

OPINION OF ADVOCATE GENERAL
RUIZ-JARABO COLOMER

delivered on 10 December 2002¹

1. The Commission seeks a declaration from the Court against the Federal Republic of Germany, under Article 226 EC, on the grounds that the legislation of certain *Länder* fails to comply with the obligations laid down in Articles 1 and 4 of Directive 89/686/EEC on personal protective equipment.²

3. The directive lays down the conditions governing the placing on the market and free movement within the Community of PPE, and the basic safety requirements which such equipment must satisfy in order to ensure the health protection and safety of users. PPE means any device or appliance worn or held by an individual for protection against one or more health and safety hazards.

The Commission complains that, under the German legislation, personal protective equipment for fire brigades is subject to additional requirements, even though it meets the requirements of Directive 89/686 and bears the EC mark.

Article 1(4) excludes from the scope of the directive:

I — Directive 89/686

— PPE covered by another directive designed to attain the same objectives with regard to placing on the market, free movement of goods and safety,

2. In accordance with Article 1(1) and (2), the directive applies to personal protective equipment, referred to as PPE.

— the PPE classes specified in the list of excluded products in Annex I, independently of the reason for exclusion mentioned in the first indent.

1 — Original language: Spanish.

2 — Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (OJ 1989 L 399, p. 18).

4. Article 4 provides that Member States are not to prohibit, restrict or hinder the placing on the market of PPE or PPE components which satisfy the provisions of the directive and which bear the EC mark.

5. Annex I contains an exhaustive list of the classes of personal protective equipment not covered by the directive. Point 1 refers to PPE designed and manufactured specifically for use by the armed forces or in the maintenance of law and order (helmets, shields, etc.).

7. The Commission took the view that those provisions infringe the requirements of the single market, and, in particular, Articles 1 and 4 of Directive 89/686, and it therefore sent a formal letter of complaint to the German Government on 19 March 1998, inviting the latter to submit observations on the matter.

8. By letter of 28 May 1998, the German Government replied that the organisation of fire brigades comes within the competence of the *Länder*, whose responsibility it is to determine the nature of these bodies. It had been impossible to reach any firm conclusion as to whether German firefighters form part of the forces of law and order, and it would therefore be necessary to establish in each case whether the equipment issued to them is covered by Directive 89/686.

II — The administrative procedure

6. Following a number of complaints, the Commission established that the legislation of certain German *Länder* required personal protective equipment for firefighters to meet requirements that are not laid down in Directive 89/686. Specifically, in Lower Saxony, firefighters' belts must conform to the technical specifications laid down in the German Standard, DIN 14926; while in North Rhine-Westphalia, helmets must be approved by a body established under the laws of that *Land*, no other body having the right to intervene, even if it provides an equivalent guarantee.

9. That explanation did not satisfy the Commission, and it sent a reasoned opinion to the German Government on 21 October 1998, repeating its objections to the national legislation and requiring the German Government to reform that legislation within two months.

10. In its reply of 18 December 1998, the German Government stated that it had written to the interior ministries of the *Länder*, which are responsible for the fire brigades, asking them to amend their legis-

lation on the purchase of personal protective equipment so that it complied with Community law, and requesting details of the measures that had been adopted. In its letter, the German Government undertook to forward the replies it received to the Commission.

11. Two years later, in December 2000, the defendant government in the present proceedings stated, in response to an enquiry from the Commission in June 2000, that it was still awaiting explanations from the *Länder*. In the light of that stance, the Commission concluded that Germany had still not fulfilled its obligations under Directive 89/686 and brought this action.

III — The contentious procedure

12. The Commission lodged the application at the Court Registry on 2 March 2001. The defendant government lodged its defence on 14 May 2001. The reply was lodged on 12 July 2001 and the rejoinder on 20 September 2001.

13. The French Government intervened in support of Germany's position in a statement which was received at the Registry on 4 October 2001, and in respect of which

the German Government and the Commission submitted their observations in December.

