OPINION OF ADVOCATE GENERAL JACOBS
delivered on 25 March 1999 *

1. In this case the Commission seeks a declaration pursuant to Article 169 of the EC Treaty that Italy has failed to fulfil its obligations under the Treaty by not fully implementing Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities [1] (the 'Seveso' Directive).

2. Article 1(1) of the Directive states:

'This Directive is concerned with the prevention of major accidents which might result from certain industrial activities and with the limitation of their consequences for man and the environment. It is directed in particular towards the approximation of the measures taken by Member States in this field.'

3. Article 1(2) specifies what is meant in the Directive by the terms 'industrial activity', 'manufacturer', 'major accident' and 'dangerous substances'.

4. Article 3 provides:

'Member States shall adopt the provisions necessary to ensure that, in the case of any of the industrial activities specified in Article 1, the manufacturer is obliged to take all the measures necessary to prevent major accidents and to limit their consequences for man and the environment.'

5. Article 4 provides:

'Member States shall take the measures necessary to ensure that all manufacturers are required to prove to the competent

* Original language: English.
1 — OJ 1982 L 230, p. 1.

authority at any time, for the purposes of the controls referred to in Article 7(2), that they have identified existing major-accident hazards, adopted the appropriate safety measures, and provided the persons working on the site with information, training and equipment in order to ensure their safety.'

6. Article 5(1) provides:

'Without prejudice to Article 4, Member States shall introduce the necessary measures to require the manufacturer to notify the competent authorities specified in Article 7:

— if, in an industrial activity as defined in Article 1(2)(a), first indent, one or more of the dangerous substances listed in Annex III are involved, or it is recognised that they may be involved, in the quantities laid down in the said Annex, such as:

— substances stored or used in connection with the industrial activity concerned,

— products of manufacture,

— by-products, or

— residues,

— or if, in an industrial activity as defined in Article 1(2)(a), second indent, one or more of the dangerous substances listed in Annex II are stored in the quantities laid down in the second column of the same Annex...'

7. Article 5(1) further prescribes in detail the information which such notification must contain, relating to substances listed in Annexes II and III, to the installations and to 'possible major-accident situations', including 'any information necessary to the competent authorities to enable them to prepare emergency plans for use outside the establishment in accordance with Article 7(1)'.

8. Article 7 provides:

'1. The Member States shall set up or appoint the competent authority or authorities who, account being taken of the responsibility of the manufacturer, are responsible for:

...

— ensuring that an emergency plan is drawn up for action outside the establishment in respect of whose industrial activity notification has been given,

...

2. The competent authorities shall organise inspections or other measures of control proper to the type of activity concerned, in accordance with national regulations.'

9. Under Article 20(1), Member States were to take the measures necessary to comply with the Directive by 8 January 1984 and forthwith to inform the Commission thereof.

10. The Commission claims that the measures adopted by Italy to implement the Directive, namely Decree No 175 of the President of the Republic, of 17 May 1988, [2] as amended and re-enacted, [3] have not been and are still not such as to ensure that all the emergency plans referred to in the third indent of Article 7(1) have been drawn up or all the inspections or other measures of control referred to in Article 7(2) carried out.

11. The Italian Government does not in its main line of defence contest those assertions but submits essentially that it is sufficient, to implement the Directive, that the Member States appoint the competent authorities and that the latter 'organise' inspections and other measures of control. The Directive does not, according to that view, require the Member States also to ensure that emergency plans are actually drawn up or inspections or other measures of control actually carried out. Those are effects admittedly sought by the Directive, but as a logical consequence of the obligations imposed on Member States rather than as an inherent part thereof.

2 — GURI No 127 of 1 June 1988, p. 3.

3 — Most recently by Law No 137 of 19 May 1997, GURI No 120 of 26 May 1997, p. 4.

12. I cannot agree. It is clear from the whole aim and structure of the Directive ('the purpose of Directive 82/501 is, in particular, to ensure that the necessary measures are adopted to prevent major accidents arising from certain industrial activities and to limit the consequences of any such accidents'[4]) that it seeks not merely the creation of a legislative framework within which those results may be achieved but their actual achievement. Were that not so and were it permissible for Member States to comply with a directive simply by setting up machinery rather than by setting it in motion, the whole system of harmonisation of laws within the Community would in many cases be set at nought.

13. It is true that the obligation imposed on the Member States comprises two stages. First, they must set up or appoint the competent authorities. Second, those authorities must ensure that an emergency plan is drawn up for each establishment concerned and must organise the relevant inspections and controls.

14. However, the idea that Member States may wash their hands of the matter once the competent authorities are in place would run counter to the whole body of case-law to the effect that Member States may not escape responsibility for complying with their obligations under a directive on the ground that the task has been delegated to domestic authorities[5] or that the failure to comply was caused by the action or inaction of some other, even independent, agency of the State.[6] In this instance, the obligation to appoint the competent authorities would be devoid of any sensible purpose if it did not entail the obligation to see to it that they carried out their tasks. Nor can I accept the argument put forward by the Italian Government at the hearing, based on a comparison with Directive 96/82.[7] Whilst the Member State's responsibility may be stated more plainly in the latter,[8] that does not imply the absence of any such responsibility under the previous legislation.

