



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

28 November 2013*

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Treatment of urban waste water — Judgment of the Court establishing a failure to fulfil obligations — Non-implementation — Article 260 TFEU — Pecuniary penalties — Imposition of a penalty payment and a lump sum payment)

In Case C-576/11,

ACTION under Article 260 TFEU for failure to fulfil obligations, brought on 18 November 2011,

European Commission, represented by O. Beynet, B. Simon and E. Manhaeve, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by P. Frantzen and C. Schiltz, acting as Agents,

defendant,

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by S. Behzadi-Spencer, C. Murrell and S. Ford, acting as Agents,

intervener,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet (Rapporteur), and E. Levits, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 April 2013,

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

gives the following

* Language of the case: French.

Judgment

- 1 By its application, the European Commission requests the Court to:
 - declare that, by failing to take the measures necessary to comply with the judgment of 23 November 2006 in Case C-452/05 *Commission v Luxembourg* [2006] ECR I-120, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 260(1) TFEU;
 - order the Grand Duchy of Luxembourg to pay to the Commission a penalty payment of EUR 11 340 for each day of delay in complying with the judgment in *Commission v Luxembourg*, from the date of delivery of the judgment in the present case until the date of compliance with the judgment in *Commission v Luxembourg*;
 - order the Grand Duchy of Luxembourg to pay to the Commission a daily lump sum of EUR 1 248, from the date of delivery of the judgment in *Commission v Luxembourg* until the date of delivery of the judgment in the present case, or until the date upon which the judgment in *Commission v Luxembourg* has been complied with, if earlier; and
 - order the Grand Duchy of Luxembourg to pay the costs.

Legal context

- 2 Article 1 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ L 135, p. 40) sets out the following objectives:

‘This Directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors. The objective of the Directive is to protect the environment from the adverse effects of the abovementioned waste water discharges.’

- 3 Article 2(6) of Directive 91/271 defines population equivalent (p.e.) as ‘the organic biodegradable load having a five-day biochemical oxygen demand (BOD₅) of 60 g of oxygen per day’.
- 4 Article 5 of that directive provides:

‘1. For the purposes of paragraph 2, Member States shall by 31 December 1993 identify sensitive areas according to the criteria laid down in Annex II.

2. Member States shall ensure that urban waste water entering collecting systems shall before discharge into sensitive areas be subject to more stringent treatment than that described in Article 4, by 31 December 1998 at the latest for all discharges from agglomerations of more than 10 000 p.e.

...

4. Alternatively, requirements for individual plants set out in paragraphs 2 and 3 above need not apply in sensitive areas where it can be shown that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area is at least 75% for total phosphorus and at least 75% for total nitrogen.

5. Discharges from urban waste water treatment plants which are situated in the relevant catchment areas of sensitive areas and which contribute to the pollution of these areas shall be subject to paragraphs 2, 3 and 4.

In cases where the above catchment areas are situated wholly or partly in another Member State Article 9 shall apply.

...

8. A Member State does not have to identify sensitive areas for the purpose of this Directive if it implements the treatment established under paragraphs 2, 3 and 4 over all its territory.'

The judgment in *Commission v Luxembourg*

- 5 In its observations submitted to the Court in *Commission v Luxembourg*, the Grand Duchy of Luxembourg had argued that a national action programme to modernise the municipal water treatment plants had been implemented in order to comply with the national provisions implementing Directive 91/271. Thus, the Grand Duchy of Luxembourg estimated that the percentage of reduction of the overall nitrogen load had to be 75% by 2008 after completion of the modernisation of the water treatment plants concerned.
- 6 The Commission, by contrast, had estimated that 8 of the 11 agglomerations with a p.e. of over 10 000 had not complied with Directive 91/271.
- 7 In *Commission v Luxembourg*, the Court held that, since it could not prove that the minimum percentage of reduction of the overall load entering the waste water treatment plants in question was at least 75% for total nitrogen, the Grand Duchy of Luxembourg had failed to fulfil its obligations under Article 5(4) of Directive 91/271.

Pre-litigation procedure

- 8 In the course of monitoring compliance with the judgment in *Commission v Luxembourg*, on 6 December 2006 the Commission requested the Grand Duchy of Luxembourg to describe the measures taken to comply with that judgment.
- 9 By letter of formal notice dated 27 March 2007 the Commission informed the Grand Duchy of Luxembourg that it had not yet received any notice of the measures taken by the Grand Duchy of Luxembourg in order to comply with the judgment in *Commission v Luxembourg*. The Grand Duchy of Luxembourg replied to that letter of formal notice on 7 August 2007.
- 10 Following that reply, which it considered inadequate, on 23 October 2007 the Commission issued a reasoned opinion to the Grand Duchy of Luxembourg, which replied by letters of 21 January 2008 and 23 December 2009.
- 11 An additional letter of formal notice was sent to the Grand Duchy of Luxembourg on 28 June 2010, to which it replied by letters of 17 September 2010, 12 May 2011 and 28 June 2011.
- 12 In the light of the replies from the Grand Duchy of Luxembourg, the Commission took the view that it had still not complied fully with the judgment in *Commission v Luxembourg*, in that at the end of 2010 six water treatment plants serving agglomerations with a p.e. of over 10 000 still did not comply with the obligations laid down in Article 5(4) of Directive 91/271.
- 13 Since the Commission considered that the Grand Duchy of Luxembourg had failed to comply with the judgment in *Commission v Luxembourg*, it decided to bring the present action.

