OPINION OF ADVOCATE GENERAL ALBER

delivered on 14 September 2000 *

1. In the present Treaty infringement proceedings against the Italian Republic, the Commission claims that the Court should:

(1) declare that, by failing to adopt or, in any event, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, [1] the Italian Republic has failed to fulfil its obligations under that directive;

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

2. Under Article 3(1) of the Directive, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 31 December 1997.

3. Since the Commission had not been informed within the prescribed period of any measures transposing the Directive into Italian law and since it had no information from which to conclude that Italy had fulfilled that obligation, on 25 August 1998, it initiated the procedure laid down in Article 169 of the EC Treaty (now Article 226 EC) by sending a letter of formal notice.

4. By letter of 16 October 1998, the Italian Government informed the Commission that the measures necessary to implement the Directive would be drafted.

5. By letter of 26 January 1999, the Commission sent to the Italian Republic a reasoned opinion in that regard calling on it to adopt the measures necessary to comply with the Directive within two months of the notification of the opinion and to communicate them to the Commission.

* Original language: German.

1 — OJ 1997 L 295, p. 23.

6. By letter of 12 April 1999, the Italian Republic communicated to the Commission a draft decree which, *inter alia*, implemented Directive 97/51.

7. Since the Commission received no further information about the Italian implementing measures, it brought the present action.

8. The Italian Government does not deny the Treaty infringement, but it points out that a draft (Italian) regulation has been sent to the Commission, for information, and to the Italian Council of State, for its opinion. Before taking a view, the Council of State deemed it necessary to seek opinions from the Autorità per le Garanzie nelle Comunicazioni (Communications Authority) and the Autorità Garante della Concorrenza e del Mercato (Competition Authority).

9. That argument is, however, not such as to invalidate the accusation of failure to implement in due time. Since the Directive has therefore not been implemented within the prescribed period, the action brought by the Commission must accordingly be held to be well founded.

10. Therefore, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, Italy has failed to fulfil its obligations under Article 3(1) of Directive 97/51.

11. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Italy has been unsuccessful, it must be ordered to pay the costs.

Conclusion

12. Consequently, I propose that the Court:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, the Italian Republic has failed to fulfil its obligations under that directive;

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