OPINION OF ADVOCATE GENERAL GULMANN
delivered on 17 March 1992 *

Mr President,
Members of the Court,

1. The Commission considers that the Kingdom of the Netherlands has not correctly and fully implemented Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities. [1] Accordingly the Commission has brought proceedings pursuant to Article 169 of the EEC Treaty for a declaration that the Kingdom of the Netherlands has infringed the Treaty.

2. The directive covers industrial activities involving the use or storage of dangerous substances. Accidents in such establishments can have extremely serious and unforeseeable consequences, not only for those employed in the establishments themselves but also for man and the environment outside the establishments. It is stated in the preamble to the directive that accidents of this type have occurred in the Community. This is no doubt a reference primarily to the dreadful accident that occurred when dioxin escaped from an establishment in the Italian town of Seveso. [2] The directive is thus commonly known as the 'Seveso directive'. It aims, on the one hand, to *prevent major accidents* in such establishments and, on the other, to *limit their consequences* for man and the environment. [3]

3. Pursuant to Article 20(1) the Member States were to comply with the directive by 8 January 1984 at the latest. [4]

The Kingdom of the Netherlands admits that implementation of the directive in Netherlands law has given rise to problems. This was because it has been technically difficult to fit the directive into the very comprehensive Dutch legislation on the environment. It is also admitted by the Kingdom of the Netherlands that to some extent the directive has been implemented too late. However, the Kingdom of the Netherlands takes the view that the directive was in fact implemented when two Royal Decrees were passed in 1988.

The Commission, on the other hand, considers that even after those decrees were passed there has not been proper implementation of the directive in Netherlands law on all points. The issue has been discussed exhaustively by the Commission's departments and the Netherlands authorities.

In 1985 the Commission initiated the administrative procedure required before proceedings for infringement of the Treaty may be brought before the Court. On 20 September

* Original language: Dutch.

1 — OJ 1982 L 230, p. 1.

2 — This is made clear in the Parliament's opinion concerning the directive of 14 July 1980, OJ 1980 C 175, p. 48, at p. 50.

3 — See the fifth recital in the preamble to the directive.

4 — The directive was amended twice, most recently by Directive 88/610/EEC of 24 November 1988, OJ 1988 L 336, p. 14. Those amendments do not affect the provisions in the directive which are material to the present case, apart from Article 8(1).

1988 the Commission sent its reasoned opinion to the Kingdom of Netherlands and on 12 June 1990 the Commission brought the matter before the Court.

4. In the course of the procedure before the Court the Commission abandoned some of the claims contained in its application. Those were the claims concerning implementation of Article 5(1)(b), Article 5(3) and Article 10(2) of the directive. Accordingly the Commission's claims now relate only to incomplete implementation of the provisions in Article 3, Article 4, Article 5(1)(c), third indent, Article 8(1) and Article 10(1).

In the course of the procedure the Netherlands Government admitted that Article 8(1) and Article 10(1) have not been correctly implemented. The Government explained that the draft laws necessary for implementation have been introduced. Article 8(1) concerns the Member States' duty to ensure that appropriate information concerning an establishment's safety measures and so forth is disseminated to persons liable to be affected by a major accident, and Article 10(1) imposes a duty on Member States to ensure that the manufacturer informs the competent authorities of any accident that occurs and in addition gives the authorities specific details.

The dispute between the parties accordingly turns solely on the question whether Articles 3, 4 and 5(1)(c), third indent, have been properly implemented in the Netherlands.

5. I have to admit that the case has caused me some difficulty. That is not, indeed, because the outcome of the case will have any significant effects on the legal situation in the Netherlands. The parties probably in reality agree that the underlying question in the case is how far it is necessary and sensible to require a Member State to implement a directive precisely and exactly where that Member State has already sought to achieve the objective which implementation of the directive is to attain, by way of existing, extremely comprehensive legislation, concerning the protection of the working and external environment.

The Commission has not claimed that the existing Netherlands legislation does not in all essential respects both seek and in fact manage to secure the objectives underlying the directive. The Commission takes the view, however, that the Netherlands legislation does not fully and absolutely precisely implement the rules in the directive and that such full and absolutely precise implementation would bring about certain improvements in the legal situation in the Netherlands.

The Netherlands Government contends, in my view rightly, that the Netherlands legislation contains a set of rules which gives better protection to the working and external environment in connection with major accidents than that which would exist if the rules of the directive were implemented on their own.

