JUDGMENT OF THE COURT (Third Chamber)

16 December 1999 *

In Case C-26/99,

Commission of the European Communities, represented by P.J. Kuijper, Legal Adviser, and N. Yerrell, a national civil servant on secondment to its 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, Director of Legal and Cultural Affairs at the Ministry of Foreign Affairs, acting as Agent, 5 Rue Notre-Dame, Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt and/or notify to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to

* Language of the case: French.

technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty,

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 28 October 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 3 February 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to adopt and/or notify to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41, 'the Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty.

2 Article 2(1) of the Directive provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 November 1996 and that they are immediately to inform the Commission thereof.

3 Since it had not been notified of any implementing measures adopted by the Grand Duchy of Luxembourg in order to comply with the Directive and it had no other evidence at its disposal to suggest that that State had adopted the necessary provisions, on 30 May 1997 the Commission sent a letter of formal notice to the

Luxembourg Government asking it to submit its observations within two months, pursuant to the procedure provided for in Article 169 of the Treaty.

4 The Commission received no response to that letter; accordingly, on 22 December 1997 it issued a reasoned opinion, calling upon the Grand Duchy of Luxembourg to adopt the measures necessary to comply with the Directive within a period of two months.

5 By letter of 25 March 1998, the Grand Duchy of Luxembourg informed the Commission that a draft regulation applying the Directive had been submitted to the Conseil d'État (Council of State) for its opinion and, by letter of 19 August 1998, the text of the Governmental amendments to that draft regulation was forwarded to the Commission.

6 Having received no notification that those measures transposing the Directive had been adopted, the Commission commenced these proceedings.

7 The Grand Duchy of Luxembourg does not dispute either that it is under an obligation to adopt the measures necessary to comply with the Directive or that it was late in doing so. It nevertheless contends that the delay in adopting the abovementioned draft regulation can be explained by the fact that, since it had held the Presidency of the Council of Ministers of the European Union, the first draft of the Grand Ducal Regulation was not adopted until 6 February 1998. Various amendments were made to that draft, which is why the new text was not submitted to the Conseil d'État until 27 January 1999. As it has taken the

measures necessary to ensure that the Directive is transposed rapidly, the Luxembourg Government considers that the Commission's action will soon be devoid of purpose and asks the Court to stay proceedings.

8 In its reply, the Commission takes formal notice of the information provided by the Luxembourg Government, but reaffirms the fact that no final measure of transposition has been adopted.

9 The first point to be made is that the Luxembourg Government does not dispute the fact that the measures necessary to transpose the Directive into national law have not yet been adopted.

10 Secondly, it is settled case-law that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, *inter alia*, Case C-401/98 *Commission* v *Greece* [1999] ECR I-5543, paragraph 9).

11 In those circumstances the action brought by the Commission must be held to be well founded.

12 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with the

Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2(1) of that Directive.

Costs

13 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 asked that the Grand Duchy of Luxembourg be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress**

Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2(1) of that Directive;

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

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 16 December 1999.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Third Chamber