

OPINION OF ADVOCATE GENERAL LÉGER

delivered on 17 November 1994 *

1. By an application lodged at the Court Registry on 15 February 1994 the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 91/687/EEC of 11 December 1991 amending Directives 64/432/EEC, 72/461/EEC and 80/215/EEC as regards certain measures relating to swine-fever¹ and with Council Directive 91/688/EEC of 11 December 1991 amending Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries² and/or by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under the penultimate articles of the said directives and Articles 5 and 189 of the EC Treaty.

posed into Belgian law by 1 July 1992 at the latest.³

3. The procedure for establishing the failure to fulfil obligations was initiated on 14 October 1992 and the Commission has obtained no official response from the Belgian Government to either its formal notice or its reasoned opinion. Furthermore, it has received no indication whatsoever that the measures necessary to transpose the directives into Belgian law have been adopted.

4. In its statement in defence the Belgian Government does not deny the failure but merely indicates that decrees implementing the directives are being drafted and that the Court will be informed as soon as they are brought into force.

2. It is common ground that the abovementioned directives should have been trans-

5. The Court has consistently held that a Member State may not plead provisions,

* Original language: French.

1 — OJ 1991 L 377, p. 16.

2 — OJ 1991 L 377, p. 18.

3 — Article 4, first paragraph, of Directive 91/687 and Article 2, first paragraph, of Directive 91/688.

practices or circumstances in its internal legal system in order to justify failure to fulfil its Community law obligations.⁴

6. It follows that the failure by the Kingdom of Belgium to fulfil its obligations alleged by the Commission and not contested by the Kingdom of Belgium has been established.

7. I propose that the Court should rule as follows:

- (1) declare that by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 91/687/EEC of 11 December 1991 amending Directives 64/432/EEC, 72/461/EEC and 80/215/EEC as regards certain measures relating to swine-fever and with Council Directive 91/688/EEC of 11 December 1991 amending Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries and/or by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under the penultimate articles of the said directives and Articles 5 and 189 of the EC Treaty;
- (2) order the Kingdom of Belgium to pay the costs.

⁴ — Case C-303/93 *Commission v Italy* [1994] ECR I-1901.