JUDGMENT OF THE COURT (Third Chamber)
19 February 2002 *

In Case C-366/00,

Commission of the European Communities, represented by R. Tricot and P. Panayotopoulos, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by J. Faltz, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed period, the laws, regulations and administrative provisions necessary fully to comply with Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty,

* Language of the case: French.

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: S. Alber,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed period, the laws, regulations and administrative provisions necessary fully to comply with Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5), the Grand Duchy of Luxembourg had failed to fulfil its obligations under the EC Treaty,

2 Directive 97/11 amends and supplements Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175 p. 40), in order to ensure that the latter directive is applied in an increasingly harmonised and efficient manner. The first subparagraph of Article 3(1) of Directive 97/11 states that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 14 March 1999 at the latest, and to inform the Commission thereof forthwith.

3 Since the Commission had not been informed by the Grand Duchy of Luxembourg of any provisions adopted by it to comply with Directive 97/11, and had not received any other information to lead it to conclude that the necessary provisions had been adopted, it decided to initiate against that Member State the procedure laid down in the first subparagraph of Article 226 EC. It therefore sent it a letter of formal notice on 5 August 1999, giving it two months in which to submit its observations.

4 On 23 November 1999, the Luxembourg Government sent the Commission a draft regulation, approved on 30 April 1999, on the assessment of the effects of certain public and private projects on the environment. The cover letter stated that the draft regulation had been submitted to the Luxembourg Conseil d'État (Council of State) for its opinion. The letter also stated that the legal basis of the regulation would be the Loi du 10 juin 1999 relative aux établissements classés (Law of 10 June 1999 on classified establishments) (*Mémorial* A 1999, p. 1904).

5 Taking the view that that law did not transpose Directive 97/11 but only authorised the adoption of the provisions necessary for the transposition, the Commission, by letter of 26 January 2000, sent the Grand Duchy of Luxembourg a reasoned opinion in which it restated its complaint and requested that that Member State comply with the reasoned opinion within two months.

6 By letter of 17 April 2000, the Luxembourg Government replied, stating that the draft regulation was still under examination by the Conseil d'État.

7 In those circumstances, the Commission brought the present action.

8 On 14 November 2000, the Conseil d'État issued an opinion which caused the Luxembourg Government to amend its draft regulation. In its defence, the Government stated that an amended draft regulation was due to be submitted to the Council of Government at the start of the year 2001 and that it would be possible to adopt the regulation during the first half of that year.

9 In its defence, the Luxembourg Government does not dispute that Directive 97/11 has not yet been transposed, but it claims that all the measures have been taken to enable it to carry out the transposition at the earliest possible opportunity, so that the Commission should soon have to withdraw its action. The Government claims that its good faith is demonstrated by the fact that the emergency procedure is to be used for the adoption of the regulation referred to in the previous paragraph, a draft law transposing the same directive in respect of construction of roads is about to be finalised and, although the directive has not yet been transposed, it is complied with by the Ministry of Public Works.

10 It must be borne in mind that, according to settled case-law, first, 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 prescribed in the reasoned opinion (see, *inter alia*, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26) and, second, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, *inter alia*, Case C-374/98 *Commission* v *France* [2000] ECR I-10799, paragraph 13).

11 Therefore, since the Grand Duchy of Luxembourg does not dispute that it failed to adopt, within the period prescribed in the reasoned opinion, the necessary transposition measures to comply with Directive 97/11, the action for failure to fulfil obligations must be considered well founded.

12 Furthermore, the finding of a failure to fulfil obligations of itself precludes granting the Luxembourg authorities' application to suspend the proceedings pending a hypothetical withdrawal of the action by the Commission (Case C-47/99 *Commission* v *Luxembourg* [1999] ECR I-8999, paragraph 12).

13 It follows from the foregoing that, by failing to bring into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 97/11, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the first subparagraph of Article 3(1) of that directive and under the Treaty.

Costs

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

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by failing to bring into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC 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 first subparagraph of Article 3(1) of that directive and under the EC Treaty;

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

Macken Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 19 February 2002.

R. Grass

Registrar

F. Macken

President of the Third Chamber