

**Judgment of the Court (Fifth Chamber) of 18 July 2007 —
Commission of the European Communities v Grand Duchy
of Luxembourg**

(Case C-61/07) ⁽¹⁾

*(Failure of a Member State to fulfil obligations — Mechanism
for monitoring greenhouse gas emissions — Implementation
of the Kyoto Protocol)*

(2007/C 211/19)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and J.-B. Laignelot, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to communicate within the prescribed period the report containing the information required under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ 2004 L 49, p. 1) — Information on national projections of greenhouse gas emissions and measures taken to limit and/or reduce such emissions

Operative part of the judgment

The Court:

1. Declares that, by failing to communicate the information required under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that provision;
2. Orders the Grand Duchy of Luxembourg to pay the costs.

⁽¹⁾ OJ C 95, 28.4.2007.

**Judgment of the Court (Seventh Chamber) of 12 July 2007 —
Commission of the European Communities v Kingdom
of Belgium**

(Case C-90/07) ⁽¹⁾

*(Failure of a Member State to fulfil obligations — Directive
2004/12/EC — Packaging and packaging waste — Failure to
transpose within the prescribed period)*

(2007/C 211/20)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and J.-B. Laignelot, acting as Agents)

Defendant: Kingdom of Belgium (represented by: S. Raskin, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste (OJ 2004 L 47, p. 26)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste, the Kingdom of Belgium has failed to fulfil its obligations under that directive;
2. orders the Kingdom of Belgium to pay the costs.

⁽¹⁾ OJ C 95, 28.4.2007.

**Action brought on 27 April 2007 — Commission of the
European Communities v French Republic**

(Case C-220/07)

(2007/C 211/21)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and M. Schotter, acting as Agents)

Defendant: French Republic

Form of order sought

- Declare that, by reason of the transposition into domestic law of the provisions relating to the designation of undertakings able to guarantee the provision of universal service, the French Republic has failed to fulfil its obligations under Articles 8(2), 12 and 13 and Annex IV of the Universal Service Directive 2002/22/EC ⁽¹⁾;
- order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission in essence complains that the defendant incorrectly transposed Directive 2002/22, to the extent that French legislation provides that any operator able to ensure the provision of one of the components of the universal service over the whole of the national territory may be given the task of so doing. Such a provision disregards both the principle of non-discrimination set out in Article 8(2) of the above-mentioned directive and the principles of profitability and efficiency which follow from Articles 8, 12 and 13 thereof and Annex IV thereto, since it excludes *a priori* economic operators which are not able to ensure provision of the universal service over the whole of the national territory. It is true that the Directive does not of itself exclude the possibility of the designation, *in fine*, of a single operator to cover the whole of the national territory, but, in any event, it requires that the Member States first follow an open procedure in accordance with the criteria set out in Article 8(2) of the Directive in order to ensure that any designation of a single operator is indeed the most efficient and cost-effective solution.

⁽¹⁾ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Action brought on 1 June 2007 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-263/07)

(2007/C 211/22)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and J.-B. Laignelot, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

- Declare that, by failing correctly to transpose Articles 9(4) and 13(1) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽¹⁾ and Annex I thereto, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
- order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission raises three complaints in support of its action.

In its first complaint, it alleges, firstly, that the defendant incorrectly transposed Article 9(4) of Directive 96/61 in that it supplemented the — correct — definition of 'best available techniques' with a comment relating to the 'excessive costs' of those techniques which does not appear in the Directive. Although the Directive does indeed stipulate that the best available techniques imply techniques perfected on a scale which permits their application, in the context of the industrial sector concerned, in economically and technically viable conditions, it does not permit the systematic exclusion of techniques whose applicability and availability would entail costs excessive by reference to establishments of average size and economically healthy in the same sector or a similar sector. Such precise requirements would go beyond what is laid down by the Directive in that regard.

By its second complaint, the Commission then alleges that the defendant reduced the scope of the obligation to reconsider or update the permit conditions, laid down in Article 13(1) of the Directive, since, according to the terms of the national transposing provisions, those conditions are to be reconsidered only in three particular situations or where it is necessary, for which 'appropriate reasons' are to be given. Those terms are, once again, more restrictive than those of the Directive, which merely refers to periodic reconsideration and to updating 'where necessary' of the permit conditions.

By its third complaint, the Commission alleges, finally, that the defendant incorrectly transposed Annex I to the Directive since the national transposing measures refer to 'boilers with a rated thermal input exceeding 50 MW' and not, as in category 1.1 in that Annex, to 'combustion installations with a rated thermal input exceeding 50 MW'. That category is wider than that of simple boilers.

⁽¹⁾ OJ 1996 L 257, p. 26.