

OPINION OF ADVOCATE GENERAL  
TIZZANO

delivered on 2 May 2002<sup>1</sup>

1. In the present proceedings instituted under Article 226 EC the Commission has applied to the Court for a declaration that, by not adopting within the prescribed period the laws, regulations and administrative provisions to comply with Directive 1999/20/EC<sup>2</sup> ('the Directive'), the Hellenic Republic has failed to fulfil its obligations under that Directive and the Treaty.

2. Under Article 5(1) of the Directive the Member States were required to adopt and publish the provisions necessary to comply with the Directive by 30 September 1999 and to inform the Commission of those provisions forthwith. The Member States were then required to apply those provisions with effect from 1 October 1999.

3. Since the Hellenic Republic was late in supplying that information, the Commis-

sion addressed to it a letter of formal notice on 18 February 2000, to which the Hellenic Republic, however, failed to reply. On 18 September 2000 the Commission therefore sent a reasoned opinion according to the Hellenic Republic a period of two months within which to comply with its obligations under the Directive. Even after the reasoned opinion the Hellenic Republic did not inform the Commission that it had adopted the measures necessary to implement the Directive and so the latter instituted the present proceedings.

4. The Greek Government does not deny the allegations put forward by the Commission but merely submits that the provisions necessary to implement the Directive have been drawn up in a draft presidential decree which, once adopted and published, will be communicated to the Court and the Commission.

5. Even supposing that to be so, it should be noted, however, that changes in the situation prevailing in a Member State after the period laid down in the reasoned opinion cannot be taken into account in determining whether a Member State has failed to fulfil its obligations.<sup>3</sup> What is

1 — Original language: Italian.

2 — Council Directive 1999/20/EC of 22 March 1999 amending Directives 70/524/EEC concerning additives in feeding-stuffs, 82/471/EEC concerning certain products used in animal nutrition, 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1999 L 80, p. 20).

3 — See, *inter alia*, Case C-148/00 *Commission v Italy* [2001] ECR I-9823, paragraph 7.

certain is that upon the expiry of that period the Hellenic Republic had not adopted the provisions necessary for the implementation of the Directive. The Greek Government has not denied this.

6. I therefore consider that the application should succeed and that, since the Commission so applied, the Hellenic Republic be ordered to pay the costs.

## Conclusion

7. I therefore propose that the Court should:

- (1) declare that by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/20/EC amending Directives 70/524/EEC concerning additives in feedingstuffs, 82/471/EEC concerning certain products used in animal nutrition, 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, the Hellenic Republic has failed to fulfil its obligations under that directive and under the EC Treaty;
- (2) order the Hellenic Republic to pay the costs.