# JUDGMENT OF THE COURT (Second Chamber)

27 January 2011 *

In Case C-490/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 30 November 2009,

**European Commission,** represented by G. Rozet and E. Traversa, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Grand Duchy of Luxembourg,** represented by C. Schiltz, acting as Agent, assisted by A. Rodesch, avocat,

defendant,

* Language of the case: French.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of Chamber, A. Arabadjiev (Rapporteur), A. Rosas, U. Lõhmus and P. Lindh, Judges,

Advocate General: P. Mengozzi,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 28 October 2010,

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

gives the following

**Judgment**

1 By its action, the Commission of the European Communities asks the Court to declare that, by maintaining in force Article 24 of the Luxembourg Social Security Code, which precludes reimbursement of the costs of medical analyses carried out in another Member State and provides only for liability for those analyses to be accepted only by a paying third party, and Article 12 of the Statutes of the Union des caisses de maladie (Union of Sickness Insurance Funds), which makes reimbursement

of medical analyses carried out in another Member State subject to full compliance with the dispensing conditions provided for by Luxembourg national agreements, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article [49] EC.

## Legal context

2 Article 24 of the Luxembourg Social Security Code, in the version applicable to the dispute (*Mémorial* A 2008, p. 790, 'the Social Security Code'), provides:

'Health care benefits shall be provided either in the form of a reimbursement by the Caisse nationale de santé (National Health Fund) [formerly the Union des caisses de maladie] and the sickness insurance funds to insured persons who have paid the costs or in the form of acceptance of direct billing by the Caisse nationale de santé, the health care provider having, in the latter case, a claim against an insured person only with respect to any statutory liability of that person. In the absence of any contrary provision under an agreement, the method of direct billing shall apply only to the following activities, services and supplies:

— laboratory analyses and tests;

…'

3 The parties to the proceedings agree that the Luxembourg rules on social security do not make provision for acceptance of liability in respect of laboratory analyses and tests, within the meaning of Article 24 of the Social Security Code, in the form of reimbursement of the costs paid for those analyses and tests by insured persons.

4 Under the first and second indents of Article 12 of the Statutes of the Union des caisses de maladie, in the version set out in the consolidated text applicable as at 1 January 1995 (*Mémorial* A 1994, p. 2989, 'the Statutes'):

'The benefits and supplies for which liability is accepted by the sickness insurance scheme in Luxembourg shall be limited to those provided for in Article 17 of the [Social Security] Code and set out in the nomenclatures referred to in Article 65 of the same Code or in the lists provided for by these Statutes.

Benefits shall be payable by the sickness insurance scheme only if they were provided in accordance with the provisions of the agreements referred to in Articles 61 and 75 of the [Social Security] Code.'

**The pre-litigation procedure**

5 Two complaints were referred to the Commission concerning cases of refusal to reimburse patients insured under the Luxembourg social security system in respect of the costs of medical analyses carried out in Member States other than the Grand Duchy of Luxembourg.

6 In one of those cases, reimbursement of the costs was refused on the ground that, since the national legislation provided for direct billing of the costs relating to those analyses to the sickness insurance funds, the relevant sickness insurance fund was not authorised to effect the reimbursement in the absence of a scale of charges for the benefit.

7 In the other case, the Commission considers that reimbursement of blood analyses and ultrasound examinations carried out in Germany was refused on the ground that only the benefits provided for in the Statutes can be reimbursed and that the benefits must be provided in accordance with the provisions of the various applicable national agreements. In that case, the conditions laid down for reimbursement of those analyses could not be fulfilled by the complainant on account of differences between the Luxembourg and German health systems. The Commission states, by way of example, that the samples were taken directly by the doctor, whereas Luxembourg law requires that they be taken in a 'separate laboratory'. It is not possible to meet that requirement in Germany.

8 Following those complaints, on 23 October 2007 the Commission sent the Grand Duchy of Luxembourg a letter of formal notice in which it stated that the maintenance in force of Article 24 of the Social Security Code and Article 12 of the Statutes is contrary to Article 49 EC.

