OPINION OF ADVOCATE GENERAL LENZ

delivered on 20 June 1995 *

1. In this action against the Hellenic Republic for failure to fulfil Treaty obligations, the Commission asks the Court to:

(1) Declare that, by failing to adopt within the prescribed period the laws, regulations and administrative measures necessary to comply fully with Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity, [1] and alternatively by failing to notify those measures to the Commission, the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Order the Hellenic Republic to pay the costs. [2]

2. Under Article 17 of Directive 91/263 Member States were required to adopt the laws, regulations and administrative measures needed to comply with the directive not later than 6 November 1992, and to inform the Commission of them forthwith.

3. Since the Commission had not learnt of any transposing measure by the Member State, it opened the procedure for failure to fulfil obligations by formal letter of 21 December 1992. There was no reply to the letter. The Commission thereupon issued a reasoned opinion on 7 February 1994. In a letter of 7 April 1994 from the Permanent Representation of the Hellenic Republic to the European Communities, the Greek Government informed the Commission that a transposition procedure was underway. As completion of the procedure was not communicated to the Commission, it brought an action before the Court on 20 September 1994. The Greek Government refers in its defence to national legislative procedures, as yet uncompleted, which represent an essential precondition for implementation of the directive in the legal system of that Member State.

4. It is established that by the close of the written procedure the directive had not yet

* Original language: German.

1 — OJ 1991 L 128, p. 1.

2 — The wording of the application differs slightly from that published in the Official Journal, OJ 1994 C 316, p. 10.

been transposed into national law. The Court has consistently held that difficulties with the national legislative process do not justify late transposition of a directive.

5. The form of order sought by the Commission relating to failure to transpose the directive within the prescribed period must therefore be granted. As to the form of order sought by the Commission relating to failure to communicate the laws, regulations and administrative procedures, it must be stated that it is an alternative to the form of order sought relating to failure to transpose. In the event of a finding that the directive was not transposed in time, the application relating to failure to communicate becomes devoid of purpose. [3]

Costs

6. In accordance with Article 69(2) of the Rules of Procedure, the unsuccessful party should be ordered to pay the costs.

Conclusion

7. In the light of the above considerations, I propose that the Court:

(1) Declare that, by failing to adopt within the prescribed period the necessary laws, regulations and administrative measures, the Hellenic Republic has failed to fulfil its obligations under Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity;

(2) Order the Hellenic Republic to pay the costs.

3 — See my Opinion of 11 May 1995 in Joined Cases C-109/94, C-207/94 and C-225/94, judgment of 29 June 1995 *Commission* v *Greece* [1995] ECR I-1791, points 10 and 11.