Developments during the present proceedings

- 14 By order of the President of the Court of 16 April 2012, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by the Grand Duchy of Luxembourg.
- 15 It transpired from the hearing on 24 April 2013 that the Commission and the Grand Duchy of Luxembourg were using different calculation methods to measure the rate of compliance of the relevant water treatment plants.
- 16 According to the Commission, the Grand Duchy of Luxembourg assesses the plants serving the City of Luxembourg on the basis of a criterion of 15 mg total of nitrogen per litre whereas, according to Table 2 of Annex I to Directive 91/271, in the case of an agglomeration with a p.e. of over 100 000, the criterion of 10 mg total of nitrogen per litre should be applied. Thus, if the Commission's criteria are applied, four plants are not compliant, whereas, in the Grand Duchy of Luxembourg's estimation, henceforth only two of six plants are still not compliant.
- 17 Indeed, at the hearing, the Grand Duchy of Luxembourg expressed its view that only two of the plants do not comply with the provisions of Directive 91/271, namely the Bonnevoie and Blesbruck plants. In the case of the Bonnevoie plant, work should be completed in 2014 at the latest, whilst in the case of the Blesbruck plant, the agent for the Grand Duchy of Luxembourg was unable to give a specific date for the completion of work, but stated that, in any event, the work would last longer than for the Bonnevoie plant.

The failure to fulfil obligations

Arguments of the parties

- 18 As regards the alleged infringement, the Commission notes that, under Article 260(1) TFEU, where the Court finds that a Member State has failed to fulfil an obligation under the FEU Treaty, that Member State must take the necessary measures to comply with the judgment of the Court. As regards the period within which such a judgment must be complied with, the Commission states that, according to settled case-law, the importance of immediate and uniform application of European Union law means that the process of compliance must be initiated at once and completed as soon as possible (Case C-121/07 *Commission v France* [2008] ECR I-9159, paragraph 21 and the case-law cited).
- 19 The Grand Duchy of Luxembourg states that there have been developments in the situation of six of the water treatment plants in question and provides explanations about the six water treatment plants and the infringements.
- 20 As regards the Übersyren water treatment plant, the Grand Duchy of Luxembourg explains that that plant receives the waste water from the Luxembourg airport. Exceptionally abundant snowfall in December 2010 caused the values for that month to be exceeded beyond all usual parameters due to the quantities of products used to clear the runways, roads and ramps, and to de-ice the aircraft prior to take-off. The non-compliance with the parameter 'biochemical oxygen demand' was caused by the use of large quantities of glycol as a de-icing agent on the aircraft wings during that period. The fact that the limits for that parameter were exceeded is of no import for the elimination of nitrogenous materials, with the result that, contrary to the Commission's submissions, there is no lack of consistency in the conclusions drawn by the national authorities from the analysis results.

- 21 The Grand Duchy of Luxembourg states that the poor performance for December 2010 alone resulted in the Übersyren water treatment plant's being non-compliant for all of 2010, even though its performance had complied with the values laid down in Directive 91/271 since at least 2003. Indeed, the values recorded to date for 2011 confirm that 2010 was an exceptional year.
- 22 As regards the Beggen water treatment plant, the Grand Duchy of Luxembourg states that that plant came on stream in the first quarter of 2011 and it is by far the largest water treatment plant in the Grand Duchy. Its treatment capacity of 300 000 p.e. is three times higher than the next largest plant in the country and ensures the treatment of half of the load generated by the agglomeration of Luxembourg. Performances continue to improve and indicate that the facility is close to achieving the required level of performance.
- 23 The results gathered for the Hesperange plant also show that performances comply with the level prescribed by Directive 91/271.
- 24 Due to the exceptional weather conditions in the winter of 2010, construction of the water treatment plant in Mersch fell slightly behind schedule, with the result that the first phase capable of ensuring treatment of a sufficient volume to cover current needs was scheduled to come on stream not in the third quarter of 2011 but in the first quarter of 2012.
- 25 Following renegotiations with the successful tenderer, the order for the dredging work for the collection system to be used for the routing of the waste water treated by the Bonnevoie water treatment plant to the Beggen water treatment plant was placed at the beginning of October 2011. Work on that project has begun, with the schedule being 900 days.
- 26 Lastly, the Grand Duchy of Luxembourg states that the extension and modernisation project for the Bleesbruck water treatment plant is being drawn up and should, in any event, take account of the results of the environmental impact study currently under way.
- 27 The Grand Duchy of Luxembourg states, by way of conclusion, that although it is true that a penalty must be proportionate and dissuasive, the work for ensuring compliance by it with the judgment in *Commission v Luxembourg* is under way and cannot be completed any faster. Compliance does not involve merely the adoption of legislation by the Chambre des députés (Luxembourg Parliament); rather, it necessitates construction and renovation work in order to bring about compliance with that judgment.

