OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 21 March 2002 [1]

1. In the present case the Commission of the European Communities seeks a declaration by the Court that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, [2] the United Kingdom has failed to fulfil its obligations under the directive.

2. The directive was published in the *Official Journal of the European Communities* on 17 September 1996. In accordance with Article 23(1), in conjunction with Article 25 thereof, the directive entered into force on 8 October 1996 and the period provided for transposition expired on 8 April 1999.

3. The object of the directive is, *inter alia*, to improve the interlinking and interoperability of national networks and also access to those networks.

4. The United Kingdom Government acknowledges that it did not transpose the directive within the period provided for. It points out that the directive was none the less partly implemented before expiry of the period for transposition. In that connection it states that late implementation is partly attributable to the fact that the committee established under Article 21 of the directive has not yet determined the requisite technical specifications for interoperability (TSIs) as a result of which certain sections of the directive cannot yet be implemented. It also states that no high-speed train is currently operational in

1 — Original language: Dutch.

2 — OJ 1996 L 235, p. 6.

Ireland, or will be in the foreseeable future. Accordingly the directive is said to be of very limited or no practical significance in Northern Ireland.

5. In that connection it should be pointed out that the Court has already held in regard to TSIs that it is not apparent from the terms of the directive and, in particular, Article 23 thereof that preparing TSIs is a precondition for the implementation of the directive. It follows that the fact that the TSIs have not yet been adopted is irrelevant for the purposes of determining whether a Member State has fulfilled its obligations. [3]

6. Nor is it relevant that in a Member State no high-speed train is yet operational. In its judgment in *Commission* v *Ireland* the Court pointed out that the fact that an activity referred to in a directive does not yet exist in a particular Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that the provisions of the directive are properly transposed. It is only where transposition of a directive is pointless for reasons of geography that it is not mandatory. However, that is not so in the case of Northern Ireland, as may be seen from map 3.15 in Annex I to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network. [4]

3 — Judgment in Case C-372/00 *Commission* v *Ireland* [2001] ECR I-10303, paragraphs 14 and 15.

4 — OJ 1996 L 228, p. 1. See *Commission* v *Ireland*, cited in footnote 3, paragraphs 11 to 13.

Conclusion

7. In light of the foregoing, I propose that the Court should:

(a) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;

(b) order the United Kingdom of Great Britain and Northern Ireland to pay the costs in accordance with Article 69(2) of the Rules of Procedure.