

1. Declares that, by failing to adopt the necessary laws, regulations and administrative provisions to comply with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, the Republic of Finland has failed to fulfil its obligations under that directive;

2. Orders the Republic of Finland to pay the costs.

(¹) OJ C 85, 3.4.2004.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 9 December 2004

in Case C-333/04: Commission of the European Communities v Grand Duchy of Luxembourg (¹)

(Failure of a Member State to fulfil obligations — Directive 1999/92/EC — Protection of workers — Exposure to risk of explosive atmospheres — Failure to transpose)

(2005/C 31/09)

(Language of the case: French)

In Case C-333/04: Commission of the European Communities (Agents: D. Martin and H. Kreppel) v Grand Duchy of Luxembourg (Agent: S. Schreiner) – ACTION under Article 226 EC for failure to fulfil obligations, brought on 2 August 2004 – the Court (Sixth Chamber), composed of: A. Borg Barthet, President of Chamber (Judge Rapporteur), J. Malenovský and U. Löhms, Judges; L.A. Geelhoed, Advocate General; R. Grass, Registrar, gave a judgment on 9 December 2004, in which it:

1. Declares that, by failing to adopt the necessary laws, regulations and administrative provisions to comply with Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), 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.

(¹) OJ C 228, 11.9.2004.

Reference for a preliminary ruling by the Corte Suprema di Cassazione by decision of that court of 11 June 2004 in the case of Honyvem Informazioni Commerciali S.r.l. against Mariella De Zotti

(Case C-465/04)

(2005/C 31/10)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Corte Suprema di Cassazione (Court of Appeal, Milan) (Italy) of 11 June 2004 received at the Court Registry on 3 November 2004, for a preliminary ruling in the case of Honyvem Informazioni Commerciali S.r.l. against Mariella De Zotti on the following questions:

Given the tenor and purpose of Article 17 of the directive and, where applicable, of the criteria it offers for calculating the indemnity for which it provides, can Article 19 be interpreted as meaning that the national legislation implementing the directive can permit that a collective agreement (or contract) that is binding on the parties to certain contracts provides not for an indemnity owed to the agent in the set of circumstances set out in the second paragraph of Article 17 and payable in accordance with criteria that can be deduced therefrom but for an indemnity which is owed to the agent without regard to the conditions set out in the two indents of paragraph 2 a) (and for part of the indemnity whatever the reason for termination of the contract) and is calculated not in accordance with the criteria to be found in the directive (and, where applicable, at the maximum amount specified therein) but in accordance with the criteria set in the collective economic agreement. That is to say an indemnity determined (without any specific reference to the increase in business generated by the agent) on the basis of predetermined percentages of the remuneration received by the agent in the course of the relationship, with the result that, even if the requirements of the directive for entitlement to the indemnity are met fully or to a high degree, in many cases the level of the indemnity to be paid would have to be lower (sometimes much lower) than the ceiling provided for in the directive and in any event lower than could have been decided in specific terms by the court if it were not bound by the calculation parameters laid down in the collective economic agreement rather than the principles and criteria of the directive.

Should the indemnity be calculated individually by estimating the further commissions that the agent could presumably have earned in the years following termination of the contract on the basis of the new customers he has brought or the substantial growth in business with existing customers that he has generated, and only then applying any adjustments to the amount, having in mind the criterion of equity and the ceiling laid down in the directive; or are other methods of calculation permitted, in particular composite methods that evaluate the criterion of equity more broadly and take the ceiling specified in the directive as their point of departure.