OPINION OF ADVOCATE GENERAL JACOBS

delivered on 6 June 2002 [1]

1. In this case the Commission seeks a declaration, pursuant to Article 226 EC, that by not drawing up or at least not communicating to the Commission the plan, the outline and the summary of the inventory provided for by Article 4(1) and Article 11 of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), [2] the Kingdom of Spain has failed to fulfil its obligations under those provisions of the Directive.

2. Article 1 of the Directive provides:

'The purpose of this Directive is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this Directive.'

3. Article 3 provides:

'Without prejudice to their international obligations, Member States shall take the necessary measures to ensure that used PCBs are disposed of and PCBs and equipment containing PCBs are decontaminated or disposed of as soon as possible. For the equipment and the PCBs contained therein, which are subject to inventory in accordance with Article 4(1), decontamination and/or disposal shall be effected at the latest by the end of 2010.'

4. Article 4(1) provides:

'In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm^3, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this Directive. In the case of power capacitors, the threshold of 5 dm^3 shall be understood as including all the separate elements of a combined set.'

5. Article 11 provides:

'1. Member States shall, within three years of the adoption of this Directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

1 — Original language: English.
2 — OJ 1996 L 243, p. 31.

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

2. Member States shall communicate these plans and outlines to the Commission without delay.'

6. The Directive entered into force on 16 September 1996.

7. The Commission contends that the Spanish authorities have not drawn up, or in any event have not communicated to the Commission, the summary inventory prescribed by Article 4 of the Directive or the plan and outline prescribed by Article 11(1).

8. Spain contests the alleged infringements: it claims that the national plan for the decontamination and elimination of PCBs, PCTs and equipment containing them was adopted, was published in the Spanish official journal,[3] as prescribed by Royal Decree 1378/99 of 27 August 1999 which transposes the Directive into national law, and was subsequently notified to the Commission.

9. The Commission claims in its reply that the national plan in question is no answer to the alleged infringements, as it was adopted (on 6 April 2001) after the expiry of the time-limit of two months laid down by the Commission's reasoned opinion of 18 September 2000 and indeed after the lodging of the Commission's application to the Court (on 5 February 2001). In the alternative the Commission contends that the plan fails in certain respects to comply with the requirements of the Directive.

10. Spain denies in its rejoinder the Commission's contentions regarding the content of the plan and argues at length that it conforms to the requirements of the Directive.

11. It is unnecessary in my view to pursue the question whether the plan complies with the requirements of the Directive, since it is clear in any event that the plan was adopted after the expiry of the time-limit laid down by the Commission's reasoned opinion. According to the Court's case-law the existence of an infringement must be determined on the basis of the situation at the expiry of that time-limit, and measures adopted by a Member State subsequently cannot be taken into account.[4]

12. It follows that the Commission's application is well founded.

3 — *Boletín Oficial del Estado* of 18 April 2001.

4 — See Case C-372/01 *Commission* v *Luxembourg*, ECR I-4553, judgment of 16 May 2002.

Conclusion

13. Accordingly the Court should in my opinion:

(1) declare that, by not drawing up within the prescribed time-limit the plan, the outline and the summary of the inventory provided for by Article 4(1) and Article 11 of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the Kingdom of Spain has failed to fulfil its obligations under those provisions of the Directive;

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