OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 31 May 2001 [1]

I — Facts, legal background and procedure

1. In its action for failure to fulfil Treaty obligations under Article 226 EC, lodged with the Court on 22 December 2000, the Commission applies for a declaration that, in not introducing the laws, regulations and administrative provisions necessary to comply with Council Directive 96/50/EC of 23 July 1996 on the harmonisation of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community [2] (hereinafter 'the Directive'), the French Republic has failed to fulfil its obligations under that Directive.

2. Article 13 of the Directive requires the Member States to adopt the measures necessary to implement it in national law at the latest 18 months after the Directive enters into force and to inform the Commission thereof. The Directive entered into force on 7 October 1996, so that this prescribed period expired on 7 April 1998.

3. Since by that date, the Commission had not been notified by the French Government of any implementation measures or receive any other information relating to the matter, by letter of 28 April 1999 it gave the French Government formal notice to submit its observations within two months.

4. By letter of 19 July 1999, the French Government replied, stating that the measures to implement the Directive were being prepared.

5. On 31 January 2000, the Commission sent a reasoned opinion within the meaning of Article 226 EC to the French Republic, requesting it to take the necessary measures within two months.

1 — Original language: German.
2 — OJ 1996 L 235, p. 31.

6. The French Republic replied to this by letter of 8 April 2000, in which it promised that it would pass the necessary implementation provisions by the end of the first half of the year 2000.

7. No notification or information that the French Republic had taken the measures necessary to implement the Directive was received in the following period, and therefore, on 6 December 2000, the Commission lodged an application initiating proceedings at the Court.

8. The Commission claims that the Court should

1. declare that, in not introducing the laws, regulations and administrative provisions necessary to comply with Council Directive 96/50/EC of 23 July 1996 on the harmonisation of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community, or, in any event, by failing to communicate those provisions to the Commission, the French Republic has failed to fulfil its obligations under that Directive;

2. order the French Republic to pay the costs.

9. The French Republic makes no applications in its defence. By letter of 16 March 2001, the Commission waived its right to file a reply.

II — The breach of Treaty obligations

Submissions of the parties

10. Referring to the obligations of the Member States under Article 249(3) EC, Article 10 EC and Article 13 of the Directive, the Commission submits that the French Republic either did not take the measures necessary to implement the Directive or did not communicate these measures and so failed to fulfil the obligations in question.

11. The French Republic does not deny that it failed to fulfil its obligation to implement the Directive in national law within the prescribed period, but it submits that the delay in implementing the Directive is to be attributed to the extent of the legislative work and consultations necessary for this. However, it refers to the progress achieved and in this connection to plans for a Decree on the navigation of vessels on inland waterways and for an

implementing regulation to this effect. The drafts of these two documents are attached to the defence as an annex.

Assessment

12. Since the French Government does not deny that there has been delay in preparing the necessary legislative measures, it also does not deny that it has failed to implement the Directive within the prescribed period.

13. The French Government submits that there are domestic difficulties in preparing the necessary legislation. In regard to that submission, it is sufficient to point out that, according to the consistent case-law of the Court, a Member State may not invoke provisions, practices or circumstances existing in its internal legal system to justify a failure to comply with the obligations and time-limits laid down in a directive. [3]

14. Moreover, a submission such as that of the French Government in the present case, that the national legislative process has reached an advanced stage, by which it clearly wishes to show that it has made efforts to implement the Directive, is immaterial, since an application based on Article 226 EC is designed only to obtain an objective declaration that a Member State has failed to fulfil its Treaty obligations and not proof of any opposition or inertia on the part of the Member State in question. [4]

15. The Commission's action is therefore well founded.

III — Costs

16. Under Article 69(2) of the Rules of Procedure of the Court, the losing party, on application, shall be ordered to bear the costs. Since the Commission has made such an application and the French Republic's submissions have been unsuccessful, it must bear the costs.

3 — See, *inter alia*, Case C-374/98 *Commission* v *France* [2000] ECR I-10799 in paragraph 13, and Case C-166/97 *Commission* v *France* [1999] ECR I-1719, paragraph 13.

4 — See the judgment in Case 301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 8.

IV — Conclusion

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

(1) declare that, in not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 96/50/EC of 23 July 1996 on the harmonisation of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community, the French Republic has failed to fulfil its obligations under that Directive;

(2) order the French Republic to pay the costs of the proceedings.