# OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 10 October 2002 [1]

1. By its application under Article 226 EC, received at the Court of Justice on 17 October 2001, the Commission seeks a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [2] or, in any event, by failing to inform the Commission of such provisions, the Kingdom of Spain has failed to fulfil its obligations under that directive. The Commission also requests that the Kingdom of Spain be ordered to pay the costs.

2. In accordance with Article 15(1) of the directive, the Member States were required to bring into force the necessary laws, regulations and administrative provisions no later than three years after the directive entered into force, in other words by 4 June 2000, and immediately to inform the Commission thereof.

3. As the Commission had not been informed of any measures transposing the directive by 4 June 2000, the time-limit for its transposition, and the Commission had received no other information in that regard, it initiated the Treaty infringement procedure. After it had given the Kingdom of Spain an opportunity to submit its observations and had not received any reply within the period prescribed, it delivered a reasoned opinion on 9 March 2001 in which it called on the Kingdom of Spain to adopt the necessary measures within two months and to inform the Commission thereof.

4. In a letter of 25 June 2001 in reply to that reasoned opinion, the Spanish authorities pointed out that in order to transpose the directive into national law it was necessary to amend Law 7/96 of 15 January 1996 (Law regulating retail trade).

5. As the Commission did not subsequently receive either a draft law or any information as to the further course of the national legislative procedure, it brought the present action.

6. The Kingdom of Spain does not deny its obligation to transpose Directive 97/7/EC

1 — Original language: German.
2 — OJ 1997 L 144, p. 19.

within the prescribed period, however it submits that it has initiated the national procedure necessary to ensure transposition of the directive. The application must therefore be dismissed and the Commission ordered to pay the costs.

7. It submits that the reason for the delay was that the Spanish legislature initially discussed in detail whether it was necessary to transpose the directive by amending Law 7/96 or enacting new provisions, or whether Law 7/96 in fact already met the requirements of Directive 97/7. After the decision had been taken to amend Law 7/96, the questions arose whether it was necessary to amend any other Spanish legislation and whether there was any connection with the new legislation on e-commerce.

8. It is settled case-law of the Court that the relevant time for determining whether a Member State has failed to fulfil its obligations is the end of the period laid down in the reasoned opinion. [3] That period expired on 9 May 2001 without the measures required by the Commission having been adopted. It is therefore clear that the directive was not transposed within the period prescribed.

9. It is also settled case-law of the Court that the Member States may not plead provisions of national law in order to justify the failure to transpose a directive by the date required. [4]

10. The obligation under Community law to transpose the directive follows, on the one hand, directly from the directive and, on the other, from Articles 249(3) EC and 10 EC.

11. As the Kingdom of Spain has thus not complied with its obligation under Community law, the Commission's application should be upheld and a declaration made that the Kingdom of Spain has failed to fulfil its obligations under the Treaty and must pay the costs.

3 — Case C-384/99 *Commission* v *Belgium* [2000] ECR I-10633, paragraph 16.

4 — See, inter alia, Case C-139/97 *Commission* v *Italy* [1998] ECR I-605, paragraph 11, or Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26.

## Conclusion

12. I therefore propose that the Court of Justice should rule as follows:

— By failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts within the prescribed period, the Kingdom of Spain has failed to fulfil its obligations under that directive.

— The Kingdom of Spain must pay the costs.