In those circumstances the case is one where fringe issues and nuances are decisive. It appear also to be a case where the outcome will to some degree depend on the Court's basic attitude to the extent and character of the requirements which should be imposed on Member States in connection with the proper implementation of directives. It is significant that in this case the Commission has referred to case-law which emphasizes the need for full and precise implementation of directive provisions, [5] whereas the Netherlands Government refers to case-law in which the Court has accepted that directives may also be implemented by means of existing rules which create a sufficient legal framework for the directive's real and effective application in national law. [6]

As the case now presents itself, it has been reduced to such minor practical significance that we should perhaps ask ourselves the question whether it represents a sensible allocation of the resources available to require a decision to be taken within the European Community's legal system on whether Member States have implemented directives properly. On this point it must, however, be acknowledged that, as mentioned above, the case acquired its present, limited, form because in the course of the procedure before the Court the parties were prepared to respect each other's legal viewpoints. It must also be recognized that the remaining legal issues have their basis in real differences in the way the parties interpret the relevant provisions of the directive and the rules in Netherlands law which are claimed to form the basis of proper implementation.

6. The main problem in the case is whether Articles 3 and 4 of the directive have been implemented in Netherlands law. It is not an easy task to develop a suitably comprehensible framework within which to express a view on the problem. It is, however, reasonably easy to express a view on the question of the implementation of Article 5(1)(c).

There are certain important differences between the provisions in Articles 3 and 4 on the one hand and the provisions in Article 5 on the other. Articles 3 and 4 are significantly wider in their scope than Article 5. Article 3 and 4 cover industrial activity as defined in Article 1. Roughly speaking, these are activities in all industrial installations covered by the directive involving, or possibly involving, a long list of *dangerous substances* which is set out in the annex to the directive. Article 5, on the other hand, covers only industrial installations involving large, specifically detailed, quantities of *particularly dangerous substances* which are listed in Annex II and III of the directive. At the hearing the Commission informed the Court

5 — See *inter alia* the judgment in Case 300/81 *Commission* v *Italy* [1983] ECR 449, at paragraph 10, where it is stated: 'It is indeed essential that each Member State should implement the directive in question in a way which fully satisfies the requirements of clarity and certainty in legal situations which the directive seeks in the interests of the institutions which are to benefit from the authorization provided for in the directive.'

6 — See judgment in Case C-339/87 *Commission* v *Netherlands* [1990] ECR 851, where in paragraph 6 *in fine* it was held that '... the transposition of a directive into national law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific express legal provision, and ... a general legal context maybe sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner.' See also the judgment in Case C-13/90 *Commission* v *France* [1991] ECR I-4327, at paragraph 8, which contains further references.

that in the Netherlands approximately 80 establishments are covered by Article 5.

Articles 3 and 4 require Member States to implement rules which impose on the manufacturer — under Article 1 'manufacturer' means any person in charge of an industrial activity covered by the directive — a general duty to prevent and limit the consequences of major accidents, whilst Article 5 contains rules which require the Member States to introduce an administrative system whereby the manufacturer must notify the national authorities of any particularly dangerous activities.

With regard to Articles 3 and 4 the Commission claims that generally speaking the Netherlands legislation does not contain a satisfactory implementation of those provisions as far as the prevention and limitation of the consequences of major accidents for man and the environment *outside establishments* is concerned.

As far as Article 5 is concerned, however, the Commission claims solely that the Netherlands legislation is insufficient to implement just one of the many requirements of notification imposed on the manufacturer under that provision.

The claim that Articles 3 and 4 are not fully implemented

7. The two provisions are worded as follows:

'*Article 3*

Member States shall adopt the provisions necessary to ensure that, in the case of any of the industrial activities specified in Article 1, the manufacturer is obliged to take all the measures necessary to prevent major accidents and to limit their consequences for man and the environment.

Article 4

Member States shall take the measures necessary to ensure that all manufacturers are required to prove to the competent authority at any time, for the purposes of the controls referred to in Article 7(2), that they have identified existing major-accident hazards, adopted the appropriate safety measures, and provided the persons working on the site with information, training and equipment in order to ensure their safety.'

