OPINION OF ADVOCATE GENERAL MISCHO

delivered on 12 September 2002 [1]

1. Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [2] ('the directive'), aims to establish the required standards for environmental protection and safety in order to guarantee that the placing on the market of those products does not cause harm to human health and to the environment.

2. It follows from Article 34 of the directive that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply therewith not later than 24 months after its entry into force and that they are to inform the Commission immediately thereof.

3. Article 35 of the directive provides that it is to enter into force on the 20th day following its publication in the *Official Journal of the European Communities*. Since publication was on 24 April 1998, the directive entered into force on 14 May 1998.

4. Accordingly, the Member States were to have implemented the laws, regulations and administrative provisions necessary to comply with the directive by 14 May 2000 at the latest.

5. As the Commission of the European Communities had not received any information enabling it to conclude that the Kindgom of Spain had adopted the necessary measures, it brought infringement pro-

1 — Original language: French.
2 — OJ 1998 L 123, p. 1.

ceedings which are the subject of the present opinion.

6. The applicant asks the Court to declare that, by not having adopted the laws, regulations and administrative provisions necessary to comply with the directive or, in any event, not having communicated those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under the directive.

7. The Spanish Government observes that the transposition of that directive into national law must be effected by means of a royal decree. The procedure for drawing up such an instrument is particularly cumbersome in that it requires numerous reports, opinions and consultations as well as a public hearing when the text affects the rights and interests of the public. In addition, in the present case, the fact that two ministries, the Ministry of Health and Consumer Protection and the Ministry of Agriculture, participated in the drawing up of that instrument prolonged that procedure.

8. In that regard, it must be pointed out that according to the settled case-law a Member State cannot rely on such circumstances existing in its internal legal system in order to justify a failure to comply with time-limits laid down in Community provisions. [3]

9. The defendant also argues that in view of the advanced state of the draft decree, which is about to be forwarded to the Consejo de Estado to which it must be submitted, there are grounds to consider that transposition of the directive is practically completed.

10. It must be recalled, however, that it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the end of the period laid down in the reasoned opinion and that taking subsequent measures is irrelevant in that context. [4] In this case, the defendant does not dispute that no implementing measures had been taken before the expiry of that time-limit. It even concedes that, at the date of the lodging of the defence, transposition had still not taken place.

11. It follows that the infringement alleged by the Commission is founded. The form of order sought must be granted.

3 — See, as an example of a consistent line of decisions Case 254/83 *Commission* v *Italy* [1984] ECR 3395.

4 — Case C-200/88 *Commission* v *Greece* [1990] ECR I-4299, paragraph 13.

Conclusion

12. For the foregoing reasons, I propose that the Court should:

— declare that by not having adopted the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market or, in any event, not having communicated those provisions to the Commission, the Kingdom of Spain has failed to fulfil its obligations under the directive;

— order the Kingdom of Spain to pay the costs.