OPINION OF ADVOCATE GENERAL MISCHO

delivered on 14 March 2000 *

1. In this action brought under Article 169 of the EC Treaty (now Article 226 EC), the Commission of the European Communities requests the Court to declare that the Portuguese Republic has failed to transpose 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 (hereinafter 'the directive'). [1]

2. Article 4(1), first and second subparagraphs, of the directive provides:

'Member States shall bring into force laws, regulations and administrative provisions necessary to comply with:

(i) the provisions of Article 7 and of Chapter I(1)(e) of Annex A by 1 July 1996;

(ii) the provisions of Chapter II, Section II of Chapter III of Annex A and Chapter II of Annex C by 1 January 1997;

(iii) other amendments by 1 July 1997.

Member States shall have a further period which can extend to 1 July 1999 within which to comply with the provisions of Section I of Chapter III of Annex A.'

3. On 5 November 1997, having received no notification as to the measures adopted to transpose that directive into the Portuguese legal system, and having in its possession no other information allowing it to conclude that the Portuguese Republic had complied with its obligation to transpose the directive, the Commission instituted the procedure under Article 169 of the Treaty by putting the Portuguese Government on formal notice to submit to it its observations.

* Original language: French.

1 — OJ 1996 L 162, p. 1.

4. The Portuguese Government informed the Commission that a decree-law to implement the directive was in the process of being drafted.

5. On 24 August 1998, the Commission addressed a reasoned opinion to the Portuguese Republic, in which it set a two-month period for compliance with the directive.

6. On 17 March 1999, having received no response from the Portuguese authorities, the Commission brought the present action against the Portuguese Republic for failure to fulfil its obligations.

7. In its statement of defence of 18 May 1999, the Portuguese Government stated that the draft decree-law had been approved within the Council of Ministers and that the Commission had been notified to that effect by letter of 18 March 1999. It explained that this draft decree-law was submitted to the Commission on 28 April 1999 with the information that it was shortly to be published in the *Diário da República*. The Portuguese Government requested the Court to stay the proceedings until 30 June 1999, at which date it would forward to it the implementing decree-law, to rule that adoption of the decree-law has remedied the failure to fulfil obligations, and to order the Commission to pay the costs.

8. On 2 July 1999, following the conclusion of the written procedure, the Portuguese Government lodged with the Registry of the Court a copy of implementing Decree-Law No 208/99 of 11 June 1999. By letter of 23 June 1999 it informed the Commission that the directive had been transposed.

9. It has consistently been held that 'the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes'. [2]

10. It is clear from the facts of the case that the provisions referred to in the first subparagraph of Article 4(1) of the directive were not implemented within the prescribed periods. The fact that the provisions in question have in the meantime been transposed has no bearing on the fact of failure to fulfil obligations. The Commission's action is accordingly well founded in regard to that point.

11. The same cannot be said with regard to the provisions referred to in the second subparagraph of Article 4(1). Under that subparagraph, Member States had a further period, 'which can extend to 1 July 1999', within which to transpose those provisions.

2 — Judgment in Case C-316/96 *Commission* v *Italy* [1997] ECR I-7231, paragraph 14.

12. That period had not yet expired on the date set by the Commission for compliance by the Portuguese Republic with the reasoned opinion.

13. The action must therefore be dismissed in so far as it relates to adoption of the measures necessary for compliance with the provisions referred to in the second subparagraph of Article 4(1) of the directive.

14. Since the Commission has requested that the Portuguese Republic be ordered to pay the costs, and since I take the view that the latter must essentially fail in its submissions, I propose that the Court order the Portuguese Republic to pay all of the costs.

Conclusion

15. I accordingly propose that the Court should:

(1) declare that, by failing to adopt, within the prescribed periods, the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of 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, the Portuguese Republic has failed to fulfil its obligations under that article;

(2) dismiss the remainder of the action;

(3) order the Portuguese Republic to pay the costs.