OPINION OF ADVOCATE GENERAL POIARES MADURO delivered on 1 April 2004 [1]

1. This action, brought under Article 226 EC, seeks a declaration by the Court that the Italian Republic has failed to fulfil its obligations under Article 10 EC by failing to cooperate in good faith with the Commission of the European Communities.

I — Legal background, facts and pre-litigation procedure

2. I observe that the first paragraph of Article 10 EC provides 'Member States shall 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. They shall facilitate the achievement of the Community's tasks'. Relying on that provision, the Commission alleges that the conduct of the Italian Republic, which has abstained from replying to its repeated requests for information, constitutes a breach of the duty to cooperate in good faith with the Commission in the achievement of its task of monitoring compliance with Community law.

3. These are, briefly, the facts of the case. During 2000, an economic operator complained to the Commission of the improper implementation, in an Italian purification plant, of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work, [2] and Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work. [3] On 3 August 2000 the Commission requested of the Italian Republic, by letter, additional information concerning the facts alleged in the complaint, so as to be able to undertake a closer examination of the situation. In the absence of any reply from the Italian authorities, it sent, on 19 March 2001, a second letter inviting the Italian Government to provide the information sought within a period of one month from the receipt of that request. In default of any reply, the Commission decided to initiate the procedure under

1 — Original language: Portuguese.

2 — OJ 1989 L 393, p. 13.

3 — OJ 1989 L 183, p. 1.

Article 226 EC. By letter of formal notice served on the Italian authorities on 24 October 2001, it invited that Member State to submit its observations in respect of an alleged infringement of its obligations under Article 1 of Directive 89/655, Article 4 of Directive 89/391, and Articles 10 EC and 249 EC. By reasoned opinion dated 18 July 2003, the Commission repeated its complaints and requested the Italian Republic to comply with its obligations within a period of two months from its service.

II — Failure to fulfil the obligation to cooperate

4. The Italian authorities met the Commission's repeated requests with a steadfast silence until the commencement of this action. But, in its observations to the Court, the Italian Republic vigorously denies any breach of its obligation to cooperate in good faith. It submits that it is established that the directives in question in this case have been fully and properly transposed into Italian law.

5. Obviously, the defendant has not grasped the purpose of the application. Whereas, in the course of the pre-litigation procedure, the Commission accused the Italian Republic of infringing certain provisions of Directives 89/655 and 89/391 as well as of a breach of its duty of cooperation, in its application it limited the subject-matter of the action to the latter complaint. Before the Court, the Commission does not accuse the Italian Republic of not having properly adopted the measures appropriate to implement the Community directives. Its complaint is that, by failing to furnish it with the requested information, the defendant has not cooperated with it in good faith.

6. It is not disputed that the principle of cooperation in good faith enshrined in Article 10 EC creates, on the part of the Member States, an obligation to facilitate the achievement of the tasks which the first indent of Article 211 EC has assigned to the Commission, namely to ensure that the provisions of the EC Treaty and the measures taken by the institutions pursuant thereto are applied. [4] It follows therefrom that the Member States are obliged to supply the Commission with the information which it needs. [5] Is a breach of that obligation sufficient for that reason to constitute a distinct failure to fulfil Treaty obligations? I have no doubt about it. The Court has clearly recognised that refusal to assist the Commission in the achievement of its tasks may constitute a distinct failure by a State to fulfil its obligations under Article 10 EC. [6] If, in certain cases, the Court declined to give

4 — Case 192/84 *Commission* v *Greece* [1985] ECR 3967, paragraph 19.

5 — See, particularly, Case 240/86 *Commission* v *Greece* [1988] ECR 1835; Case C-40/92 *Commission* v *United Kingdom* [1994] ECR I-989; and Case C-478/01 *Commission* v *Luxembourg* [2003] ECR I-2351.

6 — Case C-374/89 *Commission* v *Belgium* [1991] ECR I-367.

effect to that general provision, it was not in the least denying its mandatory character, but simply seeking to apply a specific obligation derived from a more detailed provision of primary or secondary law.[7] In those cases, the Court was merely applying the principle by which specific rules take precedence over general rules within the limits of their scope ('*specialia generalibus derogant*').

