OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 22 February 2001 [1]

1. The Commission of the European Communities has brought this action before the Court under Article 226 EC seeking a declaration that the Italian Republic has failed to fulfil its obligations under Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (hereinafter 'the Directive'). [2]

2. Article 2 of the Directive requires each Member State to liberalise the combined transport operations referred to in Article 1 from all quota systems and systems of authorisations no later than 1 July 1993.

3. On 28 July 1998, the Commission sent a reasoned opinion to the Italian Government because a system of quotas and authorisations for combined transport operations still applied in Italy. It brought this action on 15 November 1999. The Italian Government admitted its failure and stated, both in its defence and its rejoinder, that it would comply with its obligations from 1 January 2001 through the adoption of Decree No 85 of 14 March 1998, which entered into force on 22 May 1998. That Decree provides for a complete liberalisation of combined transport operations on 1 January 2001 and a transitional system until that date. According to the Italian Government that measure deprives this action of any purpose.

4. The Commission considers, on the other hand, that the Italian Republic is still guilty of failure to fulfil its obligations, in any event until 1 January 2001. Both the legislation applying until the entry into force of Decree No 85 and the transitional system which it established (from April 1998 until 1 January 2001) are incompatible with the Directive. The Italian Republic should have complied with those obligations from

1 — Original language: Dutch.
2 — OJ 1992 L 368, p. 38.

1 July 1993. Moreover, the Directive did not allow a transitional system.

5. In an action based on Article 226, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion. The Court cannot therefore take account of any subsequent changes. [3] Since the Commission has not discontinued the proceedings, its action must be held to be well founded.

3 — Joined Cases C-232/95 and C-233/95 *Commission* v *Greece* [1998] ECR I-3343; Case C-364/97 *Commission* v *Ireland* [1998] ECR I-6593, and Case C-185/96 *Commission* v *Greece* [1998] ECR I-6601.

Conclusion

Having regard to the foregoing considerations, I propose that the Court should:

(a) declare that by failing to bring into force the laws, regulations and administrative provisions necessary for the timely implementation of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States, the Italian Republic has failed to fulfil its obligations under that directive, and

(b) order the Italian Republic to pay the costs in accordance with Article 69(2) of the Rules of Procedure.