

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 2 DECEMBER 1981¹

*Mr President,
Members of the Court,*

1. The six cases with which this Opinion is concerned arise from actions brought by the Commission against the Kingdom of Belgium under Article 169 of the EEC Treaty. According to the applicant the defendant State has failed to fulfil one of the fundamental Community obligations by not having adopted, within its legal system, the measures needed to conform with a number of directives emanating from the Council of Ministers between 1975 and 1978 on the basis of Articles 100 and 235 of the EEC Treaty, all concerned with the approximation of laws in relation to the protection of the environment and human health. They are namely Directive 75/439 of 16 June 1975 on the disposal of waste oils, Directive 75/440 of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, Directive 75/442 of 15 July 1975 on waste, Directive 76/160 of 8 December 1975 concerning the quality of bathing water, Directive 76/403 of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls and Directive 78/176 of 20 February 1978 on waste from the titanium-dioxide industry.

2. The Belgian Government acknowledges that it has not yet adopted all the measures by way of laws, regulations and administrative provisions needed to implement the six directives with which we are concerned. Nevertheless it also alleges, first of all generally in the defences and then, with more particulars, in the rejoinders, that as regards certain of the directives "measures of partial implementation" are already in force. In that respect the defendant government refers to: the Law of 26 March 1971 and the Royal Decree of 3 October 1975 which contain provisions complying with certain obligations in Directive 75/439; the General Regulation on the Protection of Employment (Title 1 under the heading "Waste", List A and "Refuse", List B) containing provisions appropriate for giving effect to Directive 75/442; and finally the Law of 22 July 1974 and the Royal Decree of 9 February 1976 containing rules corresponding to those of Directive 76/403.

Certainly it cannot be denied that in principle when the law of a Member State already contains the rules capable of achieving the result sought by a particular directive that State is not bound to adopt new rules for the specific purpose of giving effect to the same directive. Thus if, instead of being collected into a single law, the national rules consistent with a directive are spread out among various laws, the obligation on the Member State may also

¹ — Translated from the Italian.

be regarded as fulfilled. But in both cases it is essential that the national law should be in complete conformity with the requirements of the directive. There must be total compliance with the directive: only in that way will the substance of the national laws of all the Member States be uniform no matter the variety of forms and methods.

In the present case the Belgian Government itself admits that at most there has been partial implementation of three directives out of six. A quick comparison of the obligations arising under the Community measures with the laws and regulations relied upon by the defendant suffices to demonstrate the following situation:

- (a) Directive 75/439 prohibits any discharge of waste oils into ground water, internal surface waters, coastal waters and drainage systems but the first prohibition is not to be found either in the Law of 26 March 1971 which concerns solely the protection of surface water against pollution or in the Royal Decree of 3 October 1975. In the same way the obligation which the directive imposes on States to prevent any deposit and or discharge or both, of waste oils harmful to the soil and any processing of waste oils causing air pollution which exceeds the level prescribed by existing provisions (Article 4) may not be regarded as fulfilled by the two Belgian measures.
- (b) The rules of Directive 75/442 do not have even a partial equivalence in those of the General Regulation on the Protection of Employment (adopted by two decrees of the Regent dated 11 February 1946 and 27 September 1947 and subsequently amended several times). In fact the regulation in question is confined to specifying industrial establishments which may be "dangerous, unhygienic and cause inconvenience" and provides that prior authorization is necessary for their creation and operation and further that they must be subject to special inspection. The representative of the Belgian Government confined himself to referring to two items of the nomenclature and classification of those establishments. In my opinion none of that has anything to do with the provisions of the directive which concern in particular the problem of the disposal of waste (at the various stages of collection, sorting, transport, deposit and treatment) and set as their aim the protection not only of human health but also of the environment.
- (c) The Belgian Law of 22 July 1974 on toxic waste, supplemented by a regulation of 9 February 1976, imposes certain measures which Directive 76/403 subsequently made mandatory but it does not contain others which are very important. In particular the regeneration of toxic waste, the abandonment of objects and equipment no longer capable of being used and containing polychlorinated phenyls and the disposal of the latter, are not covered by the Belgian rules in force.

