OPINION OF ADVOCATE GENERAL LENZ
delivered on 9 February 1995 *

A — Introduction

1. In this action against the Hellenic Republic for breach of the Treaty the Commission seeks a declaration that by failing to adopt within the prescribed period the laws, regulations and administrative provisions needed to comply fully with Council Directive 89/48/EEC [1] on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration and to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty. The first paragraph of Article 12 of the directive provides that the Member States are to take the measures necessary to comply with the directive within two years of its notification and shall inform the Commission thereof forthwith. Since the directive was notified to the Member States on 4 January 1989 [2], that period expired on 4 January 1991.

2. By that date the Commission had received no communication whatsoever regarding the adoption of measures to implement the directive and therefore brought an action for breach of the Treaty. On 28 July 1991 the Commission wrote to the defendant Member State calling upon it to submit its observations on the complaint of breach of obligations within two months. There was no response. In a reasoned opinion of 15 October 1992 the Commission gave it a new period of two months within which to comply with its obligations. That period, too, elapsed without any comment from the Member State on the complaints. On 27 July 1993 the Commission brought an action before the Court of Justice.

B — Analysis

3. The Commission acknowledges that the defendant government issued a joint Decree of the Ministers for the Economy, Health, Welfare and Social Security on 1 February 1993 which partly implemented the directive, but it was restricted to the health and welfare professions. Compliance with the directive was therefore only partial, and the breach of the Treaty thus continued.

* Original language: German.

1 — OJ 1989 L 19, p. 16.

2 — See footnote 2 to Directive 89/48.

4. The Greek Government relies in its defence on a draft presidential decree which will transpose the directive in full and which has already been submitted to the President of the Republic for signature. It also points out that the directive has already been partially transposed, as regards the health profession, lawyers and auditors, by three independent presidential decrees. The directive can be applied in practice, moreover: Article 9(2)(3) has been implemented because a coordinator (Article 9(2) [3]) and an information centre (Article 9(3) [4]) have been named.

5. Article 9(1) has not been transposed into the national law of the Member State, however, although existing procedures enable the directive to be taken into account by the competent authorities already in place.

6. Now, it is clear that on the expiry of the period prescribed in the reasoned opinion the measures necessary to transpose the directive into national law had not been adopted and no kind of communication had been forthcoming regarding existing legislation or facilities.

7. Presidential decrees issued subsequently in order to transpose the directive in individual professions are, as even the Commission concedes, capable of transposing some of the directive's provisions. Nevertheless, there has still been no general transposition of the directive for all the areas covered by the directive.

8. Similarly, the partial implementation of the procedural requirements of the directive by naming a coordinator under Article 9(2) and an information centre under Article 9(3) constitute only partial transposition.

9. Although the Greek Government explains that Article 9(1) may be implemented by means of existing procedures before the competent authorities already in place it has expressly conceded that there has been no formal measure of transposition.

10. Moreover, if the requirements of Article 9(1) were sufficiently satisfied by means of the existing procedures before the competent

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4 — a) DIKATSA for diplomas obtained on completion of university education.
b) ITE (Instituto Technologikis Ekpaidefsis, Technical Training Institute) for diplomas obtained on completion of training in a technical institute of higher education.

authorities already in place that circumstance would have to have been formally communicated to the Commission in order to satisfy the obligations laid down by Article 12 of the directive.

11. It is clear that at the time of the oral procedure on 12 January 1995 there had been no steps to transpose the directive fully into national law. The Presidential Decree intended to implement the directive generally was not yet in force. Since the action is confined to seeking a declaration that Directive 89/48 has not yet been *fully* transposed into national law the partial implementation of the directive by legal measures introduced after completion of the procedure prior to the action is not sufficient to defeat it. Even if the introduction of special procedures and competent authorities is not necessary in order to be able to implement Article 9(1) of the directive, there has been a breach of the Treaty at least as regards the failure to communicate the relevant provisions to the Commission under Article 12 of the directive. The action must therefore be upheld.

Costs

12. Under Article 69(2) of the Rules of Procedure the unsuccessful party shall pay the costs.

C— Conclusion

13. In the light of those considerations I propose that the case be decided as follows:

1. By failing to adopt within the prescribed period the laws, regulations and administrative provisions needed to comply fully with Council Directive 89/48/EEC on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration and to inform the Commission thereof the Hellenic Republic has breached its obligations under the EEC Treaty.

2. The Hellenic Republic is ordered to pay the costs.