OPINION OF ADVOCATE GENERAL LÉGER

delivered on 10 June 1999 *

1. In this action the Commission of the European Communities seeks a declaration that, by failing to adopt and to communicate to it, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, [1] alternatively by failing to ensure the introduction by management and labour of the required provisions by way of agreement, and thus by failing to take and to communicate to the Commission the measures required to guarantee the results to be achieved under that directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty. The Commission also seeks an order requiring the Grand Duchy of Luxembourg to pay the costs.

2. Under Article 14(1) of Directive 94/45, Member States were required to adopt the laws, regulations and administrative provisions necessary to comply with the Directive not later than 22 September 1996, or to ensure by that date at the latest that management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results to be achieved under the directive. The Member States were required immediately to inform the Commission of the measures adopted.

3. Having observed that the time allowed had expired without its being informed of any transposing measures adopted by the Grand Duchy of Luxembourg, the Commission initiated the procedure for a declaration for failure to fulfil obligations provided for by Article 169 of the EC Treaty (now Article 226 EC).

4. By letter of 16 January 1997, the Commission gave the Luxembourg Government formal notice to submit its observations on the absence of measures to transpose Directive 94/45 into national law.

5. By letter of 18 February 1997, the Luxembourg Government sent the Commission a preliminary draft of a law transposing Directive 94/45 and informed it that the draft was being discussed by

* Original language: French.

1 — OJ 1994 L 254, p. 64.

management and labour and was expected to be adopted by the Council of the Government at the beginning of March 1997. By letter of 2 May 1997, the Luxembourg Government informed the Commission that it was in a position to lay the text of the draft law before Parliament without delay and that 90% of undertakings had already concluded voluntary agreements of the type recommended by the directive.

6. On 22 April 1998, taking the view that no measures had been adopted to implement Directive 94/45 or, at least, that it had not been informed of any such measures, the Commission sent the Luxembourg Government a reasoned opinion stating its view that Luxembourg had failed to fulfil its obligations.

7. Having received no information about the state of progress in transposing Directive 94/45, the Commission brought the present action.

8. In its defence, the Luxembourg Government does not dispute that it failed to transpose Directive 94/45 within the prescribed period. It states that it has adopted a draft law transposing the directive into Luxembourg law and has sent it to professional bodies and to the Council of State for comment, and that it expects the draft to be voted on by the Chamber of Deputies before the end of the first semester of the current year. The Luxembourg Government goes on to say that the Luxembourg undertakings subject to the directive have almost all concluded voluntary agreements, and thus management and labour have introduced the required provisions by way of agreement. It therefore takes the view that the Commission's action now has no purpose, other perhaps than to obtain a declaration that the Grand Duchy of Luxembourg was late in transposing the directive.

9. It is thus apparent that the Luxembourg Government does not dispute the fact that Directive 94/45 was not transposed within the prescribed period. It has still not been transposed today, as no definitive law, regulations or administrative provisions have been adopted to transpose it into domestic law. It should also be observed that, as the Luxembourg Government acknowledges, not all the Luxembourg undertakings subject to Directive 94/45 are covered by agreements designed to implement the provisions necessary for its transposition and that, as the Commission emphasises, where such agreements do exist, it has not been shown that they have the binding force required for them to ensure such implementation. The Commission's action for failure to comply with the obligations imposed by Directive 94/45 is therefore well founded.

10. 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.

Conclusion

11. Consequently, I propose that the Court should:

(1) declare that, by failing to adopt and to communicate to the Commission, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, alternatively by failing to show that it has assured itself, within the same period, that management and labour have introduced the required provisions by way of agreement, and thus by failing to take and to communicate to the Commission the measures required to guarantee the results to be achieved under that directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations Article 14(1) of that directive;

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