JUDGMENT OF THE COURT (Sixth Chamber)
16 July 1998 *

In Case C-339/97,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, acting as Agent, 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 Nicolas Schmit, Head of the International Economic Relations and Cooperation Directorate 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 periods, the laws, regulations and administrative provisions necessary to comply with

— Commission Directive 94/15/EC of 15 April 1994 adapting to technical progress for the first time Council Directive 90/220/EEC on the deliberate

* Language of the case: French.

release into the environment of genetically modified organisms (OJ 1994 L 103, p. 20), and

— Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1994 L 297, p. 29),

the Grand Duchy of Luxembourg has failed to fulfil its obligations under those directives,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, R. Schintgen, P. J. G. Kapteyn, J. L. Murray and K. M. Ioannou, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 5 May 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 September 1997, 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 periods, the laws, regulations and administrative provisions necessary to comply with

— Commission Directive 94/15/EC of 15 April 1994 adapting to technical progress for the first time Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms (OJ 1994 L 103, p. 20), and

— Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms (OJ 1994 L 297, p. 29),

the Grand Duchy of Luxembourg has failed to fulfil its obligations under those directives.

2 Under Article 2 of Directives 94/15 and 94/51 the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply therewith by 30 June 1994 and by 30 April 1995 respectively and immediately inform the Commission thereof.

3 On the expiry of those periods, since it had not received from the Grand Duchy of Luxembourg any communication or other information relating to the measures for the transposition of the directives in question into national law, the Commission gave formal notice to the Luxembourg Government, on 9 August 1994 as regards Directive 94/15 and 2 August 1995 as regards Directive 94/51, to submit its observations within a period of two months, in accordance with Article 169 of the Treaty.

4 Having received no communication of any official measure transposing Directives 94/15 and 94/51 into Luxembourg law, the Commission sent two reasoned opinions to the Luxembourg Government on 27 December 1996, requesting it to take the measures necessary in order to fulfil its obligations under Directives 94/15 and 94/51 within two months.

5 By letter of 10 February 1997 the Luxembourg Government informed the Commission that the measures necessary for the transposition of the two directives were being prepared on the basis of a Law enacted on 13 January 1997.

6 Having received no official information to the effect that transposition had been completed, the Commission brought the present action.

7 The Grand Duchy of Luxembourg admits that it has not transposed Directives 94/15 and 94/51 within the periods laid down therein. It points out, however, that the legislative procedure for the adoption of the directives could not commence before the adoption of the Law of 13 January 1997 which transposed Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms (OJ 1990 L 117, p. 1) and Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ 1990 L 117, p. 15).

8 By letter of 14 May 1998, the Grand Duchy of Luxembourg pointed out that it had transposed Directive 94/15 by the Grand Ducal Regulation of 17 April 1998 (*Mémorial* of 28 April 1998, p. 458).

9 By letter lodged on 25 June 1998, the Commission took formal note of the adoption of that measure and withdrew that part of its application, but maintained the action in so far as it concerns Directive 94/51.

10 So far as concerns Directive 94/51, it is settled case-law that a Member State cannot rely on provisions, practices or situations of its own internal legal order in order to justify its failure to respect the obligations and time-limits laid down by a directive (see, in particular, Case C-208/96 *Commission* v *Belgium* [1997] ECR I-5375, paragraph 9).

11 Since the transposition of Directive 94/51 has not been achieved within the period prescribed therein, the action brought by the Commission in this connection must be held to be well founded.

12 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 94/51 the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive.

Costs

13 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.

14 According to Article 69(5) of the Rules of Procedure, a party who discontinues or withdraws from proceedings is to be ordered to pay the costs, unless such withdrawal or discontinuance is justified by the conduct of the opposite party.

15 The Commission abandoned some of the complaints set out in its application in so far as the Grand Duchy of Luxembourg adopted, after the action was brought, the measures necessary to transpose Directive 94/15.

16 It follows that the Commission's partial withdrawal was caused by the conduct of the Grand Duchy of Luxembourg which, moreover, was unsuccessful as to the remainder of its application.

17 The Grand Duchy of Luxembourg should therefore be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) **Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Council Directive 90/219/EEC on the contained use of genetically modified micro-organisms, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;**

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

Ragnemalm Schintgen Kapteyn

Murray Ioannou

Delivered in open court in Luxembourg on 16 July 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber