JUDGMENT OF THE COURT (Third Chamber)

10 June 2004 *

In Case C-333/03,

Commission of the European Communities, represented by M.-J. Jonczy, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by S. Schreiner, acting as Agent,

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 Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1998 L 201, p. 88) or, in any event, by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: A. Rosas, acting for the President of the Third Chamber, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 July 2003, 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 Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1998 L 201, p. 88, hereinafter 'the Directive') or, in any event, by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive.

Legal framework and pre-litigation procedure

2 Article 2 of the Directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 July 2001 at the latest ...

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion [of] their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall inform the Commission immediately of the measures they take to implement this Directive.'

3 Council Directive 77/187/EEC of 14 February 1977 (OJ 1977 L 61, p. 26) was repealed by Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16). According to Article 12 of Directive 2001/23, Directive 77/187, as amended, is repealed without prejudice to the obligations of the Member States concerning the time-limits for implementation set out in Annex I, Part B to Directive 2001/23. Annex I, Part B, provides that the deadline for transposing Directive 98/50 is 17 July 2001.

4 Since no national measures transposing the Directive had been communicated to it, the Commission initiated the procedure for failure to fulfil obligations laid down in Article 226 EC. Having given the Grand Duchy of Luxembourg formal notice to submit its observations, it issued a reasoned opinion on 3 April 2003, calling on that Member State to take the measures necessary to comply with the opinion within two months of the date of its notification.

5 As the Grand Duchy of Luxembourg did not reply to the opinion, the Commission decided to bring the present action.

The action

Arguments of the parties

6 The Commission states that the Grand Duchy of Luxembourg has failed to take the measures necessary to comply with the Directive, or, in any event, has failed to inform the Commission thereof, and has thereby failed to fulfil its obligations under the Directive.

7 The Grand Duchy of Luxembourg submits that draft law No 4896 regulating the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, which was intended to transpose the Directive, was submitted to the Chambre des députés (Chamber of Deputies) on 27 December 2001. Following two opinions issued by the Conseil d'État (Council of State) in May and July 2003, the Labour and Employment Committee of the Chambre des députés decided on 7 July 2003 that the text of the draft law should be amended. Those amendments were approved by the Conseil de gouvernement (Government in council) on 18 July 2003 and were forwarded to the Conseil d'État and the Chambre des députés. At its sitting of 7 July 2003, the committee decided to place the draft law on the agenda of the Chambre des députés in order that it might be adopted in October 2003.

Findings of the Court

8 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 prevailing in

the Member State at the end of the period laid down in the reasoned opinion (see, inter alia, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26, and Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7).

9 It is not disputed that the Grand Duchy of Luxembourg failed to take the measures necessary to transpose the Directive within the time-limit set by the reasoned opinion.

10 It must accordingly be held 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 under that directive.

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. As 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 the laws, regulations and administrative provisions necessary to comply with Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;**

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

Rosas Schintgen Colneric

Delivered in open court in Luxembourg on 10 June 2004.

Registrar — President of the Third Chamber

R. Grass — A Rosas