JUDGMENT OF THE COURT (First Chamber)

15 January 2002 *

In Case C-196/01,

Commission of the European Communities, represented by H. Støvlbaek and J. Adda, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented initially by N. Mackel and subsequently by J. Faltz, acting as Agents,

defendant,

APPLICATION for a declaration that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15),

* Language of the case: French.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) 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 13 December 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 8 May 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that the Grand Duchy of Luxembourg had failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) (hereinafter 'Directive 75/442'), and Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15).

2 Article 1(a) of Directive 75/442 provides as follows:

'For the purposes of this Directive:

(a) "waste" shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

The Commission, acting in accordance with the procedure laid down in Article 18, will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure'.

3 The list referred to in the above provision was adopted by the Commission, under the title 'European Waste Catalogue' (EWC), by Decision 94/3. According to point 5 of the introductory note of the annex to that decision:

'The EWC is to be a reference nomenclature providing a common terminology throughout the Community with the purpose to improve the efficiency of waste management activities. ...'

4 The EWC was incorporated into Luxembourg law by the circular of the Minister for the Environment of 20 November 1998 introducing a waste nomenclature (*Mémorial* A 1998, p. 2548). According to the first indent of point 1 of that circular:

'This circular has two objectives

— to introduce a Luxembourg waste nomenclature

— to take over the European Waste Catalogue (EWC).'

5 In accordance with the procedure provided for in the first paragraph of Article 226 EC, the Commission, after giving the Grand Duchy of Luxembourg an opportunity to submit observations, by letter of 25 July 2000 delivered a reasoned opinion calling upon that Member State to take the necessary measures to comply therewith within two months of notification of the opinion. Since the Grand Duchy of Luxembourg failed to do so, the Commission brought the present action.

6 The Commission submits that the Grand Duchy of Luxembourg infringed Article 1(a) of Directive 75/442 and Decision 94/3, first, by incorporating the EWC by means of a ministerial circular binding on the administration but not on third parties, and, second, by introducing alongside the EWC a purely Luxembourg nomenclature differing from the EWC and having the effect of excluding the use of the EWC for a large number of operations in which the classification of waste is taken into account.

7 The Luxembourg Government does not dispute the Commission's submissions, but states that a Grand Ducal regulation ensuring integral and accurate use of the EWC is due to enter into force on 1 January 2002.

8 It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-261/98 *Commission* v *Portugal* [2000] ECR I-5905, paragraph 25).

9 As the Luxembourg Government does not dispute that it did not adopt the necessary measures to comply with Article 1(a) of Directive 75/442 and Decision 94/3, the Commission's action must be regarded as well founded.

10 It must therefore be held that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 1(a) of Directive 75/442 and Decision 94/3.

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

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Declares that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, and Commission Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442;**

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

Jann Sevón Wathelet

Delivered in open court in Luxembourg on 15 January 2002.

R. Grass P. Jann

Registrar President of the First Chamber