OPINION OF ADVOCATE GENERAL ALBER

delivered on 5 November 2002 [1]

1. The Commission has applied for a declaration that, by failing to adopt or, in any event, to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, [2] the Kingdom of Spain has failed to fulfil its obligations under that directive.

2. Article 17 of Directive 98/83 provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive within two years of its entry into force. They shall forthwith inform the Commission thereof.

...

2. The Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this directive.'

3. The directive entered into force on 25 December 1998. It should therefore have been transposed by 25 December 2000.

4. Not having received any information regarding transposition of the directive, the Commission initiated the procedure for failure to fulfil Treaty obligations and, by letter of 6 April 2001, requested the Kingdom of Spain to submit its observations within two months.

5. By letter of 13 June 2001, the Spanish Government informed the Commission that the provisions of the directive were to be transposed by two royal decrees which were then being prepared. One of the decrees related to bottled water, the other contained the remaining provisions.

1 — Original language: German.

2 — OJ 1998 L 330, p. 32; corrigendum OJ 2001 L 111, p. 31.

6. On 26 July 2001, the Commission sent the Kingdom of Spain a reasoned opinion. In it, the Commission noted the ongoing Treaty infringement and set the Kingdom of Spain a time-limit of two months in which to take the measures necessary to transpose the directive.

7. By letter of 12 October 2001, the Spanish Government informed the Commission of the stage reached in the legislative procedure which was still in progress.

8. On 1 February 2002, the Commission brought this action, in which it requests the Court to make the declaration set out in point 1 and to order the Kingdom of Spain to pay the costs of the proceedings. The Kingdom of Spain contends that the action should be dismissed and the Commission ordered to pay the costs.

Analysis

9. Under the first paragraph of Article 10 EC, the Member States are to take all appropriate measures to ensure fulfilment of the obligations resulting from action taken by the institutions of the Community. Such action includes directives which, pursuant to the third paragraph of Article 249 EC, are binding, as to the result to be achieved, upon each Member State to which they are addressed. That obligation involves, for each Member State to which a directive is addressed, the timely adoption, within the framework of its national legal system, of all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues. [3]

10. Although the Spanish Government claims that the action should be dismissed, it does not dispute that the provisions necessary to transpose Directive 98/83 have not yet come into force. It has merely explained the procedure for adoption of the two royal decrees. However, the mere initiation of the procedure for adoption of a legal measure designed to transpose a directive into national law does not suffice to fulfil the obligations under the directive. [4]

11. Nor are the merits of an action affected by the fact that the default concerned may have been remedied after the expiry of the period prescribed in the reasoned opinion. [5] Therefore, even if the provisions in question had, in the meantime, come into force, that would not militate against a declaration that the Member State in question has failed to fulfil its obligations under the Treaty.

12. The decision on costs is to be taken in accordance with Article 69(2) of the Rules of Procedure.

3 — See Case C-119/00 *Commission* v *Luxembourg* [2001] ECR I-4795, paragraph 12, and Case C-29/01 *Commission* v *Spain* [2002] ECR I-2503, paragraph 9.

4 — See *Commission* v *Spain*, cited in footnote 3, paragraph 10.

5 — Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 45, and Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26.

Conclusion

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

(1) declare that, by failing to adopt or, in any event, to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, the Kingdom of Spain has failed to fulfil its obligations under that directive;

(2) order the Kingdom of Spain to pay the costs.