JUDGMENT OF THE COURT (First Chamber)

2 June 2005 *

In Case C-266/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 18 June 2003,

Commission of the European Communities, represented by C. Schmidt and W. Wils, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by S. Schreiner, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Silva de Lapuerta (Rapporteur), K. Lenaerts, S. von Bahr and K. Schiemann, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 25 November 2004,

gives the following

Judgment

1 By its application the Commission of the European Communities seeks a declaration from the Court that, by individually negotiating, concluding, ratifying and bringing into force, and by refusing to terminate

— the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Czech and Slovak Federative Republic on inland waterway transport, signed in Luxembourg on 30 December 1992 (*Mémorial* A 1994, p. 579),

— the agreement between the Government of the Grand Duchy of Luxembourg and the Government of Romania on inland waterway transport, signed in Bucharest on 10 November 1993 (*Mémorial* A 1995, p. 13), and

— the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Poland on inland waterway transport, signed in Luxembourg on 9 March 1994 (*Mémorial* A 1995, p. 1570),

the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 10 EC and Council Regulation (EEC) No 3921/91 of 16 December 1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State (OJ 1991 L 373, p. 1) and Council Regulation (EC) No 1356/96 of 8 July 1996 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services (OJ 1996 L 175, p. 7).

Legal background

Community legislation

Provisions of the EC Treaty

2 Article 10 EC is worded as follows:

'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.'

3 As regards transport, Article 70 EC provides that the objectives in this Treaty are to be pursued by Member States within the framework of a common transport policy.

4 Article 71(1) EC provides:

'For the purpose of implementing Article 70, and taking into account the distinctive features of transport, the Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.'

5 On the basis of that provision the Council adopted Regulations Nos 3921/91 and 1356/96.

Regulation No 3921/91

6 The third recital in the preamble to Regulation No 3921/91 states that non-resident carriers should be allowed to carry out national transport operations for goods and passengers by inland waterway under the same conditions as those imposed by the Member State concerned on its own carriers.

7 For that purpose the first paragraph of Article 1 of Regulation No 3921/91 provides that, with effect from 1 January 1993, any carrier of goods or passengers by inland waterway is to be permitted to carry out the national transport of goods or persons by inland waterway for hire or reward in a Member State in which he is not established, a practice called 'cabotage', provided that he is established in a Member State in accordance with its legislation and, where appropriate, he is entitled there to carry out the international transport of goods or persons by inland waterway. The second paragraph provides that if he fulfils those conditions, the carrier may temporarily carry on cabotage in the Member State concerned without having to set up a registered office or other establishment there.

8 Furthermore, Article 2(1) of Regulation No 3921/91 provides that for a carrier to be permitted to carry out cabotage he may use for this purpose only vessels whose owner or owners are natural persons domiciled in a Member State and who are Member State nationals, or legal persons which have their registered place of

business in a Member State and the majority holding in which or majority of which belongs to Member State nationals.

9 Finally, according to Article 6 of Regulation No 3921/91, its provisions do not affect the rights existing under the Revised Convention for the navigation of the Rhine, signed at Mannheim on 17 October 1868 ('Mannheim Convention').

Regulation No 1356/96

10 As is clear from its title and the second recital, the aim of Regulation No 1356/96 is to establish freedom to provide services in the sphere of the transport of goods or passengers by inland waterway between Member States by eliminating all restrictions on the provider of services on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

11 Articles 1 and 2 of Regulation No 1356/96 provide that any operator transporting goods or passengers by inland waterway is to be allowed to carry out the transport operations between Member States and in transit through them without discrimination on grounds of his nationality or place of establishment. Article 2 also sets out the conditions for that authorisation.

12 Under Article 3 of Regulation No 1356/96, its provisions 'shall not affect the rights of third-country operators under the Revised Convention for the Navigation of the

Rhine (Mannheim Convention), the Convention on Navigation on the Danube (Belgrade Convention) or the rights arising from the European Community's international obligations'.

