# OPINION OF ADVOCATE GENERAL ALBER

delivered on 14 September 2000 *

1. In these infringement proceedings the Commission alleges failure to transpose two directives.

2. Article 2(1) of Council Directive 96/51/EC of 23 July 1996 amending Directive 70/524/EEC concerning additives in foodstuffs [1] states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with:

(a) the following provisions provided for in Article 1:

— point (4): Article 6(1), Article 9d(2), Article 9e(3), Article 9f, Article 9g, Article 9h, Article 9i, Article 9j, Article 9n, Article 9o,

— points 10, 12, 19 and 20,

on 1 April 1998;

(b) the other provisions of this Directive by 1 October 1999.

They shall forthwith inform the Commission thereof.

3. Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products [2] should have been transposed by 1 January 1998.

4. The Commission received no communication from the Italian Republic concerning the transposition of either directive. It therefore sent it, on 16 July 1998 in respect of Directive 96/51 and on 3 June 1998 in

* Original language: German.

1 — OJ 1996 L 235, p. 39.

2 — OJ 1997 L 13, p. 18.

respect of Directive 96/93, letters of formal notice pursuant to Article 169 of the EC Treaty (now Article 226 EC), inviting it to submit observations within two months. Those letters remained unanswered.

5. For that reason, on 11 December 1998, reasoned opinions in respect of both directives were sent to the Italian Republic, prescribing a final period of two months for their transposition.

6. The Italian authorities replied only in respect of Directive 96/93/EC. By letter of 22 February 1999 they informed the Commission that an appropriate draft law was under preparation.

7. The Commission therefore brought the present proceedings against the Italian Republic on 11 October 1999.

The Commission claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with

(a) Council Directive 96/51/EC of 23 July 1996 amending Directive 70/524/EEC concerning additives in feedingstuffs and

(b) Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products,

or in any event by failing to communicate such provisions, the Italian Republic has failed to fulfil its obligations under the Treaty and those directives;

(2) order the Italian Republic to pay the costs.

8. The Commission points out that, under the third paragraph of Article 189 of the EC Treaty (now Article 249 EC) and Article 5 of the EC Treaty (now Article 10 EC), the Member States are required to take whatever measures are necessary to transpose the directives into national law before the expiry of the period prescribed for that purpose, and to inform the Commission of such measures immediately. According to

the Commission, those periods expired without the Italian Republic having informed it of the provisions to transpose the directives in question into national law.

9. The Italian Republic acknowledges that it has not transposed the directives in time, and gives as the reason for that the complexity of its national procedures. It states that the preparatory work on transposing the directives in question is at an advanced stage and that the adoption of appropriate legal provisions is imminent.

10. In the light of the grounds of the Commission's application, the latter must be construed as referring, in respect of Directive 96/51, only to the failure to transpose the provisions mentioned in Article 2(1)(a). The intention to bring a more far-reaching action cannot be imputed to the Commission since, on the one hand, at the time of bringing the action a possible Treaty infringement would have been only 11 days old and the pre-litigation procedure referred to expressly relates only to that part of the directive.

11. On that construction the action is well founded. On the material date for the purposes of the infringement proceedings — when the period of two months from 11 December 1998 prescribed in the reasoned opinion expired — the grievance which is the subject of the application had indisputably not yet been remedied, even taking into account any extensions of the period on account of delays in the post. The Italian Republic should therefore be declared to have failed to fulfil its obligations, as claimed in the application.

12. The appropriate order as to costs follows from Article 69(2) of the Rules of Procedure.

## Conclusion

13. I therefore propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with

(a) Article 2(1)(a) of Council Directive 96/51/EC of 23 July 1996 amending Directive 70/524/EEC concerning additives in feedingstuffs and

(b) Council Directive 96/93/EC of 17 December 1996 on the certification of animals and animal products,

the Italian Republic has failed to fulfil its obligations under the Treaty and those directives;

(2) order the Italian Republic to pay the costs.