OPINION OF ADVOCATE GENERAL ALBER

delivered on 25 April 2002 [1]

1. The Commission is seeking a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, [2] the Kingdom of Belgium has failed to fulfil its obligations under that directive.

2. Article 2 of the directive provides:

'(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive no later than 1 October 1999. They shall forthwith inform the Commission thereof.

...'

3. Since it had received no information concerning the implementation of Directive 98/76/EC, the Commission initiated the procedure under Article 226 EC and, by letter of 18 February 2000, gave the Kingdom of Belgium formal notice to submit its observations within two months.

4. In its reply of 21 April 2000, the Belgian Government stated that implementing measures were being prepared.

5. On 7 September 2000 the Commission sent the Kingdom of Belgium a reasoned

1 — Original language: German.
2 — OJ 1998 L 277, p. 17.

opinion, giving it a two-month period in which to transpose Directive 98/76/EC.

6. In its observations of 3 October 2000, Belgium stated that the directive would be implemented by orders, which would be published in the *Moniteur belge* early in 2001.

7. Since the Commission had subsequently received no information about adoption of the measures, it commenced proceedings on 12 July 2001. It complains that the Kingdom of Belgium, by failing to fulfil its obligations under Directive 98/76/EC before 1 October 1999, has infringed Article 249(3) EC and Article 10 EC.

8. The Kingdom of Belgium does not dispute that it has failed to fulfil its obligations.

9. The Belgian Government contends, first, that as regards admission to the occupation of road haulage operator, the principles of the directive were stated in a law which entered into force on 30 June 1999. It admits, however, that for transposition it is necessary to adopt a royal decree and a ministerial implementing order. It explains that the delay in transposition is due to difficulties arising from the involvement of the regions and various governmental authorities. However, the provisions should be adopted before the end of 2001.

10. As regards the legislation necessary in relation to admission to the occupation of road passenger transport operator, for which a royal decree and a ministerial order are required, the Belgian Government again refers to the consultation with the regions, which is still in progress. The relevant provisions should be published by January 2002 at the latest.

Analysis

11. Under the first paragraph of Article 10 EC, the Member States are to take all appropriate measures to ensure fulfilment of the obligations resulting from action taken by the institutions of the Community. Such action includes directives which, pur-

suant to the third paragraph of Article 249 EC, are binding, as to the result to be achieved, upon each Member State to which they are addressed. That obligation involves, for each Member State to which a directive is addressed, the adoption, within the framework of its national legal system and within the prescribed period, of all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues. [3]

12. The mere initiation of the procedure for adoption of a law designed to transpose a directive into national law does not fulfil that requirement. [4]

13. It is settled case-law that the merits of an action are not affected by the fact that the default concerned may have been remedied after the expiry of the time-limit prescribed by the reasoned opinion. [5] Even the fact that appropriate legislation may have been adopted in the meantime does not preclude a declaration that there has been a failure to fulfil obligations.

14. Finally, it should also be pointed out that a Member State cannot rely on practices or circumstances existing in its internal legal order to justify its failure to comply with the obligations and time-limits laid down by Community directives, nor therefore the late transposition of a directive. [6]

15. The Commission has also claimed that the Kingdom of Belgium should be ordered to pay the costs. Under Article 69(2) of the Rules of Procedure, the unsuccessful party must pay the costs if they have been applied for in the successful party's pleadings.

3 — See Case C-119/00 *Commission* v *Luxembourg* [2001] ECR I-4795, paragraph 12, and Case C-29/01 *Commission* v *Spain* [2002] ECR I-2503, paragraph 9.

4 — See Case C-29/01 (*Commission* v *Spain*, cited in footnote 3, paragraph 10).

5 — See Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 45, and Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26.

6 — See Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9; and Case C-139/97 *Commission* v *Italy* [1998] ECR I-605, paragraphs 9 to 11.

Conclusion

16. In the light of the foregoing considerations, I propose that the Court:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 98/76/EC of 1 October 1998 amending Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

(2) order the Kingdom of Belgium to pay the costs.