OPINION OF ADVOCATE GENERAL JACOBS

delivered on 30 March 2000 *

1. In this case the Commission seeks a declaration that, by maintaining unamended Article 257(1) of the French Customs Code as regards Community shipowners covered by Article 1(1) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), [1] France has failed to fulfil its obligations under that regulation.

2. Article 1(1) of the regulation provides as follows:

'As from 1 January 1993, freedom to provide maritime transport services within a Member State (maritime cabotage) shall apply to Community shipowners who have their ships registered in, and flying the flag of a Member State, provided that these ships comply with all conditions for carrying out cabotage in that Member State, including ships registered in Euros, once that Register is approved by the Council.'

3. Certain derogations concerning France are contained in Article 6, which provides, so far as material, as follows:

'1. By way of derogation, the following maritime transport services carried out in the Mediterranean and along the coast of Spain, Portugal and France shall be temporarily exempted from the implementation of this Regulation:

— cruise services, until 1 January 1995,

* Original language: English.

1 — OJ 1992 L 364, p. 7.

— transport of strategic goods (oil, oil products and drinking water), until 1 January 1997,

— services by ships smaller than 650 gt, until 1 January 1998,

— regular passenger and ferry services, until 1 January 1999.

2. By way of derogation, island cabotage in the Mediterranean and cabotage with regard to the Canary, Azores and Madeira archipelagoes, Ceuta and Melilla, the French islands along the Atlantic coast and the French overseas departments shall be temporarily exempted from the implementation of this Regulation until 1 January 1999.

3. ...'

4. The French legislation on maritime cabotage is contained in the French Customs Code of 11 May 1977. Article 257(1) of the Code provides that transport services carried out between the ports of metropolitan France shall be reserved to ships flying the French flag. However, the Minister responsible for the merchant navy may authorise a foreign ship to carry out a particular transport service.

5. France acknowledges that the Code in its present form does not comply with the regulation, and that draft legislation amending the Code has not yet been enacted. France relies however on two steps which have been taken. First, a circular (Circular No 93-S-030 of 19 March 1993) setting out the content of the regulation was published in the Official Customs Bulletin No 1139 of the same date. Secondly, a footnote to Article 257 of the Code contains a reference to the regulation, setting out its full title (but no more than that).

6. The Commission replies that neither the circular nor the footnote can remedy the failure to amend the Code. I agree. Only the amendment of the offending legislation can terminate the infringement. As the Court has held, the incompatibility of national legislation with provisions of

Community law, even those which are directly applicable, can be remedied only by means of national provisions of a binding nature which have the same legal force as those which must be amended. [2] It is clear that the circular cannot remedy the failure to amend the Code.

7. As regards the footnote to Article 257 of the Code referring to the regulation, that is in my view wholly inadequate, given that the Article is simply incompatible with the regulation. As the Court has held, 'the principles of legal certainty and the protection of individuals require, in areas covered by Community law, that the Member States' legal rules should be worded unequivocally so as to give the persons concerned a clear and precise understanding of their rights and obligations and enable national courts to ensure that those rights and obligations are observed'. [3] Those requirements are manifestly not satisfied by the provisions of the Code.

2 — See, for example, Case 168/85 *Commission* v *Italy* [1986] ECR 2945, paragraph 13 of the judgment.

3 — Case 257/86 *Commission* v *Italy* [1988] ECR 3249, paragraph 12 of the judgment.

Conclusion

8. Accordingly, the Court should in my opinion:

(1) declare that, by maintaining unamended Article 257(1) of the French Customs Code as regards Community shipowners covered by Article 1(1) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), the French Republic has failed to fulfil its obligations under that regulation;

(2) order the French Republic to pay the costs.