

OPINION OF ADVOCATE GENERAL
LA PERGOLA

delivered on 16 December 1997 *

1. In this case, the Commission asks the Court to declare that, by failing to adopt the laws, regulations and administrative provisions necessary to transpose Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures,¹ the French Republic has failed to fulfil its obligations under the EC Treaty and under that directive.

2. The directive whose transposition is in issue is designed to bring about a gradual approximation of the laws of the Member States concerning the tax treatment of road transport, with a view to eliminating distortions of competition between Community transport undertakings. Under Article 13(1) of the directive, the deadline for transposition was 1 January 1995.

3. By a judgment of 5 July 1995,² the Court annulled the directive, whilst providing that its effects were to be preserved in their entirety until the adoption of a new directive by the Council.

4. The French Government does not deny the failure to transpose the directive. It merely observes that the delay in transposition is due to the serious socio-economic difficulties affecting the road transport sector. In particular, it maintains that transposition of the directive would have caused an increase in costs for transporters and thus aggravated a situation of severe social tension, thereby imperilling the proper functioning of a service essential to the national economy. Moreover, in view of the particular circumstances of the French market, the Government maintains that failure to transpose the directive has not caused any distortion of competition. It has, in any event, indicated its willingness to transpose the directive at the first opportunity.

* Original language: Italian.

1 — OJ 1993 L 279, p. 32.

2 — Case C-21/94 *Parliament v Council* [1995] ECR I-1827.

5. Nevertheless, it seems to me that the French Government's arguments are directed not so much at obtaining the dismissal of the Commission's application as at providing justification for the reasons for the breach of obligations. In any case, it is settled case-law that the difficulties put forward by the defendant Member State do not constitute justification for failing to fulfil its obligations.³

6. I therefore propose that the Court should allow the application and order the French Republic to pay the costs.

3 — See, *inter alia*, Case C-52/95 *Commission v France* [1995] ECR I-4443.