Article 3 contains a description of the duty that Member States are to impose on manufacturers in their legislation in order to prevent major accidents and to limit the consequences thereof. Article 4 contains a non-exhaustive specification of what manufacturers are required to do. They are to have:

(a) identified existing major-accident hazards;

(b) adopted the appropriate safety measures; and

(c) provided the persons working on the site with information, training and equipment in order to ensure their safety.

As it stands Article 4 indicates moreover that manufacturers must be able to prove to the competent authority at any time that they have taken all the measures mentioned.

8. I shall deal first with the question whether the Netherlands legislation contains adequate rules with regard to the *implementation of the manufacturer's general duty to prevent major accidents and limit the consequences thereof in accordance with Article 3.*

The Commission has accepted that the requirements of the directive are satisfied on that point as far as the area covered by the Netherlands Law on the Working Environment is concerned. [7] The Commission considers, however, that the Netherlands legislation is not adequate in so far as the area covered by the Netherlands legislation concerning protection of the external environment is concerned.

9. In my opinion it is, first, important to state that there can be no doubt that the basic objective of the directive, that is to say the adoption of real and effective measures to prevent major accidents and to limit their consequences, is secured in the Netherlands legislation. It is claimed by the Netherlands Government and seems to be accepted by the Commission that the area covered by the directive is also covered by the rules which are found in the Netherlands Law on installations and devices that are contaminated, harmful to health or in any other way dangerous (*Hinderwet*). [8] The *Hinderwet* is based upon a general system under which establishments in which dangerous substances are used and stored are only lawful if they are positively approved by the Netherlands authorities, see Article 2 of the Hinderwet. It is clear from Article 17 of the Hinderwet that such approval is not given unless it is certain that the necessary measures have been adopted to prevent and limit the dangers and hazards which the establishment represents for the surrounding area. The authorities may only give their approval if that basic condition is satisfied. The authorities may if necessary make their approval conditional on further detailed requirements being satisfied.

10. The Commission founds its criticism of the Netherlands rules in relation to the requirements of the directive on the following points:

(a) the Commission does not consider that the existing Netherlands rules sufficiently ensure in all cases that the necessary measures are taken in establishments;

7 — See Arbeidsomstandighedenwet (Arbowet), which in Article 4(1) provides: 'In the general management of the establishment, the employer shall set up an operating system affording the greatest possible safety and the best possible protection of health and promoting the employee's well-being within the establishment or installation; it is to include the means and method by which that objective is to be achieved and lay down the various powers conferred and responsibilities imposed on the persons working for the employer.' Stb. 1990, 94.

8 — See Stb. 1981, 410.

(b) the Commission claims that the Netherlands rules contravene the directive because it is the authorities and not the manufacturers themselves who are responsible for 'taking all the necessary measures' which are to apply to the establishments; and

(c) the Commission maintains that the Netherlands rules do not, as the directive provides, ensure that the manufacturer is required 'at any time' to see that the safety measures in force are amended when developments make that necessary.

The Netherlands Government:

(a) has sought to establish that the existing Netherlands system has, by means of a long list of laws, in fact built up a level of protection which is higher than that which the directive requires to be implemented;

(b) claims that the Netherlands Law on Environmentally Dangerous Substances [9] does in fact impose a duty on the manufacturer corresponding to Article 3 of the directive; and

(c) claims that the approval system prescribed in the Hinderwet (Articles 2 and 17) must be regarded as sufficient to implement Article 3 of the directive.

11. The Government has pointed to a comprehensive set of rules in a list of special laws for combatting air pollution, fires and catastrophes [10] which, in the Government's opinion, contribute to implementing the directive in Netherlands law. In my view there is no reason to examine those laws in further detail. It is common ground that the Netherlands Government is correct in its view that within the area they regulate those laws contain rules that really do help to prevent major accidents and limit their consequences. But it is also common ground that they cannot be regarded as containing a fully adequate implementation of the directive. It is thus accepted by the Netherlands Government that they are laws which cover the area dealt with by the directive up to a certain point only.

12. It is more important to examine the question whether the Netherlands Government's contention that the provisions in the Law on Environmentally Dangerous Substances can be regarded as containing an adequate implementation. The Netherlands Government has referred to Article 2 of the law, which provides:

'Whosoever manufactures for commercial purposes a substance or preparation, makes it available to third parties, imports or uses it in the Netherlands, and knows or ought to know that his use of the substance or prepa-

9 — Wet milieugevaarlijke stoffen, Stb. 1985, 639.