7. It remains to be seen whether, in this instance, the refusal to cooperate may be justified. The Italian Government explains its silence by the lack of detail in the Commission's requests. Neither the letter of formal notice nor the reasoned opinion identifies the place of the alleged infringement. Lacking precise information concerning the purification plant which is the subject of the complaint, the competent authorities could not reply to the requests or engage in cooperation with the Commission.

8. It is firmly established in case-law that the duty to cooperate in good faith which governs relations between the Community and its Member States rests on mutual duties, which bind not only the States but also the Community institutions.[8] In order that the State may be in a position to give the Commission the information specifically requested, the Commission's request must satisfy certain conditions of clarity and precision.[9] That does not mean, however, that if a State is unable to provide that information it is entitled to ignore the Commission completely. One may indeed ask whether, in such a case, the principle of the duty to cooperate in good faith does not require the Member State to apply to the Commission to clarify its request. That could in my view be the logical consequence of the spirit in which cooperation in good faith was conceived in the context of the Community's institutional system.

9. In this case, however, it is futile to enter into that discussion. Indeed, the Italian authorities were in possession of all the necessary facts to undertake the requisite investigations and to supply the Commission with the information requested. A statement as to the place which was the subject of the complaint appears clearly in the letters sent by the Commission before the commencement of the pre-litigation procedure. It is clear from the letters dated 3 August 2000 and 19 March 2001 that the infringements referred to in the complaint received by the Commission concerned a 'purification plant situated in the commune of Mandello del Lario in Lombardy'. The letter of 3 August 2000 details the defects, in the light of Directive 89/655, which affected that plant. At that date, the Italian authorities were in possession therefore of all the facts enabling them to reply to the Commission's request for information. In those circumstances, the

7 — See, in particular, Joined Cases C-78/90 to C-83/90 *Compagnie commerciale de l'Ouest and Others* [1992] ECR I-1847, paragraph 19.

8 — Most recently, Case C-344/01 *Germany* v *Commission* [2004] ECR I-2081, paragraph 79.

9 — See, to that effect, the Opinion of Advocate General Darmon in Case 192/84 *Commission* v *Greece*, cited above in footnote 4, point 6.

Commission was entitled to refer, in the proceedings for failure to fulfil Treaty obligations, to the letters preceding the commencement of the proceedings, which contained all the information relevant to the purposes of implementing proper cooperation. In those circumstances, there is no reason why the Italian Republic's refusal to reply to the Commission's request for information should not be held to be contrary to its obligations under Article 10 EC.

10. That conclusion is not altered by the fact that this case is of 'very limited importance', 'completely individual and very circumscribed', as the defendant State points out. It is clear from consistent case-law that a failure to fulfil obligations occurs irrespective of the gravity of the consequences which may ensue from it. [10]

III — The alleged lack of detail of the claims in the action

11. The Italian Government argues also that the application does not contain the essential materials for the exercise of its rights of defence. It must be noted that the precise identification of the complaints in the course of the proceedings for a declaration of failure to fulfil obligations plays an essential role in the protection of the rights of the defence of the State against which proceedings are brought. Thus, as the Court noted in Case C-365/97 *Commission* v *Italy*, 'the opportunity for the Member State to submit its observations, even if it chooses not to avail itself thereof, constitutes an essential guarantee intended by the Treaty, adherence to which is an essential formal requirement of the infringement procedure'. [11]

12. However, in this case, such an argument is irrelevant. The complaint is clearly identified in the application commencing the proceedings. It must be observed, indeed, that the subject-matter of the action was limited to the statement of the complaints in the letter of formal notice, the operative part of the reasoned opinion and the claims for relief in the application. In the latter, the Commission accused the Italian Government only of not having provided any information on the facts alleged by the complainant as referred to in the first requests for information. It was perfectly possible for the Italian Government to explain, in answer, the reasons for its alleged inability to communicate the requested information. As a result, it is not shown that the proceedings for a declaration of failure to fulfil Treaty obligations are tainted by any irregularity.

10 — Case C-209/88 *Commission* v *Italy* [1990] ECR I-4313, paragraph 13.

11 — [1999] ECR I-7773, paragraph 23.

IV — Conclusion

13. As a result, I suggest that the Court should:

(1) declare that since it abstained from providing information to the Commission of the European Communities pursuant to a request concerning the implementation of certain provisions of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work, and Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, in a clearly identified waste water purification plant, the Italian Republic has failed to fulfil its obligations under Article 10 EC;

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