

JUDGMENT OF THE COURT (Fifth Chamber)  
17 October 1996 <sup>\*</sup>

In Case C-312/95,

**Commission of the European Communities**, represented by Frank Benyon, 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, Director of International Economic Relations and Cooperation in the Ministry of Foreign Affairs, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the measures necessary in order to comply with 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), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 22 and 23 of those directives respectively and under Articles 5 and 189 of the EC Treaty,

<sup>\*</sup> Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón (Rapporteur), C. Gulmann, D. A. O. Edward and M. Wathelet, 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 4 July 1996,

gives the following

### Judgment

1 By application lodged at the Court Registry on 3 October 1995, 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 period the measures necessary in order to comply with 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), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 22 and 23 of those directives respectively and under Articles 5 and 189 of the EC Treaty.

2 Article 22 of Directive 90/219 and Article 23 of Directive 90/220 provided that the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with those directives not later than 23 October 1991 as regards Directive 90/219 and before 23 October 1991 as regards Directive 90/220. In addition, both articles required the Member States to inform the Commission forthwith of the measures adopted.

3 Since it had not been notified of any implementing measures adopted by the Grand Duchy and it had no other evidence at its disposal suggesting that that State had fulfilled its obligation to bring the necessary measures into force within the prescribed period, the Commission gave formal notice to the Luxembourg Government by letter of 20 May 1992 to submit its observations within two months, pursuant to the first paragraph of Article 169 of the EEC Treaty.

4 Since the letter of formal notice did not evoke an official reply, on 13 April 1993 the Commission addressed a reasoned opinion to the Grand Duchy of Luxembourg, requesting it in accordance with the second paragraph of Article 169 of the Treaty to take the measures required to comply with the opinion within two months.

5 By letter of 25 July 1995, the Luxembourg Government replied that the Council of State committee responsible for consideration of the two draft laws transposing Directives 90/219 and 90/220 into national law was about to complete its task and intended to give its opinion during September 1995. The draft laws and the opinion of the Council of State could thus be put before the Chamber of Deputies for debate and adoption in the autumn of 1995.

6 The Commission accordingly instituted this action. With reference to Article 5 and the third paragraph of Article 189 of the EC Treaty, Article 22 of Directive 90/219 and Article 23 of Directive 90/220, it considers that the content of the Luxembourg authorities' letter of 25 July 1995 confirms that the Grand Duchy failed to comply with those directives, and in particular with Articles 22 and 23 thereof.

7 The Grand Duchy of Luxembourg does not deny that it failed to transpose the directives into national law within the prescribed period. It contends, nevertheless, that the application should be dismissed, on the ground that the delay in transposing the two directives was related both to the complexity of the subject-matter and to the discussion on the draft implementing legislation during the consultation procedure which preceded the legislative process.

- 8 The Luxembourg Government adds that the completion of the Chamber of Deputies' work is now in sight. The Council of State gave its opinion on 26 September 1995 as to the draft laws, with the result that the Chamber's special 'genetic' committee was able to undertake its examination of the draft texts in mid-October. Discussions within the committee produced agreement in principle on the proposed drafts. The committee should consequently have been in a position to complete its work at the beginning of 1996, opening the way to a vote in the months to follow. Accordingly, Luxembourg's alleged failure to fulfil its obligations could be brought to an end in the near future, which would render these proceedings devoid of purpose.
- 9 In that connection, it suffices to note that the Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down by a directive (see, in particular, Case C-253/95 *Commission v Germany* [1996] ECR I-2423, paragraph 12).
- 10 Since the directives in question were not transposed within the prescribed period, the action brought in this connection by the Commission must be considered to be well founded.
- 11 It must therefore be held that, by failing to adopt within the prescribed period the measures necessary in order to comply with Directives 90/219 and 90/220, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 22 and 23 of those directives respectively.

### Costs

- 12 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. The Commission has asked for the Grand Duchy of Luxembourg to be ordered to pay the costs. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt within the prescribed period the measures necessary in order to comply with Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms, and Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 22 and 23 of those directives respectively;
2. Orders the Grand Duchy of Luxembourg to pay the costs.

Moitinho de Almeida

Sevón

Gulmann

Edward

Wathelet

Delivered in open court in Luxembourg on 17 October 1996.

R. Grass

J. C. Moitinho de Almeida

Registrar

President of the Fifth Chamber