OPINION OF ADVOCATE GENERAL JACOBS

delivered on 25 September 1997 *

1. In these proceedings the Commission seeks a declaration, under Article 169 of the EC Treaty, that the Federal Republic of Germany has failed to comply with its obligations under the Treaty by not adopting within the prescribed period the measures necessary to implement Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances [1] and Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. [2]

2. Article 11 of Council Directive 91/157 provides that:

'1. Member States shall take the measures necessary to comply with this Directive before 18 September 1992. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.'

3. Article 7 of Commission Directive 93/86 provides that:

'Member States shall take the measures necessary to comply with this Directive no later than 31 December 1993. They shall immediately inform the Commission thereof.

...'

4. The Federal Republic of Germany has not disputed its failure to implement the Directives and states in its defence that it has informed the Commission on a number of occasions of the reasons for the delay. Germany refers to voluntary undertakings by the manufacturers and distributors of batteries, but it is clear that such undertakings cannot be a substitute for the proper implementation of the Directives.

5. It follows that the Commission is entitled to the declarations which it seeks.

* Original language: English.

1 — OJ 1991 L 78, p. 38.

2 — OJ 1993 L 264, p. 51.

Conclusion

6. Accordingly I am of the opinion that the Court should:

(1) declare that, by failing to adopt within the prescribed period the provisions necessary to implement:

— Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, and

— Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances,

the Federal Republic of Germany has failed to fulfil its obligations under the Treaty;

(2) order the Federal Republic of Germany to pay the costs of these proceedings.