9 By letter of 17 December 2007, Luxembourg replied to that letter of formal notice, stating that it was aware of its obligations under EU law and that it intended, on the one hand, to provide a general solution to the issue raised by the Commission and, on the other hand, to deal 'pragmatically' with any 'isolated cases' arising in the meantime.

10 The Grand Duchy of Luxembourg nevertheless reported several technical difficulties in complying with those obligations. It relied, in particular, on the fact that it was not possible for the Union des caisses de maladie to apply a scale of charges by analogy for the reimbursement of costs incurred abroad, on the specific national conditions governing reimbursement of the costs of medical analyses and on the fact that the social partners were responsible for amending the Statutes.

11 On 16 October 2008, since it considered that it had not obtained any firm commitment from the Luxembourg authorities regarding elimination of the alleged infringement, the Commission sent a reasoned opinion to the Grand Duchy of Luxembourg, requesting it to fulfil its obligations under Article 49 EC within two months of the date of receipt of that opinion.

12 Following an exchange of letters between the Grand Duchy of Luxembourg and the Commission, in which that Member State argued, in particular, that the sickness insurance funds in Luxembourg had been asked to reimburse the costs of medical analyses carried out outside Luxembourg by applying a scale of charges set by analogy with the Luxembourg charges, that the Union des caisses de maladie had been asked to amend its Statutes and that the Social Security Code would be amended not in isolation but as part of a forthcoming general reform, the Commission considered that no provision amending the contested national legislation had been adopted and therefore decided to bring the present action.

**Procedure before the Court**

13 By order of the President of the Court of 19 April 2010, the Kingdom of Denmark was granted leave to intervene in support of the form of order sought by the Grand Duchy of Luxembourg.

14 After the Kingdom of Denmark informed the Court that it was withdrawing its intervention, the President of the Court, by order of 14 July 2010, ordered that that Member State be removed from the register as an intervener in the case.

## The action

*Arguments of the parties*

15 The Commission considers that Article 24 of the Social Security Code and Article 12 of the Statutes lead to an unjustified restriction on the freedom to provide services within the meaning of Article 49 EC.

16 It claims that medical services are services within the meaning of Article 49 EC and that the latter precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services within the same Member State. The Commission also considers that, although EU law does not detract from the power of the Member States to organise their social security systems and to determine the conditions for the grant of social security benefits, Member States must nevertheless exercise that power in accordance with EU law.

17 The system for direct billing of the costs relating to laboratory analyses and tests to the sickness insurance funds does not apply in cases where the laboratory used by a person insured under the social security system in Luxembourg is established outside Luxembourg. The fact that the national legislation provides that liability for those services can be accepted only by that system therefore precludes the possibility of reimbursement to such a person of the costs arising from medical analyses carried out in a Member State other than the Grand Duchy of Luxembourg.

18 The Commission points out that the Court has already ruled that those Member States which have established a system providing benefits in kind must provide mechanisms for *ex post facto* reimbursement in respect of care provided in a Member State other than that in which the persons concerned are insured.

19 Moreover, even if the Luxembourg authorities were to apply a system of reimbursement in the case of analyses or tests carried out in Member States other than the Grand Duchy of Luxembourg, the costs relating to those benefits could not be reimbursed if the benefits were not provided in full compliance with the conditions laid down by the relevant Luxembourg regulations. In that regard, for liability for those services to be capable of being accepted, they must be provided in a 'separate analysis laboratory'. However, in Germany, and also in other Member States, doctors carry out such analyses themselves.

20 The conditions for acceptance of liability laid down by the Luxembourg legislation therefore discriminate on the basis of the way in which the health care is provided in the Member States. Accordingly, whether or not a person covered by the Luxembourg social security system may be reimbursed depends on the Member State in which he received the health care. By way of example, the Commission claims that if a person insured under the Luxembourg social security system goes to France or Belgium, where analyses are most often carried out in 'separate laboratories', that person will be reimbursed. By contrast, the Commission submits that if that person goes to Germany, as was the case in one of the complaints referred to it, he will not be reimbursed.

