JUDGMENT OF THE COURT (Fifth Chamber)
9 March 2004 *

In Case C-314/03,

Commission of the European Communities, represented by G. Rozet, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by S. Schreiner, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt and, in any event, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ 2000 L 193, p. 75), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, S. von Bahr (Rapporteur) and R. Silva de Lapuerta, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 July 2003, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt and, in any event, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (OJ 2000 L 193, p. 75), the Grand Duchy of Luxembourg had failed to fulfil its obligations under that directive.

2 Under the first paragraph of Article 2 of Directive 2000/52, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 31 July 2001 at the latest, and forthwith to inform the Commission thereof.

3 In accordance with the procedure laid down in the first paragraph of Article 226 EC, after placing the Grand Duchy of Luxembourg on notice to submit its observations, the Commission issued a reasoned opinion by letter of 19 December 2002 requesting that Member State to take the measures necessary to fulfil its obligations under Directive 2000/52 within two months of its notification. Since the information submitted by the Luxembourg authorities in response to that opinion did not show that those measures had been definitively adopted, the Commission decided to bring this action.

4 The Grand Duchy of Luxembourg acknowledges that it did not take the measures necessary to comply with Directive 2000/52 within the period laid down in the first paragraph of Article 2 of that directive. However, it believes that there are reasons justifying its delay. Implementation of that directive was to a large extent complicated and delayed by failure on the part of the Commission to publish a consolidated version of Directive 2000/52 and of three other directives affected by implementation of that directive before 2002. Moreover, the Luxembourg Government claims that it had difficulty in contacting the Commission in order to discuss methods of implementing the directive.

5 As regards the Luxembourg Government's arguments relating to the difficulties it had in implementing the provisions of Directive 2000/52, it has consistently been held that difficulties which emerge when it comes to implementing a Community measure cannot constitute a ground for a Member State to exonerate itself from

fulfilling its obligations (see, inter alia, Case 128/78 *Commission* v *United Kingdom* [1979] ECR 419, paragraph 10, Case C-374/89 *Commission* v *Belgium* [1991] ECR I-367, paragraph 10, and Case C-327/98 *Commission* v *France* [2000] ECR I-1851, paragraph 21).

6 The grounds pleaded by the Luxembourg Government to explain its failure to transpose Directive 2000/52 must for that reason be rejected.

7 In those circumstances, the action brought by the Commission must be considered to be well founded.

8 Accordingly, it must be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/52, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

Costs

9 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 and the Grand Duchy of Luxembourg has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

Hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, 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.**

Gulmann von Bahr Silva de Lapuerta

Delivered in open court in Luxembourg on 9 March 2004.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber