OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 18 November 1993 *

Mr President,
Members of the Court,

1. By application received at the Court on 21 October 1992 the Commission requests the Court to declare that, by failing to adopt within the prescribed period the measures necessary to comply with Council Directive 88/407/EEC of 14 June 1988 laying down animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen, of domestic animals of the bovine species, [1] with Council Directive 90/120/EEC [2] of 5 March 1990 amending Directive 88/407/EEC and with Council Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products, [3] Ireland has failed to fulfil its obligations under the EEC Treaty.

2. As regards Directives 88/407/EEC and 90/120/EEC, Ireland confines itself to justifying its failure to transpose them into national law within the prescribed period on the ground of the complexity of the legislative amendments to be adopted and stresses that the implementing measures should enter into force very shortly and that in any event they are in practice already applied, given that imports of deep-frozen bovine semen into Ireland are effected in conformity with the requirements laid down in the directives in question.

As regards Directive 88/658/EEC, Ireland maintains, firstly, that it has in any event ensured its transposition into internal law by means of administrative measures, and more particularly instructions to the competent officials, measures which, moreover, were notified to the Commission on 7 June 1991, and, secondly, that that directive is no longer in force, having been replaced by Directive 92/5/EEC, [4] which entered into force on 1 January 1993, with the result that in this respect it can no longer be charged with any failure to fulfil its Treaty obligations.

3. It does not seem to me that those arguments, put forward, truth to tell, with little conviction, can be upheld. As regards the implementation of directives by means of administrative practices or measures, it is sufficient here to recall that the Court has consistently held that 'mere administrative practices, which by their nature are alterable

* Original language: Italian.

1 — OJ 1988 L 194, p. 10.

2 — Council Directive of 5 March 1990 amending Directive 88/407/EEC which lays down animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species (OJ 1990 L 71, p. 37).

3 — OJ 1988 L 382, p. 15.

4 — Council Directive of 10 February 1992 amending and updating Directive 77/99/EEC on health problems affecting intra-Community trade in meat products and amending Directive 64/433/EEC (OJ 1992 L 57, p. 1).

at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty'. [5]

As regards, next, the fact that Directive 88/658/EEC has, since 1 January 1993, no longer been in force and that it is contended that, consequently, Ireland cannot be charged with any failure to fulfil obligations on account of its failure to transpose that directive, I would point out, as the Commission has done, that Directive 92/5/EEC did not abolish the obligations under the directive in question, but merely updated them. It follows that only the actual transposition of Directive 92/5/EEC could have caused the failure to fulfil obligations with which Ireland is charged by the present action for failure to implement Directive 88/658/EEC to be regarded as remedied.

4. In those circumstances, I propose therefore that the Court allow the application and order the defendant State to pay the costs.

5 — Judgment of 17 November 1992 in Case C-236/91 *Commission* v *Ireland* [1992] ECR I-5933, paragraph 6. See also the judgment of 2 August 1993 in Case C-9/92 *Commission* v *Hellenic Republic*, not yet published in the ECR, paragraph 20.