OPINION OF ADVOCATE GENERAL LÉGER

delivered on 19 October 2000 [1]

1. Pursuant to Article 226 EC, the Commission applies to the Court for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, [2] Ireland has failed to fulfil its obligations under that directive.

2. Article 16 of the Directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 January 1998 and that they are to communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by the Directive.

3. Since it had not been informed of any implementing measure adopted by Ireland, on 31 March 1998, the Commission gave Ireland formal notice to submit its observations to it within two months.

4. By letter of 18 May 1998, the Irish authorities informed the Commission that they were finalising a comprehensive new Bill which would update all aspects of Irish copyright law and would implement the Directive.

5. Since it had not received any further information, on 2 October 1998, the Commission sent Ireland a reasoned opinion pointing out that the time-limit for transposition of the Directive had expired on 1 January 1998 and that Ireland was under an obligation to inform the Commission of any implementing measure which had been adopted.

6. By letter of 1 December 1998, the Irish Government replied that the comprehensive new Bill on copyright and related rights was at an advanced stage of preparation and would shortly be ready for publication.

7. Since that reply to the reasoned opinion, the Commission has not received any further information on the state of implementation of the Directive in Ireland.

1 — Original language: French.

2 — OJ 1996 L 77, p. 20; 'the Directive'.

8. The Commission points out that, under the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), directives are to be binding, as to the result to be achieved, upon each Member State to which they are addressed and that, under the first paragraph of Article 5 of the EC Treaty (now the first paragraph of Article 10 EC), Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

9. The Irish Government does not deny its failure to implement the Directive within the period prescribed. In this respect, it states that the Irish authorities have endeavoured to take every step necessary to transpose the Directive into domestic law. However, the provisions of the Directive cannot be effectively implemented without all aspects of Irish copyright law being revised and updated.

10. According to the Irish Government, the revision of Irish copyright law, which has been in progress since 1994, has resulted in a new Copyright and Related Rights Bill which has been published and whose enactment is now imminent.

11. The Irish Government requests the Court to stay proceedings for a period of six months from the date of its defence, by which time it hopes that the Commission, having examined the Irish legislation, will find it possible to discontinue the proceedings.

The infringement

12. According to settled case-law, 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 laid down in a directive. [3]

13. As regards the Irish Government's request for proceedings to be stayed, it should be observed that, if the Member State to which a reasoned opinion has been issued has not, by the end of the period which it is for the Commission to lay down pursuant to the second paragraph of Article 226 EC, put an end to the infringement with which it is charged, the Commission is at liberty to decide whether or not to bring the matter before the Court. Since the Commission stated in its reply that it was maintaining the action, it is not appropriate to stay proceedings. [4]

3 — See, in particular, Case C-470/98 *Commission* v *Greece* [2000] ECR I-4657, paragraph 11.

4 — See, in particular, Case C-212/98 *Commission* v *Ireland* [1999] ECR I-8571, paragraph 12.

14. Since the Directive was not implemented within the period prescribed by it, the Commission's application must be held to be well founded.

15. Under Article 69(2) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings, which is the case here.

Conclusion

16. Consequently, I propose that the Court:

(1) declare that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Ireland has failed to fulfil its obligations under that directive;

(2) order Ireland to pay the costs.