The bilateral agreements concluded by the Grand Duchy of Luxembourg

13 The three bilateral agreements mentioned in paragraph 1 of this judgment ('the contested bilateral agreements') contain provisions on the transport of passengers and goods by inland waterway between the contracting parties and the reciprocal use of their inland waterways.

14 They provide, inter alia, that the transport of passengers or goods by the vessels of one contracting party between two ports of the other party (cabotage) is subject to special authorisation by the competent authorities of the latter, and that the vessels of one contracting party may carry passengers or goods between the ports of the other party and those in a non-Member State (transport operations with non-Member States) in cases specified by the competent authorities of the contracting parties concerned.

15 Those agreements were ratified by the Grand Duchy of Luxembourg by the Laws of 10 April 1994, 6 January and 24 July 1995 and entered into force on 6 June 1994, 3 February and 1 October 1995.

Background to the dispute and pre-litigation procedure

16 On 28 June 1991, the Commission submitted a recommendation for a decision to the Council on the opening of negotiations for the conclusion of a multilateral agreement between the Community and third countries in the field of transport of passengers and goods by inland waterway.

17 By decision of 7 December 1992, the Council 'authorised the Commission to negotiate a multilateral agreement on the rules applicable to the transport of passengers and goods by inland waterway between the European Economic Community and Poland and the Contracting States of the Danube Convention (Hungary, Czechoslovakia, Romania, Bulgaria, the ex-USSR, ex-Yugoslavia and Austria)'.

18 Following the Council's decision of 7 December 1992 the Commission, by letter of 24 April 1993, called on several Member States, including the Grand Duchy of Luxembourg, 'to abstain from any initiative likely to compromise the proper conduct of the negotiations initiated at Community level and, in particular, to abandon ratification of agreements already initialled or signed, and to forgo the opening of further negotiations with the countries of Central and Eastern Europe relating to inland waterway transport'.

19 On 8 April 1994 the Council decided that priority was to be given to the conduct of negotiations with the Czech Republic, the Republic of Hungary, the Republic of Poland and the Slovak Republic.

20 Taking the view that, by continuing negotiations and initiating the procedure for parliamentary approval of the contested bilateral agreements, the Luxembourg Government had infringed the provisions of Article 5 of the EC Treaty (now Article 10 EC), the Commission in a further letter, of 12 April 1994, repeated its request and urged the Luxembourg Government not to exchange the instruments of ratification.

21 The multilateral negotiations conducted by the Commission led, on 5 August 1996, to the initialling of a draft multilateral agreement on the basis of which the Commission presented to the Council, on 13 December 1996, a proposal for a decision on the conclusion of the agreement laying down the conditions governing the transport by inland waterway of goods and passengers between the European Community and the Czech Republic, the Republic of Poland and the Slovak Republic.

22 Until the present day, however, no multilateral agreement has been concluded by the European Community with the countries concerned.

23 Since it came to the knowledge that the bilateral agreements had come into force, the Commission initiated proceedings under Article 226 EC for failure to fulfil obligations. After giving the Grand Duchy of Luxembourg formal notice to submit its observations it sent a reasoned opinion, on 28 February 2000, calling on that Member State to take the measures necessary in order to comply with that opinion within two months of the date of its notification.

24 Taking the view that the situation remained unsatisfactory, the Commission decided to bring this action.

The action

25 The Commission raises three complaints in support of its action. First, it alleges that the Grand Duchy of Luxembourg has infringed the exclusive external competence of the Community within the meaning of the judgment in Case 22/70 *Commission* v *Council* ('*ERTA*') [1971] ECR 263. Second, it relies on an infringement of Article 10 EC. Third, it submits that the contested bilateral agreements are incompatible with Regulation No 1356/96.

