OPINION OF ADVOCATE GENERAL DARMON
delivered on 12 July 1994 *

Mr President,
Members of the Court,

1. By application lodged at the Court Registry on 15 February 1994, the Commission of the European Communities applied pursuant to Article 169 of the EC Treaty for a declaration by the Court that, by failing to bring into force the laws, regulations and administrative provisions necessary in order to comply with Council Directive No 90/167/EEC [1] (apart from Article 11(2)) and/or by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under Article 15 of the said directive and Articles 5 and 189 of the EC Treaty.

2. Those proceedings were preceded by a reasoned opinion dated 3 May 1993.

3. Article 15 of the aforementioned directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply

— with the requirements of Article 11(2) on the date on which they must conform with the Community rules on the protection of feedingstuffs against pathogenic agents, but at the latest by 31 December 1992,

— before 1 October 1991, with the other provisions of this Directive.

They shall forthwith inform the Commission thereof.'

4. The Kingdom of Belgium, without contesting the validity of the action, merely states in its defence that 'a draft Royal Decree is presently in the course of prepara-

* Original language: French.

1 — Council Directive of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (OJ 1990 L 92, p. 42).

tion and is the subject of consultation between the departments concerned'.

5. According to the most recent case-law of the Court, [2] where a Member State fails to fulfil the specific obligations incumbent on it under a directive, there is no need to examine the question whether it has thereby also failed to fulfil its obligations under Article 5 of the Treaty.

6. In the light of the foregoing I propose that the Court should:

— declare that, by failing to bring into force the laws, regulations and administrative provisions necessary in order to comply with Council Directive No 90/167/EEC of 26 March 1990 laying down the conditions governing the preparation, placing on the market and use of medicated feedingstuffs in the Community (apart from Article 11(2)), the Kingdom of Belgium has failed to fulfil its obligations under Article 189 of the EEC Treaty and Article 15(1), second indent, of the aforesaid directive;

— order the defendant to pay the costs.

2 — Judgments in Case C-378/92 *Commission* v *Spain* [1993] ECR I-5095 and Case C-303/93 *Commission* v *Italy* [1994] ECR I-1901, paragraph 7. See in that regard M. Blanquet: 'La conception de l'article 5, lex generalis inopérante', in *L'article 5 du Traité CEE — Recherche sur les obligations de fidélité des Etats membres de la Communauté*, LGDJ, 1994, p. 281.