21 According to the Commission, the Court has ruled that the conditions on which social security benefits are granted by the Member State of affiliation remain enforceable with respect to patients receiving care in another Member State, but they must be neither discriminatory nor an obstacle to freedom of movement of persons. In this case, the conditions laid down by the Luxembourg legislation are directly linked to the way in which the Member States organise the provision of health care and it is, in practice, impossible for patients to exercise any influence over the way in which that care is delivered. By contrast, the nature of an analysis remains unchanged whether

that analysis is carried out by a doctor in his surgery, at a hospital or in a 'separate laboratory'.

22 Article 24 of the Social Security Code and Article 12 of the Statutes therefore have the effect of deterring persons insured under the Luxembourg social security system from using providers of medical services established in Member States other than the Grand Duchy of Luxembourg and consequently constitute an unjustified obstacle to the freedom to provide services.

23 With regard to the risk to the system of agreements, associated with the fact that contractual providers would no longer have any interest in accepting negotiated prices if the benefits were reimbursed at the same rate regardless of whether they were provided by contractual providers, the Commission argues that the Grand Duchy of Luxembourg has provided no convincing evidence in that regard. Moreover, the system of direct billing to sickness insurance funds operates in favour of contractual providers since, by definition, non-contractual providers cannot offer that to their patients.

24 With regard to the instructions given to the sickness insurance funds to reimburse the costs of medical analyses carried out outside Luxembourg, the Commission considers that administrative practices, which by their nature are alterable at will by the authorities and are not given appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under EU law.

25 The Grand Duchy of Luxembourg considers that the refusal by sickness insurance funds to accept liability for analyses carried out in a laboratory established in another Member State is contrary to Article 49 EC.

26 It submits, however, that the Member States retain exclusive powers as regards the organisation, funding and provision of health services and questions whether the obligation imposed on them to reimburse the costs of those services without their having any prior oversight might be contrary to the principle of proportionality set out in the third paragraph of Article 5 EC. That obligation, it submits, infringes the sovereign rights of the Member States in the field in question and would require the Grand Duchy of Luxembourg to make a radical change in the organisation of its health care system.

27 That Member State also argues that its health care system is based on the principles of a system of compulsory agreements with providers and the inclusion of hospital establishments in the budget. That system takes account of social policy considerations by offering the same benefits both to citizens with modest resources and to those with high incomes. It can only be maintained if a large number of persons with social insurance actually use it, and the mechanism for direct billing to sickness insurance funds is one way of achieving that result.

28 If the wealthiest insured persons were allowed freely to obtain health care in Member States located close to the Grand Duchy of Luxembourg, the solidarity necessary for the Luxembourg health care system to operate would be jeopardised. Medical service providers established in that Member State would thus refuse to comply with the conditions arising from the system of agreements. Indeed, in order to maintain the agreements with certain providers, increases in the scale of charges were conceded at the time of the collective negotiations.

29 However, the Grand Duchy of Luxembourg explains that it does not intend to oppose amendments to the provisions called into question by the Commission's action. Such amendments are to be made in the context of a comprehensive reform of the relevant field, pending which the Inspectorate General of Social Security has given clear, precise and binding instructions, requiring the sickness insurance funds to reimburse laboratory analyses carried out in other Member States, non-compliance with which

will lead to the suspension or even setting aside of any contrary decision. This, the Member State argues, ensures compliance with Article 49 EC.

30 The Grand Duchy of Luxembourg therefore considers that the Commission's application should be dismissed.

*Findings of the Court*

31 The Commission argues that the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC in that that Member State, first, has not made provision, under its social security rules, for the acceptance of liability for laboratory analyses and tests, within the meaning of Article 24 of the Social Security Code, carried out in another Member State, in the form of reimbursement of the costs paid by insured persons for those analyses and tests, but has provided only for direct billing to the sickness insurance funds. It complains, secondly, that, in any event, that Member State has, under Article 12 of the Statutes, made reimbursement by those funds of the costs of medical analyses carried out in another Member State subject to full compliance with the dispensing conditions provided for by the national agreements referred to in that article.

