OPINION OF ADVOCATE GENERAL LÉGER

delivered on 3 May 2001 [1]

1. In this action, the Commission of the European Communities charges the Kingdom of Spain for having failed to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management [2] within the time-limit laid down by the Directive.

2. The Kingdom of Spain denies the infringement with which it is charged and argues that the time-limit for transposition by the Member States, as prescribed in Article 11 of the Directive, has not yet expired.

3. The outcome of these proceedings turns on the interpretation of Article 11 of the Directive.

1 — Original language: French.

2 — OJ 1996 L 296, p. 55, hereinafter 'the Directive'.

I — Legal framework

4. The objective of the Directive is to define the basic principles of a common strategy for the management and assessment of ambient air quality.

5. Article 3 of the Directive, entitled 'Implementation and responsibilities' is worded as follows:

'For the implementation of this Directive, the Member States shall designate at the appropriate levels the competent authorities and bodies responsible for:

— implementation of this Directive,

— assessment of ambient air quality,

— approval of the measuring devices (methods, equipment, networks, laboratories),

— ensuring accuracy of measurement by measuring devices and checking the maintenance of such accuracy by those devices, in particular by internal quality controls carried out in accordance, *inter alia*, with the requirements of European quality assurance standards,

— analysis of assessment methods,

— coordination on their territory of Community-wide quality assurance programmes organised by the Commission.

When they supply it to the Commission, the Member States shall make the information referred to in the first subparagraph available to the public.'

6. It follows from the first indent of Article 4(1) of the Directive that the Council, on the basis of proposals by the Commission, was to adopt, no later than 31 December 1996, limit values and alert thresholds for certain atmospheric pollutants, such as sulphur dioxide, oxides of nitrogen, fine particulate matter such as soot, suspended particulate matter, and lead. [3]

7. Pursuant to that article, the Council, on 22 April 1999, adopted Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air. [4]

8. Article 11(1) of the Directive states that: '[a]fter adoption by the Council of the first proposal referred to in the first indent of Article 4(1)... Member States shall notify to the Commission the competent authorities, laboratories and bodies referred to in Article 3...'.

9. According to the first indent of Article 13(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not

3 — These pollutants are listed in Annex I to the Directive.
4 — OJ 1999 L 163, p. 41.

later than 18 months after it came into force with regard to the provisions relating to Articles 1 to 4. That period expired on 21 May 1998.

10. The second indent of Article 13(1) of the Directive states: '[w]hen Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedures for such a reference shall be adopted by Member States.'

II — Procedural framework

A — *Pre-litigation procedure*

11. Not having received a communication from the Kingdom of Spain regarding the necessary measures which should have been adopted within the framework of the Directive, or any other information from which it might conclude that that Member State had adopted the provisions necessary in order to comply with its obligations, the Commission sent a letter of formal notice under Article 169 of the EC Treaty (now Article 226 EC) to that Member State on 25 August 1998, inviting it to submit observations within a period of two months from the date of receipt of that letter.

12. Faced with silence from the Kingdom of Spain, the Commission, on 11 December 1998, sent a reasoned opinion requesting it to take the measures necessary to comply with the obligations resulting from the Directive within a period of two months from the date of notification of that opinion.

13. By letter of 2 March 1999, the Spanish authorities denied the alleged infringement. They argued that it was impossible for them to transpose the provisions of the Directive, in so far as the contents of Articles 1, 2, 4 and 12 and of the annexes were concerned, into their national legal order, so long as the Commission had not set the limit values and alert thresholds under Article 4(1) of that Directive. Furthermore, as regards, specifically, the obligation to designate competent authorities and bodies under Article 3 of the Directive, they argued that that obligation was deferred until the Council had adopted specific legal rules setting limit values and alert thresholds for atmospheric pollutants.

14. Finding the reasons for which the Kingdom of Spain considered that it did not have to transpose the provisions of Article 3 to be unsatisfactory, the Commission decided to bring the present proceedings.

B — *Forms of order sought by the parties*

15. The Commission's application was lodged at the Court Registry on 29 October 1999.

16. The Commission claims that the Court should:

— declare that, by failing to designate the competent authorities and bodies referred to in the first paragraph of Article 3 of Directive 96/62, the Kingdom of Spain has failed to fulfil one of its obligations under the provisions of that directive;

— order the Kingdom of Spain to pay the costs.

