OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 8 February 1994 *

Mr President,
Members of the Court,

1. In the present case, concerning infringement of the Treaty, the Commission is pursuing proceedings for non-compliance with the judgment of the Court of 12 July 1988 in Case 322/86. [1] In that case, which also concerned infringement of the Treaty, the Court held: 'By failing to adopt within the prescribed period the measures necessary in order to comply with Council Directive 78/659/EEC [2] of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life the Italian Republic has failed to fulfil its obligations under the Treaty'.

2. The Commission claims that the Court should

— declare that, by failing to adopt all the measures necessary to comply with the Court's judgment of 12 July 1988 in Case 322/86 *Commission* v *Italy* [1988] ECR 3995, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty;

— order the Italian Republic to pay the costs.

3. The Commission points out that, as the Court has consistently held, even though Article 171 of the EEC Treaty does not prescribe any time-limit within which a judgment is to be complied with, the interests of the prompt and uniform application of Community law are such as to require such compliance to be initiated immediately and concluded within the shortest possible time. [3]

4. Following correspondence between the parties concerning compliance with the judgment, the Commission initiated the Treaty infringement procedure in this matter on 15 May 1990. On 31 July 1991 it delivered a reasoned opinion in which it set a time-limit of two months for the cessation of the infringement of the Treaty.

* Original language: German.

1 — Judgment in Case 322/86 *Commission* v *Italy* [1988] ECR 3995.

2 — Council Directive 78/659/EEC of 18 July 1978 (OJ 1978 L 222, p. 1)

3 — Judgment in Case C-101/91 *Commission* v *Italy* [1993] ECR I-191, para. 20.

5. On 25 January 1992 the Italian Republic enacted Decreto legislativo No 130 [4] with a view to implementing the directive. The Decreto provides that the regions are to be entitled and obliged to fulfil the obligations laid down in Articles 4 and 5 of Directive 78/659/EEC.

6. The Commission regarded the Decreto legislativo as inadequate and consequently brought an action for infringement of the Treaty on 18 May 1993. Neither at the conclusion of the written procedure nor at the time of the oral procedure had the Italian Republic complied in full with the designation obligations laid down by Article 4 of the directive or the obligation to establish programmes imposed by Article 5 of the directive. Since those obligations also formed the subject-matter of the judgment in Case 322/86, [5] the failure to comply with them constitutes a concurrent failure to comply with the judgment.

7. That is not contested by the Italian Republic. I therefore propose that the Commission's application be granted.

4 — Suppl. ord. No 34, published in GURI No 41 of 19 February 1992 and rectified in GURI No 121 of 25 May 1992 and No 175 of 27 July 1992.

5 — See the judgment in Case 322/86 (loc. cit., para. 6)