OPINION OF ADVOCATE GENERAL TESAURO

delivered on 3 June 1992 *

Mr President,
Members of the Court,

1. These proceedings concern a case on all fours with Case C-69/91 *Decoster* in which I am to deliver my Opinion today. Criminal proceedings have been brought against Mrs Neny, née Taillandier, for selling in May 1990 telecommunication terminals (in particular, telephones) which had not been previously approved in accordance with French Decree No 85-712 of 11 July 1985.

As in the *Decoster* case, the national court is asking the Court of Justice whether the said decree is compatible with Community law. In particular, it is asking whether the obligations provided for in Decree No 85-712 to submit for type-approval equipment intended to be marketed, and to refer to such approval on the equipment, with a fine of between FF 1 300 and FF 2 500 as the penalty for infringement, are to be considered incompatible with Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment. [1]

Article 6 of the directive provides that Member States are to ensure that, from 1 July 1989, responsibility for drawing up technical specifications, monitoring their application and granting type-approval is entrusted to a body independent of public or private undertakings offering goods and/or services in the telecommunications sector.

As I said in my Opinion in the *Decoster* case, to which I refer in its entirety, the body responsible in France at the material time for granting type-approval (or an equivalent document) and for laying down the relevant technical specifications did not fulfil, at least in the light of the information contained in the documents before the Court, the requirement of independence laid down in Article 6 of the directive. As I pointed out in *Decoster*, lack of independence goes to the very heart of the system of approval provided for in Decree No 85-712 thus entailing the inapplicability of the provision in the decree which requires traders seeking to market terminal equipment to demonstrate by means of type-approval or an equivalent procedure that such equipment complies with certain requirements.

* Original language: Italian.

1 — OJ 1988 L 131, p. 73.

Accordingly, without its being necessary to consider whether the fines provided for in Decree No 85/712 are in themselves, in view of their size, incompatible with Community law, the question submitted by the national court can in my view be answered as follows:

Article 6 of Commission Directive 88/301/EEC precludes the application of a national provision such as that contained in French Decree No 85-712, which requires traders seeking to market terminal equipment to demonstrate, by means of type-approval or an equivalent procedure, that the equipment complies with certain requirements, where there is at the same time no guarantee of the independence, in relation to any trader offering goods or services in the telecommunications sector, of the body which:

— issues the type-approval certificate (or an equivalent document);

— draws up the technical specifications used for the purpose of issuing the type-approval certificate (or an equivalent document).