# OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 28 October 1999 *

1. This action has been brought by the Commission pursuant to Article 169 of the EC Treaty (now Article 226 EC) against the Grand Duchy of Luxembourg for a declaration that, by not adopting the legislative, regulatory or administrative measures necessary to comply with its obligations under Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), and/or by failing to inform the Commission thereof, Luxembourg has failed to fulfil its obligations under the EC Treaty. [1] The Commission also seeks a declaration that the defendant be obliged to pay the costs of these proceedings.

2. Article 2(1) of Directive 95/30 (hereinafter 'the Directive') required the Member States to adopt the necessary measures to transpose it into national law by 30 November 1996, at the latest, and to inform the Commission of those measures. Not having been informed by Luxembourg of the measures taken to implement the Directive, the Commission sent a letter of formal notice to Luxembourg on 30 May 1997. In the absence of any official reply to that letter from Luxembourg, the Commission addressed a reasoned opinion to it on 22 December 1997. Luxembourg replied by letters of 25 March 1998 and 19 August 1998, in which it informed the Commission, first, that a draft regulation to implement the Directive was being considered by the Conseil d'État (Council of State) and, secondly, that the Luxembourg Government had decided to submit amendments to that draft. The Commission, having

* Original language: English.

1 — OJ 1995 L 155, p. 41.

received no further official information regarding the transposition of the Directive, decided, on 2 February 1999, to bring the present application, which it bases not only on Luxembourg's obligations under Article 2(1) of the Directive but also on Article 5 of the EC Treaty (now Article 10 EC) and the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC).

3. In its defence of 27 April 1999, Luxembourg, although not denying that it has failed to fulfil its obligations, submits that the delay may be attributed to its Presidency of the Council of Ministers of the European Union in the latter half of 1997 and that, since the end of that Presidency, all appropriate measures have been taken to ensure the rapid implementation of the Directive. It submits that the Commission's action will presently be unnecessary and requests the Court to suspend the present application. In its reply of 6 May 1999, the Commission notes the information furnished by Luxembourg but points out that, to date, no such implementing measures have been adopted. Consequently, it maintains its application.

4. It is clear from the well-established case-law of the Court that a Member State may not seek to rely on internal administrative difficulties, which must include those related to preparing for the hosting of the Presidency of the Council of Ministers of the European Union, to justify a failure to fulfil its Community-law obligation to transpose in a timely fashion a directive into national law.[2] The Commission is, accordingly, entitled to the declaration that it seeks in so far as it relates to the non-transposition of the Directive, it being unnecessary to consider its alternative complaint regarding non-communication.[3]

2 — See, among many others, Case C-214/96 *Commission* v *Spain* [1998] ECR I-7661, paragraph 18 and Case C-401/98 *Commission* v *Greece* [1999] ECR I-5543, paragraph 9.

3 — See, in this respect, Case C-362/98 *Commission* v *Italy* [1999] ECR I-6299.

## Conclusion

5. I thus recommend that the Court:

(1) Declare that, by not adopting the legislative, regulatory or administrative measures necessary to comply with its obligations under Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty;

(2) Order the Grand Duchy of Luxembourg to pay the costs of these proceedings.