OPINION OF ADVOCATE GENERAL DARMON
delivered on 18 March 1992 *

Mr President,
Members of the Court,

1. By application lodged at the Court Registry on 24 May 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to provide the Commission with the information it had requested and by requiring undertakings established in Greece to purchase exclusively electronic cash registers comprising in their manufacture at least 35% value added in Greece, the Hellenic Republic had failed to fulfil its obligations under Articles 5 and 30 of the Treaty.

2. These proceedings arose from a complaint to the Commission about Greek legislation concerning electronic cash registers used in business: undertakings established in Greece may purchase only approved cash registers; however, the complainant asserted that only registers comprising in their manufacture at least 35% value added in Greece were approved by the Minister of Finance.

3. Two requests for an explanation sent by telex on 7 December 1988 and 23 February 1989 by the Commission to the Greek Permanent Representation went unanswered.

4. In a letter before action sent on 8 August 1989, the Commission noted that there was an infringement of Article 5 of the Treaty and that the Greek rules concerning electronic cash registers were incompatible with the provisions of Community law relating to the free movement of goods, in particular Article 30 of the EEC Treaty. The letter went unanswered.

5. Finally, the reasoned opinion of 8 June 1990 alleging failure to fulfil obligations under Article 5 and failure to fulfil obligations under Article 30 of the Treaty did not give rise to any remedial action by the Greek authorities within the period of one month allowed to them.

6. Under Article 2(1) of Greek Law No 1809/88 [1] of 29 September 1988 and 5 October 1988 on the rules governing electronic cash registers and other provisions, electronic cash registers, used especially in retail business, may be approved by a committee in the Ministry of Finance only if they comprise in their manufacture at least 35% value added in Greece.

7. There is no doubt that such rules directly interfere with intra-Community trade and constitute a measure having equivalent effect to a quantitative restriction on imports in contravention of Article 30 of the EEC

* Original language: French.

1 — *Official Gazette of the Hellenic Republic*, A'222.

Treaty as interpreted by the Court since the *Dassonville* judgment. [2]

8. Admitting that its legislation had to be amended, [3] the Hellenic Republic asserts that it expressed its intention of adjusting the rules governing electronic cash registers by passing Article 14(2) of Law No 1914/90 [4] of 17 December 1990.

9. This text, which replaces Article 2(1) of Law No 1809/88, provides that cash registers coming from Member States of the Community, deemed to be domestic products for the calculation of the value added in Greece, are not subject to the requirement that a minimum of 35% of their value should be added in Greece. It will not come into force until 1 January 1993.

10. It is therefore established that at the date on which the period set by the Commission in its reasoned opinion expired, Article 2(1) of Law No 1809/88 was still applicable. It follows that the defendant State has failed to fulfil its obligations under Article 30 of the EEC Treaty, as indeed it does not deny.

11. The Commission also bases its action on Article 5 of the EEC Treaty.

12. In the abovementioned telexes of 7 December 1988 and 23 February 1989, the Hellenic Republic was requested to provide the Commission with 'texts, information and explanations' relating to the conditions for approval of electronic cash registers in Greece *within a period of thirty days.*

13. It is common ground that the defendant State provided the first information as to Greek legislation on cash registers at a meeting held in Athens with the representatives of the Commission on 27 and 28 September 1990, that is to say after the period provided for in the reasoned opinion had expired. The Hellenic Republic did not therefore cooperate with the Commission until nearly two years after the first request for information made by the latter.

14. In an earlier case, [5] the Commission considered that, by refusing to provide it with information about restrictions on olive oil imports and in particular about two specific cases in which authorization to import was not granted, the Greek Government had failed to fulfil its obligations under Article 5 of the Treaty.

15. The Court held that:

'...The Member States are under a duty, by virtue of Article 5 of the EEC Treaty, to facilitate the achievement of the Commission's tasks, which consist in particular,

2 — Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837.

3 — Defence, p. 3 of the French translation.

4 — *Official Gazette of the Hellenic Republic,* A'178.

5 — Case 272/86 *Commission* v *Greece* [1988] ECR 4875.

pursuant to Article 155 of the Treaty, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied'. [6]

16. The obligation to cooperate under Article 5 of the Treaty is especially important during the pre-litigation stage of the action for failure to fulfil obligations: only active cooperation allows it to be determined with certainty whether an infringement of the Treaty exists.

17. It follows that, by failing to provide the information requested in the telexes of 7 December 1988 and 23 February 1989 within the prescribed periods, the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty. [7]

18. I propose therefore that the Court should:

(1) declare that, by requiring undertakings to be equipped exclusively with electronic cash registers approved by a committee in the Ministry of Finance and comprising in their manufacture at least 35% value added in Greece, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) declare that, by failing to reply within the period allowed to the questions asked in the telexes of 7 December 1988 and 23 February 1989, it has failed to fulfil its obligations under the first paragraph of Article 5 of the EEC Treaty;

and order the defendant State to pay the costs.

6 — Ibid., paragraph 30. See also the judgment in Case 97/81 *Commission* v *Netherlands* [1982] ECR 1818, paragraph 7, and lastly the judgment in Case 33/90 *Commission* v *Italy* [1991] ECR I-5987, paragraphs 18 to 20.

7 — On this point see my Opinion in the abovementioned Case 33/90, paragraphs 27 and 28.