JUDGMENT OF THE COURT (Fifth Chamber)
15 June 1995 *

In Case C-220/94,

Commission of the European Communities, represented by Anders C. Jessen, of its Legal Service, and J.-F. Pasquier, a national civil servant seconded to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, also of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Grand Duchy of Luxembourg, represented by N. Schmit, Conseiller de Légation (first class) in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at that Ministry, 5 Rue Notre-Dame,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions needed to comply with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165, p. 27) or, alternatively, by failing to

* Language of the case: French.

inform the Commission forthwith of such measures, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and under Article 15 of that directive,

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, D. A. O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: M. B. Elmer,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 March 1995, at which the Grand Duchy of Luxembourg was represented by G. Harles, of the Luxembourg Bar,

after hearing the Opinion of the Advocate General at the sitting on 11 May 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 July 1994, the Commission of the European Communities brought an action under Article 169 of the EC

Treaty for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions needed to comply with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165, p. 27, hereinafter 'the Directive') or, alternatively, by failing to inform the Commission forthwith of such measures, the Grand Duchy of Luxembourg had failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and under Article 15 of the Directive.

2 The Directive comprises *inter alia* rules ensuring that users have access to information on leased line offerings (Article 3), rules on the supply conditions which must be published (Article 4), on users' rights in the event of termination of such services (Article 5), and on compliance with essential requirements in relation to conditions for access and usage (Article 6). The Directive also requires States to ensure that telecommunications organizations provide a minimum set of leased lines in accordance with harmonized technical characteristics (Article 7) and to control those undertakings (Article 8), it lays down principles for billing procedures and the calculation of tariffs, costs and charges (Articles 9 and 10), and, finally, it sets up a conciliation procedure (Article 12).

3 Under Article 15(1) of the Directive, Member States must 'take the measures necessary to comply with this Directive before 5 June 1993' and 'forthwith inform the Commission thereof'.

4 Since it had not been informed by the Luxembourg Government of the measures transposing the Directive, the Commission, by letter of 9 August 1993, gave it formal notice to comply with its obligations under the Directive and the EEC Treaty.

5 When no reply to that letter was received, the Commission addressed a reasoned opinion to the Luxembourg Government on 7 February 1994 inviting it to take the measures needed to comply with the Directive within a period of two months from notification of the opinion. There was no reply to the opinion either.

6 In the defence, the Luxembourg Government considers that it took all the necessary measures to ensure that procedures in accordance with the Directive were established. In this respect it relies on the Law of 10 August 1992 establishing the postal and telecommunications undertaking, which transformed the former postal and telecommunications administration into a public undertaking with financial and administrative autonomy and legal personality.

7 It states that access to the services in question and the conditions under which they are to be supplied are governed by the 'General Conditions for Telecommunications Services', published, with a list of services offered and prices, by the postal and telecommunications undertaking.

8 It acknowledges, however, that the legislation on telecommunications services and infrastructure is only at draft stage.

9 The Commission considers that since the 'General Conditions' have not been the subject of official publication, they are not a satisfactory transposition of the Directive. Furthermore, they are not drafted with the necessary precision and clarity to ensure legal certainty and the establishment of a transparent system in accordance with the Directive.

10 The Court has consistently held that in order to ensure that directives are fully applied in fact as well as in law, Member States must provide a precise legal framework in the field in question, by adopting rules of law capable of creating a situation which is sufficiently precise, clear and transparent to allow individuals to know their rights and rely on them before the national courts (see, *inter alia*, Case C-361/88 *Commission* v *Germany* [1991] ECR I-2567, paragraph 24).

11 Even supposing that the general conditions adopted and published by the postal and telecommunications undertaking have a content which complies with the Directive, which the Commission doubts, it is apparent that the Grand Duchy of Luxembourg has not adopted within the prescribed period the provisions needed to oblige that undertaking to comply with the requirements of the Directive and to put individuals in a position to know the full extent of their rights under the Directive and rely on them, if necessary, before the national courts.

12 In those circumstances, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 15 of the Directive.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provisions to leased lines, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 15 of that directive;**

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

Gulmann Jann Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 15 June 1995.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber