OPINION OF ADVOCATE GENERAL ALBER

delivered on 25 October 2001 [1]

1. The action brought by the Commission concerns the application of the principle of freedom to provide services to maritime transport. The Commission brought a complaint regarding the collection of harbour taxes in the ports of Trieste, Naples and Genoa for passengers arriving from or travelling to other Member States. The tax is not payable for passengers travelling within Italian territory.

2. Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (hereinafter 'Regulation No 4055/86') [2] introduces the principle of freedom to provide services in the maritime transport sector as from 1 January 1987. Under that regulation, all the rules of the EC Treaty on the freedom to provide services are applicable to maritime transport between Member States. [3] In the perspective of a single market and in order to permit the realisation of its objectives, that freedom precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State. [4] As the Court held in Case C-381/93 *Commission* v *France*, the collection of separate harbour taxes — according to whether passengers are transported to a national port of the State in question or to a port of another Member State — is an unjustified restriction on the freedom to provide services in maritime transport.

3. Under Italian Law No 82/63 [5] a special tax was brought in for passengers in transit in the ports of Genoa, Naples and Trieste arriving from other Member States in the European Union or from third States. In accordance with Article 7 of Law No 255/91 [6] the tax ranges from a minimum of ITL 400 to a maximum of ITL 6 000. For maritime journeys on national territory no tax is collected in accordance with Article 32(d) of Law No 82/63. That exception has been in force since the issue of Decree Law No 457 of 30 December 1997, converted into Law No 30 of 27 February 1998, [7] both for vessels registered in Italy and for those registered in

1 — Original language: German.

2 — OJ 1986 L 378, p. 1.

3 — Case C-381/93 *Commission* v *France* [1994] ECR I-5145, paragraph 13.

4 — *Commission* v *France*, cited above, paragraph 17.

5 — GURI (Official Gazette of the Italian Republic) No 52 of 23 February 1963.

6 — GURI No 190 of 14 August 1991.

7 — GURI No 49 of 28 February 1998.

other Member States in so far as they carry out maritime transport between Italian ports.

4. On 1 August 2000, after the administrative procedure was duly completed, the Commission brought an action against the Italian Republic seeking a declaration that, by maintaining in force a tax payable by passengers disembarking or embarking in the ports of Genoa, Naples and Trieste where those passengers arrive from, or are travelling to, ports in another Member State or a third country, whereas no such tax is levied in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to comply with its obligations under Article 1 of Council Regulation (EEC) No 4055/86. Furthermore, it asked that the Italian Republic be ordered to pay the costs.

5. In its defence, lodged on 20 October 2000, the Italian Republic did not dispute its failure to comply with the Treaty. It pointed out that the necessary amendment to Italian law would be included in the finance bill for 2001, which should be approved during the course of 2000.

6. The Court has not yet been informed that the amendment to the legislation has been made. Furthermore, according to settled case-law, any remedy to the failure to comply with an obligation after the time-limit prescribed in the reasoned opinion has expired, fixed in this case at 14 February 1999, does not affect the question whether the action is justified. The subject-matter of the case at issue is established by the reasoned opinion. Even when the default has been remedied after the time-limit prescribed by the second paragraph of Article 226 EC has expired, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur as a result of its default towards other Member States, the Community or private parties. [8]

7. Italy does not dispute the failure to comply. Consequently the Court should find in favour of the Commission.

8. The Commission also requested that Italy be ordered to pay the costs. In accordance with Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for.

8 — Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 45; Case C-361/88 *Commission* v *Germany* [1991] ECR I-2567, paragraph 31.

Conclusion

9. In the light of the reasons set out above, I propose that the Court should give the following reply:

(1) By maintaining in force a tax payable by passengers disembarking or embarking in the ports of Genoa, Naples and Trieste where those passengers arrive from, or are travelling to, ports in another Member State or a third country, whereas no such tax is levied in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to comply with its obligations under Article 1 of Regulation (EEC) No 4055/86.

(2) The Italian Republic is ordered to pay the costs.