14. At the hearing, which was held on 24 October 2002, oral argument was presented by the Agents of the Commission and the German Government.

IV — Analysis of the action

15. The Commission seeks a declaration from the Court that the Federal Republic of Germany has failed to fulfil its obligations, together with an order that Germany should pay the costs.

16. Article 4 of Directive 89/686 enshrines the principle of freedom of movement for personal protective equipment and its components which satisfy the provisions of the directive and bear the EC mark, by providing that Member States may not prohibit, restrict or hinder the placing on the market of such equipment or components. The fact that Germany makes equipment for use by fire brigades subject to additional requirements is not in dispute. There is disagreement between the parties, however, over the fact that, in Germany, the fire services are classified as forces of law and order.

The outcome of the action brought by the Commission hinges, therefore, on whether personal protective equipment for firefighters comes under the exception set out in Annex I, Point 1. In order to determine the answer, it is necessary to decide whether that equipment was designed and manufactured specifically for use by the armed forces or in the maintenance of law and order.

uniformly applied federal rules. The success of a joint operation involving several units can only be guaranteed if all the units have the same rescue tools which meet the same manufacturing and safety standards.

17. The German Government states that the firefighters' belts, which gave rise to these proceedings, protect firefighters from the hazards to which they are exposed during training, exercises and active duty. The technical circular relating to the belt governs its measurements, specifications and monitoring procedures, and stipulates that it must bear a mark. It is vital that all firefighters wear identical belts during exercises and active duty in order to ensure that they can be rescued, that others can be rescued and, in particular, that assistance can be given to colleagues who are in difficulties. The beltline enables firefighters to protect themselves against the risk of falling from ladders and other dangerous places. The belt incorporates an axe with a protective cover, which conforms to DIN 14 924. Precise directions are needed for the belt since, for example, the safety features can only be activated with the aid of precision ropes and apparatus. That is why the use and putting into service of firefighters' equipment are governed by

18. The Community legislature had that concern for the safety of workers, and for the safety of fire brigade personnel in particular, in mind when it adopted Directive 89/686. The preamble³ states that the provisions governing the design and manufacture of personal protective equipment laid down in the directive are fundamental to attempts to ensure a safer working environment. In addition to laying down the conditions governing the placing on the market and free movement within the Community of PPE, the directive also sets out the basic requirements which such equipment must satisfy in order to ensure the health protection and safety of users. Article 8(4) provides that the production of PPE is to be subject to the EC declaration of conformity. In addition, PPE of complex design intended to protect against mortal danger or against dangers that may seriously and irreversibly harm the health, the immediate effects of which the designer assumes the user cannot identify in sufficient time, must be subject to one of the two monitoring procedures referred to in Article 11; namely, the EC quality control system for the final product, and the system for ensuring EC quality of production by means of monitoring. The latter category includes, *inter alia*, filtering respiratory devices for protection against solid and liquid aerosols or irritant; dangerous, toxic or radiotoxic gases; emergency equipment for use in high-temperature environments the effects of which are comparable to

3 — Seventh recital.

those of an air temperature of 100 °C or more and which may or may not be characterised by the presence of infra-red radiation, flames or the projection of large amounts of molten material; emergency equipment for use in low-temperature environments the effects of which are comparable to those of an air temperature of 50 °C or less; and PPE to protect against falls from a height. I should add that Annex II, which lists basic health and safety requirements and general requirements applicable to all PPE, lays down a whole series of additional requirements according to risk; paragraph 3.1.2.2. of the annex covers the prevention of falls from a height, while paragraph 3.6. covers protection against heat and/or fire.

