

# OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 10 January 2002 <sup>1</sup>

1. By its application under Article 226 EC, received at the Court of Justice on 24 January 2001, the Commission seeks a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control <sup>2</sup> or, in any event, by failing to communicate those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under that directive. The Commission also seeks an order that the Kingdom of Spain should pay the costs.

2. As no implementing provisions had been communicated to the Commission by 30 October 1999, the time-limit for implementing the directive, and the Commission had received no other information in that regard, it initiated the Treaty infringement procedure. After it had given the Kingdom of Spain an opportunity to submit its observations, it delivered a reasoned opinion on 27 July 2000 in which it called on the Kingdom of Spain to adopt the necessary measures within two months and to inform the Commission thereof. By letter of 8 September 2000 the Kingdom of Spain sought an extension of one month, but its request was not granted. On 6 December

2000 the Spanish Government submitted its response in which it announced — referring to a bill which already existed — a draft law for the implementation of the directive and completion of the legislative procedure towards the end of 2001, which it justified by the need for consultation within Spain. The Commission then brought the present action.

3. It is settled case-law of the Court of Justice that the relevant time for determining whether a Member State has failed to fulfil its obligations is the end of the period laid down in the reasoned opinion. <sup>3</sup> That period expired on 27 September 2001 without the measures required by the Commission having been adopted. The Spanish Government in fact stated that it was working on the implementing law and that the national procedure was in progress.

4. It is also settled case-law of the Court of Justice that the Member States may not plead provisions of national law in order to justify the failure to implement a directive by the date required. <sup>4</sup>

1 — Original language: German.

2 — OJ 1996 L 257, p. 26.

3 — Case C-384/99 *Commission v Belgium* [2000] ECR I-10633, paragraph 16.

4 — Case C-139/97 *Commission v Italy* [1998] ECR I-605, paragraph 10, and Case C-323/97 *Commission v Belgium* [1998] ECR I-4281, paragraph 8.

5. The obligation under Community law to implement the directive follows, on the one hand, directly from the directive and, on the other, from Article 249(3) EC and Article 10 EC.

6. As the Kingdom of Spain has thus not complied with its obligation under Community law, the Commission's application should be upheld and a declaration made that the Kingdom of Spain has failed to fulfil its obligations under the Treaty and must pay the costs.

## Conclusion

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

- (1) By failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control within the prescribed period, the Kingdom of Spain has failed to fulfil its obligations under that directive.
- (2) The Kingdom of Spain must pay the costs.