First complaint: infringement of the exclusive external competence of the Community

Arguments of the parties

26 By its first complaint the Commission submits that, by negotiating, concluding, ratifying and bringing into force the contested bilateral agreements, the Grand Duchy of Luxembourg has infringed the exclusive competence of the Community within the meaning of the *ERTA* judgment. Those agreements affect the common rules adopted by the Community in Regulation No 3921/91.

27 In particular, the Commission takes the view that, in so far as they allow, subject to special authorisation, access to cabotage in Luxembourg for carriers from the third countries concerned, the contested bilateral agreements affect the common rules

contained in Regulation No 3921/91, to the extent that those rules harmonise completely, from 1 January 1993, the conditions for cabotage in the Member States of the Community. By reserving the right to unilaterally grant rights of access to carriers from third countries, outside the Community framework, the Grand Duchy of Luxembourg has infringed the exclusive external competence of the Community.

28 The Commission submits, in that regard, that Regulation No 3921/91 covers not only Community carriers, but also carriers from third countries, because Article 6 recognises the rights of access of Swiss carriers under the Manheim Convention.

29 The Luxembourg Government argues that the conclusion of the contested bilateral agreements meets two needs. First, it prevents discrimination between national carriers and carriers of other Member States, and second, it is necessary to ensure that a legal vacuum is not created in relations with the countries of Central and Eastern Europe in the absence of a multilateral agreement on inland waterway transport at Community level. Thus, pending the conclusion of such an agreement, the Community is not entitled to prohibit its Member States from securing provisional bilateral instruments.

30 Furthermore, Regulation No 3921/91 concerns only Member States of the Community and does not cover third countries.

31 The Luxembourg Government also states that access by non-resident carriers to cabotage in Luxembourg is subject to authorisation by the Luxembourg Minister for Transport and that such authorisation has never been issued.

32 Moreover, from 1 May 2004, the date of the accession of the Czech Republic, the Republic of Poland and the Slovak Republic to the European Union, the contested bilateral agreements have lost all legal validity.

33 Finally, the Luxembourg Government maintains that at the time the present action was brought, the Grand Duchy of Luxembourg was the only Member State against which the Commission had brought an action for failure to fulfil obligations, although other Member States had also concluded and ratified bilateral agreements on inland waterway transport with non-Member States.

Findings of the Court

34 The Luxembourg Government's argument that the Commission has brought only one action, even though other Member States have concluded other bilateral agreements with non-Member States on inland waterway transport, must be dismissed from the outset.

35 It must be recalled, first, that under the system laid down by Article 226 EC, the Commission has a discretion to bring an action for failure to fulfil obligations and it is not for the Court to assess whether it was appropriate to exercise that discretion (Case C-152/98 *Commission* v *Netherlands* [2001] ECR I-3463, paragraph 20) and that, second, a Member State cannot, in any event, plead the principle of reciprocity and rely on a possible infringement of the Treaty by another Member State in order to justify its own default (Case 325/82 *Commission* v *Germany* [1984] ECR I-777, paragraph 11, and Case C-131/01 *Commission* v *Italy* [2003] ECR I-1659, paragraph 46).

36 It must also be recalled that, 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 in the Member State as it stood at the end of the period laid down in the reasoned opinion, and that the Court may not take account of any subsequent changes (see, in particular, case C-110/00 *Commission* v *Austria* [2001] ECR I-7545, paragraph 13).

37 In this case, the period prescribed in the reasoned opinion expired on 28 April 2000, so that the accession of the Czech Republic, the Republic of Poland and the Slovak Republic to the European Union is irrelevant to this case.

38 Consequently, it is appropriate to determine whether the Community has, as alleged, exclusive external competence within the meaning of the *ERTA* judgment.

39 Although the EC Treaty does not explicitly attribute external competence to the Community in the sphere of inland waterway transport, Articles 71(1) and 80(1) EC provide nevertheless for a Community power to act in this field.

