# OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 10 October 2002 [1]

1. By its application under Article 226 EC, received at the Court of Justice on 10 October 2001, the Commission seeks a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, [2] or, in any event, by failing to inform the Commission thereof, the Kingdom of Spain has failed to fulfil its obligations under that directive. The Commission also claims that the Kingdom of Spain should be ordered to pay the costs.

2. According to Article 3(1) of the directive, the Member States were to bring into force the necessary laws, regulations and administrative provisions at the latest 30 months after publication of the directive in the *Official Journal of the European Communities*, that is to say by 23 April 2000, and immediately inform the Commission thereof.

3. Since no implementing provisions had been communicated to the Commission by expiry of the implementation period on 23 April 2000 and the Commission had received no other information in that regard, it initiated the Treaty infringement procedure. Having given the Kingdom of Spain an opportunity to submit its observations and received no reply within the relevant time-limit, it issued a reasoned opinion on 9 March 2001 in which it called on the Kingdom of Spain to adopt the necessary measures within two months and to inform the Commission thereof.

4. In their reply of 25 June 2001, the Spanish authorities stated that transposition of the directive into national law required a supplement to Law 34/88 of 11 November 1988 (General advertising law). In addition, the Spanish Government stated that that law already included parts of the directive in question.

5. Having subsequently received neither a draft law nor an explanation as to which parts of the directive in question had

1 — Original language: German.
2 — OJ 1997 L 290, p. 18.

already been implemented by the above-mentioned law, the Commission brought the present action.

6. The Kingdom of Spain does not dispute that it was obliged to implement Directive 97/55/EC within the prescribed time-limit. However, it submitted that the complex national procedure necessary to ensure implementation of the directive was at a very advanced stage. A final adoption of the draft law was expected at the end of April 2002. The application should therefore be dismissed and the Commission should be ordered to pay the costs.

7. It is settled case-law of the Court of Justice that the relevant time for determining whether a Member State has failed to fulfil its obligations is the expiry of the period laid down in the reasoned opinion. [3] That period expired on 9 May 2001 without the measures required by the Commission having been adopted. The Spanish Government in fact stated that it was working on the implementing law and that the national procedure was in progress. It is therefore clear that the directive was not implemented within the relevant time-limit.

8. It is also settled case-law of the Court of Justice that the Member States may not rely on provisions of national law in order to justify the failure to implement a directive within the prescribed time-limit. [4]

9. The obligation under Community law to implement the directive follows, on the one hand, directly from the directive and, on the other, from Article 249(3) EC and Article 10 EC.

10. Since the Kingdom of Spain has thus not complied with its obligation under Community law, the Commission's application should be allowed and a declaration made that that Member State has failed to fulfil its obligations under the Treaty and must pay the costs.

3 — Case C-384/99 *Commission* v *Belgium* [2000] ECR I-10633, paragraph 16.

4 — Case C-139/97 *Commission* v *Italy* [1998] ECR I-605, paragraph 11.

## Conclusion

11. I therefore propose that the Court of Justice should give judgment as follows:

— By failing to adopt, within the prescribed time-limit, the laws, regulations and administrative provisions necessary to comply with Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, the Kingdom of Spain has failed to fulfil its obligations under that directive.

— The Kingdom of Spain shall pay the costs.