3. To justify the total or partial failure to implement the six directives, the Belgian Government has primarily put forward an argument of a constitutional nature. It is as follows: the structure of the Belgian State has been altered in recent years to provide for regionalization and it was only on 8 August 1980 that the Law defining the distribution of powers between the State and the Regions was adopted. The uncertainties and difficulties inherent in that process of fundamental alteration of the public institutions were the cause of the delay in fulfilling the obligations under the directives. A large number of the matters with which the directives are concerned come under the powers of the regional institutions with the result that the adoption of the implementing measures requires more time than that determined by the Council.

The defendant stressed the exceptional nature of the constitutional reforms brought about in recent years and maintained that this should lead to a different decision in these cases from that adopted in the above-mentioned case-law. That, however, cannot be accepted. In spite of the particular difficulties of the institutional or political situation of a Member State it is not possible to extend the time-limits laid down by directives and even less to derogate from them. It is necessary to bear in mind, as the Court has stated, that "The mandatory nature of directives entails the obligation for all Member States to comply with the time-limits contained therein in order that the implementation shall be achieved uniformly within the whole Community" (judgment of 22 September 1976 in Case 10/76 *Commission v Italian Republic* [1976] ECR 1359, paragraph 12 at p. 1365).

I do not think that justifications of this kind are valid. The Court has repeatedly stated 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 resulting from Community directives". Among the most recent judgments let me mention those of 10 November 1981 in Joined Cases 28 and 29/81 *Commission v Italian Republic*, 13 October 1981 in Case 252/80 *Commission v Italian Republic* and 17 February 1981 in Joined Cases 133 and 171/80 *Commission v Italian Republic*.

I cannot refrain from a final observation. The periods within which the directives had to be implemented extend from June 1977 to February 1979 (in particular for Directives 75/439 and 75/440 the period expired on 18 June 1977; for Directive No. 75/442 on 18 July 1977; for Directive 76/160 on 10 December 1977; for Directive 76/403 on 9 April 1978 and for Directive 78/176 on 22 February 1979). We have seen that the new distribution of powers between central government and regional authorities was defined in August 1980. As a result, then, it must be assumed that, before that date, it was for the central government to adopt the necessary measures of implementation and the proposition that there was a power vacuum or legislative paralysis which lasted for several years is unacceptable!

4. During the course of the oral procedure the defendant's representative stated that in October of this year the Flemish region adopted measures for implementing Directives 439 and 442 of 1975, 403 of 1976 and 176 of 1978 in relation to the collection and disposal of waste, that the Walloon region has already prepared, in draft form, implementing measures in relation to the same four directives, and finally, that as regards the region of Brussels, which is the concern of the central government, a draft law has been prepared.

I shall confine myself to saying that those measures are belated and inadequate. Apart from the fact that there is little information in relation to the implementation of the other two

directives it is obvious that pending legislation such as that in relation to the Brussels region and the Walloon region is irrelevant in the present case. The measures very recently adopted by the Flemish region are in any event a form of partial implementation since the territorial effect of the rules is confined to only one of the three regions. Generally speaking, it must be said that the implementation of directives by means of legislative measures of a regional nature is certainly acceptable from the Community point of view since each Member State is free to distribute legislative powers within its territory as it thinks best, but it remains true that the Member State, whatever its structure, is responsible to the Community when there is implementation only in respect of part of its territory.

5. In conclusion I propose that the Court, in giving judgment in the six actions brought by the Commission against the Kingdom of Belgium by applications lodged at the Registry on 3 April 1981 in Cases 68/81, 69/81 and 70/81 and on 6 April 1981 in Cases 71/81, 72/81 and 73/81, should declare that the defendant State has not adopted within the prescribed periods the provisions needed to comply with Council Directives 75/439 and 75/440 of 16 June 1975, 75/442 of 15 July 1975, 76/160 of 8 December 1975, 76/403 of 6 April 1976 and 78/176 of 20 February 1978 and that it has thus failed to fulfil its obligations under the Treaty.

The costs must be borne by the unsuccessful party in accordance with Article 69 (2) of the Rules of Procedure.