OPINION OF ADVOCATE GENERAL LÉGER

delivered on 16 July 1998 *

1. By application lodged at the Registry of the Court on 24 March 1998, the Commission of the European Communities commenced an action under Article 169 of the EC Treaty seeking a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/69/EC of 19 December 1994 adapting to technical progress for the 21st time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [1] (hereinafter 'the Directive'), Belgium has failed to fulfil its obligations under that Directive.

2. Article 1 of the Directive provides that Annex I to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, [2] is to be replaced by Annex I to Directive 94/69.

3. Article 2 of the Directive provides that Member States are to implement the laws, regulations and administrative provisions necessary to comply therewith by 1 September 1996 and are to inform the Commission thereof immediately.

4. On 16 January 1997 the Commission, acting in accordance with Article 169 of the Treaty, sent a letter of formal notice to Belgium requesting it to submit, within two months, its observations on the absence of measures necessary to transpose the Directive into national law.

5. On 3 September 1997, in the absence of a reply from the Belgian Government, the Commission sent the latter a reasoned opinion in which it sought compliance with the terms thereof within two months of its notification.

6. In reply to that reasoned opinion, the Belgian Government informed the Commission, by letter of 3 October 1997, that the Directive would be transposed into Belgian law by a decree, the text of which was annexed to the letter, that the decree would be submitted to the Minister for Public Health and the Minister for the Environment for signature, and that it would be signed by the Head of State and published as soon as possible.

* Original language: French.

1 — OJ 1994 L 381, p. 1.

2 — OJ, English Special Edition 1967, p. 234.

7. Since it did not receive from the Belgian Government any further information indicating that Belgium had in the meantime fulfilled its obligations under the Directive, the Commission decided to commence the present proceedings.

8. In its defence, Belgium observes that the measures transposing the Directive into national law are currently being drafted. It states that a draft royal decree implementing the relevant Community legislation will be submitted to the King for signature as soon as possible, and that the Court will be informed as soon as the royal decree enters into force.

9. The Commission stated that it was waiving its right of reply to the defence.

10. The fact remains that Belgium does not deny that it failed to adopt the measures necessary to transpose the Directive into national law within the time-limit prescribed by it.

11. The Court should therefore allow the action brought by the Commission and declare that, by not adopting within the prescribed period the measures necessary to comply with the Directive, Belgium has failed to fulfil its obligations under Article 2 thereof.

12. In accordance with Article 69(2) of the Rules of Procedure of the Court of Justice, Belgium should be ordered to pay the costs.

Conclusion

13. I propose that the Court:

(1) declare that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/69/EC of 19 December 1994 adapting to technical progress for the twenty-first time Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of the Directive;

(2) order the Kingdom of Belgium to pay the costs.