OPINION OF ADVOCATE GENERAL ALBER

delivered on 15 October 2002 [1]

1. The Commission seeks a declaration that, by failing to adopt for Northern Ireland and Wales all 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] or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 17(1) and (2) of 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 implemented by 25 December 2000.

4. When the Commission failed to receive information concerning implementation it initiated the Treaty infringement procedure and, by letter of 19 April 2001, requested the United Kingdom to submit its observations within two months.

5. The United Kingdom Government thereupon forwarded, by letter of 18 June 2001, the legislation implementing the directive in Scotland. With regard to Wales, Northern Ireland and Gibraltar, it indicated that the necessary legislation would be enacted soon.

6. On 24 July 2001 the Commission sent the United Kingdom a reasoned opinion

1 — Original language: German.

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

allowing it two months to take the measures necessary in order to implement the directive in Wales, Northern Ireland and Gibraltar.

7. By letter of 26 September 2001, the United Kingdom Government forwarded the implementing legislation for Gibraltar and provided information concerning the state of preparations for implementation in Wales and Northern Ireland.

8. On 26 February 2002 the Commission brought the present action, seeking the declaration set out in point 1 above. The United Kingdom accepts that the Court should grant the Commission's application. It states that the legislation for Wales was enacted on 7 December 2001 and entered into force on 1 January 2002. It adds that resource constraints delayed implementation in Northern Ireland. However, the necessary legislation would enter into force in September 2002.

Assessment

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. The mere initiation of the procedure for adoption of a law designed to transpose a directive into national law does not fulfil that requirement. [4]

11. It is settled-case law that the remedying of a failure to fulfil obligations after the period laid down in the reasoned opinion has expired does not affect whether the action is well founded. [5] The provisions implementing the directive in Wales entered into force on 1 January 2002. The United Kingdom Government envisaged that the directive would be implemented in Northern Ireland in September 2002. Since the provisions therefore entered into force, or will enter into force, after expiry of the period, a finding that the United Kingdom has failed to fulfil its obligations is not precluded.

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 — *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.

12. The Commission has also applied for an order of costs against the United Kingdom. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings.

Conclusion

13. On the basis of the foregoing considerations, I propose that the Court should:

(1) declare that, by failing to adopt for Northern Ireland and Wales all 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 or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 17(1) and (2) of that directive;

(2) order the United Kingdom of Great Britain and Northern Ireland to pay the costs.