OPINION OF ADVOCATE GENERAL COSMAS
delivered on 19 March 1998 *

I — Introduction

By an application under Article 169 of the EC Treaty, the Commission has asked the Court to declare that, by failing to adopt or communicate to the Commission within the prescribed period the programmes provided for in Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38, hereinafter 'the Directive'), the Kingdom of Spain has failed to fulfil its obligations under that article.

II — Legal background

1. Article 6 of the Directive provides:

'Member States shall draw up programmes in order to achieve the following objectives:

— reduction of the heavy-metal content of batteries and accumulators,

— promotion of marketing of batteries and accumulators containing smaller quantities of dangerous substances and/or less polluting substances,

— gradual reduction, in household waste, of spent batteries and accumulators covered by Annex I,

— promotion of research aimed at reducing the dangerous-substance content and favouring the use of less polluting substitute substances in batteries and accumulators, and research into methods of recycling,

— separate disposal of spent batteries and accumulators covered by Annex I.

The first programmes shall cover a four-year period starting on 18 March 1993. They shall be communicated to the Commission by 17 September 1992 at the latest.

The programmes shall be reviewed and updated regularly, at least every four years, in the light in particular of technical progress

* Original language: Greek.

and of the economic and environmental situation. Amended programmes shall be communicated to the Commission in good time.'

III — The facts

2. Not having been given notice of any programmes of the kind referred to in Article 6 of the Directive and having at its disposal no other information indicating that the Kingdom of Spain had fulfilled its obligation to draw up those programmes, the Commission formally called on that Member State, in accordance with the procedure provided for by Article 169 of the Treaty, to submit its observations regarding that infringement within two months.

3. On 6 March 1996 the Kingdom of Spain submitted observations, from which its appears, first, that the Spanish authorities had started drawing up the requisite programmes and, second, that, in the meantime, action had already been embarked upon regarding the collection, treatment and recycling of batteries and accumulators under cooperation agreements between the Spanish State and the Autonomous Communities. The Commission sought additional information concerning such action but received no reply.

4. For that reason, on 21 October 1996 it sent a reasoned opinion to the Kingdom of Spain to the effect that the latter had failed to fulfil its obligations under Article 6 of the Directive.

5. On 20 January 1997 the Spanish authorities informed the Commission that the Ministry of the Environment had just drawn up a draft national plan for urban waste providing for the development and coordination of all the action undertaken by the Autonomous Communities, the competent authorities under national law for action to combat pollution; that action constituted, in the view of the Kingdom of Spain, proper transposition of the Directive into Spanish domestic law.

6. Taking the view that the Spanish authorities had not fulfilled their clear obligation to draw up and apply within the prescribed period the abovementioned programmes and bring them to the Commission's notice, the latter decided to institute proceedings before the Court of Justice.

IV — The views of the parties

7. The Commission stresses the importance of drawing up the programmes provided for in Article 6 of the Directive in pursuance of certain objectives relating, directly or indirectly, to environmental protection. It is for that reason that the Community legislature expressly required the Member States to establish such programmes for a period of four years, reckoned from 18 March 1993, and to communicate them to the Commis-

sion no later than 17 September 1992. According to the Commission, that obligation, deriving as it does from the provisions of a directive, is binding on the Member States to which it is addressed as regards the result to be achieved, in accordance with Article 189 of the EC Treaty; by virtue of that obligation, the Member States, including the Kingdom of Spain, must take all general and specific measures needed to ensure attainment of the abovementioned objectives. The Commission refers to the settled case-law of the Court of Justice to the effect that obligations deriving from directives must be fulfilled within the periods prescribed for that purpose, the Member States not being entitled to plead technical or procedural difficulties involved in transposing the provisions of directives into national law. It therefore asks the Court to find that the Kingdom of Spain has failed to fulfil its obligations under Directive 91/157 and to order the defendant to pay the costs.

8. The Kingdom of Spain does not deny the failure to communicate the programmes of which the Commission accuses it. It contends, however, that the Directive was transposed into domestic law by Royal Decree No 45/96, Article 6 of which incorporates the provisions of Article 6 of the Directive and entrusts to the Autonomous Communities the task of giving effect to the programmes in question. The defendant also asserts that it is endeavouring gradually to achieve the result pursued by the Directive, in accordance with Article 189 of the Treaty. It considers that that objective cannot be achieved merely by drawing up programmes, unless they are accompanied by specific practical action. In its view, when the Court is called on to determine to what extent a Member State has fulfilled its obligations under Article 6 of the Directive, it must not merely consider whether the programmes mentioned in that article have been drawn up and communicated but must, above all, establish whether the Member State concerned has undertaken specific action capable of enabling it to attain the objectives set out in those programmes.