32 First, it should be noted that, whilst it is established that EU law does not detract from the power of the Member States to organise their social security systems and that, in the absence of harmonisation at European Union level, it is for the legislation of each Member State to determine the conditions for the grant of social security benefits, the fact nevertheless remains that, when exercising that power, Member States must comply with EU law and, in particular, with the provisions on the freedom to provide services (see, in particular, Case C-157/99 *Smits and Peerboms* [2001]

ECR I-5473, paragraphs 44 to 46; Case C-385/99 *Müller-Fauré and van Riet* [2003] ECR I-4509, paragraph 100; Case C-372/04 *Watts* [2006] ECR I-4325, paragraph 92, and Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 40).

33 In that regard, Article 49 EC precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State (Case C-158/96 *Kohll* [1998] ECR I-1931, paragraph 33, and Case C-211/08 *Commission* v *Spain* [2010] ECR I-5267, paragraph 55).

34 According to settled case-law, medical services supplied for consideration fall within the scope of the provisions on the freedom to provide services (see, in particular, *Kohll*, paragraph 29, and *Elchinov*, paragraph 36), there being no need to distinguish between care provided in a hospital environment and care provided outside such an environment (Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 41; *Müller-Fauré and van Riet*, paragraph 38; *Watts*, paragraph 86, and Case C-512/08 *Commission* v *France* [2010] ECR I-8833, paragraph 30).

35 The Court has also held that the freedom to provide services includes the freedom for the recipients of services, including persons in need of medical treatment, to go to another Member State in order to receive those services there (see Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, paragraph 16; *Watts*, paragraph 87; *Elchinov*, paragraph 37, and *Commission* v *France*, paragraph 31).

36 Moreover, the fact that the applicable national rules are social security rules and, more specifically, provide, as regards sickness insurance, for benefits in kind rather than reimbursement does not mean that medical treatment falls outside the scope of that basic freedom (see, to that effect, *Müller-Fauré and van Riet*, paragraph 103; *Watts*, paragraph 89, and *Commission* v *Spain*, paragraph 47).

37 With regard, in the first place, to the Commission's action as regards the absence of a possibility of acceptance of liability for laboratory analyses and tests, within the meaning of Article 24 of the Social Security Code, by means of reimbursement of the costs paid for those analyses and tests, it should be noted, as a preliminary point, that it covers only the acceptance of liability for health care provided by medical service providers which have not entered into an agreement with the Luxembourg sickness insurance funds, costs relating to health care being covered by the system of direct billing to those funds where such care is provided by a contractual provider.

38 In that regard, although the national social security rules do not deprive insured persons of the possibility of using a medical service provider established in a Member State other than the Grand Duchy of Luxembourg, the fact remains that they do not allow reimbursement of the costs of care provided by a non-contractual provider, although such reimbursement is the only way of paying for such care.

39 In so far as it is common ground that the Luxembourg social security scheme is based on a system of compulsory agreements with providers, the providers who have entered into agreements with the Luxembourg sickness insurance funds are primarily those providers established in that Member State.

40 Admittedly, it is open to the sickness insurance funds of a Member State to enter into agreements with providers outside national territory. However, it seems unlikely, in principle, that a significant number of providers in other Member States would ever enter into agreements with those sickness funds, given that their prospects of admitting patients insured by those funds remain uncertain and limited (see *Müller-Fauré and van Riet*, paragraph 43).

41 Consequently, in so far as the application of the Luxembourg rules at issue effectively precludes, in practice, the possibility of acceptance of liability for laboratory analyses and tests, within the meaning of Article 24 of the Social Security Code, carried out by almost all, or even all, medical service providers established in Member States other than the Grand Duchy of Luxembourg, it deters or even prevents persons insured by the Luxembourg social security scheme from using such providers and constitutes, both for such persons and for providers, an obstacle to the freedom to provide services.

42 In its defence, the Grand Duchy of Luxembourg argues that its sickness insurance scheme might be jeopardised if insured persons were free to obtain health care in other Member States, because an insufficient number of those persons would then use the medical service providers established in Luxembourg and because the latter would refuse to comply with the conditions arising from the system of agreements.