I am certain that the concern shown by the defendant government for the safety of fire brigades in Germany is shared by the other Member States, but that has not prevented those States from amending their national legislation in order to remove any barriers to the free movement within the Community of personal protective equipment for use by such workers.

in its territory; accordingly, the duties and the organisation of the different brigades, and the firefighters' statutes, vary from one *Land* to another. It is also for each *Land* to decide whether the fire brigades are bodies responsible for the maintenance of public safety or law and order. The German Government states that firefighters form part of the forces of law and order and that the powers and duties assigned to them are intrinsic to the exercise of powers conferred by public law, which is why personal protective equipment specifically manufactured for their use is excluded from the scope of Directive 89/686. The German Government adds that under fire protection provisions, State fire brigades have consistently been granted the same rights and powers as public authorities. Under current legislation, fire brigades are required to take the necessary measures to protect the community and individuals against the risks posed to their lives, health, safety and property by fires, explosions, accidents and other emergency situations, such as natural catastrophes. The measures concerned rank among those endowed with official authority, and may, therefore, entail the restriction of basic rights that are partly enshrined in the legislation.⁴

Fire brigades also have powers of enforcement. The German Government cites the example of the fourth sentence of Paragraph 26(1) of the Rhineland-Palatinate Law on protection against fires and catastrophes. Under that provision, the operations commander or, where he is prevented from doing so, any other member of

4 — By way of an example, the German Government cites Paragraph 64 of the Hesse Law on fire protection, which sets out measures governing rescue and safety in the event of a catastrophe, and Paragraph 38 of the Schleswig-Holstein Law on fire protection and attendance by fire brigades, which contains similar provisions.

19. The German Government maintains that each *Land* has control of firefighting

the brigade, is authorised to implement the necessary security measures, if such measures have not been taken by the police or another competent body, such as the federal border police, the military police, or other armed forces or forces responsible for the maintenance of law and order. When putting such measures into effect, the commander has the power, where necessary, to use force against objects or individuals and to overcome resistance by the use of physical force. The legislation of the other *Länder* confers wide powers of intervention on fire brigades. The German Government adds that those brigades play an important role in the organisation of civil protection, a sphere which, in times of war, is an intrinsic part of the functions of the State itself. The German Government asserts that it follows from a literal interpretation of Directive 89/686 that German public fire brigades, which are granted powers under public law, form part of the forces responsible for the maintenance of law and order referred to in Annex I, Point 1, to the directive.

20. The French Government, which has intervened in support of the German Government, argues that, in order to interpret the exception in Annex I, Point 1, to Directive 89/686, it is necessary to determine whether the type of personal protective equipment used by fire brigades is intended specifically for military or police operations, rather than whether the users of such equipment should be classified as armed forces or forces responsible for the maintenance of law and order.

21. Article 1(4) of Directive 89/686 excludes from the scope of the directive two wide categories of personal protective equipment. These are: (a) PPE which is covered by another directive designed to attain the same objectives with regard to placing on the market, free movement of goods, and safety, and (b) the PPE classes specified in the exhaustive list of excluded products in Annex I. Point 1 of the Annex refers to personal protective equipment designed and manufactured specifically for use by the armed forces or in the maintenance of law and order, such as helmets and shields.

22. The parties agree that firefighters do not form part of the armed forces. They disagree, however, about whether firefighters should be regarded as forces of law and order. If firefighters are regarded as forces of law and order, their personal protective equipment would be excluded from the scope of Directive 89/686, with the result that each Member State would be empowered to require such equipment to comply with the most appropriate requirements, as appears to be the case in Germany at the moment.

