OPINION OF ADVOCATE GENERAL ALBER

delivered on 7 June 2001 [1]

1. The Commission has brought the present action for failure to fulfil Treaty obligations against the Grand Duchy of Luxembourg for failing to transpose within the prescribed time-limit Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. [2]

2. Article 32(1), first subparagraph, of Directive 95/46 provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest at the end of a period of three years from the date of its adoption. On the relevant date, 24 October 1998, the Luxembourg Government had not yet communicated to the Commission any provisions to transpose the Directive. The Commission therefore sent a letter of notice on 18 December 1998, initiating the proceedings to establish a failure to fulfil Treaty obligations. There was no reply to the letter. By letter of 26 August 1999, the Commission therefore sent a reasoned opinion to the Grand Duchy of Luxembourg, prescribing a period of two months. By letter of 27 October 1999, the Luxembourg Government pointed out that the legislative procedure had commenced, but that there had been delays because of the change of government in the year 1999.

3. By application of 5 December 2000, entered in the Court Register on 7 December 2000, the Commission initiated proceedings for failing to transpose Directive 95/46 within the prescribed period.

4. Before this Court, the Luxembourg Government again submits that the legislative process is not completed. It states that the delays arise from the new allocation of competencies of its ministries, entailed by the change of government in the year 1999.

5. The Commission claims that the Court should:

(1) declare that, in failing within the prescribed period to introduce the laws, regulations and administrative

1 — Original language: German.

2 — OJ 1995 L 281, p. 31.

provisions containing possible sanctions, necessary to comply with Article 32 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive;

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

6. The Luxembourg Government claims that the Court should:

— dismiss the application;

in the alternative

— discontinue the proceedings.

7. The Court has consistently held [3] that the decisive date for determining the existence of a failure to fulfil Treaty obligations is the date on which the period prescribed in the reasoned opinion expires. The date on which the two-month period prescribed in the reasoned opinion of 26 August 1999 commenced was the date of the letter of notification. The period expired without the Luxembourg Government complying with the Commission's request.

8. Again, according to the settled case-law of the Court, [4] practices and circumstances under the legal systems of the Member State do not justify failure to fulfil the obligations and observe the time-limits arising from Community directives, including delay in implementing a directive. Consequently, at the expiry of the period prescribed in the reasoned opinion, Directive 95/46 must be regarded as not having been implemented in the law of the Member State and I therefore propose that the Grand Duchy of Luxembourg be found at fault pursuant to the application.

9. The decision on costs is determined by Article 69(2) of the Rules of Procedure.

3 — Case C-384/99 *Commission* v *Belgium* [2000] ECR I-10633, paragraph 16.

4 — Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9; Case C-139/97 *Commission* v *Italy* [1998] ECR I-605, paragraph 11.

Conclusion

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

(1) declare that, in failing to introduce within the prescribed time-limit the laws, regulations and administrative provisions containing possible sanctions necessary to comply with Article 32 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, 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 of the proceedings.