OPINION OF ADVOCATE GENERAL MISCHO

delivered on 14 March 2000 *

1. In this action brought under Article 169 of the EC Treaty (now Article 226 EC), the Commission of the European Communities requests the Court to declare that Ireland has failed to transpose Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC (hereinafter 'the directive'). [1]

2. Article 4(1), first and second subparagraphs, of the directive provides:

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

(i) the provisions of Article 7 and of Chapter I(1)(e) of Annex A by 1 July 1996;

(ii) the provisions of Chapter II, Section II of Chapter III of Annex A and Chapter II of Annex C by 1 January 1997;

(iii) other amendments by 1 July 1997.

Member States shall have a further period which can extend to 1 July 1999 within which to comply with the provisions of Section I of Chapter III of Annex A.'

3. On 5 November 1997, having received no notification as to the measures adopted to transpose that directive into the Irish legal system, and having in its possession no other information allowing it to conclude that Ireland had complied with its obligation to transpose the directive, the Commission instituted the procedure under Article 169 of the Treaty by putting the Irish Government on formal notice to

* Original language: French.

1 — OJ 1996 L 162, p. 1.

submit to it its observations within two months.

4. On 10 August 1998, the Commission addressed a reasoned opinion to Ireland, requesting it to take the measures necessary for compliance with its obligations under the directive within two months following notification of that opinion.

5. In view of the persistent lack of response on the part of the Irish authorities, the Commission brought the present action against Ireland for failure to fulfil its obligations.

6. In its statement of defence of 13 September 1999, the Irish Government does not deny its failure to fulfil its obligations, but requests the Court to suspend the proceedings for a period of three months from the date of its defence to enable it to complete implementation of the directive.

7. The Court has consistently held that '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 and that the Court cannot take account of any subsequent changes'. [2]

8. It is clear from the facts of the case that the provisions referred to in the first subparagraph of Article 4(1) of the directive were not implemented within the prescribed periods.

9. The Commission's action is accordingly well founded in regard to that point.

10. The position is different concerning the provisions referred to in the second subparagraph of Article 4(1), under which Member States had a further period, 'which can extend to 1 July 1999', within which to adopt the necessary implementing measures.

11. That period had not yet expired on the date set by the Commission for compliance by Ireland with the reasoned opinion.

12. The action must therefore be dismissed in so far as it relates to adoption of the measures necessary for compliance with the provisions referred to in the second subparagraph of Article 4(1) of the directive.

2 — Judgment in Case C-316/96 *Commission* v *Italy* [1997] ECR I-7231, paragraph 14.

13. Since the Commission has requested that Ireland be ordered to pay the costs, and since I take the view that Ireland must essentially fail in its submissions, I propose that the Court order Ireland to pay all of the costs.

Conclusion

14. I accordingly propose that the Court should:

(1) Declare that, by failing to adopt, within the prescribed periods, the laws, regulations and administrative provisions necessary to comply with the provisions referred to in the first subparagraph of Article 4(1) of Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC, Ireland has failed to fulfil its obligations under that article;

(2) Dismiss the remainder of the application;

(3) Order Ireland to pay the costs.