OPINION OF ADVOCATE GENERAL ALBER

delivered on 30 May 2002 [1]

1. This action relates to the failure to transpose, within the prescribed period, Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit ('Directive 98/7'). [2]

2. Under Article 2 of Directive 98/7 the Member States were required to adopt the necessary laws, regulations and administrative provisions no later than two years after the entry into force of that directive. The directive was published in the Official Journal on 1 April 1998. Therefore, in accordance with Article 254 EC, the measures necessary to transpose the directive were to be adopted by 21 April 2000.

3. On 8 August 2000, after failing to receive any information from the Kingdom of Spain regarding the adoption of measures transposing Directive 98/7, the Commission sent the Spanish Government a letter of formal notice requesting it to submit its observations on the matter within two months. Since the Commission did not receive any reply to that letter, it sent a reasoned opinion to the Kingdom of Spain, by letter of 9 March 2001, in which it reiterated its complaint and instructed the Spanish Government to comply with its Treaty obligations within two months.

4. By letter of 25 June 2001, the Spanish Government informed the Commission that the procedure for adoption of the measures transposing Directive 98/7 was still ongoing. On 8 October 2001, after failing to receive either a draft law or any other information regarding the status of the legislative procedure, the Commission brought the present action. It claimed that the Court should declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, the Kingdom of Spain has failed to fulfil its obligations under the Treaty.

1 — Original language: German.
2 — OJ 1998 L 101, p. 17.

5. Spain does not dispute the contention that it failed to transpose Directive 98/7 within the prescribed period. It merely points out that it was not possible to complete the procedure for adopting the transposition measures in the sixth parliamentary session. In the meantime, the Spanish Minster for Justice has drawn up an appropriate draft law which has already been approved by the Government and is now only awaiting the adoption by the Cortes Generales.

6. According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion. [3] The subject-matter of the action is determined by the Commission's reasoned opinion. Even where the default referred to in that opinion is remedied after the expiry of the period prescribed in accordance with the second paragraph of Article 226 EC, 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. [4] Spain does not dispute the contention that it failed to transpose Directive 98/7 within the prescribed period. The Commission's application must therefore be accepted.

3 — Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26; Case C-366/00 *Commission* v *Luxembourg* [2002] ECR I-1749, paragraph 10.

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

Conclusion

7. For the reasons set out above, I propose that the Court should:

(1) declare that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, the Kingdom of Spain has failed to fulfil its obligations under the Treaty;

(2) order the Kingdom of Spain to pay the costs.