OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 6 June 2002 [1]

1. In the present case, the Commission of the European Communities seeks a declaration by the Court that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group [2] or, in any event, by failing to notify the Commission of those measures, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

2. The Directive was published in the *Official Journal of the European Communities* on 5 December 1998. In accordance with Article 11(1) of the Directive, the period for transposition expired on 5 June 2000.

3. The Directive lays down rules on the supplementary supervision of insurance undertakings in an insurance group. Its purpose is thereby to enable the authorities supervising an insurance undertaking to form a more soundly-based judgment of its financial situation.

4. The Greek Government concedes that it failed to transpose the Directive within the prescribed period. It submits that the procedure for adoption of a draft presidential decree to transpose the Directive is underway. According to the Greek Government, that draft was being examined by the Greek Council of State at the time when the reply in the present proceedings was lodged. It further submits that the Greek authorities will have regard to the obligations under the Directive in their dealings with the authorities of other Member States.

5. It should be borne in mind that, according to the settled case-law of the Court, a Member State may not rely on provisions, practices or circumstances in its internal legal order to justify its failure to comply with the obligations and time-limits laid down in a directive. It is likewise settled case-law that, when transposing a directive, a Member State must ensure that its legislation is consistent with the provisions of the directive and may not be content simply with administrative practices.

1 — Original language: Dutch.
2 — OJ 1998 L 330, p. 1.

Conclusion

6. In light of the foregoing, I propose that the Court should:

(a) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group, the Hellenic Republic has failed to fulfil its obligations under that directive;

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