15. Article 189 of the Treaty specifies that directives are to be binding as to the result

4 — Case C-190/90 *Commission* v *Netherlands* [1992] ECR I-3265, paragraph 18 of the judgment.

5 — See, for example, Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 12 of the judgment; the same consideration remains equally applicable in a case such as the present where the Directive specifies that the action is to be taken by the domestic authority.

6 — See, for example, Case 8/70 *Commission* v *Italy* [1970] ECR 961, paragraph 9 of the judgment.

7 — Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, OJ 1997 L 10, p. 13, which replaces and repeals Directive 82/501.

8 — See, for example, Article 11(1)(c): 'Member States shall ensure that... the authorities designated for that purpose... draw up an external emergency plan for the measures to be taken outside the establishment.'

to be achieved, and Article 5 explicitly requires Member States to take all appropriate measures to ensure fulfilment of their obligations resulting from 'action taken by Community institutions', a category which clearly includes directives. The Court has consistently held that the obligation is not merely to enact the relevant legislation but also to take 'all the measures necessary to ensure that the directive is fully effective', [9] and that Member States must 'ensure that the provisions of a directive are applied exactly and in full'. [10] In this case, the result to be achieved includes the explicit requirement that the competent authorities must *ensure* that emergency plans are drawn up and *organise* inspections or other appropriate measures of control. If they fail to do so, the Member State has not fulfilled its obligations under the Directive.

16. I should stress here that it is unthinkable that the Community legislature, in choosing the word 'organise' in Article 7(2) of the Directive, meant to indicate some activity falling short of actually effecting the inspections or controls in question. It is true that, as the Italian Government pointed out at the hearing, the Commission's proposal for the Directive used the verb 'carry out'. [11] However, the terms of the Directive as enacted make it impossible to accept the Italian Government's argument, namely that the requirement laid down does not extend to ensuring that the inspections or controls take place.

17. Finally, the specific argument of the Italian Government to the effect that plans cannot be drawn up or inspections properly carried out until manufacturers have provided the requisite information may be countered simply by reference to the terms of Articles 4 and 5(1) of the Directive, under which Member States must take the measures necessary to ensure that manufacturers are required to provide that information.

18. The Italian Government then raises two further, apparently alternative defences: the obligation to ensure that emergency plans are drawn up in respect of individual establishments is met by general plans

9 — See, for example, Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 15 of the judgment.

10 — See, for example, Case C-16/95 *Commission* v *Spain* [1995] ECR I-4883, paragraph 8 of the judgment.

11 — OJ 1979 C 212, p. 4. The verb appears to have been changed in the Directive as finally adopted in most language versions other than the German.

(three of which it appends to its defence) drawn up by regional authorities, and the inspections required by Article 7(2) of the Directive have in fact been carried out on a large number of establishments.

19. With regard to the first point, suffice it to note that the Italian Government stated, in a letter to the Commission dated 21 May 1997, that 110 plans had been drawn up out of a total of 443 which should have been prepared, and apparently has not since then produced any other plans for inspection by the Commission. Plans are, moreover, clearly to be based on the specific information provided by each manufacturer, so that a general plan could only satisfy the requirements of the Directive if it dealt with each establishment individually.

20. With regard to the second point, the Italian Government states that in fact 220 out of 391 establishments have been inspected, the remainder having been subjected to other measures of control, whereas the Commission relies on letters from that Government stating that the number of establishments to be inspected is 710 and the number inspected 179. Again, the Italian Government does not appear to have produced any evidence in support of its later claim.

21. In any event, even if steps have now been taken to reduce the extent of the non-compliance, they have clearly not met with anything approaching complete success; the subject-matter of an Article 169 action is, moreover, determined at the stage of the Commission's reasoned opinion and is unaffected by any subsequent remedying of the failure at issue. [12]

22. The fact that actual compliance with the two requirements in question is at a level of approximately 25% is further exacerbated by the fact that the time-limit for implementation of the Directive expired on 8 January 1984 and the relevant Italian provisions have been in effect since 1988. Although it is accepted by the Commission that the time-limit for implementation does not extend to 'second-stage' measures to be carried out by the competent authorities, there has clearly been considerably more than enough time for those measures to be put into effect.

12 — See, for example, Case C-280/89 *Commission* v *Ireland* [1992] ECR I-6185, paragraph 7 of the judgment.

Conclusion

23. Accordingly the Court should, in my opinion:

(1) declare that, by not ensuring that all the emergency plans referred to in the third indent of Article 7(1) of Council Directive 82/501/EEC are drawn up and that all the inspections or other measures of control referred to in Article 7(2) thereof are carried out, the Italian Republic has failed to fulfil its obligations under the Treaty;

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