10 — Wet inzake de luchtverontreiniging, Stb. 1970, 580, Brandweerwet, Stb. 1985, 87, and Rampenwet, Stb. 1985, 88.

ration may present a danger for man or the environment shall be required to take all reasonable measures to limit the danger as far as possible.'

It will be seen that that provision imposes on the manufacturer a general duty which in principle corresponds to Article 3 of the directive, namely that general responsibility should be imposed on the manufacturer to ensure against irresponsible handling of dangerous substances. The provision which is, moreover, subject to a criminal penalty, must therefore be regarded as a significant step towards proper implementation of Article 3 of the directive. I must, however, agree with the Commission that as it stands the provision is not sufficient to implement Article 3. The Commission has, rightly I believe, raised doubts as to whether the scope of application of the Netherlands provision is not narrower than that of the provision in the directive and it is in any case clear that there are such great differences in the form of the two provisions that it is not sufficiently certain that the law will be applied absolutely consistently with the directive. The provision does not therefore fulfil the requirement that there must be precise and exact implementation of the provisions of directives. It is also worth noting that the Netherlands Government first raised the significance of that provision as it stands relatively late in the course of the procedure, namely in its rejoinder, where it contended that the provision '*contributes*' to implementation. In addition, at the hearing the Government referred to that provision as containing merely secondary implementation in relation to the implementation which is said to have taken place by way of the Hinderwet.

13. Thus the question arises as to whether the provisions in the Hinderwet may be regarded as adequately implementing Article 3.

In my view it can reasonably be claimed that the objectives which the rules in the Seveso directive seek to achieve are realized most effectively under a system whereby an industrial establishment which deals with and stores dangerous substances is only lawful if the authorities have approved it, or where such approval is only conferred if the authorities, after independent investigation, conclude that adequate safety measures have been taken in the establishment. The Netherlands Government has described how approval under the Hinderwet may be given if it is established that the necessary safety measures have been taken and how the authorities can make approval conditional on a number of further specified safety measures.

That assessment is confirmed in my view by the notification system laid down in Article 5 of the directive. It is clear that the notification system was considered to be a necessary extension of the protection system to be achieved by applying Articles 3 and 4. Notification is to enable the competent authorities to check that the manufacturer has adopted the most appropriate safety measures and so forth, on which see Article 7 of the directive. The notification system applies, as stated, only to the relatively few establishments that use particularly dangerous substances. It is evident that the Netherlands

protection system went further than was required under the directive,

(i) by requiring not merely notification, but *prior approval*;

(ii) by making the approval system apply to *every industrial establishment covered by the directive*, not just to establishments where particularly dangerous substances are involved.

In this connection it should perhaps be mentioned that Article 17 of the directive expressly provides that the directive does not prevent the Member States from laying down rules that ensure greater protection of man and the environment than that which derives from the provisions of the directive.

14. In that context the question to be examined is whether the Commission is correct in its view that in order to comply with the directive it is necessary for the existing Netherlands rules to be supplemented by a general rule imposing on the manufacturer a duty to do independently what he finds necessary to prevent major accidents and to limit their consequences.

The question is whether such a general obligation on the manufacturer would improve the level of safety already achieved in the Netherlands.

15. In my opinion it is necessary to distinguish between the conditions prevailing at the time industrial installations covered by the directive are set up and commence operation and conditions subsequent thereto.

16. As stated in Article 2 and 17 of the Hinderwet, the setting up and commencement of operation of installations cannot take place without the manufacturer's first having obtained approval, in connection with which it is ensured that the safety provisions are in order. The Netherlands Government has pointed out, undoubtedly correctly, that the approval procedure requires cooperation between the manufacturer and the authorities and thus the manufacturer's active collaboration.

A prerequisite of approval is, of course, an application by the manufacturer, who must provide the information which enables the authorities to take a decision on the application (see Article 5(2) of the Hinderwet, according to which 'Bij het verzoek om vergunning moeten de bescheiden worden overgelegd welke door Ons bij algemene maatregel van bestuur worden voorgeschreven'). More detailed rules concerning the content of the application are laid down in a decree, the Hinderbesluit. [11] Those rules provide *inter alia* that an external safety report must be prepared containing detailed information on safety problems and the measures which the manufacturer has taken. The external safety report need only, however, be prepared for the establishments covered by Article 5 of the directive, that is to say for establishments which deal with particularly dangerous substances. The Hinderbesluit, however, requires of all establishments that

11 — See Article 2 (Stb. 1981, 660), which has most recently been amended by the Royal Decree of 15 September 1988 (Stb. 1988, 433).

the application should contain certain general information about the establishment to enable the authorities to assess the establishment's safety conditions. It is also common ground that under Article 30 b of the Hinderwet the authorities are entitled to demand from the manufacturer all the information necessary to assess whether the establishment satisfies the law's conditions for approval.

