OPINION OF ADVOCATE GENERAL LENZ

delivered on 6 March 1997 *

1. In these proceedings, the Commission alleges that the French Republic has failed to fulfil its obligations under Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, [1] and in particular Article 45, by failing to adopt the laws, regulations and administrative provisions necessary to implement the directive. In the alternative, the Commission seeks a declaration that the French Republic has failed to fulfil its obligations under the above provisions by not immediately informing the Commission of such measures.

2. Article 45 requires Member States to adopt the measures necessary to transpose the directive, apply them by 1 July 1994 [2] and inform the Commission thereof immediately.

3. The French Republic does not deny that it has not transposed the directive within the prescribed period. It merely states that the relevant draft legislation has been entered on the parliamentary agenda for the year 1996/97.

4. As it is clear, therefore, that the directive in question has not been transposed within the prescribed period, there is no need to examine the Commission's alternative plea.

5. I therefore propose that the Court declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to transpose Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, the French Republic has failed to fulfil its obligations under that directive and in particular under Article 45 thereof. I also propose that the French Republic be ordered to pay the costs.

* Original language: German.

1 — OJ 1993 L 199, p. 84.

2 — Under Article 45(2), however, other periods apply to Spain, Portugal and Greece.