

OPINION OF ADVOCATE GENERAL
GEELHOEDdelivered on 25 October 2001¹

1. In this case the Commission of the European Communities requests the Court to declare, pursuant to Article 226 EC, that Ireland has failed to fulfil its obligations under Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system² in force ('the directive').

2. The object of the directive is to improve the interlinking and interoperability of national networks and also access to those networks.

3. By virtue of Article 23(1) of the directive the Member States are required to amend and adopt the legal and administrative provisions necessary in order to comply with the directive no later than 30 months after its entry into force. In addition, the Member States must forthwith inform the Commission thereof.

4. Article 25 of the directive provides that the directive is to enter into force on the 21st day following its publication in the *Official Journal of the European Communities*. Since the directive was published on 17 September 1996, it entered into force on 8 October 1996 and the Member States

ought to have fulfilled their obligations under the directive by 8 April 1999 at the latest.

5. The Irish Government acknowledges that the directive was not implemented in good time. It points out in that regard that the competent minister has reached an advanced stage in drafting legislation. The Irish Government observes also that there are currently no high-speed trains operational in Ireland. In addition, it notes that at the time the defence was lodged in this action the technical specifications for interoperability (TSIs) referred to in Chapter II of the directive had not yet been approved or finalised.

6. I would observe that the Irish Government has not disputed the infringement. The fact that no high-speed trains are currently operational in Ireland is irrelevant. The Court has on many occasions ruled that the fact that an activity referred to in a directive does not exist in a particular Member State cannot release that State from its obligation to adopt laws or regulations in order to ensure that all the provisions of the directive are properly transposed.³

1 — Original language: Dutch.

2 — OJ 1996 L 235, p. 6.

3 — Case C-339/87 *Commission v Netherlands* [1990] ECR I-851, and Case C-214/98 *Commission v Greece* [2000] ECR I-9601.

7. To my mind, the observation concerning TSIs is also without pertinence. As the Commission has correctly pointed out during the written procedure, under Article 4 of the directive the trans-European high-speed rail system, subsystems and their interoperability constituents must meet the essential requirements laid down in Annex III to the directive. Those essential requirements apply independently of the existence of TSIs. The fact that the TSIs have not yet been completed cannot, therefore, amount to justification for late implementation of the directive.

Conclusion

In the light of the facts and circumstances set out above, 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, Ireland has failed to fulfil its obligations under that directive;
- (b) order Ireland to pay the costs in accordance with Article 69(2) of Rules of Procedure.