40 In paragraphs 16 to 18 and 22 of the *ERTA* judgment, the Court held that the competence of the Community to conclude international agreements arises not only from an express conferment by the Treaty but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions; that in particular, each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules; that as and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the Community legal order; and that to the extent to which Community rules are adopted for the attainment of the objectives of the Treaty, the Member States cannot, outside the framework of the Community institutions, assume obligations which might affect those rules or alter their scope.

41 If the Member States were free to conclude international agreements affecting the common rules, that would compromise the attainment of the objective pursued by those rules as well as the Community's tasks and the objectives of the Treaty.

42 The circumstances in which the scope of the common rules may be affected or distorted by international commitments and, therefore, the circumstances in which the Community acquires exclusive external competence by reason of the exercise of its internal competence have been set out by the Court, inter alia in Case C-472/98 *Commission* v *Luxembourg* [2002] ECR I-9741.

43 That is the case where the international commitments fall within the scope of the common rules, or in any event within an area which is already largely covered by such rules, even if there is no contradiction between those rules and the commitments (*Commission* v *Luxembourg*, paragraph 88).

44 Thus it is that, whenever the Community has included in its internal legislative acts provisions relating to the treatment of nationals of non-member countries or expressly conferred on its institutions powers to negotiate with non-member countries, it acquires an exclusive external competence in the spheres covered by those acts (*Commission* v *Luxembourg*, paragraph 89).

45 The same applies, even in the absence of any express provision authorising its institutions to negotiate with non-member countries, where the Community has achieved complete harmonisation in a given area, because the common rules thus adopted could be affected within the meaning of the *ERTA* judgment if the Member States retained freedom to negotiate with non-member countries (*Commission* v *Luxembourg*, paragraph 90).

46 As is clear from its title and from Articles 1 and 2, Regulation No 3921/91 lays down the conditions for access to the national transport of goods or passengers by inland waterway in Member States only in respect of Community carriers. Those provisions cover only carriers of goods or passengers by inland waterway established in a Member State, which use vessels whose owner or owners are natural persons domiciled in a Member State and who are Member State nationals, or legal persons which have their registered place of business in a Member State and the majority holding in which or majority of which belongs to Member State nationals.

47 The reference in Article 6 of Regulation No 3921/91 to rights existing on the basis of the Mannheim Convention cannot alter that conclusion, since, as the Advocate General states in point 58 of his Opinion, by that provision the Community is merely taking formal note of Switzerland's rights under that convention.

48 It follows that Regulation No 3921/91 does not govern the conditions for access by non-Community carriers to the national transport of goods or passengers by inland waterway in a Member State.

49 Since the contested bilateral agreements do not fall within an area already covered by Regulation No 3921/91 they cannot be regarded as affecting it on the ground relied on by the Commission.

50 Furthermore, the fact that Regulation No 3921/91 does not govern the situation of carriers established in third countries operating within the Community demonstrates that the harmonisation achieved by that regulation is not complete.

51 Therefore, the Commission's claim that the Community has acquired exclusive external competence, as defined by the *ERTA* judgment, in the area governed by the contested bilateral agreements is unfounded.

52 In those circumstances the first complaint must be dismissed.

Second complaint: infringement of Article 10 EC

Arguments of the parties

53 By its second complaint the Commission submits that the Grand Duchy of Luxembourg has failed to comply with its obligations under Article 10 EC since, by negotiating, concluding, ratifying and bringing into force the contested bilateral agreements after the Council decided, on 7 December 1992, to authorise the Commission to negotiate an agreement on behalf of the Community, that Member State has compromised the implementation of that decision. The negotiation by the

Commission of an agreement on behalf of the Community and its subsequent conclusion by the Council is inevitably made more difficult by interference from a Member State's own initiatives. Furthermore, in the negotiations with a non-member country the Community's position is weakened because the Community and its Member States appear fragmented.

54 In addition to the arguments already set out in paragraph 29 of this judgment, the Luxembourg Government contends that the contested bilateral agreements were negotiated before 7 December 1992, the date on which the Council authorised the Commission to negotiate a multilateral agreement on behalf of the Community.