23. It is settled case-law of the Court that exceptions to the principle of free movement of goods must be restrictively interpreted,⁵

⁵ — Judgments in Case 46/76 *Bauhuis* [1977] ECR 5; in Case 95/81 *Commission v Italy* [1982] ECR 2187, paragraph 27; in Case 58/83 *Commission v Greece* [1984] ECR 2027, paragraph 9; in Case 229/83 *Leclerc* [1985] ECR 1, paragraph 30; in Case 11/82 *Piraiki-Patraiki v Commission* [1985] ECR 207, paragraph 26; and in Case 103/84 *Commission v Italy* [1986] ECR 1759, paragraph 22.

and cannot be extended to cases other than those specifically laid down.⁶

I agree with the Commission that the question whether fire brigades are answerable to a particular ministry or to central government, be it regional or local, depending on the *Land*, is not crucial to determining the scope of Directive 89/686. The bodies in question represent different forms of administrative organisation which are immaterial when it comes to determining whether there is free movement of personal protective equipment for firefighters in the internal market.

24. In all the Member States, the main duty of fire brigades, irrespective of whether they are under the control of the State or of private undertakings, and of whether they are made up of professionals or volunteers, is the prevention and fighting of fires. They also carry out operations to rescue people and property in the event of explosions, floods, earthquakes or other large-scale catastrophes.

There is a marked difference between those duties and the duties of security forces, whose primary role is to maintain law and order, for which purpose their members exercise the authority of the State itself

when they carry out the duties that have been assigned to them. When they are on active duty, fire brigades may be empowered by law to use force against objects or to take coercive measures against people, but such tasks are only likely to arise on an unplanned, occasional basis, and do not form part of their normal activities. Rather, the duties assigned to fire brigades under the control of the State are virtually the same as those carried out by private firefighters retained by businesses or factories, who, in addition to preventing and fighting fire in the sectors where they work, may be required to participate in joint operations with the former if the need arises. For that reason, the personal protective equipment used by both types of fire brigade must comply with the same user safety requirements.

25. The exception in Annex I, Point 1, to Directive 89/686 specifies that the equipment must be designed and manufactured *specifically* for use by the armed forces or in the maintenance of law and order. In view of the fact that fire brigades can be required on an occasional, contingent, and unplanned basis to carry out any of the functions of those forces, it cannot be argued that the equipment intended for their use fulfils that specific condition regarding its design and manufacture.

26. It is settled case-law that Community legislation does not, in principle, aim to

⁶ — Judgment in Case 113/80 *Commission v Ireland* [1981] ECR 1625, paragraphs 7 and 8.

define concepts on the basis of one or more national legal systems unless there is express provision to that effect.⁷ Directive 89/686 does not contain any express reference to the legal systems of the Member States.

means of measures adopted by regional or local authorities. That division of powers does not, however, release it from the obligation to ensure that the provisions of the directive are properly implemented in national law.⁹

The Court has consistently proscribed any attempt by Member States to have recourse to national law in an attempt to restrict the scope of provisions of Community law, describing this rule as fundamental to the existence of the Community,⁸ since otherwise the unity and efficacy of the Community legal order would be impaired. In the case before the Court, if the Member States were able to exclude from the scope of Directive 89/686 a group of consumers of personal protective equipment that is as important as fire brigades, simply by classifying fire brigades as forces of law and order, the free movement of those goods in the Community would be distorted.

27. The fact that fire brigades are under the control of the *Länder* does not release Germany from the obligation to comply with Directive 89/686 in the same way as all the other Member States. According to case-law, each Member State is free to delegate powers to its domestic authorities as it sees fit and to implement directives by

28. Nor do I agree with the French Government, because the personal protective equipment used by fire brigades is intended to protect them in the exercise of their normal duties, including, in particular, the prevention and fighting of fires. Since they do not undertake military or police operations, they need suits that are fire-retardant to a degree which ensures their health protection and safety at work, and therefore a bullet-proof vest, for example, would be of no use to them at all.

29. The German Government maintains that Directives 89/391¹⁰ and 89/656¹¹ contain minimum provisions, so it would

7 — Judgments in Case 64/81 *Corman* [1982] ECR 13, paragraph 8, and in Case C-296/95 *Emu Tabac and Others* [1998] ECR I-1605, paragraph 30.

