OPINION OF ADVOCATE GENERAL SAGGIO

delivered on 14 October 1999 *

Relevant legislation, facts and procedure

1. Article 17(1) of Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work [1] (hereinafter 'the Directive') provides that Member States are to bring into force the provisions necessary to comply with the its obligations under the Directive 'not later than 22 June 1996 or ensure, by that date at the latest, that the two sides of industry introduce the requisite provisions by means of collective agreements', and 'forthwith inform the Commission thereof'.

2. By document lodged at the Court Registry on 16 February 1999, the Commission brought an action under Article 169 of the EC Treaty (now Article 226 EC) against the Grand Duchy of Luxembourg, seeking from the Court a declaration that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to implement the Directive, the Grand Duchy of Luxembourg had failed to fulfil its obligations thereunder.

3. The facts preceding the commencement of that action are as follows. On 16 January 1997, having received no communication from the Luxembourg authorities concerning national measures to implement the Directive, and having no information from other sources regarding the adoption of such measures, the Commission sent the Luxembourg authorities a letter of formal notice calling upon them to submit their observations within two months. The authorities replied by letter of 25 February 1997 stating that legislation to transpose the Directive was being prepared. The Commission received no further information and, by letter of 20 January 1998, sent the Luxembourg Government a reasoned opinion in which it set out the observations already made in its letter of formal notice, complained that the Directive had not been implemented, and laid down a period of two months in which it must adopt the necessary measures. By letter of 10 March 1998, the Luxembourg authorities sent the Commission the text of a draft law designed to transpose the Directive into domestic law, and asked for an extension of time in which to complete the drafting of the national provisions in question. The

* Original language: Italian.

1 — OJ 1994 L 216, p. 12.

Commission granted that extension of time. However, on the day it brought the present action, it had still not received any information on developments or on the completion of that legislative procedure.

4. On that basis the Commission took the view that the Grand Duchy of Luxembourg had failed to transpose the provisions of the Directive into its domestic law and had thus failed to fulfil its obligations under the Directive and the relevant provisions of the Treaty. It therefore brought the present action against the Grand Duchy of Luxembourg for failure to fulfil obligations.

The failure to fulfil obligations

5. Under the third paragraph of Article 189 of the EC Treaty (now Article 249 EC), directives are binding, as to the result to be achieved, upon each Member State to which they are addressed. Under the first paragraph of Article 5 of the EC Treaty (now Article 10 EC), Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. As far as the transposition of the Directive into domestic law is concerned, the relevant obligation is set out explicitly in Article 17 thereof, which fixes 22 June 1996 as the last day for transposition and requires the Member States to inform the Commission forthwith of the adoption of national implementing measures.

6. In its defence, lodged on 16 April 1999, the Luxembourg Government stated that the draft law transposing the Directive had been adopted on 19 March 1999 and sent on 13 April 1999 to the Council of State for its opinion, as is required by the rules of legislative procedure. It also stated that the draft would be laid before Parliament by April 1999 and would be adopted before the end of 1999. In order to justify its delay, the Luxembourg Government pointed out that the preparatory work for the implementing legislation had proved to be extremely complex, making it necessary to create an interministerial group to examine all aspects of the Directive. It also observed that the current legislation, and in particular the Law of 28 October 1969 on the protection of minors and young workers, and the Law of 17 June 1994 on the protection of the health of workers, already fulfilled, in large part, the requirements of the Directive, and that the draft law containing the implementing measures therefore dealt essentially with 'tasks of a technical nature' and adaptation of the prior legislation. It therefore asked that the proceedings be suspended or, in the alternative, that the action be dismissed.

7. The request for suspension of the proceedings cannot be granted as it would not remove the liability of the Grand Duchy of

Luxembourg for its failure to fulfil its obligations.

8. As to the substance, the arguments raised by the Luxembourg Government in support of its request for the dismissal of the action are unfounded. It is well established that difficulties inherent in national legislative procedure in no way lessen the liability of the Member States for any delay in fulfilling Community obligations or, in particular, in adopting measures implementing directives. The unsubstantiated point that a series of provisions exists in Luxembourg law partly satisfying the demands of the Directive is irrelevant, since, leaving aside other considerations, the Luxembourg Government itself expressly acknowledges that it must still adopt certain provisions in order for its domestic law to conform to the Directive.

Costs

9. The Grand Duchy of Luxembourg has been unsuccessful in all its pleas. 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, the Grand Duchy of Luxembourg must be ordered to pay the costs.

Conclusion

10. In light of all the foregoing considerations, I propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

(2) order the Grand Duchy of Luxembourg to pay the costs.