OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 19 March 2002 [1]

1. The European Commission seeks a declaration that the Italian Republic has failed to fulfil its obligations under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, [2] by having maintained in force the first paragraph of Article 12 of Law No 81 of 8 March 1991, which regulates the professions of ski monitor and mountain guide. [3]

2. Under that provision, the pursuit in Italy of the profession of ski monitor by nationals of other Member States of the European Union is subject to the principle of reciprocity. [4]

3. That requirement does not appear in Directive 92/51, which in Article 3(a) limits itself to requiring possession of a diploma required and awarded in another Member State for the pursuit of that profession. [5] As the Commission pointed out, for the European legislature, if a Community citizen is fully qualified in his country of origin to carry out a professional activity he will also be qualified to carry it out in another Member State.

4. Moreover, the fulfilment of obligations that the Treaty or secondary legislation impose on the Member States of the Community may not be made subject to a condition of reciprocity. [6]

1 — Original language: Spanish.

2 — OJ 1992 L 209, p. 25.

3 — GURI No 64 of 16 March 1991, p. 3.

4 — The rule states: 'The regions shall regulate the exercise within their territory of the activity of foreign ski monitors not registered in regional professional registers. The authorisation for pursuit of this profession is subordinated to the recognition... of the equivalence of diplomas *and of reciprocity*' (emphasis added).

5 — Article 3(a) of the Directive provides: 'Without prejudice to Directive 89/48/EEC, where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, as defined in this Directive or in Directive 89/48/EEC, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals: (a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State'.

6 — See, *inter alia*, the judgments in Case C-38/89 *Blanguernon* [1990] ECR I-83, paragraph 7 and Case C-163/99 *Portugal* v *Commission* [2001] ECR I-2613, paragraph 22.

5. The incompatibility of the Italian legal system with Community law on that point is thus clear.

6. The Italian Government admits that the situation did not change by the end of the period laid down in the reasoned opinion [7] or as a result of anything stated in the defence to the action, except as regards the region of Venice. [8] It states, however, that it is preparing a draft law, Article 15 of which amends Article 12 of Law No 81 and removes the requirement of reciprocity. That is irrelevant for the purposes of this hearing.

7. Nor is it relevant that the Italian authorities have never applied Article 12 of Law No 81, since the incompatibility of national legislation with Community law can be finally remedied only by adopting and bringing into force national provisions of a binding nature which have the same legal force as those which must be amended. [9]

8. From the foregoing, it can be concluded that the Italian Republic has failed to fulfil its obligations as alleged and that the application should be upheld.

9. In accordance with Article 69(2) of the Rules of Procedure, the defendant Member State should be ordered to pay the costs. [10]

7 — By reference to which, according to the case-law of the Court of Justice, the question whether a Member State has failed to fulfil its obligations must be decided (see the judgments in Case C-96/98 *Commission* v *France* [1999] ECR I-8531, paragraph 19 and Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16.

8 — Where, in January 2000, through the amendment of a regional law, the requirement of reciprocity was abolished for the pursuit in its territory of the profession of ski monitor.

9 — See, for example, the judgment in Case C-358/98 *Commission* v *Italy* [2000] ECR I-1255, paragraph 17.

10 — Codified version published in OJ 2001 C 34, p. 1.

Conclusion

10. I propose that the Court of Justice should uphold the application and:

(1) declare that by having maintained in force the first paragraph of Article 12 of Law No 81 of 8 March 1991, the framework law for the profession of ski monitor and complementery provisions relating to the organisation of the profession of mountain guide, the Italian Republic has failed to fulfil its obligations under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC;

(2) order the Italian Republic to pay the costs.