

OPINION OF ADVOCATE GENERAL
DARMON

delivered on 21 September 1993 *

*Mr President,
Members of the Court,*

1. By application lodged at the Court Registry on 12 October 1992, the Commission of the European Communities has brought an application pursuant to Article 169 of the EEC Treaty for a declaration that the Kingdom of Spain has failed to fulfil its obligations under the third paragraph of Article 189 and Article 5 of the EEC Treaty by failing to adopt within the prescribed period the measures necessary to implement Council Directive 88/658/EEC.¹

2. It is not denied that the directive in question should have been transposed into Spanish law no later than 1 July 1990.² The defendant Government failed to adopt either by that date, or subsequently, as far as I am aware, an appropriate measure to comply with its obligations to transpose arising as the Court held in *Oberkreisdirektor des Kreises Borken v Moorman*³ — out of the third paragraph of Article 189 and Article 5 of the EEC Treaty.

3. However, the Kingdom of Spain contends, first, that there were internal difficulties because the matter governed by the directive fell within the area of competence of several ministries and, secondly, that the adoption of Council Directive 92/5/EEC⁴ amended the directive in dispute in certain specific respects.

4. First, it should be pointed out that the Court has consistently held that,

‘(...) a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from [directives]’.⁵

5. Secondly, and without its being necessary for the Court to consider the possible impact of Directive 92/5/EEC on the provisions of the directive at issue, suffice it to observe that Directive 92/5/EEC had not yet been adopted when the time-limit for the entry into force of the 1988 directive expired. The 1988 directive should therefore have been transposed no later than the date prescribed and it is not possible effectively to rely upon

* Original language: French.

1 — Council Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products (OJ 1988 L 382, p. 15).

2 — Article 3.

3 — Case 190/87 *Oberkreisdirektor des Kreises Borken v Moorman* [1988] ECR 4689, paragraph 22.

4 — Council Directive of 10 February 1992 amending and updating Directive 77/99/EEC on health problems affecting intra-Community trade in meat products and amending Directive 64/433/EEC (OJ 1992 L 57, p. 1).

5 — Case C-290/89 *Commission v Belgium* [1991] ECR I-2851, paragraph 9; see also Case C-377/90 *Commission v Belgium* [1992] ECR I-1233, paragraph 6.

the fact that subsequent legislation was adopted in order to justify any failure to fulfil obligations in respect of the 1988 directive.

6. It should accordingly be declared, in accordance with the settled case-law of the Court,⁶ that by failing to adopt within the

prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 88/658/EEC of 14 December 1988 amending Directive 77/99/EEC on health problems affecting intra-Community trade in meat products, the Kingdom of Spain has failed to fulfil its obligations under the EEC Treaty, and the Kingdom of Spain should be ordered to pay the costs.

6 — See, in particular, Case 283/86 *Commission v Belgium* [1988] ECR 3271 and Case C-316/92 *Commission v Germany* [1993] ECR I-3659.