OPINION OF ADVOCATE GENERAL ALBER

delivered on 26 October 2000 [1]

1. In these infringement proceedings the Commission alleges failure to transpose certain provisions of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (hereinafter 'the directive'). [2]

2. Article 15 of the directive reads as follows:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this directive not later than 24 October 1998.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with Article 5 of this Directive not later than 24 October 2000.

...

4. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this directive.'

3. The Commission received no communication from the French Republic concerning the transposition of the directive. On 3 February 1999 it therefore sent a letter of formal notice, pursuant to Article 226 EC, to the French Government, requesting it to submit observations within two months.

4. In a letter received on 16 April 1999, the French Republic stated that the directive

1 — Original language: German.
2 — OJ 1998 L 24, p. 1.

had already been partially transposed and that the remaining provisions of the directive would, in part, be transposed in the near future under legislative proposals which were at an advanced stage.

5. Since no further communication was received from the French authorities, a reasoned opinion was issued by the Commission to the French Republic on 23 July 1999. In that opinion the Commission complained that the French Republic had failed to fulfil its obligation to transpose the provisions of the directive mentioned in the application in due time. It set the French Republic a final time-limit of two months to comply with its obligations.

6. The French authorities first requested an extension of the time-limit and, by letter of 22 October 1999, again announced that work on the necessary measures for the transposition of the abovementioned provisions was in progress.

7. Since no further communications had been received in the meantime, on 19 April 2000 the Commission brought the present action against the French Republic.

8. The Commission of the European Communities claims that the Court should:

(1) declare that, by failing to bring into force and to communicate to the Commission within the prescribed period the national measures transposing Article 4(2), Article 6(1), (3) and (4), Article 7, Article 8(2), (3), (4) and (6), Article 11(2) and Article 12 of Directive 97/66/EC, the French Republic has failed to fulfil its obligations under Article 15 of that directive;

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

Submissions of the parties

9. The Commission notes that under the third paragraph of Article 249 EC and under Article 10 EC Member States are

obliged to take whatever measures are necessary to transpose directives into national law before the expiry of the time-limits provided for in those directives. Member States are also obliged to communicate such measures to the Commission without delay. The time-limit laid down in Article 15(1) of the directive expired on 24 October 1998 without France having adopted the measures transposing the provisions mentioned in the application. Even when the time-limit of 23 September 1999 laid down in the reasoned opinion expired, the French authorities had not communicated to the Commission the measures transposing those provisions.

10. Referring to the judgment in Case 52/75,[3] the Commission points out that the Member States are liable no matter which organ of the State is responsible for the failure, and that a Member State may not 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 under Community directives.

11. The French Republic again points out that work on the necessary measures for the transposition of the abovementioned provisions is in progress.

Appraisal

12. The action is well founded. On the date material to the infringement proceedings, when the period of two months from 23 July 1999 prescribed in the reasoned opinion expired, the complaint made in the application had indisputably not yet been remedied, even taking into consideration possible extensions of the period on account of time taken by the post. The French Republic should therefore be found to have failed to fulfil its obligations, as claimed in the application.

13. The decision as to costs follows from Article 69(2) of the Rules of Procedure.

3 — *Commission* v *Italy* [1976] ECR 277, paragraph 14.

Conclusion

14. I therefore propose that the Court should:

(1) declare that, by failing to bring into force and to communicate to the Commission within the prescribed period the national measures transposing Article 4(2), Article 6(1), (3) and (4), Article 7, Article 8(2), (3), (4) and (6), Article 11(2) and Article 12 of Directive 97/66/EC, the French Republic has failed to fulfil its obligations under Article 15 of that directive;

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