# OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 1 February 1996 *

1. By application of 22 June 1995, registered at the Court on 6 July 1995, pursuant to Article 169 of the Treaty, the Commission contends that by failing to implement the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 (hereinafter 'the Directive'), [1] laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (hereinafter 'the Basic Directive'), [2] or by not informing the Commission of the measures taken to comply with the Directive, the Italian Republic has failed in its obligations both under the Treaty and the Directive.

2. Article 16 of the Basic Directive, as amended, [3] requires the national authorities to evaluate the risks to man and the environment of new chemical substances put on the market. Articles 7 to 9 require that such substances be notified to the competent national authorities, who are obliged by Article 16(1) to carry out the required assessment in accordance with the general principles laid down by the Commission pursuant to its obligation under Article 3(2). The Directive at issue in these proceedings establishes those principles.

3. Member States were required by Article 8(1) of the Directive to 'adopt and publish the provisions necessary to comply with this Directive by 31 October 1993' and 'forthwith inform the Commission'. Not having received any information from the Italian authorities concerning the measures taken to implement the Directive, the Commission commenced the pre-contentious procedure required by Article 169 giving Italy formal notice by letter on 3 December 1993. There was no response either to that letter or to the Commission's subsequent reasoned opinion of 29 September 1994 addressed to Italy.

4. In its defence of 29 September 1995, the Italian Government admitted that Italy had not yet implemented the Directive. It submitted, however, that this delay was not attributable to inertia on its part, but, rather,

* Original language: English.

1 — OJ 1993 L 227, p. 9.

2 — OJ 1967 L 196, p. 1. The full Official Journal title of the Basic Directive is 'Council Directive of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances'.

3 — The Basic Directive has been amended several times but most materially, for the purposes of the present case, by Council Directive 92/32/EEC of 30 April 1992 amending for the seventh time Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances; OJ 1992 L 154, p. 1.

to problems experienced in implementing the Directive in national law in coordination with the Basic Directive, as recently amended by Council Directive 92/32/EEC. [4]

5. Article 189 of the Treaty obliges Member States to adopt the national measures necessary to ensure the attainment of the objectives of each directive. This specific requirement is reinforced by their general duty pursuant to Article 5 of the Treaty 'to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community'. It is undisputed that the Directive was not implemented in Italy by the expiry of the prescribed time-limit. The Court has consistently held that Member States may not plead practical or other difficulties experienced in implementing a directive so as to justify a failure to comply with obligations resulting from Community directives. [5]

6. As the failure of Italy to adopt the measures necessary to implement the Directive and, thus, end the infringement identified by the Commission during both the course of the pre-contentious stage and in its application in this case has not been remedied, I can only propose that the Court grant the relief sought by the Commission.

## Conclusion

7. Accordingly, I am of the opinion that the Court should:

(1) declare that by not implementing within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC, the Italian Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty and under Article 8(1) of Directive 93/67;

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

4 — Cited in footnote 3 above.

5 — See, for example, Case 58/81 *Commission* v *Luxembourg* [1982] ECR 2175, paragraph 4 of the judgment.