OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 14 March 1996 *

1. By an action brought on 19 July 1995, the Commission sought a declaration by the Court that the Federal Republic of Germany has failed to fulfil its obligations under the EC Treaty by failing to adopt within the prescribed period the measures needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts. [1]

2. The first paragraph of Article 44(1) of the directive in question lays down 1 July 1993 as the date by which Member States were to bring into force the laws, regulations and administrative provisions needed in order to comply with the directive.

3. In this respect, it is sufficient to note that the German Government does not deny the infringement alleged against it. In its observations it has merely stated that decrees intended to bring national law into line with the aforementioned directive were being adopted to that end and that it informed the Federal contracting authorities and the relevant *Länder* ministries in due time that the directive in question was directly applicable as from 1 July 1993. It is settled case-law [2] that this does not, however, justify a failure by a Member State to fulfil its obligations.

4. I therefore propose that the Court should uphold the application and order the defendant State, pursuant to Article 69(2) of the Rules of Procedure, to pay the costs.

* Original language: Italian.

1 — OJ 1992 L 209, p. 1.

2 — See, *ex multis*, the judgment in Case C-147/94 *Commission* v *Spain* [1995] ECR I-1015.