REPORT FOR THE HEARING
in Case C-137/91 *

I — Facts

1. *National legal framework*

In Greece, Law No 1809/88 of 29 September 1988 and 5 October 1988 (Official Gazette of the Hellenic Republic A'222) provides that retailers keeping account books within the second or third category of the tax code are required as from 1 August 1989 to use electronic cash registers. According to Article 2(1), these electronic machines may not be used without the approval of a committee in the Ministry of Finance. Approval may be given only if at least 35% of the cost of the machine consists of value added in Greece.

Article 14(2) of Law No 1914/90 of 17 December 1990 (Official Gazette A'178) provides that machines and spare parts coming from Member States of the EEC are to be considered for this purpose to be domestic products. However, that provision will not come into force until 1 January 1993.

2. *Background to the dispute*

In November 1988 a complaint was made to the Commission about the rules in force in Greece concerning electronic cash registers for commercial undertakings. The Commission then sent two telexes to the Office of the Greek Permanent Representation on 7 December 1988 and 23 February 1989, asking it for information in this connection.

In a letter before action dated 8 August 1989, the Commission requested the Greek Government to submit its observations as to the compatibility of the legislation with Community law, pursuant to Article 169 of the EEC Treaty. No reply was received.

On 8 June 1990 the Commission issued the reasoned opinion provided for in the first paragraph of Article 169 of the EEC Treaty. It stated that, by restricting the import into Greece of electronic cash registers and by failing to reply to the requests for information and the letter before action, the Greek Government had failed to fulfil its obligations under the EEC Treaty; the Commission requested the Greek Government to comply with the opinion within one month.

Since the Greek authorities sent no reply to the Commission, it decided to bring this action.

* Language of the case: Greek.

II — Written procedure and forms of order sought

The Commission's application was lodged at the Court Registry on 24 May 1991.

The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral proceedings without any preparatory inquiry.

The *Commission* claims that the Court should declare that:

(1) by failing to provide the Commission with the information it had requested,

(2) and by requiring undertakings to equip themselves exclusively with electronic cash registers approved by a committee in the Ministry of Finance and comprising in their manufacture at least 35% value added in Greece,

the Hellenic Republic has failed to fulfil its obligations under Articles 5 and 30 of the EEC Treaty;

order the Hellenic Republic to pay the costs.

The *Hellenic Republic* contends that the Court should:

dismiss the action brought by the Commission;

order the applicant to pay the costs.

III — Pleas in law and arguments of the parties

A — *Infringement of Article 5 of the EEC Treaty*

The *Commission* claims that the Hellenic Republic has failed to fulfil its obligations under Article 5 of the Treaty, inasmuch as it has failed to provide the information requested of it concerning electronic cash registers for commercial undertakings. As is apparent from the judgment delivered in Case 97/81 *Commission* v *Netherlands* [1982] ECR 1819, Member States are bound by this provision to supply clear and precise information to enable the Commission to carry out its task, and failure to fulfil that obligation may of itself justify recourse to the procedure under Article 169 of the EEC Treaty in order to establish the failure to fulfil that obligation.

The Commission considers that the meeting held in Athens on 27 and 28 September 1990, when this matter formed the subject of discussion with the Greek authorities, did not put an end to the failure to fulfil obligations in question, for it was held after the time

allowed for a reply by the reasoned opinion had expired.

The *Hellenic Republic* maintains that it has not infringed Article 5 of the Treaty, since before this action was brought it provided the Commission with all the information requested at the meetings held in Athens on 27 and 28 September 1990 with representatives of Commission Directorate-General III, meetings at the end of which the Greek authorities undertook to amend the import rules laid down by Law No 1809/88.

According to the Hellenic Republic, in November 1990 the Greek authorities communicated to the Commission a draft amendment to Law No 1809/88, which received the latter's approval. This amendment was put into a bill laid before the Greek Parliament which, when it came to the vote, added a paragraph postponing the entry into force of the new law until 1 January 1993. The text was forwarded to the Commission on 31 January 1991.

B — *Infringement of Article 30 of the EEC Treaty*

The *Commission* maintains that the contested legislation is contrary to Article 30 of the Treaty, since it requires all undertakings to be equipped exclusively with electronic cash registers approved by a committee of the Ministry of Finance, approval being granted only for machines comprising in their manufacture at least 35% value added in Greece.

According to the Commission, this requirement has the effect of restricting intra-Community trade because it hinders the import into Greece of electronic cash registers originating in other Member States, even if this hindrance occurs indirectly (see the judgment in Case 8/74 *Procureur du Roi* v *Dassonville* [1974] ECR 837).

The *Hellenic Republic* admits that Law No 1809/88 is contrary to Article 30 of the EEC Treaty. It states, however, that on the basis of the Commission's observations the contested provisions were repealed and replaced by Law No 1914/90, which lays down new rules on the import of electronic cash registers.

As far as the paragraph in that last law is concerned which postpones the entry into force of the new rules to 1 January 1993, the Greek authorities have undertaken to repeal it in a new legislative measure to be included in a taxation bill which will be passed shortly.

J. C. Moitinho de Almeida

Judge-Rapporteur