OPINION OF ADVOCATE GENERAL LÉGER

delivered on 16 January 2003 [1]

1. By this action, the Commission of the European Communities asks the Court to make a declaration that, by not adopting or by not notifying to it, within the prescribed period, the laws, regulations and administrative provisions necessary to comply fully with Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms, [2] the Kingdom of Spain has failed to fulfil its obligations under that directive. The Commission also seeks an order that the Kingdom of Spain is to pay the costs.

2. According to the Court's established case-law, in an action under Article 226 EC, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes. [3]

3. In this case it is clear from the contents of the file that, at the expiry of the period laid down by the reasoned opinion, that is 17 March 2001, the Kingdom of Spain had not adopted the laws, regulations and administrative provisions necessary for the complete transposition of Directive 98/81. The Kingdom of Spain does not dispute that fact, even though it seeks the dismissal of this action.

1 — Original language: French.

2 — OJ 1998 L 330, p. 13.

3 — See, particularly, Case C-71/99 *Commission* v *Germany* [2001] ECR I-5811, paragraph 29, and Case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13.

Conclusion

4. Accordingly, I suggest that the Court should:

(1) declare that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 98/81/EC of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms, the Kingdom of Spain has failed to fulfil its obligations under that directive;

(2) order the Kingdom of Spain to pay the costs.