JUDGMENT OF THE COURT

13 April 1994 *

In Case C-313/93,

Commission of the European Communities, represented by Xavier Lewis, a member of its Legal Service, acting as Agent, assisted by Bernard Leplat, a French official placed at the disposal of the Legal Service, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Grand Duchy of Luxembourg, represented by Claude Franck, Senior Adviser in the Ministry for the Environment, acting as Agent, with an address for service in Luxembourg at the Ministry for the Environment, 18 Montée de la Pétrusse,

defendant,

APPLICATION for a declaration that, by failing to adopt and/or communicate to the Commission within the prescribed period all the measures necessary to comply with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (Official Journal L 175, p. 40), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive, in particular Article 12 thereof, and under Articles 5 and 189 of the EEC Treaty,

* Language of the case: French.

THE COURT,

composed of: G. F. Mancini, President of Chambers, acting as President, J. C. Moitinho de Almeida and D. A. O. Edward (Rapporteur) (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg and J. L. Murray, Judges,

Advocate General: W. Van Gerven,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 23 February 1994, in which the Grand Duchy of Luxembourg was represented by Claude Franck, acting as Agent, assisted by Nicolas Decker, of the Luxembourg Bar,

after hearing the Opinion of the Advocate General at the sitting on 9 March 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 June 1993, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to adopt and/or communicate to the Commission within the prescribed period all the measures necessary to comply with Council Directive 85/377/EEC of 27 June 1985 on the assessment of the effects of

certain public and private projects on the environment, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive, in particular Article 12 thereof, and under Articles 5 and 189 of the EEC Treaty.

2 Article 2 of Directive 85/337 provides that Member States are to adopt all measures necessary to ensure that, before authorization is given for their execution, public and private projects likely to have significant effects on the environment are subject to an assessment with regard to their effects. Article 4 provides that certain public and private projects must always be subject to an assessment, while others must be subject to an assessment only where Member States consider that their characteristics so require. Article 12 provides that Member States are to take the measures necessary to comply with the directive within three years of its notification. That time-limit expired on 3 July 1988.

3 In the absence of any communication concerning the measures adopted by the Luxembourg authorities in order to comply with the provisions of the directive, the Commission by letter of 9 March 1990 initiated the procedure under Article 169 of the Treaty and requested the Grand Duchy of Luxembourg to submit its observations regarding that state of affairs within a period of two months.

4 By letter of 19 July 1990, the Permanent Representative of the Grand Duchy of Luxembourg stated that a draft law concerning the assessment of the environmental impact of certain public and private projects had been drawn up and that the procedure for its adoption was in progress.

5 On 8 April 1991, as neither that law nor any other legislation had been communicated to it, the Commission sent a reasoned opinion to the Grand Duchy of

Luxembourg under Article 169 of the Treaty, requesting it to adopt the measures necessary to comply with the directive within two months of its notification.

6 By letter of 3 May 1991, the Grand Duchy communicated to the Commission the text of a draft Grand Ducal regulation on the assessment of the environmental impact of certain public and private projects, pointing out that the draft regulation would regularize the situation.

7 The Commission was not satisfied with the Luxembourg authorities' reply to the reasoned opinion, and instituted these proceedings.

8 The Commission claims that the Luxembourg legislation already in force in the field covered by the directive does not fully transpose the latter into national law. It considers that the assessment procedure provided for by the directive will not be incorporated into national law until after the entry into force of the new Grand Ducal regulation to which the Luxembourg Government had referred in its letter of 3 May 1991.

9 The Luxembourg Government does not deny failing to fulfil its obligations. At the hearing, however, it pointed out that the Grand Ducal regulation would be adopted as soon as possible with a view to transposing the directive into national law.

10 It should be noted, however, that even if the regulation in question does bring the infringement to an end, it is common ground that it was not in force at the time when the period prescribed by the reasoned opinion expired.

11 Accordingly, it must be held that, by failing to adopt within the prescribed period all the measures necessary to comply with Directive 85/337, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive, in particular Article 12 thereof, and under Articles 5 and 189 of the Treaty.

12 However, the Court does not have to take account of the failure to communicate any measures laid down by law, regulation or administrative action which should have been taken in order to comply with the directive, since no such measures have in fact been adopted by the Grand Duchy of Luxembourg.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Grand Duchy of Luxembourg has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1) Declares that, by failing to adopt within the prescribed period all the measures necessary to comply with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private

projects on the environment, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the directive, in particular Article 12 thereof, and under Articles 5 and 189 of the EEC Treaty;

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

Mancini Moitinho de Almeida Edward

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Murray

Delivered in open court in Luxembourg on 13 April 1994.

R. Grass G. F. Mancini

Registrar President of the Second and Sixth Chambers acting as President