17. The Kingdom of Spain contends that the Court should:

— dismiss the Commission's application;

— order the Commission to pay the costs.

III — Pleas in law submitted by the Commission and observations of the parties

18. The Commission states that, in view of the observations submitted by the Kingdom of Spain in its reply to the reasoned opinion, it is limiting the subject -matter of its action to the issue of the designation of the competent authorities and the bodies responsible for implementing the Directive, as required under Article 3 of the Directive.

19. According to the Commission, the Kingdom of Spain's position is based on a misreading of Articles 3 and 11 of the Directive, which lay down different kinds of obligations. Article 3 of the Directive requires the Member States to designate at appropriate levels the competent authorities and bodies responsible for implementing the Directive. Article 11 requires the Member States to communicate the list of designated authorities and bodies to the Commission.

20. The time-limit for transposing the obligation in Article 3 is laid down in Article 13 of the Directive. By virtue of that article, Member States are required to bring into force the laws, regulations and admin-

istrative provisions necessary to comply with the obligation under Article 3 not later than 18 months after it enters into force, that is, by 21 May 1998.

21. The Kingdom of Spain maintains its position on a point of principle and argues that the charge of infringement cannot succeed while the period laid down for transposition of the provisions of Article 3 of the Directive has not yet expired. In the alternative, it maintains that it has complied with the obligation under Article 3. In that regard, it explains that in Spain, from a constitutional point of view, the state and the autonomous communities share competence as regards the environment. Under existing national law, it falls exclusively to the autonomous communities, which have competence as regards the organisation, regime and functioning of their self-administering institutions, to designate the bodies and authorities mentioned in Article 3 of the Directive. The central administration of the State — that is, the Directorate-General for Quality and Assessment of the Environment in the Ministry of the Environment — is, for its part, responsible for ensuring at national level the coordination of the measures adopted by the autonomous communities.

22. The Kingdom of Spain contends that it has fulfilled the obligations under Article 3 of the Directive inasmuch as the autonomous communities of the Kingdom have made the necessary designations. To that effect it produces a table containing the relevant rules adopted in the matter by each of those communities.

23. The Commission maintains its complaints against the Kingdom of Spain. As regards the alternative argument put forward by the Kingdom of Spain, it points out that the rules adopted by the autonomous communities and presented as transposing provisions do not satisfy the obligations laid down by Article 3 of the Directive. In that regard, it points out that those rules are not sufficiently precise to satisfy the requirements of Article 3 of the Directive. It mentions further that, contrary to the wording of Article 13 of the Directive, those national rules do not refer expressly to the Directive.

IV — Assessment

The principal arguments submitted by the Kingdom of Spain

24. The Kingdom of Spain rejects the charge of failure to transpose which has been made against it, maintaining principally that the period for transposition of

the provisions of Article 3 has not yet expired. In so doing it relies on the provisions of Article 11.

25. That argument is founded on a misreading of the provisions of the Directive.

26. As the Commission has pointed out, it follows from the actual wording of Articles 3 and 11 that the Directive imposes different types of obligations on the Member States. First, under Article 3 of the Directive, the obligation is to *designate* the bodies and competent authorities for the purposes of implementation of the Directive. Second, in accordance with Article 11 of the Directive, it is a question of *informing* the Commission of these bodies or competent authorities.

27. It is clear from the wording of Articles 11 and 13 that those obligations must be transposed within different time-limits. Under Article 13 of the Directive, the obligation to designate the authorities which are empowered for that purpose must be transposed not later than 18 months after the entry into force of the Directive. In contrast, the obligation to inform the Commission of the execution of the requirements in Article 3 of the Directive is, under Article 11, subject to the adoption by the Council of limit values and alert thresholds for certain pollutants listed in Annex I. As those measures were adopted on 22 April 1999 in Directive 1999/30, the period prescribed for performance of the obligation under Article 11 could not begin to run before that date.

28. In addition, this Court has held in a line of decisions that when a directive contains different obligations which must be implemented within different periods, Member States which wait for the expiry of the latest period in order to implement obligations which could be fulfilled immediately may find themselves charged with having failed to fulfil their obligations under Article 169 of the Treaty. [5]

29. A similar outcome is dictated by the need to avoid deferring the transposition of a directive to the adoption of the last measure necessary to complete its implementation.

