# OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 14 March 2002 [1]

1. The Commission has brought an action against the Italian Republic under Article 226 EC, asking the Court of Justice of the European Communities to declare that the Member State has failed to fulfil its obligations under Commission Directive 98/101/EC [2] adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. [3]

The applicant claims that Italy has not amended its national legislation within the prescribed period and has failed to inform it of the adoption of any implementing measures.

## I — Directive 98/101

2. The purpose of the Directive is to achieve a high level of environmental protection. It therefore prohibits the marketing of certain batteries and accumulators in view of the amount of mercury they contain, as well as appliances into which such batteries and accumulators are incorporated, in order to facilitate the recovery of spent batteries. Under the first paragraph of Article 2, Member States are to adopt and publish, before 1 January 2000, the provisions necessary to comply with this Directive. They are forthwith to inform the Commission thereof.

## II — Background to the case

3. By letter of 13 July 2000, the Commission informed the Italian Government that, although the prescribed period for implementing Directive 98/101 had elapsed, it had received no information that the necessary national provisions were being drawn up, nor was it clear that Italy was implementing the Directive, and it requested Italy to submit its observations within two months.

1 — Original language: Spanish.

2 — Commission Directive of 22 December 1998 (OJ 1999 L 1, p. 1).

3 — Council Directive of 18 March 1991 (OJ 1991 L 78, p. 38).

4. Having received no reply to that letter, the Commission on 17 January 2001 sent the Italian State a reasoned opinion requiring it to amend its domestic legislation within two months. In the absence of a reply, the Commission assumed that Italy had not implemented Directive 98/101 and consequently brought an action for failure to fulfil obligations on 24 August 2001.

5. In its defence to the application, submitted on 23 November 2001, the defendant State stated that the interministerial decree implementing Directive 98/101 into national law had been drafted, that it would be approved before the end of that month and that its text would be communicated to the Commission so that it could determine whether it was technically correct. It accepted that it was implementing the Directive late but pointed out that this had not been to the detriment of environmental protection in the Community. It was confident that, once it had eliminated the technical difficulties in this area, the Commission would decide to discontinue the proceedings.

6. In fact, in March 2002, the Commission gave no indication that it wished to discontinue its action. Moreover, it is settled case-law that the subject-matter of an action brought under Article 226 EC is determined by the Commission's reasoned opinion, and even when the default has been remedied after the expiry of the time-limit prescribed by the second paragraph of that article, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur towards those whose rights could be affected. [4]

7. Under the third paragraph of Article 249 EC, a directive is binding as to the result to be achieved upon each Member State to which it is addressed but leaves to the national authorities the choice of form and methods. Under Article 10 EC, Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

8. Since it has been established that Italy has not fulfilled its obligation to bring its domestic law into line with the provisions of Directive 98/101, the Court should grant the application of the Commission and declare that the Member State has failed to fulfil its obligations, and order it to pay the costs.

4 — Case 39/72 *Commission* v *Italy* [1973] ECR 101, paragraph 11; Case 154/85 *Commission* v *Italy* [1987] ECR 2717, paragraph 6; Case C-29/90 *Commission* v *Greece* [1992] ECR I-1971, paragraph 12; and Case C-280/89 *Commission* v *Ireland* [1992] ECR I-6185, paragraph 7.

## III — Conclusion

9. On the basis of the foregoing observations, I propose that the Court of Justice should:

(1) declare that the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 2 of Commission Directive 98/101/EC of 22 December 1998 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances by not incorporating its provisions in its domestic law before 1 January 2000;

(2) order Italy to pay the costs.