OPINION OF ADVOCATE GENERAL ALBER

delivered on 16 December 1999 *

A — Introduction

1. In the present action for failure to fulfil obligations under the Treaty, the Commission claims that the Italian Republic has not transposed Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1] ('Directive 95/30') into national law or has not communicated the relevant provisions to the Commission.

2. Article 2(2) of Directive 95/30 provides that Member States are to 'bring into force the laws, regulations and administrative provisions necessary to comply with [that] Directive by 30 November 1996. They shall immediately inform the Commission thereof.'

Preliminary proceedings

3. Since the Commission had received no information concerning the transposition of Directive 95/30, it wrote to the Italian Republic on 30 May 1997 and gave it the opportunity to submit its observations as provided for in Article 169 of the EC Treaty (now Article 226 EC). It is apparent from the notes from the Permanent Representation of Italy of 11 July 1997 and 28 October 1997 that the Italian authorities drafted certain measures in order to transpose Directive 95/30. Since the Commission subsequently received no further information, however, it delivered a reasoned opinion in accordance with Article 169 of the Treaty on 12 January 1998 and requested the Italian Republic to take the necessary measures within two months. No reply to that reasoned opinion was received from the Italian Republic.

Procedure before the Court of Justice

4. By application of 26 November 1998, registered at the Court Registry on 3 December 1998, the Commission therefore brought an action against the Italian Republic for failure to fulfil its obligations under the Treaty.

* — Original language: German.
1 — OJ 1995 L 155, p. 41.

5. The Commission claims that it is common ground that, pursuant to Article 2 of Directive 95/30, the Italian Republic was required to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 30 November 1996. That obligation is also based on the third paragraph of Article 189 of the EC Treaty (now Article 249 EC) and Article 5 of the EC Treaty (now Article 10 EC).

6. Since the Commission did not receive any information concerning the procedure being followed for the purpose of transposing the directive or the text of the relevant laws, regulations or administrative provisions, it can only be concluded that the Italian Republic did not transpose the directive within the prescribed period or that it did not inform the Commission that it had done so and that, accordingly, it failed to fulfil its obligations under Community law.

7. The Italian Republic does not dispute those complaints. It merely states that the transposition procedure was initiated but was not pursued because of the adoption by the European Commission of Directives 97/59/EC [2] and 97/65/EC [3] further adapting to technical progress Directive 90/679/EEC. [4] The competent ministry considered it appropriate, for reasons of procedural economy, to transpose Directives 95/30, 97/59 and 97/65 by a single decree, since the same requirements were to be satisfied in each case. The Ministry of Labour and Social Security transmitted a proposal to that effect to the ministries concerned for their comments. The Italian Republic states that that procedure will soon be complete and requests that in those circumstances the Commission withdraw the application.

8. The Commission claims that the Court should:

(1) declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC), or by not communicating those provisions, the Italian Republic has failed to fulfil its obligations under that directive;

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

2 — Commission Directive 97/59/EC of 7 October 1997 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1997 L 282, p. 33).

3 — Commission Directive 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (OJ 1997 L 335, p. 17).

4 — Council Directive 90/679/EEC of 26 November 1990 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1990 L 374, p. 1).

B — Analysis

9. Pursuant to Article 2 of Directive 95/30, that directive should have been transposed into Italian law by 30 November 1996. The Italian Republic does not dispute that it has not brought into force the laws, regulations and administrative provisions necessary to comply with that directive. It merely claims that it initiated the appropriate procedure with a view to adopting the necessary decree but then discontinued that procedure because the Commission had adopted further directives which the Italian Republic wished to transpose together with Directive 95/30. However, that does not alter the fact that the Italian Republic was under an obligation to adopt the provisions necessary to transpose Directive 95/30 within the prescribed period. In the present case, moreover, it should be observed that the later Directives 97/59 and 97/65, were adopted in October and November 1997 respectively, by which time Directive 95/30 should have already been transposed for more than a year.

10. Therefore, it must be declared that the Italian Republic has failed to fulfil its obligations under Directive 95/30.

Costs

11. Under Article 69(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs.

C — Conclusion

12. In the light of the foregoing considerations, I propose that the Court should:

(1) declare that by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related

to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Italian Republic has failed to fulfil its obligations under that directive;

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