30. It follows from the foregoing that the Kingdom of Spain should have transposed the provisions at issue at the latest by 21 May 1998. Its argument that it cannot be charged with failing to fulfil the obligations under Article 3 of the Directive since the Council had not adopted limit values

5 — See Case C-137/96 *Commission* v *Germany* [1997] ECR I-6749, paragraph 10.

and alert thresholds for certain pollutants is therefore unfounded.

The alternative arguments submitted by the Kingdom of Spain

31. The existence of an infringement must be assessed in relation to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion. Changes which have occurred subsequently cannot be taken into account by the Court. [6] In the present case, this period was two month from the date of notification of the reasoned opinion, issued by letter of 11 December 1998.

32. In addition, national transposition measures must be sufficiently clear and precise to enable individuals to ascertain their rights and obligations. [7] Thus, a provision which implicitly lays down an obligation, makes a recommendation or imposes a penalty does not ensure the full implementation of a directive in a sufficiently clear and precise manner.

33. Similarly, in accordance with settled case-law of this Court, [8] when a directive requires a positive act of transposition, and especially when it expressly requires that the transposition measures adopted by the Member States contain a reference to the directive or that they be accompanied by such a reference at the time of their official publication, the Member State that does not comply with that requirement may be charged with having failed to comply with its obligations under that directive.

34. Contrary to the assertions of the Kingdom of Spain, it is obvious that, on the expiry of the period laid down in the reasoned opinion, the Spanish authorities had not designated the competent authorities under Article 3 of the Directive. The rules presented by the Kingdom of Spain as transposing the obligations under Article 3 of the Directive do not satisfy the requirements of that article.

35. It is clear from the express terms of Article 3 of the Directive that the competent authorities which must be designated by the Member States are assigned specific tasks necessitating different kinds of administrative and technical competence. Thus, it is expressly provided that the authorities to be designated will be responsible for:

— implementation of the Directive,

6 — See, for example, Case C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031, paragraph 36.

7 — See, for example, Case C-221/94 *Commission* v *Luxembourg* [1996] ECR I-5669, paragraph 22.

8 — See, particularly, Case C-361/95 *Commission* v *Spain* [1997] ECR I-7351, paragraph 15.

— assessment of ambient air quality,

— approval of measuring devices (methods, networks, equipment, laboratories),

— internal quality control,

— analysis of assessment methods.

36. In the light of the explanations provided and the documents produced by the Kingdom of Spain, the rules adopted by the autonomous communities do not meet those requirements, in particular because of their lack of precision in relation to the wording of the Directive. Thus, they make no mention of the specific tasks devolving on the various authorised or approved bodies. Furthermore, whatever may be the rules in the matter of organisation or competence in force on Spanish territory, the Kingdom of Spain is required, in accordance with the provisions of Article 189 of the EC Treaty (now Article 249 EC), to ensure the exact and complete implementation of the Directive. Therefore, that State's explanation that the autonomous communities have exclusive competence to ensure the transposition of Article 3 of the Directive cannot exempt it from the provisions of Article 169 of the Treaty. [9]

37. In addition, it clearly follows from Article 13(1) of the Directive that the Directive provides that transposition provisions relating in particular to Article 3 must contain 'a reference to this Directive or [be] accompanied by such a reference at the time of their official publication.' The rules relied on by the Kingdom of Spain — that is, those adopted by the autonomous communities — do not satisfy that requirement.

38. It follows from the foregoing considerations that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Article 3 of the Directive, the Kingdom of Spain has failed to comply with its obligations under the Directive.

39. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. As the Commission has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs.

9 — See, in particular, Case C-423/99 *Commission* v *Italy* [2000] ECR I-11167, paragraph 10.

Conclusion

40. For the reasons set out above, I propose that the Court should:

— declare that, by failing to adopt, within the period prescribed for that purpose, the laws, regulations and administrative provisions necessary to comply with the first paragraph of Article 3 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management and, in particular, by not designating the competent authorities and bodies referred to in that article, the Kingdom of Spain has failed to fulfil its obligations under the provisions of that directive;

— order the Kingdom of Spain to pay the costs.