OPINION OF ADVOCATE GENERAL MISCHO

delivered on 14 December 2000 [1]

1. The Commission of the European Communities seeks a declaration from the Court that, by failing to communicate the laws, regulations and administrative provisions necessary to comply with all the provisions of European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively [2] ('the Directive'), or by failing to adopt the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under the Directive. It also asks for an order for costs against the French Republic.

2. Under the first subparagraph of Article 4(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 13 October 1998 and forthwith to inform the Commission thereof.

3. The Commission alleges that the French authorities have transposed into national law only the provisions laid down in Articles 1(1)(a), 2(1)(a) and 3(1)(a) of the Directive, relating to the thresholds above which contract notices must be published in the *Official Journal of the European Communities*. It considers that, in those circumstances, it should be found that, notwithstanding expiry of the time-limit laid down, the French Republic has not yet adopted the national provisions for transposing the whole of the Directive and, in any event, has not communicated them.

4. In its defence the French Government does not deny the infringement pleaded. It points out that the Directive has been partly transposed by the Order of 22 April 1998 which sets the thresholds above which contract notices have to be published in the *Official Journal of the European Communities*, and it asks the Court to find that the process for transposition of the Directive is in the course of being completed given that a draft decree is undergoing interdepartmental examination and will be submitted shortly to the Conseil d'État.

1 — Original language: French.

2 — OJ 1997 L 328, p. 1.

5. It is common ground that, on the date of expiry of the time-limit set by the reasoned opinion (Commission letter of 3 September 1999 setting a time-limit of two months from its notification), the French Republic still had not adopted the measures necessary to transpose the Directive in full.

6. The Commission's action should therefore be considered well founded.

7. Pursuant to Article 69(2) of the Rules of Procedure, the French Republic should be ordered to pay the costs.

Conclusion

8. In view of the foregoing considerations, I propose that the Court should rule as follows:

(1) by failing to communicate the laws, regulations and administrative provisions necessary to comply with all the provisions of European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively, or by failing to adopt the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under that directive;

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