JUDGMENT OF THE COURT (First Chamber)
13 April 2000 *

In Case C-348/99,

Commission of the European Communities, represented by M. Wolfcarius, Legal Adviser, and M. Desantes Real, a national official on secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Grand Duchy of Luxembourg, represented by P. Steinmetz, Head of Legal and Cultural Affairs in the Ministry of Foreign Affairs, acting as Agent, 5 Rue Notre-Dame, Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20), the Grand Duchy of Luxembourg has failed to fulfil its obligations thereunder,

THE COURT (First Chamber),

composed of: L. Sevón (Rapporteur), President of the Chamber, P. Jann and M. Wathelet, Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 February 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 September 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20, hereinafter 'the Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations thereunder.

2 The purpose of the Directive is to harmonise national laws on the legal protection of databases.

3 Under Article 16(1) and (2) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply therewith before 1 January 1998 and to communicate to the Commission the text of the provisions of domestic law which they adopted in the field governed by the Directive.

4 Since it had not received any notification of the measures which the Grand Duchy of Luxembourg was to adopt to implement the Directive, the Commission, by

letter of 31 March 1998, formally called upon the Grand Duchy of Luxembourg to submit its observations within two months.

5 Having received no reply to that letter, the Commission, by letter of 30 September 1998, sent the Grand Duchy of Luxembourg a reasoned opinion calling upon it to adopt the measures necessary to comply with the opinion within two months of service thereof.

6 Since it received no further communication from the Luxembourg Government relating to transposition of the Directive, the Commission brought this action.

7 The Luxembourg Government does not dispute that it failed to transpose the Directive but argues that the action will become devoid of purpose once draft Law No 4431 on copyright, neighbouring rights and databases which was submitted to the Chambre des Députés (Parliament) on 24 April 1998 is adopted. One of the objectives of that law is to transpose the Directive, in Articles 67 to 70, which extend copyright protection to databases. The Luxembourg Government therefore requests that the Court of Justice stay proceedings and, in the alternative, dismiss the application and order the Commission to pay the costs.

8 In that connection, it must be borne in mind that, in proceedings under Article 226 EC, the question whether a Member State has failed to fulfil its

obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-315/98 *Commission* v *Italy* [1999] ECR I-8001, paragraph 11).

9 Since the Grand Duchy of Luxembourg did not transpose the Directive within the prescribed period and has not provided any information such as to justify staying proceedings, its application for a stay of proceedings must be dismissed and the action brought by the Commission must be considered to be well founded.

10 The Court therefore finds that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations thereunder.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the Grand Duchy of Luxembourg and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, the Grand Duchy of Luxembourg has failed to fulfil its obligations thereunder;**

2. **Orders the Grand Duchy of Luxembourg to pay the costs.**

Sevón Jann Wathelet

Delivered in open court in Luxembourg on 13 April 2000.

R. Grass

Registrar

L. Sevón

President of the First Chamber