OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 10 October 2002 [1]

1. In this case the Commission of the European Communities seeks a declaration by the Court that the Kingdom of Belgium has failed to adopt or notify, within the prescribed period, the laws, regulations and administrative provisions necessary to transpose fully Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption [2]. The transposition period laid down in Article 17 of that directive expired on 25 December 2000.

2. According to Article 1, the objective of Directive 98/83/EC is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.

3. By letter of 6 April 2001 the Commission gave the Kingdom of Belgium formal notice to submit its observations on the ground that it had not received any information from the Belgian Government about the measures adopted by it to implement the directive. On 23 May 2001 the Belgian Government submitted a draft Royal Decree on the quality of water intended for human consumption which is packaged or which is used in food processing establishments in the manufacture and/or commercial preparation of food products. On 19 March 2001 that draft royal decree was submitted for its opinion to the Conseil d'État (Council of State). It also submitted a preliminary draft of a decree of the Flemish Region relating to water intended for human consumption which the Flemish Government approved in principle on 16 March and 23 March 2001. By letter of 19 June 2001 the Belgium Government subsequently submitted a preliminary draft of a decree of the Walloon Region relating to water intended for human consumption which was adopted by the Walloon Government on 23 May 2001.

4. Since the documents referred to in paragraph 3 were not legislative measures in

1 — Original language: Dutch.
2 — OJ 1998 L 330, p. 32.

force, the Commission, on 26 July 2001, sent a reasoned opinion, in which it called upon the Belgian Government to adopt the measures necessary to comply with the reasoned opinion within a period of two months from its notification. In response to the reasoned opinion the Belgium Government provided additional documents.

5. In its application, the Commission submits that the Belgian Government has still not adopted the laws and administrative provisions necessary to fulfil its obligations under the directive. It points out that the documents submitted are not legislative measures in force but merely preliminary drafts.

6. In its defence, the Belgian Government did not dispute the fact that it had failed to implement the directive within the prescribed period. None the less, it points out that the royal decree intended to implement the directive in national law was published in the *Moniteur belge* of 19 March 2002 and the Commission was notified of that fact on 21 February 2002. The implementation of Directive 98/83/EC by the Flemish and Walloon Regions should be completed shortly.

7. According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion [3]. In the present case, the reasoned opinion — in which the Belgian Government was called upon to notify the Commission, within two months, of the measures to be taken — was issued on 26 July 2001. The Court therefore cannot take account of any changes which occurred after the expiry of the time-limit set by the Commission.

3 — See, recently, Case C-323/01 Commission v Italy [2002] ECR I-4711.

Conclusion

8. I therefore propose that the Court should:

— declare that, by failing to adopt or notify, within the prescribed period, the laws, regulations and administrative provisions necessary to comply fully with Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.