8 — Judgment in Case 149/79 *Commission v Belgium* [1980] ECR 3881, paragraph 19.

9 — Judgments in Cases 96/81 and 97/81 *Commission v Netherlands* [1982] ECR 1791 and 1819 respectively; in Joined Cases 227/85, 228/85, 229/85 and 230/85 *Commission v Belgium* [1988] ECR 1, paragraph 9; and in Case 131/88 *Commission v Germany* [1991] ECR I-825, paragraph 71.

10 — Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

11 — Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1989 L 393, p. 18).

be inconsistent for Member States to lay down additional requirements for firefighters' equipment under those directives, which are aimed at improving the health protection and safety of workers, since that is prohibited by Directive 89/686. For that reason, in the German Government's submission, personal protective equipment for firefighters should be excluded from the scope of Directive 89/686.

30. I do not subscribe to that interpretation because the contradiction suggested by the defendant government does not exist.

31. In June 1989, the Council, pursuant to Article 118a of the EC Treaty,¹² adopted Directive 89/391, which is a framework directive aimed at encouraging improvements in the safety and health of workers, and which is intended to serve as a basis for other specific directives covering all the hazards in that sphere. In November 1989, the Council relied on the same legal basis to enact Directive 89/656, laying down minimum provisions for the use of personal protective equipment in the workplace (third individual directive within the meaning of Article 16(1) of Directive 89/391/EEC).

The following December, the Council approved Directive 89/686, the obligations under which the Commission claims that Germany has failed to fulfil. The legal basis for Directive 89/686 is Article 100a of the EC Treaty¹³ and it is one of the measures aimed at progressively establishing the internal market without frontiers over a period which expired on 31 December 1992. It was adopted to address the existence of differing, very detailed, national provisions on the design, manufacture, quality level, testing and certification of personal protective equipment, with a view to protecting individuals against injury and illness. The differences between the national provisions were liable to constitute a barrier to trade with direct consequences for the creation and operation of the common market.

32. Directives 89/391 and 89/656 form part of the block of legislation dealing with Community social policy and they contain minimum rules concerning the imposition by Member States on employers and workers of certain obligations relating to safety and health at work. There would, therefore, be nothing to prevent the introduction of more favourable provisions. Both directives contain exclusions: in the case of Directive 89/391, these are intended to recognise characteristics peculiar to certain specific public service activities (for example, the armed forces or the police), or to the civil protection services; while, in the case of Directive 89/656, their purpose is to

12 — Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC.

13 — Now, after amendment, Article 95 EC.

exclude from the meaning of individual protective equipment for the purposes of the directive, equipment used by emergency and rescue services, and personal protective equipment worn or used by the military, the police and persons responsible for the maintenance of public order.

to posts which involve direct or indirect participation in the exercise of official authority, and to those whose purpose is to safeguard the general interests of the State or of other public authorities. The powers conferred on fire brigades are included among the powers of the State and, accordingly, the European Community may not interfere in the nature or the exercise of those powers.

By contrast, Directive 89/686 is aimed at harmonising the laws of the Member States, laying down the conditions governing the placing on the market and free movement within the Community of personal protective equipment, together with the basic safety requirements which that equipment must satisfy in order to ensure the health protection and safety of users. Here, the power of the Member States to lay down the relevant requirements is subject to two conditions: there must be compliance with the Treaty and the exercise of the power concerned must not give rise to modifications to personal protective equipment which could result in its non-conformity with the provisions of the directive. In any event, Member States must not prohibit, restrict or hinder the placing on the market of such equipment or its components which satisfy the provisions of the directive and which bear the EC mark.