The approval will be based on the information given by the manufacturer on the safety conditions in the establishment. This forms part of the basis for approval and accordingly binds the manufacturer. The advantage of the Netherlands system is that the authorities are obliged to assess whether the safety conditions in the establishment are satisfactory or whether, in order to prevent accidents and to limit their consequences to an adequate extent, it is necessary to require the manufacturer to adopt further safety measures. If the authorities consider that to be the case, under Article 17(1) of the Hinderwet they are bound to make approval conditional on such safety measures being taken by the manufacturer.

In my opinion that shows that the Hinderwet, at least in connection with *setting up an establishment and putting it into operation*, contains the necessary rules to 'ensure that ... the manufacturer is obliged to take all the measures necessary to prevent major accidents and to limit their consequences ...' as required by Article 3 of the directive and that at that point at least nothing would be gained by imposing on the manufacturer an independent general duty as the Commission considers necessary.

17. It is more difficult to assess whether an independent obligation on the manufacturer corresponding to that laid down in Article 3 of the directive would be appropriate as regards *the constant updating* of the safety measures which may be necessary

(i) when changes occur in the establishment that may affect the risk of a major accident; and

(ii) when there are advances in the knowledge of how major accidents may best be prevented and their consequences limited.

The Commission has in particular submitted that implementation in national law of a general rule corresponding to Article 3 would emphasize the fact that manufacturers are under a positive duty to ensure on a permanent basis that safety measures are kept up to date with progress. It is also common ground that it is important to ensure that, once adopted, safety measures should be amended when the need arises. In an approval system such as that of the Netherlands, there might be a risk that manufacturers will take the view that they have fulfilled their obligations concerning safety conditions once they have simply complied with the conditions for, and the content of, the approval.

18. If the Commission is correct in its belief that Article 3 should be interpreted as containing an independent requirement that the manufacturer should continue to amend the safety measures he has adopted in the light of developments, that is a strong argument

for saying that Article 3 should be implemented in Netherlands law as well by way of a general rule directed at manufacturers. The Commission pointed out that the general formulation of Article 3 supports that interpretation which is, moreover, confirmed by the fact that Article 4 requires manufacturers 'at any time' to be able to prove that they have adopted the appropriate safety measures.

19. There are, however, other provisions in the directive which in my view definitely run counter to such an interpretation of Article 3. The provisions in question expressly regulate the Member States' duties to ensure that manufacturers amend their safety measures when an industrial activity is modified in a way which could have significant consequences as regards major-accident hazards and when changes in technical knowledge relative to safety take place, including knowledge concerning the assessment of hazards.

Article 6 of the directive provides:

'In the event of modification of an industrial activity which could have significant consequences as regards major-accident hazards, the Member States shall take appropriate measures to ensure that the manufacturer:

— revises the measures specified in Articles 3 and 4,

— informs the competent authorities referred to in Article 7 in advance, if necessary, of such modification in so far as it affects the information contained in the notification specified in Article 5.'

Article 5(3) of the directive provides:

'The notification specified in paragraph 1 shall be updated periodically to take account of new technical knowledge relative to safety and of developments in knowledge concerning the assessment of hazards.'

Those two provisions should, in my view, be understood as laying down exhaustively the Member States duties to ensure that there should be constant updating of the safety measures adopted. It is hard to see what independent meaning the provisions could have if the Commission's interpretation of Article 3 was correct.

I cannot therefore agree with the Commission that Article 3 can be construed as containing an independent updating duty for the manufacturer. That question is regulated exhaustively in Article 5(3) and Article 6.

