OPINION OF ADVOCATE GENERAL LENZ
delivered on 15 April 1997 *

1. In these Treaty infringement proceedings, the Commission claims that Ireland has failed to fulfil its obligations under Articles 6, 48, 52 and 58 of the EC Treaty, Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State [1] and Article 7 of Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity. [2] It bases that claim on the submission that Ireland has maintained in force laws, regulations and administrative provisions which limit the right to register a vessel other than a fishing vessel in the Irish shipping register to a vessel which is owned in whole or in part by the Government, a Minister of State, an Irish citizen or an Irish body corporate.

2. The relevant provisions of Irish law are contained in the Mercantile Marine Act 1955. Under section 9 of that Act, the following ships are in principle [3] treated as 'Irish ships' and therefore have the right to fly the Irish flag: State-owned ships, ships wholly or partly owned by an Irish citizen or an Irish body corporate [4] and not registered under the laws of another country, and ships registered or deemed to be registered under the Act. Section 16 provides that, subject to section 19, [5] only the Irish Government, Irish Ministers of State, Irish citizens and Irish bodies corporate are qualified to own a registered ship or a share therein.

3. Those provisions applied originally to merchant vessels, to fishing vessels and to vessels not used to pursue an economic activity but as pleasure craft. During the course of the pre-litigation procedure under Article 169 of the EC Treaty, Ireland enacted

* Original language: German.

1 — OJ 1970 L 142, p. 24. Article 7 of the regulation states: 'The right to equality of treatment, established by Council Regulation (EEC) No 1612/68, shall apply also to persons coming under the provisions of this Regulation.'

2 — OJ 1975 L 14, p. 10. Article 7 of the directive provides as follows: 'Member States shall apply to persons having the right to remain in their territory the right of equality of treatment recognized by the Council Directives on the abolition of restrictions on freedom of establishment pursuant to Title III of the General Programme which provides for such abolition.'

3 — Section 9 applies 'subject to subsection (3) of section 18' of the Act. The latter provision is not relevant to this case.

4 — An 'Irish body corporate' is to be understood, in accordance with the definition in section 2(1) of the Act, as a body corporate established under Irish law and having its principal place of business in Ireland.

5 — Section 19 confers upon the Irish Government the power to allow exceptions, on the basis of reciprocity, in favour of nationals and bodies corporate of another State. As the Commission has correctly pointed out, and Ireland has not disputed, that provision is not relevant to the outcome of this case.

the Fisheries (Amendment) Act 1994. The Commission concluded that the new provisions regarding fishing vessels met the objections which it had raised. Accordingly, the Commission's application now covers the provisions of Irish law cited above in relation to merchant vessels and pleasure craft only.

4. The file shows that the Commission first alleged that the Irish legislation infringed Article 7 of Regulation No 1251/70 and Article 7 of Directive 75/34 in the two reasoned opinions delivered by it. In my view, that cannot call the admissibility of the action into question. It was clear from the Commission's previous letters, which gave Ireland the opportunity to make observations, that the Commission took the view that the Irish legislation in question was incompatible with the provisions of the EC Treaty on freedom of movement for persons. Both Regulation No 1251/70 and Directive 75/34 are acts of secondary Community law intended to help to bring about such freedom of movement. Therefore, the belated reference to those two measures did not prejudice Ireland's rights. Besides, Ireland has not raised any objection as to the admissibility of the action.

5. I can, I believe, be brief as to the substance of the case. It is immediately apparent from the judgments of the Court, to which the Commission refers, in the *Factortame* case, [6] in *Commission* v *Ireland*, [7] in *Commission* v *United Kingdom* [8] and in *Commission* v *France* [9] that the claims made by the Commission are well founded. For the sake of simplicity, I will simply quote here the relevant passages from the last of those judgments. That case was concerned with French legislation under which the right to register vessels in the national register was limited to vessels which were owned as to more than half either by French nationals or by legal persons which had their seat in France or — in simplified terms — were controlled to a specified extent by French nationals. [10]

6. The Court ruled as follows in relation to vessels used in the course of an economic activity:

'[13] The Court has held that the general prohibition of discrimination on grounds of nationality laid down in Article 7 of the EEC Treaty has been implemented by Article 52 of that Treaty in the specific domain which it governs and that, consequently, any rules incompatible with the latter provision are also incompatible with Article 7 of the Treaty (*Commission* v *United Kingdom*, paragraph 18). Article 7 of the

6 — Case C-221/89 *The Queen* v *Secretary of State for Transport* ex parte *Factortame and Others* [1991] ECR I-3905.

