

JUDGMENT OF THE COURT (First Chamber)

16 May 2002 \*

In Case C-372/01,

**Commission of the European Communities**, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Grand Duchy of Luxembourg**, represented by J. Faltz, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1) and, in any event, by failing to communicate them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

\* Language of the case: French.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, M. Wathelet (Rapporteur), and  
A. Rosas, Judges,

Advocate General: F.G. Jacobs,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 7 March  
2002,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 26 September 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1) and, in any event, by failing to communicate them to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

- 2 Under Article 34 of Directive 98/8, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with it not later than 24 months after its entry into force, that is to say 14 May 2000, and forthwith to inform the Commission thereof.
- 3 Having received no communication from the Grand Duchy of Luxembourg on measures implementing Directive 98/8, the Commission initiated the infringement procedure. Having given the Grand Duchy of Luxembourg formal notice to submit its observations and having received no reply from the Luxembourg authorities, the Commission, on 24 January 2001, sent a reasoned opinion to that Member State requesting it to adopt the measures necessary to comply with the directive within a period of two months from the date of its notification.
- 4 Having received no information to the effect that the transposition of Directive 98/8 had been completed, the Commission brought the present action.
- 5 The Commission, pointing out the obligations incumbent on the Member States under the third paragraph of Article 249 EC, maintains that the Grand Duchy of Luxembourg was required to take all measures necessary to comply with Directive 98/8 within the prescribed period.
- 6 The Luxembourg Government states that the transposition of Directive 98/8 into national law is under way and should be completed shortly.

- 7 It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, in particular, Case C-147/00 *Commission v France* [2001] ECR I-2387, paragraph 26).
- 8 In the present case, it is not disputed that the Grand Duchy of Luxembourg has not adopted the measures necessary in order to comply with the reasoned opinion within the period prescribed for that purpose.
- 9 Accordingly, the action brought by the Commission must be regarded as well founded.
- 10 Consequently, it must be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary in order to comply with Directive 98/8, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

## Costs

- 11 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 (First Chamber),

hereby:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary in order to comply with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market, 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.

Jann

Wathelet

Rosas

Delivered in open court in Luxembourg on 16 May 2002.

R. Grass

P. Jann

Registrar

President of the First Chamber