20. The Netherlands legislation contains a number of rules which aim to ensure that safety measures are amended when developments make that necessary and the parties did to some extent give an account of those

rules during the written and oral procedure. There is, however, no cause for the Court to examine whether those rules fulfil the requirements of the directive for the simple reason that the Commission has not claimed that Article 5(3) and Article 6 are not properly implemented in Netherlands law. [12]

On that basis I cannot support the Commission in its view that Article 3 of the directive is not correctly implemented in Netherlands law. There is to be sure no general rule corresponding to Article 3 in the Netherlands legislation for the protection of man and the environment outside establishments but that is not necessary in the light of the fact that the Netherlands legislation has set up an approval system which undoubtedly secures the objectives of the directive and, by way of the authorities' contribution, contains greater protection against major accidents than is required by the directive.

21. For the sake of completeness I should mention that in its defence the Netherlands Government claimed that the adoption of a framework law with a general content for the purpose of implementing the directive would have involved a thoroughgoing reorganization of the existing legislation on the matter. That view made a distinct impression on me, even though no further details were provided. It might well have been the case that technical legal problems would arise in introducing a general duty on the manufacturer into the already very comprehensive Netherlands environmental legislation. It did not seem inconceivable to me that such a rule could cause certain problems when it came to slotting it into the existing approval system, including the existing system of penalties. Not least in environmental matters it is important that the implementation of EC directives does not create further complications, unless absolutely necessary to achieve the directive's objectives, in the very comprehensive and complicated regulatory systems of some of the Member States. Environmental rules have practical significance for a very large number of establishments and are normally administered by local authorities whose staff resources may well be limited.

22. It turned out that my misgivings were groundless. The Netherlands Government no longer appears to ascribe importance to the said technical legal problems. On the contrary, the Netherlands Government holds out the prospect that Article 3 of the directive will be incorporated into its environmental legislation in a planned amendment thereto. The Government has emphasized that that is not because it is thought to be necessary from the legal point of view, but that it has the advantage that thereby any remaining ambiguity will be removed concerning the directive's implementation in Netherlands law.

23. As stated, I share the Netherlands Government's view of the law, but it undeniably affords me a certain peace of mind to know that that view, whether or not the Court will share it, will have no practical significance as far as the future state of the law in the Kingdom of the Netherlands is concerned.

12 — In the course of the administrative procedure, before the application was lodged, the Commission claimed that both provisions were improperly implemented. It abandoned its criticism of the implementation of Article 6 before the case was brought before the Court and, as mentioned above, abandoned its criticism of the implementation of Article 5(3) at the hearing.

24. With regard to the *Commission's claim that Article 4 of the directive has not been properly implemented*, it is worth pointing out that the Commission has founded a large part of its argument on the abovementioned views concerning the manufacturer's duty to ensure positively and on a permanent basis that the necessary safety measures are adopted in the establishment. I have dealt with those views in connection with Article 3, where in my view they belong. The independent meaning of Article 4 is that under national law manufacturers are to be required *to prove that they have adopted the appropriate safety measures* to the national authority. The duty to provide information or, put differently, the duty to furnish proof, is a duty imposed on manufacturers at all times. That means that the competent national authorities, whenever they wish, are to be able to require information about the safety measures adopted and that manufacturer must be in a position to provide that information when it is sought.

The Netherlands Government has mentioned that in Articles 30, 30 a and 30 b the Hinderwet contains provisions which entitle the authorities at any time to require information from establishments to the extent necessary to supervise the establishments' safety measures. The Netherlands Government, in my view rightly, contended that both the spirit and the letter of Article 30 b of the Hinderwet impose a permanent duty on the manufacturer to give information. There are sufficient legal remedies in Netherlands law available to the authorities to ensure that the manufacturer fulfils that duty to provide information.

25. It appears to me excessively formalistic to require that, in addition to those provisions enabling the competent authorities to require from the manufacture any information of importance for safety conditions, there should also be an express duty on the manufacturer to be in a position to fulfil that duty to provide information.

In my view the supervision provisions in the Hinderwet are, within the framework of the Netherlands system, sufficient to implement the duty to provide information under Article 4. I would therefore suggest that the Court should also find for the Kingdom of the Netherlands as far as that part of the Commission's claim is concerned.

Article 5(1)(c) of the directive

26. As stated, Article 5 requires the manufacturer to notify the competent national authorities of industrial activity involving, or possibly involving, particularly dangerous substances. Article 5 lists in detail the information which the notification must contain. Under Article 5(1)(c), third indent, with regard to possible major-accident situations, the notification must contain:

'the names of the person and his deputies or the qualified body responsible for safety and authorized to set the emergency plans in motion and to alert the competent authorities specified in Article 7'.