43 In that regard, the Court has acknowledged, first, that the objective of maintaining a balanced medical and hospital service open to all may fall within the derogations on grounds of public health provided for in Article 46 EC, in so far as such an objective contributes to the attainment of a high level of health protection (*Kohll*, paragraph 50; *Müller-Fauré and van Riet*, paragraphs 67 and 71, and *Watts*, paragraph 104), and, secondly, that it cannot be excluded that the risk of seriously undermining the financial balance of the social security system may constitute an overriding reason in the general interest capable of justifying an obstacle to the principle of freedom to provide services (*Kohll*, paragraph 41; *Müller-Fauré and van Riet*, paragraph 73; *Watts*, paragraph 103, and *Elchinov*, paragraph 42).

44 However, the Grand Duchy of Luxembourg has failed to demonstrate the existence of such a risk or explained why non-reimbursement of the costs relating to laboratory analyses and tests carried out by medical service providers established in other

Member States is capable of guaranteeing the attainment of the objective of protecting public health and does not exceed what is objectively necessary for that purpose.

45 Furthermore, in response to an argument that the Member States would be forced to abandon the principles and system of their sickness insurance scheme and that both their freedom to set up the social security system of their choice and the operation of that system would be adversely affected, in particular if their method of organising access to health care had to include mechanisms for reimbursement of the costs of such care provided in other Member States, the Court ruled in paragraph 102 of *Müller-Fauré and van Riet* that the achievement of the fundamental freedoms guaranteed by the EC Treaty inevitably requires Member States to make some adjustments to their systems of social security. It does not follow that this would undermine their sovereign powers in this field.

46 Moreover, when applying Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2), those Member States which have established a system providing benefits in kind, or even a national health service, must provide mechanisms for *ex post facto* reimbursement in respect of care provided in a Member State other than the competent State (*Müller-Fauré and van Riet*, paragraph 105). In that regard, nothing precludes a competent Member State with a benefits in kind system from fixing the amounts of reimbursement which patients who have received care in another Member State can claim, provided that those amounts are based on objective, non-discriminatory and transparent criteria (*Müller-Fauré and van Riet*, paragraph 107).

47 Finally, as regards the instructions issued by the Inspectorate General of Social Security to which the Grand Duchy of Luxembourg refers in order to disprove the alleged failure, it is sufficient to point out that mere administrative practices resulting from the application of such instructions, which by their nature are alterable at will

by the authorities and are not given appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty (see, in particular, Case C-465/05 *Commission* v *Italy* [2007] ECR I-11091, paragraph 65).

48 Consequently, it must be held that, by failing to provide, under its social security rules, for the possibility of acceptance of liability for costs relating to laboratory analyses and tests, within the meaning of Article 24 of the Social Security Code, which are carried out in another Member State, by means of reimbursement of the costs paid for those analyses and tests, but by providing solely for a system of direct billing to sickness insurance funds, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC.

49 With regard, in the second place, to the Commission's action as regards Article 12 of the Statutes, it must be borne in mind from the outset that, in proceedings under Article 226 EC for failure to fulfil obligations, it is for the Commission to prove the alleged failure by placing before the Court all the information needed to enable the Court to establish that the obligation has not been fulfilled (see, in particular, Case C-160/08 *Commission* v *Germany* [2010] ECR I-3713, paragraph 116, and *Commission* v *France*, paragraph 56).

50 Moreover, it is clear from Article 38(1)(c) of the Rules of Procedure of the Court of Justice and from the case-law relating to that provision that an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based, and that that statement must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to rule on the application. It is therefore necessary for the essential points of law and of fact on which a case is based to be indicated coherently and intelligibly in the application itself and for the heads of claim to be set out unambiguously so that the Court does not rule *ultra petita* or indeed fail to rule on an objection (see Case C-412/04 *Commission* v

*Italy* [2008] ECR I-619, paragraph 103; *Commission* v *Spain*, paragraph 32, and Case C-508/08 *Commission* v *Malta* [2010] ECR I-10589, paragraph 16).

