# OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 14 June 2001 [1]

1. By the present action brought under Article 226 EC, the Commission is asking the Court to declare that, by failing to notify the laws, regulations and administrative provisions necessary for compliance with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (hereinafter 'the Directive') [2] or by failing to adopt all the measures necessary for that purpose, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.

2. In accordance with Article 9 thereof, the Directive entered into force on the date of publication in the Official Journal, that is 23 November 1995; the Member States had to bring into force the laws, regulations and administrative provisions necessary for compliance within nine months of that date, that is by 23 August 1996, and had to inform the Commission thereof immediately (Article 8).

3. As the Commission had received no notification from the Netherlands Government concerning the measures transposing the Directive, it concluded that the Netherlands had not yet taken those measures and had therefore failed to fulfil its obligations in that respect. Consequently, by letter of 16 January 1997, the Commission initiated an infringement procedure, putting the Netherlands Government on notice to submit its observations within two months.

4. On 24 March 1997 the Permanent Representation of the Netherlands replied that the measures necessary for compliance with the Directive were under preparation before the competent national authorities.

5. On 14 October 1998, as no new information had been received, the Commission sent a reasoned opinion to the Netherlands Government asking it to adopt all the measures necessary for compliance with the obligations under the Directive within two months of notification of the opinion.

1 — Original language: Italian.
2 — OJ 1995 L 281, p. 51

6. By letter of 18 December 1998, the Netherlands Government replied that the provisions in Article 4(b) and (c), first and second indent, of the Directive had been implemented by Articles 8.5 and 8.6 of the Telecommunicatiewet (Telecommunications Law) of 19 October 1998, which entered into force on 15 December 1998; while the other provisions of the Directive would be implemented as quickly as possible, once the internal constitutional procedures were completed. A year later, however, the Netherlands Government informed the Commission by letter of 2 November 1999 that the legislative procedure was still in progress.

7. As the Commission did not receive any other communication from the Netherlands Government after that date, it decided on 9 June 2000 to bring the present action.

8. The Netherlands Government has not disputed the failure to fulfil obligations at issue, and acknowledges that Articles 2, 3, 4(a) and (d), last paragraph, and 5 of the Directive have not yet been transposed into national law. In its defence pleadings it merely stated that the Directive will be completely transposed into national law when the bill amending the Telecommunicatiewet, approved by the Council of Ministers on 14 July 2000, has obtained the opinion of the Council of State and may therefore be submitted to the upper house of Parliament. Moreover, the defendant government objects that some provisions of the Directive, in particular Article 4(b) and (c), first and second indents, have already been transposed by Articles 8.5 and 8.6 of the Telecommunicatiewet; that the national law on patents and competition complies with Article 4(d), first and second indents, and (e) of the Directive; and that the other provisions of the Directive are already complied with in the Netherlands, so that neither consumers nor operators of television networks and telecommunications services are suffering any damage as a result of the delay in transposition. The defendant government also acknowledges that those circumstances do not exempt the State from the obligation to implement the Directive formally and within the time allowed.

9. It may therefore be stated with certainty that the Netherlands has not introduced the measures necessary to transpose all the provisions of the Directive into national law within the period prescribed. Similarly, it is certain that it has not fulfilled the obligation to notify the Commission exhaustively and in good time of the information requested in Article 8 of the Directive.

10. That being so, I would recall first of all, as regards the failure to transpose the Directive within the period prescribed, that, according to settled case-law of the Court, any action for failure to fulfil obligations brought by the Commission in

such a case must be considered to be well founded. [3] For that purpose, the existence of the infringement must be assessed in relation to the situation which existed on the expiry of the period laid down in the reasoned opinion. [4] Nor, secondly, again according to settled case-law of the Court, may a Member State plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive. [5]

11. As regards the defendant government's argument that the Netherlands legal order is already in conformity with the Directive (at least in part), I would note that that government has acknowledged that such a circumstance does not exempt the State from the obligation to implement the Directive formally and within the period prescribed. As is clear from settled case-law, 'although [the third paragraph of Article 189 of the EC Treaty] leaves Member States to choose the ways and means of ensuring that the directive is implemented, that freedom does not affect the obligation imposed on all the Member States to which the directive is addressed, to adopt, in their national legal systems, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues'. [6] For that purpose, they must establish a specific legislative framework in the area in question which brings national law into line with the provisions of the Directive in such terms that there are no doubts or ambiguities, not only as regards the content of the relevant national legislation and its compliance with the Directive, but also as regards the formal status of that legislation. [7] Therefore, given that the Member State concerned must 'ensure the full and exact application of the provisions of any directive' the infringement exists until it 'has completely complied with it', even if 'the [domestic] law has to a large extent already secured the objectives of the directive'. [8]

12. Finally, with reference to the claim of the defendant government that some provisions of the Directive have already been transposed into national law through the Telecommunicatiewet or other measures, I should point out that, even if this were so, and notwithstanding the incomplete nature of the transposition, the fact remains that those measures were not notified to the Commission, as prescribed by the Directive.

3 — Most recently, amongst many cases, Case C-97/00 *Commission* v *France* [2001] ECR I-2053, paragraph 10; Case C-83/00 *Commission* v *Netherlands* [2001] ECR I-2351, paragraph 11.

4 — Case C-328/96 *Commission* v *Austria* [1999] ECR I-7479.

5 — In particular, Case C-470/98 *Commission* v *Greece* [2000] ECR I-4657, paragraph 11; Case C-83/00, cited above, paragraph 10.

6 — In particular, Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 15.

7 — For example, Case C-339/87 *Commission* v *Netherlands* [1990] ECR I-851, paragraph 25; Case C-59/89 *Commission* v *Germany* [1991] ECR I-2607, paragraph 28; Case C-340/96 *Commission* v *United Kingdom* [1999] ECR I-2023, paragraph 27.

8 — Case 91/79 *Commission* v *Italy* [1980] ECR 1099, paragraph 6, and Case 92/79 *Commission* v *Italy* [1980] ECR 1115, paragraph 6; and my Opinion of 23 January 2001, Case C-144/99 *Commission* v *Netherlands* [2001] ECR I-3541.

## Conclusion

13. In view of the foregoing I therefore propose that the Court should:

(1) declare that, by failing to notify the laws, regulations and administrative provisions necessary for compliance with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals or by failing to adopt all the measures necessary for that purpose, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

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