

OPINION OF ADVOCATE GENERAL
MISCHO

delivered on 14 January 2003 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 market² (hereinafter ‘the directive’) is intended to introduce the rules on environmental protection and safety which are needed to ensure that the placing of those products on the market does not damage human health or the environment.

Official Journal of the European Communities. Having been published on 24 April 1998, the directive entered into force on 14 May 1998.

2. It is clear from Article 34 of the directive that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within 24 months after its entry into force and to inform the Commission thereof immediately.

4. Consequently, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive on or before 14 May 2000.

5. Since the Commission of the European Communities received no information from which it was able to conclude that the French Republic had adopted the necessary measures, it brought the infringement action which is the subject-matter of this Opinion.

3. Article 35 of the directive provides that the directive is to enter into force on the 20th day following its publication in the

6. The applicant seeks a declaration by the Court that, by failing to adopt the laws,

¹ — Original language: French.

² — OJ 1998 L 123, p.1.

regulations and administrative measures necessary to comply with the directive or, in any event, by failing to communicate those provisions to it, the French Republic has failed to fulfil its obligations under the directive.

position of the directive within the time-limit set for that purpose.

7. The French Government does not challenge the Commission's assertion that it has not ensured a complete transposition of the directive. It argues that various texts, still in draft form, will serve to complete the transposition into national law of all the provisions of the directive and specifies, for each of the latter which are not yet transposed, the corresponding provisions which will ensure its transposition.

9. The defendant points out that the delay in transposition is due mainly to the need to organise optimally the procedure for assessing the files, which requires the involvement of several bodies.

10. It must be pointed out in that context that, according to settled case-law, a Member State may not plead provisions, practices or situations in its internal legal system to justify non-compliance with obligations and time-limits arising from rules of Community law.⁴

8. In that regard, it must be recalled that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations is to be assessed as at the date of expiry of the period laid down by the reasoned opinion and that the adoption of subsequent measures is irrelevant in that context.³ In this case, it is common ground that the French Republic did not adopt the measures necessary to complete the trans-

11. It follows from what I have stated above that the breach of obligations alleged by the Commission has been established. The Commission should therefore be granted the form of order which it seeks.

³ — Case C-200/88 *Commission v Greece* [1990] ECR I-4299, paragraph 13.

⁴ — See, for example, Case C-276/98 *Commission v Portugal* [2001] ECR I-1699, paragraph 20.

Conclusion

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

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market, or, in any event, by failing to communicate those provisions to the Commission of the European Communities, the French Republic has failed to fulfil its obligations under that directive;
- order the French Republic to pay the costs.