51 It should be noted, first, that, with regard to Article 12 of the Statutes, the Commission complains that the Grand Duchy of Luxembourg makes reimbursement of the costs of medical analyses carried out in another Member State subject to compliance with all the conditions laid down by its national rules on that subject. It also claims that those conditions are 'manifestly disproportionate'.

52 In that regard, as the Commission itself pointed out in its application initiating proceedings, the Court has ruled that the conditions on which social security benefits are granted, which the Member States have competence to determine, just as they have competence to determine the extent of the insurance cover guaranteed by the social security system, in so far as those conditions are neither discriminatory nor an obstacle to freedom of movement of persons, remain enforceable where treatment is provided in a Member State other than that of affiliation (see *Müller-Fauré and van Riet*, paragraph 106).

53 However, with the exception of the requirement, which the Commission identified in the letter of formal notice and the reasoned opinion as well as in its application, that 'medical analyses' must be carried out by 'a separate laboratory', the Commission has not indicated in its pleadings what those conditions are. Nor has it specified which particular provisions of Luxembourg law lay down those conditions.

54 The Commission has therefore failed to place before the Court all the information needed to enable the Court to establish that those conditions are incompatible with Article 49 EC.

55 Secondly, with regard to the requirement referred to in paragraph 53 of this judgment, it must be stated that the Commission has not identified the provision of Luxembourg law which lays down that requirement or determined clearly and precisely the exact scope of that requirement or the medical benefits to which it applies.

56 In that regard, neither the description of the complaint referred to the Commission nor the information supplied by the latter at the hearing made it possible to clarify those matters.

57 In that respect, the Commission claimed at the hearing that it does not have the powers to investigate failures by a Member State to fulfil its obligations and that the Commission depends, for the purpose of investigating cases, on the replies and cooperation of the Member States.

58 However, that fact alone cannot allow the Commission to circumvent the obligations referred to in paragraphs 49 and 50 of this judgment.

59 It is true that the Court has ruled that Article 10 EC makes it clear that the Member States are required to cooperate in good faith with the enquiries of the Commission pursuant to Article 226 EC and to provide the Commission with all the information requested for that purpose (see Case C-82/03 *Commission* v *Italy* [2004] ECR I-6635, paragraph 15, and Case C-221/08 *Commission* v *Ireland* [2010] ECR I-1669, paragraph 60).

60 However, it is not clear from the case-file submitted to the Court whether the Commission asked the Grand Duchy of Luxembourg to send the Commission the applicable rules, or whether the Commission complained that that Member State had failed to fulfil its obligations under Article 10 EC.

61 Finally, the Commission has also failed to show how the requirement referred to in paragraph 53 of this judgment restricts freedom to provide services, but has simply confined itself to noting disparities between national social security schemes which

remain in the absence of harmonisation at the level of EU law in that respect (see, in that regard, Case 41/84 *Pinna* [1986] ECR 1, paragraph 20, and *Commission* v *Spain*, paragraph 61).

62 In those circumstances, it must be concluded that the Commission has not established that, by maintaining in force Article 12 of the Statutes, which makes acceptance of liability by sickness insurance funds for health benefits and supplies subject to full compliance with the dispensing conditions laid down by the national agreements referred to in that article, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC.

63 It follows from the foregoing that the Commission's application must be dismissed in so far as it concerns Article 12 of the Statutes.

**Costs**

64 Under the first paragraph of Article 69(3) of the Rules of Procedure, the Court may order that the costs be shared or that the parties bear their own costs, in particular where each party succeeds on some and fails on other heads. In this case, since the parties have failed respectively on one or several heads, it is appropriate to order that they must each bear their own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Declares that, by failing to provide, under its social security rules, for the possibility of acceptance of liability for costs relating to laboratory analyses and tests, within the meaning of Article 24 of the Luxembourg Social Security Code, in the version applicable to the dispute, which are carried out in another Member State, by means of reimbursement of the costs paid for those analyses and tests, but by providing solely for a system of direct billing to sickness insurance funds, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC;**

2. **Dismisses the remainder of the action;**

3. **Orders the European Commission and the Grand Duchy of Luxembourg to bear their own costs.**

[Signatures]