OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 20 November 1990 *

My Lords,

1. In these proceedings the Commission seeks a declaration, under Article 169 of the EEC Treaty, that Italy has failed to comply with its obligations under the Treaty by not adopting within the prescribed period the measures necessary to implement Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (Official Journal 1983 L 263, p. 25).

2. Article 18 of the directive provides that:

'(1) Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this directive before 1 January 1987. They shall forthwith inform the Commission thereof. The date 1 January 1987 is, however, postponed until 1 January 1990 in the case of asbestos-mining activities.

(2) Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this directive.'

3. Not having received any communication from Italy regarding the implementation of the directive, the Commission addressed a letter to the Italian Government on 16 November 1987 inviting it to submit observations pursuant to Article 169 of the Treaty.

4. In its reply to that letter the Italian Government referred to a number of internal problems posed by the transposition of the directive into Italian law. It also mentioned certain provisions of Italian law which, in its opinion, would ensure that workers were protected against asbestos pending implementation of the directive. On 18 January 1989 the Commission issued a reasoned opinion, to which the Italian Government did not respond. On 31 July 1989 the Commission lodged an application at the Court. The Commission has expressly excluded from the scope of the application measures relating to asbestos-mining activities on the ground that the period for the adoption of such measures did not expire until 1 January 1990.

5. In its defence the Italian Government again refers to certain provisions of Italian law designed to ensure the protection of workers against the dangers of asbestos. It recognizes, however, that further legislation is required in order to implement the directive fully. It states that a bill is before the Chamber of Deputies the purpose of which is to delegate to the executive the

* Original language: English.

power to adopt legislation implementing a number of directives, including Directive 83/477.

6. The Agent of the Italian Government provided further information at today's hearing. It is clear from the Italian Government's defence and from those observations, however, that the failure to implement the directive is not contested. Moreover, as the Court has consistently held, a Member State may not plead provisions, practices or circumstances in its internal legal system in order to justify a failure to comply with its obligations under Community law.

7. I therefore conclude that the Court should declare that, by not adopting before 1 January 1987 the measures necessary to implement Council Directive 83/477/EEC, other than measures relating to asbestos-mining activities, the Italian Republic has failed to fulfil its obligations under the EEC Treaty. The Italian Republic should be ordered to pay the costs, in accordance with Article 69(2) of the Rules of Procedure.