OPINION OF ADVOCATE GENERAL COSMAS

delivered on 21 September 2000 *

1. In this action brought under Article 226 EC, the Commission asks the Court for a declaration that, by not adopting and, in any event, by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (hereinafter 'the Directive'), [1] the Italian Republic has failed to fulfil its obligations under the Directive.

2. The Directive concerns the harmonisation of conditions for open and efficient access to, and use of, fixed public telephone networks and fixed public telephone services in an environment of open and competitive markets, in accordance with the principles of open network provision (ONP). The Directive's aim is to ensure the availability throughout the Community of good-quality fixed public telephone services and to define the set of services to which all users, including consumers, should have access in the context of universal service, at an affordable price, in the light of specific national conditions.

3. Article 32(1) provides that the Member States are to take the measures necessary to comply with the Directive by 30 June 1998 and forthwith to inform the Commission thereof.

4. Since the Commission established that the time-limit in Article 32(1) of the Directive had expired without the Italian Government having provided information on

* Original language: Greek.

1 — OJ 1998 L 101, p. 24.

the adoption of the necessary measures for transposing the Directive into national law and it had no other information enabling it to conclude that the Italian Republic had complied with its obligations under the Directive, it sent that Member State a letter of formal notice (No SG(7301)D/11246) on 25 August 1998, setting a time-limit of two months for the submission of observations.

5. In its reply of 16 October 1998,[2] the Italian Republic stated that the measures necessary in order to comply with the Directive were in the process of being drawn up. However, no definitive text of the legislation was formally sent to the Commission.

6. Thus, in accordance with the procedure laid down in Article 226 EC, the Commission sent a reasoned opinion to that State by letter of 26 January 1999,[3] pointing out that it still had not informed the Commission of the provisions adopted by it to transpose the Directive, and calling on it to adopt the measures necessary for that purpose within two months from notification of the opinion and to communicate them to the Commission.

7. The Commission received a reply to the reasoned opinion by letter No 5626 of 12 April 1999,[4] which contained as an annex a draft decree transposing various Community directives, including the one at issue. However, since the Commission had no other information from which it could conclude that the Italian Republic had duly complied with the reasoned opinion, it decided to bring the present action. In its application lodged at the Court Registry on 29 October 1999, it sought, first, a declaration that, by not adopting and, in any event, by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with the Directive, the Italian Republic had failed to comply with its obligations under the Directive and, second, an order for costs against that Member State.

8. As the Commission correctly points out, under Article 249 EC directives are binding on the Member States as to the result to be achieved. That obligation includes the obligation to comply with the time-limits laid down by a directive.[5]

9. In addition, the Court has consistently held that a Member State may not plead

2 — Letter No 6806/SG(98) A/15776.

3 — SG(98)D/602.

4 — SG(99) A/5203.

5 — Case 10/76 *Commission* v *Italy* [1976] ECR 1359.

provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits under the EC Treaty and Community directives. [6]

10. In the present case, the relevant provisions of the Directive require the Member States to take the appropriate measures by 30 June 1998 at the latest and forthwith to inform the Commission thereof. Notwithstanding the expiry of the time-limit, the Italian Republic has not taken the appropriate measures to comply with the Directive or provided any substantive information on such measures, thus failing to fulfil its obligations under Article 249 EC and Article 32 of the Directive.

11. It is to be noted that the Italian Republic does not dispute the Commission's claim that it has failed to fulfil its obligations. It merely observes that, for the purpose of implementing the Directive, a draft regulation within the meaning of Article 1(3) of Decree-Law No 115 of 1 May 1997, [7] which, after amendment, became Law No 189 of 1 July 1997, [8] was prepared long ago and was submitted to the Commission for information and to the Consiglio di Stato (Council of State) for an opinion. However, the Consiglio di Stato considered it expedient, before giving its opinion, to consult the Autorità per le Garanzie nelle Comunicazioni (Communications Authority) and the Autorità Garante della Concorrenza e del Mercato (Competition Authority).

12. In view of the foregoing I consider that the Italian Republic has not adopted, and in any event has not communicated to the Commission in due time, definitive measures transposing the Directive and, therefore, the infringement on its part pleaded by the Commission is substantiated.

6 — See, for example, Case C-303/93 *Commission* v *Italy* [1994] ECR I-1901, Case C-65/94 *Commission* v *Belgium* [1994] ECR I-4627, Case C-294/96 *Commission* v *Belgium* [1997] ECR I-1781 and Case C-135/96 *Commission* v *Belgium* [1997] ECR I-1061.

7 — *Gazzetta Ufficiale della Repubblica Italiana* (GURI) No 100 of 2 May 1997.

8 — GURI No 151 of 1 July 1997.

Conclusion

13. Consequently, I propose that the Court should:

— declare that, by not adopting and, in any event, by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment, the Italian Republic has failed to fulfil its obligations under that directive;

— order the Italian Republic to pay the costs.