaria [Community Law] 1990'. [3]

Since it was apparent to the Commission that the said directives had not been transposed into Italian law either by the 'Legge Comunitaria 1990' or by the 'Legge Comunitaria 1991', [4] the Commission set out its views in a reasoned opinion of 18 June 1993. No reply from the Italian Government to that reasoned opinion was received and the Commission therefore lodged the present application.

3. The Italian Government does not dispute that it is obliged to transpose the directives

* Original language: Danish.

1 — OJ 1989 L 163, p. 32.

2 — OJ 1989 L 203, p. 50.

3 — Subsequently Law No 428 of 29 December 1990.

4 — Subsequently Law No 142 of 19 February 1992.

in question into Italian law: Directive 89/369 was not implemented and Directive 89/429 only partially implemented within the period prescribed. In its observations to the Court, the Italian Government explained that Directive 89/429 had been partially implemented in Italian law by the Environment Minister's Decree of 12 July 1990 on guidelines for limiting pollutant emissions from industrial plants and fixing minimum emission values. The Commission had not, however, been informed thereof since it was anticipated that new rules would be drafted to correspond specifically to the provisions of Directive 89/429.

In the light of that clarification concerning the implementation of Directive 89/429, the Commission withdrew its claim concerning the failure to implement that directive.

4. Since the Italian Republic has not disputed the fact that Directive 89/369 has not been implemented in Italian law within the period prescribed in Article 12(1), the Italian Republic must therefore be found to have infringed its obligations under the EC Treaty.

5. The Commission has claimed that the Italian Republic should be ordered to pay the costs, including the costs relating to that part of the case concerning implementation of Directive 89/429.

Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 69(5) a party who discontinues or withdraws from proceedings is to be ordered to pay the costs. However, upon application by the party who discontinues or withdraws from proceedings, the costs are to be borne by the other party if this appears justified by the conduct of that party.

6. Since the Italian Government did not inform the Commission within the period prescribed for implementing Directive 89/429 that that directive had already been partially implemented in Italian law, the Commission's application included that directive as well. It was only in its defence that the Italian Government first stated that the directive was already partially in force in Italy, whereupon the Commission withdrew that part of the case. The fact that the Commission brought proceedings concerning the failure to implement Directive 89/429 and subsequently withdrew that application was the result solely of the Italian Government's conduct and I therefore agree with the Commission that the Italian Republic should bear the costs of that part of the case as well.

Conclusion

7. In the light of the foregoing, I suggest that the Court hold as follows:

(1) By failing to adopt the necessary measures to implement Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste-incineration plants, the Italian Republic has failed to fulfil its obligations under the EC Treaty.

(2) The Italian Republic is ordered to pay the costs.