33. The defendant government draws a parallel between the exception concerning employment in the public service laid down in Article 39(4) EC, and the exception in Annex I, Point 1, to Directive 89/686. Both must be interpreted strictly, and are limited

34. I do not agree with this argument put forward by the German Government either. Article 39(4) EC excludes employment in the public service from the scope of the principle of free movement of workers. Since that is a derogation from one of the fundamental freedoms, the Court has restricted it to posts which involve the exercise of official authority, including local government posts,¹⁴ and which require a special relationship of allegiance to the State on the part of persons occupying them, and the reciprocity of rights and duties which form the foundation of the bond of nationality.¹⁵ The posts excluded are confined to those which, having regard to the tasks and responsibilities involved, display the characteristics of the specific activities of the public service in the spheres described.

14 — Judgment in Case 149/79 *Commission v Belgium* [1982] ECR 1845, paragraph 7.

15 — Judgments in Case 149/79 *Commission v Belgium* [1980] ECR 3881, paragraphs 9 and 10; and in Case 66/85 *Laurie-Blum* [1986] ECR 2121, paragraph 27.

35. As concerns freedom of establishment and freedom to provide services, the first paragraph of Article 45 EC, and Article 55 EC, also lay down an exception for activities which are connected to the exercise of official authority. The Court has restricted the exception to the activities referred to in Articles 43 EC and 49 EC which in themselves involve a direct and specific connection with the exercise of official authority.¹⁶

36. However, it would not be appropriate in this case to apply, by analogy, the exception relating to persons and services, since Article 30 EC, which is included in the chapter on free movement of goods, sets out a wide range of grounds on which restrictions on imports, exports or goods in transit may be justified. Nevertheless, it is well known that the Court has ruled that Article 30 EC is not designed to reserve certain matters to the exclusive jurisdiction of Member States but permits national laws to derogate from the principle of the free movement of goods only to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article. It therefore follows that, when certain Community directives provide for the harmonisation of the measures necessary to guarantee the protection of animal and human health and when they establish procedures to check that they are observed, recourse to Article 30 EC is no longer justified, and the appropriate checks must be carried out and the protective measures adopted within

the framework outlined by the harmonising directives.¹⁷

Since Directive 89/686 harmonises the laws of the Member States relating to personal protective equipment, in order to guarantee free movement of goods for such equipment, the only derogations permitted are the ones laid down in the directive itself; that is, the exceptions relating to equipment governed by Community law, which cover its placing on the market, freedom of movement, and safety, and the exceptions set out in the detailed list in Annex I.

37. The German Government claims that the Member States have a wide discretion, which is not open to judicial review, when it comes to interpreting the exception concerning the free movement of goods in Annex I, Point 1, to Directive 89/686. The German Government puts forward the example of the general-interest grounds listed in Article 30 EC, where the definition is enshrined in Community law but the level of protection is left to the discretion of the Member States. The leeway which the Member States have enables them to determine the duties of the forces of law and order that participate in the exercise of official authority. Accordingly, the regulation of the personal protective equipment

16 — Judgment in Case 3/88 *Commission v Italy* [1989] ECR 4035, paragraph 13.

17 — Judgments in Case 251/78 *Denkavit Futtermittel* [1979] ECR 3369, paragraph 14; and in Case C-102/96 *Commission v Germany* [1998] ECR I-6871, paragraph 21.

used by fire brigades in their capacity as forces of law and order forms part of the discretionary powers of the Member States relating to the implementation of Directive 89/686.

38. While I might agree with the German Government in principle, I disagree totally as to the substance. It is the case that Member States have a considerable degree of latitude to oversee the maintenance of law and order in their territories, and the division of powers between the various security forces and bodies. They also enjoy a wide margin of discretion when laying down the requirements for personal protective equipment designed and manufactured specifically for the forces of law and order, but only in so far as that equipment is excluded from the scope of Directive 89/686 by Annex I, Point 1, thereof. As I have already pointed out, Annex I, Point 1, derogates from Article 4, which provides for the free movement of personal protective equipment within the Community, and, as such, it must be interpreted restrictively.