55 Furthermore, the Council's decision of 8 April 1994 is in fact a new mandate for negotiation which replaces the mandate of 7 December 1992.

56 Finally, the Luxembourg Government states that it has declared its willingness to terminate all the contested bilateral agreements immediately after a multilateral agreement has entered into force.

Findings of the Court

57 Article 10 EC requires Member States to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.

58 That duty of genuine cooperation is of general application and does not depend either on whether the Community competence concerned is exclusive or on any right of the Member States to enter into obligations towards non-member countries.

59 In that regard, it must be recalled that the Court has already held that the Member States are subject to special duties of action and abstention in a situation in which the Commission has submitted to the Council proposals which, although they have not been adopted by the Council, represent the point of departure for concerted Community action (see Case 804/79 *Commission* v *United Kingdom* [1981] ECR I-1045, paragraph 28).

60 The adoption of a decision authorising the Commission to negotiate a multilateral agreement on behalf of the Community marks the start of a concerted Community action at international level and requires, for that purpose, if not a duty of abstention on the part of the Member States, at the very least a duty of close cooperation between the latter and the Community institutions in order to facilitate the achievement of the Community tasks and to ensure the coherence and consistency of the action and its international representation.

61 In this case it is common ground that after the Council authorised the Commission to negotiate a multilateral agreement on behalf of the Community, by decision of 7 December 1992, the Grand Duchy of Luxembourg negotiated, concluded, ratified and implemented the contested bilateral agreements without cooperating or consulting with the Commission. By acting in that manner that Member State has compromised the achievement of the Community's task and the attainment of the objectives of the Treaty.

62 Consultation with the Commission was all the more necessary because the Council and the Commission had agreed, as regards the negotiation procedure for that agreement, to apply the rules of conduct set out in a gentleman's agreement annexed to the mandate for negotiation of 7 December 1992, providing for close coordination between the Commission and the Member States. In that respect, Title II, paragraph 3(d), of the Gentleman's Agreement provides that 'the Commission shall be the spokesman during the negotiations, and the representatives of the Member States shall speak only if requested to do so by the Commission' and that 'the representatives of the Member States must take no action which is likely to handicap the Commission in its work'.

63 Although it is possible, as the Luxembourg Government argues, that the negotiations on the agreement with the Czech and Slovak Federative Republic were opened before the Council's decision of 7 December 1992, the fact remains that the contested bilateral agreements were all signed and ratified after that date.

64 Furthermore, it does not appear anywhere in the file that the Council's decision of 8 April 1994 constitutes a new mandate for negotiation which replaces that of 7 December 1992. All that is clear is that that decision was made to clarify and supplement the mandate which had been issued to the Commission in 1992.

65 Finally, as the Advocate General stated in point 76 of his Opinion, the fact that the Luxembourg Government has declared its willingness to terminate all the contested bilateral agreements on the entry into force of a multilateral agreement binding the

Community does not demonstrate compliance with the obligation of genuine cooperation laid down in Article 10 EC.

66 It follows from the foregoing that, having negotiated, concluded, ratified and brought into force the contested bilateral agreements without having cooperated or consulted with the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligation under Article 10 EC.

67 It follows that the second complaint is well founded, to the extent just stated in the preceding paragraph.

The third complaint: incompatibility of the contested bilateral agreements with Regulation No 1356/96

Arguments of the parties

68 By its third complaint the Commission submits that maintaining in force, after the adoption of Regulation No 1356/96, the provisions of the contested bilateral agreements, which provide that vessels registered in the third countries concerned may provide transport services by inland waterway between the Grand Duchy of Luxembourg and other Member States of the Community subject to special authorisation from the competent authority, is incompatible with Articles 1 and 2 of that regulation as well as its general objectives.

