OPINION OF ADVOCATE GENERAL LENZ
delivered on 11 May 1995 *

A — Introduction

1. These actions for failure to fulfil treaty obligations concern three directives on insurance. The Commission accuses the Hellenic Republic of failing fully to implement the directives in national law within the prescribed time-limits, or of failing to inform the Commission of such implementation.

2. Case C-109/94 concerns Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance. [1] By Article 12 thereof, Member States were required to amend their national provisions to comply with the directive within 18 months and so to inform the Commission forthwith.

3. Case C-207/94 concerns Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC. [2] By Article 32 thereof, Member States were required to amend their national provisions to comply with the directive within 18 months and so to inform the Commission forthwith.

4. Finally, Case C-225/94 concerns Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC. [3] By Article 30 thereof, Member States were required to amend their national provisions to comply with the directive within 24 months and so to inform the Commission forthwith.

* Original language: German.

1 — OJ 1990 L 330, p. 44.

2 — OJ 1988 L 172, p. 1.

3 — OJ 1990 L 330, p. 50.

5. In each of those three cases, the Commission delivered a reasoned opinion under Article 169 of the EC Treaty, having first given the Hellenic Republic the opportunity to submit its observations. The Hellenic Republic informed the Commission that the work on implementing the directives had not yet been completed, whereupon the Commission brought an action in all three cases before the Court of Justice. At the request of the Hellenic Republic, the Court ordered that the three cases be joined for the purposes of the oral proceedings and the judgment.

B — Analysis

6. The Hellenic Republic does not deny that it has failed to transpose the three directives into its domestic law within the time-limits specified in the three reasoned opinions of the Commission.

7. Nevertheless, the defendant contends that the action should be dismissed. A draft presidential decree implementing the three directives was prepared in June 1992, and was submitted to the Council of State (Symvoulio Epikrateias) for examination in March 1994. The delay was due to the fact that the draft had been subject to close examination by the relevant authorities and that there were a number of personnel changes in the relevant ministries and authorities during the period in question. The Council of State decided in 1994 that it was no longer possible to adopt the draft, since the directives had in the meantime been amended by Directives 92/49/EEC [4] and 92/96/EEC. [5] The Greek authorities were therefore preparing a draft of a new presidential decree, to implement not only the three directives at issue, but also Directives 92/49 and 92/96.

8. Those circumstances, which the representative of the Hellenic Republic again referred to at the hearing, are not sufficient to justify the Treaty infringement committed by the defendant. It is well established in the Court's case-law that a Member State 'may not plead provisions, practices or circumstances existing in its internal system in order to justify a failure to comply with obligations and time-limits arising from Community directives'. [6] Directive 88/357 should have been implemented not later than 31 December 1989, and Directives 90/618 and 90/619 should have been implemented not later than 20 May 1992. That did not happen in Greece. The Hellenic Republic

4 — Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (OJ 1992 L 228, p. 1).

5 — Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (OJ 1992 L 360, p. 1).

6 — Judgment in Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9.

did not even implement those directives within the time-limit of two months in each case laid down by the Commission's reasoned opinions of 7 July 1993 (Case C-109/94), 6 August 1992 (Case C-207/94), and 15 February 1994 (Case C-225/94). That is decisive in assessing whether these actions are well founded.

It should also be noted that Directives 92/49 and 92/96, which the Greek Government pleads in aid, should also have been implemented already, by 31 December 1993 and 1 July 1994 respectively.

9. The same applies to the defendant's argument that the lack of implementing measures did not prevent the effective application of the directives in practice.

10. Since it is thus established that the Hellenic Republic did not implement the relevant directives in time, the Court does not need to examine the Commission's complaint concerning the failure to inform it of such implementation.

That is self-explanatory in relation to Cases C-207/94 and C-225/94, where that complaint was raised only in the alternative. But it also applies to Case C-109/94, in which the Commission accused the Hellenic Republic of not implementing the directives in time *and* of not informing the Commission of the measures taken. If the measures necessary to implement a directive are not even taken, then neither, logically, can the Commission be informed of such measures. The finding that implementation has not taken place thus encompasses the further complaint that the Commission was not informed, without any need for a separate finding on that point.

11. I appreciate that, in two recent judgments in similar cases, the Court found that directives had not been implemented, but nevertheless dismissed the remainder of the Commission's claim. [7] However, for the reason just given, I do not consider that course of action appropriate. Moreover, those two judgments do not in any way constitute a settled line of authority. Although the Court referred in those judgments to its judgment of 18 May 1994 in Case C-303/93 *Commission* v *Italy*, [8] in a judgment in a similar case on 15 December 1994, [9] for example, it merely held that the defendant Member State had not implemented the directives in ques-

7 — Judgments in Case C-365/93 *Commission* v *Hellenic Republic* [1995] ECR I-499, and Case C-147/94 *Commission* v *Spain* [1995] ECR I-1015. It is not possible to determine whether the Court took the same view in its judgment in Case C-348/93 *Commission* v *Italy* [1995] ECR I-673, since in that case part of the Commission's claim was dismissed in any event.

8 — [1994] ECR I-1901.

9 — Case C-94/94 *Commission* v *Spain* [1994] ECR I-5777. The same occurred in Case C-66/94 *Commission* v *Belgium* [1995] ECR I-149, in which the Commission had claimed that the Member State had not taken the measures necessary for implementation, 'and/or' had not notified them to the Commission.

tion. Neither in the judgment itself nor in the operative part did it specifically address the Commission's additional complaint that it had not been informed of the necessary implementing measures. That seems to me to be the correct approach.

C — Conclusion

12. In the light of the foregoing, I propose that the Court should give the following ruling:

(1) By failing to adopt within the prescribed time-limits the necessary laws, regulations and administrative provisions to comply fully with Directives 90/618/EEC, 88/357/EEC and 90/619/EEC, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

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