In view of the fact that the maintenance of law and order in the territories of the Member States is not the primary, or even the secondary, duty of fire brigades, it is not appropriate to classify them as forces of law and order in order to exclude their personal protective equipment from the material scope of Directive 89/686.

39. In the German Government's submission, the exception in Annex I, Point 1, to Directive 89/686 must conform to the division of powers between the Member States and the Community, and to the principles of subsidiarity and proportionality referred to in Article 5 EC. In the German Government's opinion, the interpretation of the exception proposed by the Commission amounts to an abuse of power, and it is also a breach of the fundamental provisions in question. The exercise of the rights and powers associated with official authority, including the fixing of requirements for personal protective equipment, comes within the competence of the Member States. Therefore, the derogations provided for by Directive 89/686 should be applied by reference to those provisions of the Treaty, from which it follows that the equipment used by fire brigades is covered by the exception in Annex I, Point 1, to the directive.

40. However, when fire brigades carry out the duties entrusted to them, they are not exercising official authority, and they do not form part of the forces responsible for the maintenance of law and order. The Commission's interpretation of the exception does not, therefore, constitute an abuse of power, and nor does it breach the principles of subsidiarity and proportionality.

41. According to the German Government, it is difficult to distinguish between the duties of fire brigades and those of the forces of law and order. On the one hand,

the former have to protect themselves against personal attack, since fires are not just natural phenomena but can be started by pyromaniacs or terrorists as well. On the other hand, the forces of law and order lend assistance in natural catastrophes, such as forest fires and floods.

fighters is designed and manufactured specifically for the forces of law and order. The equipment is not, therefore, covered by the exception in Annex I, Point 1, to Directive 89/686, from which it follows that it must be permitted to move freely within the Community.

42. I find the German Government's assertions perplexing, because the majority of citizens do not appear to have the same difficulty. If there is a fire in their homes or in an area of woodland, they call the fire brigade; if they or their property come under threat, they go to the police. To state that firefighters have to protect themselves from attacks by pyromaniacs appears to me to be beside the point, since such people set fire to property rather than firefighters; so, when firefighters are putting out the flames, they do not need self-defence equipment to protect them from attack by people but rather specific equipment that enables them to work as safely as possible to extinguish the fire. Nor is it relevant that the forces of law and order assist in operations to deal with disasters caused by catastrophes, since ordinary citizens also help voluntarily and unselfishly in those kinds of emergencies.

44. In my opinion, the Commission has demonstrated that the Federal Republic of Germany has failed to fulfil its obligations under Articles 1 and 4 of Directive 89/686, by retaining, in certain *Länder*, legislation under which personal protective equipment for use by fire brigades is subject to additional requirements, despite the fact that such equipment satisfies the requirements of the directive and bears the EC mark.

The Commission's application is therefore well founded and a declaration should be granted against the Federal Republic of Germany.

V — Costs

43. None of the arguments put forward by Germany has convinced me that the personal protective equipment used by fire-

45. In accordance with Article 69(2) of the Rules of Procedure, the unsuccessful party

must be ordered to pay the costs, if they have been applied for in the other party's pleadings. Since I propose that the Commission's application should be allowed, and since an order for costs has been sought against Germany, it is appropriate to order the Federal Republic of Germany to pay the costs of the proceedings.

46. The French Republic, which intervened in these proceedings in support of the claims of the Federal Republic of Germany, must bear its own costs, in accordance with the first subparagraph of Article 69(4) of the Rules of Procedure.

VI — Conclusion

47. In the light of the foregoing considerations, I propose that the Court of Justice should:

- (1) declare that the Federal Republic of Germany has failed to fulfil its obligations under Articles 1 and 4 of Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment, by retaining, in certain *Länder*, legislation under which personal protective equipment for use by fire brigades is subject to additional requirements, despite the fact that such equipment satisfies the requirements of that directive and bears the EC mark;
- (2) order the Federal Republic of Germany to pay the costs;
- (3) order the French Republic to bear its own costs.