JUDGMENT OF THE COURT (Sixth Chamber)

21 October 1999 *

In Case C-430/98,

Commission of the European Communities, represented by P.J. Kuijper, Legal Adviser, and N. Yerrell, a national civil servant on secondment to its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Grand Duchy of Luxembourg, represented by P. Steinmetz, Head of Legal and Cultural Affairs in the Ministry of Foreign Affairs, acting as Agent, 5 Rue Notre-Dame, Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt and/or to communicate to the Commission 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

* Language of the case: French.

informing and consulting employees (OJ 1994 L 254, p. 64), 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/or 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 COURT (Sixth Chamber),

composed of: P.J.G. Kapteyn, acting as President of the Sixth Chamber, G. Hirsch and H. Ragnemalm (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 June 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 November 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to adopt and/or to communicate to it 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 (OJ 1994 L 254, p. 64, hereinafter 'the Directive'), 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/or 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.

2 Under Article 14(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by no 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 imposed by the Directive. The Member States were required immediately to inform the Commission of the measures adopted.

3 On 16 January 1997, having received no notification concerning the measures adopted to transpose the Directive into Luxembourg law, and in the absence of any other information indicating that the Grand Duchy of Luxembourg had fulfilled its obligation to do so, the Commission initiated the procedure laid down in Article 169 of the Treaty by sending the Luxembourg Government a letter calling on it to submit its observations within a period of two months.

4 By letter of 18 February 1997, the Luxembourg Government sent the Commission a preliminary draft of a law transposing the Directive, indicating that the draft was presently being discussed by management and labour and might, in principle, be adopted at the beginning of the following month.

5 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.

6 On 22 April 1998, having received no information concerning implementation of the Directive, despite the assurances given, the Commission sent the Grand Duchy of Luxembourg a reasoned opinion calling on it to take the measures necessary to comply with its obligations under the Directive within two months of notification of the opinion.

7 In the absence of any further communication from the Luxembourg Government regarding the adoption of such measures, the Commission brought the present action.

8 The Luxembourg Government does not dispute that the Directive has not been transposed within the prescribed period. Nevertheless, it argues that a draft law was approved on 19 January 1999 and was then immediately sent to professional bodies and the Council of State for comment. It adds that the Luxembourg undertakings concerned by the Directive, which must therefore establish a European Works Council, are covered — with one or two exceptions — by voluntary agreements. Management and labour have thus introduced the required provisions by way of agreement. That being the case, the Luxembourg Government asks the Court to suspend the present proceedings.

9 In its reply, the Commission opposes the Luxembourg Government's application for suspension of the proceedings. The fact that a law transposing the Directive has been drafted is undoubtedly a step forward, but the Grand Duchy of Luxembourg has, until present, adopted no definitive provisions implementing the Directive. Furthermore, the Commission maintains that agreements that might have been entered into in the majority of the Luxembourg undertakings concerned do not ensure the proper transposition of the Directive because they are voluntary in nature, and thus not binding. The Luxembourg authorities should therefore take all necessary steps enabling them at all times to guarantee the results to be achieved under the Directive and inform the Commission thereof.

10 It should be observed at the outset that there are no grounds for the Court to suspend the proceedings.

11 As to the substance, first, it should be observed that the provisions necessary to transpose the Directive correctly and in its entirety have not been adopted within the period allowed.

12 Secondly, it should also be observed that, as the Luxembourg Government itself concedes, the agreements entered into by management and labour do not cover all the undertakings subject to the Directive. Moreover, the Luxembourg authorities have not taken all necessary steps enabling them at all times to guarantee the results to be achieved under the Directive, as is required by Article 14(1).

13 It must therefore be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the Directive, 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 the measures required

to guarantee the results to be achieved under the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive.

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 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 (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 94/45/EC of 22 December 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 ensure the introduction by management and labour of the required provisions by way of agreement, and thus by failing to take the measures required to guarantee the results to be achieved under the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Kapteyn Hirsch Ragnemalm

Delivered in open court in Luxembourg on 21 October 1999.

R. Grass — Registrar

J.C. Moitinho de Almeida — President of the Sixth Chamber