OPINION OF ADVOCATE GENERAL LENZ

delivered on 13 July 1995 *

A — Introduction

1. Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC [1] was to be transposed into national law by 20 November 1992. [2]

2. In the present Treaty infringement proceedings, the Commission seeks a declaration that, by failing within the prescribed period to adopt, or in the alternative to communicate to the Commission, the laws, regulations and administrative provisions necessary to comply with that directive, the Kingdom of Spain has failed to fulfil its obligations under the Treaty. The Commission also requests that the Kingdom of Spain be ordered to bear the costs of the proceedings.

3. The Kingdom of Spain does not dispute that it has not complied within the prescribed period with its obligation to adopt the measures necessary for the transposition of the said directive, in particular those needed to adapt the relevant legislative provisions.

4. However, the Kingdom of Spain puts forward two arguments in its defence. First, a draft law for the transposition of the directive in question, introduced in good time, was not passed because new elections intervened, entailing the dissolution of the Spanish Parliament. A new legislative procedure for the transposition of the directive has been in preparation since January 1994. Secondly, pending the completion of the legislative procedure, there are administrative provisions embodied in a 'Protocol' which make up *de facto* for the fact that the legislative

* Original language: German.

1 — OJ 1990 L 330, p. 50.

2 — See the first paragraph of Article 30 of Directive 90/619.

provisions have not yet been adapted *de jure*. The Kingdom of Spain cannot, therefore, be accused of failing to comply with its obligations and the Commission's application is ungrounded.

B — Opinion

5. The Kingdom of Spain's submission cannot be accepted. In view of the objective nature of Treaty infringement proceedings, in order to find an infringement it is sufficient to note that the Spanish Government does not dispute the infringement with which it is charged. [3] First, the Kingdom of Spain simply adduces the dissolution of its Parliament to justify the failure to transpose the directive within the prescribed period. The Court has consistently held that a Member State may not rely on internal difficulties of a technical, institutional or political nature in order to disregard its obligation to transpose a directive in good time. [4] Secondly, the Kingdom of Spain argues in its defence that the binding nature of the directive, as to the result to be achieved (third paragraph of Article 189 of the EC Treaty), has been complied with, temporarily, by means of administrative provisions — contained, here, in the 'Protocol'. Even if it were to be accepted that an infringement of the Treaty could be made good in that manner, it would be difficult for the Kingdom of Spain to successfully rely on that argument: according to the terms of Annex I to the defence, the 'Protocol' did not produce its effects until 1 July 1994. The Treaty infringement, however, should have been brought to an end at the latest by the expiry of the two-month period laid down by the Commission in its reasoned opinion of 15 February 1994. In any event, as internal law not having direct effect, the 'Protocol' would not meet the requirements as to the choice of form and means which the Member States must observe in accordance with the Court's established case-law. [5]

6. Since it is clear that the Kingdom of Spain has not transposed the directive in issue into national law in good time, the Court need not examine the Commission's alternative claim that the Kingdom of Spain has failed to notify the measures taken to transpose the directive.

3 — See, most recently, Case C-260/93 *Commission* v *Belgium* [1994] ECR I-1611, paragraphs 7 and 8.

4 — See, already, Case 52/75 *Commission* v *Italy* [1976] ECR 277, paragraphs 10 and 14.

5 — Case C-361/88 *Commission* v *Germany* [1991] ECR I-2567.

C — Conclusion

7. I propose that the Court should:

(1) declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 90/619/EEC, the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty;

(2) order the Kingdom of Spain to bear the costs.