27. This head of claim requires me to give my opinion on two issues:

28. The first concerns a question of the interpretation of this provision in the directive. The Netherlands Government claims that the person whose name is to be given in the notification is the person who is *legally* responsible for safety in the establishment, which means in practice the manufacturer himself. The Netherlands Government points out that it is clear from the Netherlands rules that the name of that person must always appear on the application for approval.

The Commission claims that the Netherlands Government is misinterpreting that provision in the directive which, in the Commission's view, requires notification of the name of the person who is *de facto* responsible within the establishment for the establishment's safety conditions. The Commission's interpretation of the provision appears to me, in the light of both the wording of the provision and its objective, to be correct. An express requirement that the name of the person responsible in law, that is to say, the manufacturer, should be notified does not make much sense, since it is the manufacturer himself who is under a duty to give the notification, and for that reason the authorities already know his name. In addition the provision requires notification of the name of the person 'responsible for safety and authorized to set the emergency plans in motion ...'. It is not natural to describe the person responsible in law for the establishment as a person 'authorized' to set the emergency plans in motion. The objective of the provision must, moreover, be to identify the person or persons who in practice have particular responsibility for safety measures and special knowledge thereof.

29. However, the Netherlands Government contends secondly, in the alternative, that even interpreted as the Commission claims it should be, the provision is adequately implemented in Netherlands law. The Government refers to the fact that the internal safety report, which the establishment is required to submit to the authorities in connection with its application for approval of its industrial activity must contain particulars of the person *de facto* responsible for safety conditions in the establishment. It is true that that does not follow expressly from binding provisions in the Netherlands legislation, but is prescribed in special guidelines, the Arbeidsveiligheidsrapport P172-2, which the Netherlands authorities have prepared for the guidance of persons who have to prepare safety reports. The Netherlands Government referred to Point 3.3 of the guidelines, where *inter alia*, it is provided that the report should contain: '... a description of the responsibility and duties of the departments, bodies and persons having a bearing on safety; ...', and in addition it is provided that 'in order to clarify the situation on safety matters and thus increase the usefulness of the report, it may be necessary to describe how safety policy is implemented in the establishment and how the departments, bodies and persons with responsibility for safety exercise their powers'. Those provisions do not, in my view, make it sufficiently certain that the requirement in Article 5(1)(c), third indent, will be complied with and do not, therefore, constitute a sufficiently precise implementation of the requirements of the directive. On that ground alone I believe that the Court should find for the Commission on that head of claim.

30. There is accordingly no reason to examine whether the provisions in the said guidelines might be acceptable as the basis for a correct implementation of the directive, on which point I would refer to the case-law of the Court, according to which the provisions of directives may not normally be implemented by way of non-binding provisions. [13]

For the sake of completeness, I should mention that, as stated above, at the hearing the Commission abandoned its claim that Article 5(1)(b) had not been properly implemented, presumably because, having regard to the special circumstances of these matters, it considered that the duty of notification may be fulfilled under the provisions in the Netherlands guidelines for internal safety reports. That appears to me, moreover, to be absolutely proper having regard to the Netherlands Government's arguments.

31. If the Court agrees with my Opinion, it should be held that the Kingdom of the Netherlands has failed to implement Article 5(1)(c), third indent, Article 8(1) and Article 10(1), since as far as the two latter provisions are concerned it will be recalled that the Netherlands Government has admitted to the Commission's claims. On the other hand, the Kingdom of Netherlands should succeed against the Commission in respect of the claims that it has failed to implement Article 3 and Article 4 properly.

32. Since each of the parties has partly succeeded in its submissions they should be ordered to bear their own costs.

Conclusion

33. Accordingly I propose that the Court should hold that:

(1) the Kingdom of Netherlands has failed to fulfil its obligations under Article 189 of the EEC Treaty in so far as it has not correctly adopted all the provisions necessary to make its national legislation wholly consistent with Article 5(1)(c), third indent, Article 8(1) and Article 10(1) of Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities;

(2) the remainder of the application is dismissed;

(3) each party is to bear its own costs.

13 — See the Court's latest judgment (1.10.91) on this point in Case 13/90 *Commission* v *France*, cited above, at paragraphs 8-10, with references to other judgments.