OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 3 October 1996 *

1. In these proceedings, the Court of Justice is called upon to give a decision in the action brought under Article 169 of the EC Treaty by the Commission on 3 October 1995 for a declaration that, by not adopting and bringing into force within the prescribed periods the provisions necessary to comply with Directives 93/48/EEC, [1] 93/49/EEC, [2] 93/52/EEC, [3] 93/61/EEC [4] and 93/85/EEC, [5] and by failing to notify the Commission thereof, the Italian Republic has failed to fulfil its obligations under the Treaty and under Article 10(1) of Directive 93/48, Article 8(1) of Directive 93/49, Article 2(1) of Directive 93/52, Article 7(1) of Directive 93/61 and Article 13(1) of Directive 93/85.

2. In accordance with those provisions, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with those directives by 31 December 1993, 1 January 1994 or 15 November 1993, as the case may be, and to notify the Commission thereof.

3. Since, on 1 January 1994, the Commission had not received any notification of the transposition into national law of those directives, on 10 February 1994 it formally drew the Italian Government's attention to the lack of notification and asked it to communicate a full and detailed description of the national provisions implementing those directives. In the same letter, the Commission complained that the Italian Government had failed to fulfil its obligations under the Treaty and the abovementioned directives and gave it two months in which to submit its observations.

4. As the letter before action went unanswered, the Commission delivered a reasoned opinion on 22 September 1994, in which it stated that, according to the information available, the Italian Republic had not transposed those directives into national law nor sent any such notification to the Commission, which constituted a failure to

* Original language: Spanish.

1 — Commission Directive 93/48/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by fruit plant propagating material and fruit plants intended for fruit production, pursuant to Council Directive 92/34/EEC (OJ 1993 L 250, p. 1).

2 — Commission Directive 93/49/EEC of 23 June 1993 setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC (OJ 1993 L 250, p. 9).

3 — Council Directive 93/52/EEC of 24 June 1993 amending Directive 89/556/EEC on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species (OJ 1993 L 175, p. 21).

4 — Commission Directive 93/61/EEC of 2 July 1993 setting out the schedules indicating the conditions to be met by vegetable propagating and planting material other than seed pursuant to Council Directive 92/33/EEC (OJ 1993 L 250, p. 19).

5 — Council Directive 93/85/EEC of 4 October 1993 on the control of potato ring rot (OJ 1993 L 259, p. 1).

fulfil obligations, and therefore it requested that the measures necessary to implement the directives should be adopted within two months.

5. By letter of 3 February 1995 from its Permanent Representative, the Italian authorities informed the Commission that the measures necessary to implement the directives were being prepared.

6. Since in October 1995 the Commission still had no evidence that Italy had implemented any of the directives, it brought this action.

7. In its defence, the Italian Government does not deny the alleged failure to fulfil its obligations, merely repeating the claims made throughout the pre-litigation procedure that it would shortly be adopting the provisions necessary to transpose those directives into national law.

8. Subsequently, on 27 February 1996, the Italian authorities notified the Commission in a letter from their Permanent Representative that Directive 93/85 had been transposed into national law on 31 January 1996 by the passing of a Ministerial Decree published on 14 February 1996.

9. In view of that document and after appropriate verification, the Commission informed the Court of Justice that, in accordance with Article 78 of the Rules of Procedure, it was discontinuing part of its claim — the part referring to Directive 93/85 — but confirming all the remainder of its claim, that is to say, it still sought a declaration under Article 169 of the Treaty that the Italian Republic had failed to fulfil its obligations as regards the implementation of Directives 93/48/EEC, 93/49/EEC, 93/52/EEC and 93/61/EEC.

10. With regard to the remaining allegations of failure to fulfil obligations, it is apparent from the Italian Government's defence that in February 1996 Directives 93/48/EEC, 93/49/EEC, 93/52/EEC and 93/61/EEC had still not been transposed into national law, as the time-limit for transposing the first, second and fourth of had expired on 31 December 1993 and for transposing the third on 1 January 1994.

11. The application should therefore be upheld and, in accordance with Article 69(2)

of the Rules of Procedure, the defendant Member State should be ordered to pay all the costs, in accordance with the first paragraph of Article 69(2) and the first paragraph of Article 69(5) of the Rules of Procedure, since the Commission's partial discontinuance was caused by the defendant's conduct in not adopting the measures necessary to implement Directive 93/85/EEC until after the application had been lodged.

12. I therefore propose that the Court should:

(1) declare that, by not adopting and bringing into force within the prescribed period the provisions necessary to comply with Directives 93/48/EEC, 93/49/EEC, 93/52/EEC and 93/61/EEC, and by failing to notify the Commission thereof, the Italian Republic has failed to fulfil its obligations under the Treaty and under Article 10(1) of Directive 93/48, Article 8(1) of Directive 93/49, Article 2(1) of Directive 93/52 and Article 7(1) of Directive 93/61;

(2) order the Italian Republic to pay the costs of the proceedings.