OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 15 December 1993 *

Mr President,
Members of the Court,

1. In these proceedings for failure to fulfil a Treaty obligation, the Commission alleges that the Italian Republic has not within the prescribed period transposed Directive 88/599/EEC [1] into national law and/or not informed the Commission of the text of the transposing provisions. That directive contains the minimum requirements as to checks carried out by the Member States to ensure compliance with Community social legislation relating to road transport.

2. Under Article 7 (1) of the directive, Member States [2] were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive on 1 January 1989 at the latest. [3] Article 7 (2) obliges Member States to communicate to the Commission their laws, regulations and administrative provisions concerning the application of the directive.

3. Before the Court the defendant Member State merely drew attention to a draft law under which the directive at issue would be implemented by means of administrative procedures.

4. It is therefore established that it has not within the prescribed period fulfilled its obligation to *transpose* the directive, and the Commission's application must consequently be upheld to that extent. On the other hand, the Court should not make any finding on the point of *failure to communicate* the provisions, since there were no provisions which could and should have been communicated.

* Original language: German.

1 — Council Directive of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (OJ 1988 L 325, p. 55).

2 — With the exception of Portugal, for which the time-limit was 1 January 1990.

3 — It may be noted in passing that the period of about six weeks for transposition appears remarkably short. The defendant Member State has not, however, objected to this. In this connection the judgment in Case C-74/71 *Commission* v *Germany* [1992] ECR I-5437 should be noted, according to which a Member State, in the context of an action for failure to fulfil its obligations by reason of an infringement of a directive, cannot argue that the directive is unlawful, but only that it is legally non-existent (paragraphs 10 and 11). In any event, if it wishes to plead that implementation of the directive is absolutely impossible, it must substantiate that assertion (paragraph 12).

5. I therefore propose that the Court:

(1) declare that by not adopting within the prescribed period the laws, regulations and administrative provisions necessary for compliance with Directive 88/599/EEC, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) order the Italian Republic to pay the costs, in accordance with the application.