OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 27 February 1997 *

1. By applications lodged at the Court Registry on 21 August 1996, the Commission brought two actions under Article 169 of the EC Treaty for a declaration that, by failing within the periods prescribed to adopt the laws, regulations and administrative measures necessary in order to comply with Directive 91/157/EEC [1] and Directive 93/86/EEC, [2] the French Republic has failed to fulfil its obligations under those directives. By order of 11 February 1997 the President of the Court decided that the two cases should be joined.

2. Directive 91/157, the aim of which is to approximate the laws of the Member States on the recovery and controlled disposal of spent batteries and accumulators containing certain dangerous substances, provides in Article 11 that the Member States are to take the measures necessary to comply with that directive before 18 September 1992 and are forthwith to inform the Commission thereof.

3. Directive 93/86, the object of which is to establish the system for marking batteries and accumulators provided for in Article 4 of Directive 91/157, provides in Article 7 that the Member States are to take the measures necessary to comply with that directive no later than 31 December 1993 and are immediately to inform the Commission thereof.

4. Having received no information as to the transposition of the two directives into French law by the dates when the aforesaid time-limits expired, the Commission initiated two procedures under Article 169 of the Treaty. By formal notices dated 21 December 1992 and 10 February 1994, relating to Directives 91/157 and 93/86 respectively, the Commission called upon the French Government to communicate to it its observations concerning the non-transposition into its national law of the directives in question.

5. As regards Directive 91/157, the French Government informed the Commission on 11 March 1993 that a draft decree implementing that directive had been submitted

* Original language: Spanish.

1 — Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38).

2 — Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances (OJ 1993 L 264, p. 51).

for examination at interministerial level and would be sent to the Commission as soon as possible following its adoption. The French Government did not respond to the Commission's formal notice regarding Directive 93/86.

6. Having received no communication of any national measure transposing the directives, the Commission on 25 October 1993 and 14 November 1994 sent to the French Government reasoned opinions in relation to Directive 91/157 and Directive 93/86 respectively, requesting it to take the necessary measures to comply with those opinions within two months.

7. In the absence of any response from the French Government, the Commission sent it a telex dated 18 May 1995, informing it that, unless within 20 days it communicated an approved text or a final draft accompanied by a timetable for its adoption, the Commission would pursue the procedures for failure to fulfil obligations.

8. In response to the telex and the reasoned opinions, the French Government sent to the Commission, by letter of 13 June 1995, a draft decree relating to the marketing of batteries and accumulators and the disposal of spent batteries and accumulators, implementing Directive 91/157, and a draft ministerial order for the transposition of Directive 93/86 into national law. It also stated that it expected both those measures to be adopted during the course of 1995.

9. By letter of 9 April 1996, the French Government informed the Commission that the draft ministerial order for the implementation of Directive 93/86 had been withdrawn and that its contents would be annexed to the decree transposing Directive 91/157 into national law. That letter also indicated to the Commission that the draft decree was awaiting signature by the Prime Minister.

10. In the continuing absence of any communication from the French Republic confirming the adoption of the national measure transposing the directives at issue into national law, the Commission brought the present proceedings.

11. Under Articles 5 and 189 of the EC Treaty, together with Article 11 of Directive 91/157 and Article 7 of Directive 93/86, the French Republic was obliged, as the Commission points out in its applications in the two actions, to transpose those directives into national law within the aforesaid time-limits. According to the settled case-law of the Court of Justice, a Member State cannot plead any rules, practices or situations peculiar to its national legal order as justification

for non-compliance with the obligations and time-limits imposed by Community directives.

12. In the defences lodged by it in the present proceedings, the French Republic admits non-compliance with the directives at issue and further observes that, for technical reasons connected with the preparation of the text in question, a new draft implementing those directives has been drawn up and is currently at the stage of being approved.

13. It follows that the actions brought by the Commission must be regarded as well founded, since it has been shown, without being contested, that the French Republic has failed to adopt within the periods prescribed the laws, regulations and administrative measures necessary to comply with Directive 91/157 and Directive 93/86.

14. Since the actions brought by the Commission are wholly well founded, and since its submissions must be upheld, the French Republic should be ordered, in accordance with Article 69(2) of the Rules of Procedure, to pay the costs.

Conclusion

15. In the light of the foregoing, I propose that the Court:

(1) declare that, by failing to adopt within the periods prescribed the laws, regulations and administrative measures necessary to comply with Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances and Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Directive 91/157, the French Republic has failed to comply with its obligations under Article 11 of Directive 91/157 and Article 7 of Directive 93/86;

(2) order the French Republic to pay the costs.