OPINION OF ADVOCATE GENERAL LENZ

delivered on 14 March 1996 *

1. In this action for failure to fulfil obligations, the Commission claims that the Hellenic Republic has failed to transpose into national law within the prescribed period Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts. [1]

2. Under Article 44 of the directive Member States were obliged to adopt the laws, regulations and administrative provisions necessary to comply with the directive before 1 July 1993. Member States were further obliged to inform the Commission thereof forthwith.

3. Since the Commission had not received any such information from the Hellenic Republic, by letter of 9 August 1993 it gave the latter two months in which to make observations on the point. There was no reply to the letter. The Commission thereupon on 6 May 1994 sent the Hellenic Republic a reasoned opinion, inviting it to comply with its obligation to transpose the directive within two months. Since there was no reply to that letter either, the Commission brought an action before the Court of Justice on 29 September 1995 on the basis of Article 169 of the EC Treaty.

4. The defendant does not dispute that the directive in question was not transposed into national law within the prescribed period. It nevertheless seeks for the application to be dismissed. It submits in this connection that in November 1994 a committee was set up with a view to transposition of the directive, with the task of preparing the necessary legislation. A ministry has also already produced and transmitted to the said committee a draft of a presidential decree by which the provisions of the directive are to be transposed into national law. Moreover, that ministry already on 27 August 1993 brought the text of the directive to the attention of all institutions in the public sector in a circular. That circular contained instructions on the provisional application of the directive.

5. I am not convinced by those defences. If — as the Greek Government submits — the necessary measures for transposition of the directive into national law are currently in preparation, that merely emphasizes the fact that transposition has not taken place within the prescribed period. Nor can the Greek

* Original language: German.

1 — OJ 1992 L 209, p. 1.

Government rely successfully on the ministerial circular referred to. As the Court has held on several occasions already, 'mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty'. [2]

6. I therefore propose that the Court declare that, by failing to adopt within the prescribed period the necessary laws, regulations and administrative provisions to comply fully with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty. I further propose that the Hellenic Republic be ordered to pay the costs.

2 — See, for example, Case C-381/92 *Commission* v *Ireland* [1994] ECR I-215, paragraph 7.