9. In that connection, the Kingdom of Spain considers that it has attained the objectives laid down by Article 6 of the Directive. It lists a series of specific measures undertaken by the governments of the Spanish Autonomous Communities in order to achieve the objectives of Article 6 of the Directive. It refers, by way of example, to the Ley Básica de Residuos (the national law on waste), to Ley No 6/93 Reguladora de los Residuos de Cataluña, which governs the same matter in the territory of the Autonomous Community of Catalonia, and to the agreements concluded between the autonomous administration of Castile-León and the municipalities for which it is responsible in order to provide for management of the collection, storage and processing of spent batteries and accumulators; it also mentions equivalent programmes initiated in Aragon, Catalonia and Galicia, special studies concerning the management of spent batteries and accumulators, decrees of the Autonomous Community of Valencia governing grants for separate collection, storage and processing of spent batteries, and finally the direct contracts concluded by public authorities with specialised undertakings in Asturias, the Balearic Islands and the Rioja region and the public information campaigns carried out in all the Autonomous Communities. Such action is not limited to the distribution of

special containers for the collection of waste of that kind; it also involves the setting up of special recycling centres, or storage sites where recycling is not possible. On the basis of all the foregoing, the defendant considers that the action undertaken by the Autonomous Communities has facilitated attainment of the objectives laid down in Article 6 of the Directive. It therefore contends that the action should be dismissed and the applicant ordered to pay the costs.

V — My views on the application

10. Notwithstanding the arguments advanced by the Kingdom of Spain in response to the Commission's criticisms, I consider that that State has not fulfilled the specific obligations incumbent on it under Article 6 of the Directive. The defendant also concedes in its observations to the Court that, by the final date of 17 September 1992, the Kingdom of Spain had not prepared or published programmes designed to attain the objectives set out in the first paragraph of Article 6 of the Directive. That in itself is enough to support a finding of infringement of that provision and a declaration that the applicant's allegations in that regard are well founded.

11. It is also worth mentioning that that fact cannot be altered by all the problems to which the defendant referred when arguing that it had met the requirements of Article 6 of the Directive by undertaking certain specific practical action relating to batteries and accumulators. It should be remembered that the Directive sets the objective, among others, of protecting the environment: the safeguarding of that legal asset necessarily involves the adoption, at the same time, both of regulatory measures and of practical measures; it therefore depends to a considerable extent on the planning of comprehensive action by the national and Community public institutions in those areas in which the environment is important. In other words, the need for adequate planning, through the drawing up of programmes, which is the aim pursued by Article 6 of the Directive, cannot in any circumstances be satisfied, contrary to the Kingdom of Spain's contention, by piecemeal activity on the part of the national authorities in the sectors which such planning ought to cover.

12. Furthermore, it is not superfluous to observe that the Directive was adopted under Article 100a of the EC Treaty and is therefore intended to bring about approximation of national laws with a view to obviating distortion of competition and other adverse effects on the functioning of the internal market. For that reason, particular importance must be attached to the monitoring of national measures and other action by the national authorities in the sphere covered by the Directive. The drawing up of the programmes referred to in Article 6 of the Directive and the communication thereof to the Commission makes such monitoring materially possible; accordingly, the specific obligations of the Member States cannot be regarded as satisfied until the action taken at national level has been brought to the notice of the Commission.

13. Moreover, the whole scheme of the Directive is conducive to the view that the Community legislature intends progressively confronting the problem of special waste (such as batteries and accumulators) in accordance with a specific timetable. That is why it provided for the drawing up of national programmes which '... shall be reviewed and updated regularly, at least every four years, in the light in particular of technical progress and of the economic and environmental situation.' [1] The fact that the Kingdom of Spain has not drawn up the first of those programmes, which the Directive expressly requires to cover a period of four years as from 18 March 1993 and to be communicated to the Commission no later than 17 September 1992, is entirely disruptive to Community planning and without any doubt constitutes a direct infringement of the Directive and of the obligations imposed on the Kingdom of Spain by virtue of Articles 5 and 189 of the Treaty.

14. Finally, regard must be had to the settled case-law of the Court of Justice to the effect that a State may not plead national practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in the Treaty and in Community directives. [2] I would add that partial practical measures and fragmentary regulations cannot discharge the obligation of a Member State to draw up a comprehensive programme with a view to attaining certain objectives, as provided for in Article 6 of the Directive.

VI — Conclusion

15. I therefore suggest that the Court:

— Declare that, by failing to adopt or communicate to the Commission within the prescribed period the programmes provided for in Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, the Kingdom of Spain has failed to fulfil its obligations under that directive;

— Order the Kingdom of Spain to pay the costs.

1 — Last paragraph of Article 6 of the Directive.

2 — See Case C-294/96 *Commission* v *Belgium* [1997] ECR I-1781; Case C-378/92 *Commission* v *Spain* [1993] ECR I-5095; Case C-107/96 *Commission* v *Spain* [1997] ECR I-3193. See also Case C-297/95 *Commission* v *Germany* [1996] ECR I-6379.