OPINION OF ADVOCATE GENERAL ELMER
delivered on 17 May 1995 *

1. By an application lodged at the Court Registry on 20 September 1994, the Commission is seeking a declaration that, by omitting to adopt within the period prescribed the measures necessary to implement Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines, [1] and, in the alternative, by omitting to notify the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

2. Under Article 15 of the directive Member States were to take the measures necessary to comply therewith before 5 June 1993.

Since the Hellenic Republic had not informed the Commission that it had implemented the directive before the time-limit expired, the Commission commenced the procedure leading to an action under Article 169 of the Treaty with a letter of formal notice dated 9 August 1993. The Greek Government did not reply and accordingly the Commission set out its views in a reasoned opinion of 7 February 1994.

By a letter of 7 April 1994 the Greek Government replied to both the letter of formal notice and the reasoned opinion. It stated that it was in the process of implementing the directive in Greek law.

Since the Commission did not, however, receive subsequent notification from the Greek Government that the directive had been implemented, it brought proceedings before the Court.

3. The Greek Government does not dispute that it is obliged to implement the directive in question in Greek law and that such implementation did not take place within the period prescribed.

However, in its defence, the Government stated that, in its letter of 7 April 1994 to the Commission, it had already explained that there were a number of problems in connection with the implementation of the directive, which were partly due to the nature of the directive and partly due to the lack of a statutory framework in Greek law governing the telecommunications sector. The Minister

* Original language: Danish.
1 — OJ 1992 L 165, p. 27.

responsible had therefore set up a special working party to examine all aspects of those problems.

The Greek Government added that in May 1994 the special working party had submitted to the Commission draft administrative regulations to implement the directive. Those regulations had not so far been published in the *Official Gazette of the Hellenic Republic* because a framework law governing the telecommunications sector had not yet been enacted. The law had, meanwhile, been approved by the Greek Parliament and would be published as soon as possible.

Immediately after publication of the framework law, the Minister responsible would issue the abovementioned regulations implementing Directive 92/44.

4. It is clear from the settled case-law of the Court that a Member State may not plead provisions, practices or circumstances existing in its internal system in order to justify a failure to comply with the obligations laid down in Community law. [2]

The Court has also consistently held [3] that the subject-matter of an action under Article 169 is determined in the Commission's reasoned opinion. Even when a default has been remedied while the case is pending before the Court, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur as a result of its default towards other Member States, the Community or private parties.

5. Since the Hellenic Republic has not disputed that Council Directive 92/44 was not implemented in Greek law within the period prescribed in Article 15 of the directive, it should therefore be held that the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

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

2 — See, for example, the judgment in Case C-303/93 *Commission* v *Italy* [1994] ECR I-1901.

3 — See *inter alia* the judgment in Case C-37/93 *Commission* v *Belgium* [1993] ECR I-6295.

Conclusion

7. In view of the foregoing, I would propose that the Court hold as follows:

— By omitting to adopt within the period prescribed the measures necessary to implement Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

— The Hellenic Republic is ordered to pay the costs.