7 — Case C-93/89 *Commission* v *Ireland* [1991] ECR I-4569.

8 — Case C-246/89 *Commission* v *United Kingdom* [1991] ECR I-4585.

9 — Case C-334/94 *Commission* v *France* [1996] ECR I-1307.

10 — For the requirements in detail, see the judgment in *Commission* v *France*, cited above (footnote 9), paragraph 3.

EEC Treaty has become Article 6 of the EC Treaty.

[14] In *Factortame and Others* the Court noted that, in exercising its powers for the purpose of defining the conditions for the grant of its "nationality" to a ship, each Member State must comply with the prohibition of discrimination against nationals of Member States on grounds of their nationality (paragraph 29) and that a condition which stipulates that where a vessel is owned or chartered by natural persons they must be of a particular nationality and where it is owned by a company the shareholders and directors must be of that nationality is contrary to Article 52 of the Treaty (paragraph 30).

...

[17] It follows that the French legislation restricting the right to register a vessel in the French register and to fly the French flag to vessels more than half the shares in which are owned by natural persons of French nationality is contrary to Articles 6 and 52 of the EC Treaty. The same applies to the requirement that a certain proportion of the capital of certain legal persons owning vessels must be controlled by French nationals and to the requirement that the actual control or management must be in the hands of French nationals.

...

[19] Finally, in so far as the French legislation requires legal persons owning vessels to have their seats in French territory and thus precludes the registration or management of a ship in the case of a secondary establishment such as an agency, branch or subsidiary, it is contrary to Articles 52 and 58 of the Treaty.'

7. In relation to vessels *not* used in the course of an economic activity, the Court held:

'[21] Under Community law, every national of a Member State is assured of freedom both to enter another Member State in order to pursue an employed or self-employed activity and to reside there after having pursued such an activity. Access to leisure activities available in that Member State is a corollary to that freedom of movement.

[22] The registration by such a national of a leisure craft in the host Member State falls within the scope of the Community provisions relating to freedom of movement.

[23] French legislation under which only French nationals may register in France

leisure craft of which they own more than half the shares is therefore contrary to Articles 6, 48 and 52 of the Treaty, Article 7 of Regulation No 1251/70 and Article 7 of Directive 75/34.'

8. In its defence, the Irish Government accepted, as the Commission correctly pointed out in its reply, that the claims made by the Commission are well founded. Admittedly, Ireland submitted at the same time that natural persons or companies from other Member States had the same right of access to Irish ports as Irish nationals. The only difference was that they could not register their vessels in the Irish shipping register. As the Commission rightly stated in its reply, that argument must be rejected. In *Factortame and Others*, the Court rejected an equivalent submission in the context of Article 52 of the EC Treaty by referring to the wording of that provision, according to which freedom of establishment for nationals of other Member States includes 'the right to take up and pursue activities as self-employed persons...under the conditions laid down for its own nationals by the law of the country where such establishment is effected ...'. [11] The same is true for the other provisions on which the Commission founds this action.

9. The hope expressed by the Irish Government in its defence that the legislation needed to bring national law into line with Community law would be enacted in the foreseeable future shows that Ireland wishes now to comply with its duties under Community law, but that cannot affect the outcome of this case.

10. I accordingly propose that the Court should declare that, by maintaining in force laws, regulations and administrative provisions which limit the right to register a vessel other than a fishing vessel in the Irish shipping register to a vessel which is owned in whole or in part by the Government, a Minister of State, an Irish citizen or an Irish body corporate, Ireland has failed to fulfil its obligations under Articles 6, 48, 52 and 58 of the EC Treaty, Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State and Article 7 of Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity. I also propose that Ireland should be ordered to pay the costs.

11 — Cited above (footnote 6), paragraph 25.