69 By permitting the unilateral grant of rights of access by the Grand Duchy of Luxembourg, or at least in reserving the right of that Member State to grant unilaterally rights of access on routes within the Community to carriers who do not satisfy the conditions laid down by Regulation No 1356/96, the contested bilateral agreements modify, unilaterally and beyond the Community's control, the nature and scope of the rules concerning the freedom to provide intra-Community inland waterway transport services as defined by Community law. According to the Commission, it is common ground that the Polish, Romanian, Czech and Slovak transport carriers and undertakings likely to be authorised, in accordance with the contested bilateral agreements, to provide transport services between the Grand Duchy of Luxembourg and the other Member States of the Community do not satisfy any of those conditions.

70 The Luxembourg Government contends that Regulation No 1356/96 organises inland waterway transport between the Member States and concerns only Community carriers, since the carriers established in third countries are excluded or covered by other Community provisions.

Findings of the Court

71 It must be recalled that the main objective of Regulation No 1356/96 is to establish freedom to provide services in the field of the transport of goods or passengers by inland waterway between the Member States by eliminating all restrictions or discrimination as regards the provider of services on the grounds of his nationality or the place of establishment.

72 According to Article 2 of Regulation No 1356/96, the benefit of the arrangements involving the freedom to provide inland waterway transport services for goods or passengers is for carriers who:

— are established in a Member State in accordance with the laws of that Member State,

— are entitled in that Member State to carry out the international transport of goods or passengers by inland waterway,

— use for such transport operations inland waterways vessels which are registered in a Member State or, in the absence of registration, possess a certificate of membership of a fleet of a Member State, and

— satisfy the conditions laid down in Article 2 of Regulation No 3921/91, that is to say, they use vessels whose owner or owners are natural persons domiciled in a Member State and who are Member State nationals, or legal persons which have their registered place of business in a Member State and the majority of which belongs to Member State nationals.

73 As the Advocate General states in points 85 and 86 of his Opinion, whilst Regulation No 1356/96 organises the freedom to provide inland waterway transport services between the Member States of the Community to the benefit of carriers established in one of those Member States, it is clear that the system established by Regulation No 1356/96 does not have as its purpose or effect to prevent operators established in third countries or vessels registered in the latter to carry out services between Member States of the Community.

74 Furthermore, as the Advocate General notes out in points 87 to 89 of his Opinion, the contested bilateral agreements do not establish the freedom to provide services for the transport by inland waterway of goods or passengers between the Member States by Czech, Polish, Slovak or Romanian carriers, but merely provide that in strictly defined circumstances and subject to authorisation by the competent authorities of the parties, vessels registered in the third countries concerned may operate such services between the Grand Duchy of Luxembourg and other Member States of the Community.

75 It follows that, contrary to the Commission's submissions, the provisions of the contested bilateral agreements have not modified either the nature or the scope of the provisions of Regulation No 1356/96.

76 In those circumstances the third complaint must be dismissed.

77 Taking account of all of the foregoing considerations it must be held that by negotiating, concluding, ratifying and brought into force the contested bilateral agreements without cooperating or consulting with the Commission the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 10 EC, and the remainder of the action should be dismissed.

Costs

78 Under Article 69(3) of the Rules of Procedure, the Court may order that the costs be shared or that the parties bear their own costs if each party succeeds on some and fails on other heads. Since the Commission's application has been upheld only in part, each party must be ordered to bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. Declares that, by negotiating, concluding, ratifying and bringing into force

— the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Czech and Slovak Federative Republic on inland waterway transport, signed in Luxembourg on 30 December 1992;

— **the agreement between the Government of the Grand Duchy of Luxembourg and the Government of Romania on inland waterway transport, signed in Bucharest on 10 November 1993; and**

— **the agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Poland on inland waterway transport, signed in Luxembourg on 9 March 1994;**

without having cooperated or consulted with the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 10 EC;

2. **Dismisses the remainder of the action;**

3. **Orders the Commission of the European Communities and the Grand Duchy of Luxembourg to bear their own costs.**

[Signatures]