JUDGMENT OF THE COURT (Fourth Chamber)

22 May 2003 *

In Case C-335/02,

Commission of the European Communities, represented by H. Kreppel and D. Martin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

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

defendant,

APPLICATION for a declaration that, by failing to define the necessary capabilities and aptitudes for persons designated to carry out activities related to protection against and prevention of occupational risks, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 10 EC and 249 EC and Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the

* Language of the case: French.

introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1),

THE COURT (Fourth Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, D.A.O. Edward and S. von Bahr (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
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 20 September 2002, the Commission of the European Communities brought an action under Article 226

EC for a declaration that, by failing to define the necessary capabilities and aptitudes for persons designated to carry out activities related to protection against and prevention of occupational risks, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 10 EC and 249 EC and Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1),

2 Article 7 of Directive 89/391, entitled 'Protective and preventive services', provides, in paragraph 8, that the Member States are to define the capabilities and aptitudes which the workers and the external persons or services designated to carry out activities related to protection against and prevention of occupational risks in the undertaking and/or establishment must have.

3 Taking the view that some provisions of Directive 89/391, in particular Article 7(8), had not been fully transposed by the Grand Duchy of Luxembourg, the Commission initiated an infringement procedure. On 18 October 1999, after having given the Member State formal notice to submit its observations, the Commission issued a reasoned opinion calling on that State to take the measures necessary to comply with the reasoned opinion within two months of its notification. Having received no information to the effect that the transposition of Article 7(8) of that directive had been completed, the Commission brought the present action.

4 The transposition of Article 7(8) of Directive 89/391 entails the adoption by the Member States of laws or regulations which comply with the requirements of that directive and which are brought to the attention of the undertakings concerned by appropriate means, so as to enable them to be aware of their obligations in the matter and the competent national authorities to check that those measures are

complied with (Case C-49/00 *Commission* v *Italy* [2001] ECR I-8575, paragraph 36).

5 The Grand Duchy of Luxembourg does not deny its failure to adopt the provisions necessary for the transposition of Article 7(8) of Directive 89/391.

6 In those circumstances, the action brought by the Commission must be regarded as well founded.

7 Accordingly, it must be held that, by failing to define the necessary capabilities and aptitudes for persons designated to carry out activities related to protection against and prevention of occupational risks, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(8) of Directive 89/391

Costs

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

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Declares that, by failing to define the necessary capabilities and aptitudes for persons designated to carry out activities related to protection against and prevention of occupational risks, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

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

Timmermans Edward von Bahr

Delivered in open court in Luxembourg on 22 May 2003.

R. Grass

Registrar

C.W.A. Timmermans

President of the Fourth Chamber