Findings of the Court

- 28 Under Article 260(2) TFEU, if the Commission considers that the Member State concerned has not taken the necessary measures to comply with a judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations, specifying the amount of the lump sum or penalty to be paid by that State which it considers appropriate in the circumstances.
- 29 In that regard, the reference date for assessing whether there has been an infringement for the purpose of Article 260(1) TFEU is the date of expiry of the period prescribed in the letter of formal notice issued in accordance with that provision (Case C-610/10 *Commission v Spain* [2012] ECR, paragraph 67, and Case C-241/11 *Commission v Czech Republic* [2013] ECR, paragraph 23).
- 30 In the present case, as it acknowledged at the hearing, at least as regards two water treatment plants, the Grand Duchy of Luxembourg had not complied with the requirements laid down in the judgment in *Commission v Luxembourg*. Consequently, it is common ground that, at the end of the two-month

period following receipt by the Grand Duchy of Luxembourg of the additional letter of formal notice referred to in paragraph 11 of this judgment, namely on 28 August 2010, it had not, in any event, taken all the measures necessary to comply fully with the obligations deriving from that judgment.

- 31 In those circumstances, it must be found that, by failing to adopt the measures necessary to comply with the judgment in *Commission v Luxembourg*, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 260(1) TFEU.

The financial penalties

Arguments of the parties

- 32 The Commission requests the Court to order the Grand Duchy of Luxembourg to pay, first, a lump sum of EUR 1 248, multiplied by the number of days between the delivery of judgment in *Commission v Luxembourg* and the date the Court gives judgment in the present proceedings or the time of full compliance with that judgment and, secondly, a daily penalty payment of EUR 11 340 as from the date of the latter judgment and full compliance by the Grand Duchy of Luxembourg with the first judgment.
- 33 Referring to the guidelines contained in its Communication SEC(2005) 1658 of 13 December 2005, entitled ‘Application of Article 228 of the EC Treaty’, as updated by its Communication SEC(2010) 923/3 of 20 July 2010, entitled ‘Application of Article 260 of the Treaty on the Functioning of the European Union – Updating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings’, the Commission takes the view that the fixing of financial penalties must be based on the seriousness of the infringement, its duration, and the need to ensure that the penalty is a deterrent to further infringements.
- 34 As regards, in the first place, the seriousness of the infringement, the Commission proposes to apply a coefficient for seriousness of 6 out of 20, given both the importance of the rules of European Union law which have been infringed, namely the rules of a directive aimed at protecting human health and the environment and the effects of non-compliance with the judgment in question on public and private interests, and the magnitude of the risk of pollution flowing therefrom.
- 35 Next, for the determination of the duration of the infringement, the Commission submits that the amount of the lump sum must be calculated with regard to the period between the date of delivery of the judgment in *Commission v Luxembourg*, implementation of which is sought, and the date on which it decided to bring the present proceedings before the Court, that is to say, approximately 59 months, which corresponds, under the terms of its Communication of 13 December 2005, to a duration factor of 3.
- 36 Lastly, as regards the need to ensure that a penalty is a deterrent to further infringements, the Commission has fixed, applying the Communication of 20 July 2010, the factor ‘n’ at 1, based on the Grand Duchy of Luxembourg’s ability to pay.
- 37 In its written and oral submissions, the Grand Duchy of Luxembourg argues that the efforts and improvements, as well as the work necessary to comply with the judgment in *Commission v Luxembourg*, should be taken into account in assessing the seriousness and duration of the infringement. Given that compliance requires not only legislation, but also a whole range of planning and sub-contracting activities (which can give rise to delays) as well as the work itself, the time required to ensure compliance will necessarily be longer than for merely enacting legislation.

- 38 The Grand Duchy of Luxembourg adds that the degree of the seriousness of the infringement should be assessed accordingly. In its submission, a longer period for compliance in a specific case does not necessarily call for a stricter assessment of the seriousness of the infringement and therefore the imposition of a higher lump sum.
- 39 The United Kingdom submits that the Commission must allow for a reasonable time period for implementation in the case of large-scale infrastructure projects such as those at issue in the present proceedings, taking account of a range of parameters, including the project design, technical performance or the nature of regulatory aspects to be complied with. The Commission should also, where applicable, take account of events beyond the control of the Member State concerned, such as natural disasters. Aspects such as administrative and judicial proceedings required under EU law and national law must also be taken into account in the determination of what constitutes a reasonable period. Lastly, the United Kingdom submits that it is for the Commission to demonstrate that the time taken to comply with a judgment establishing an infringement is unreasonable.
- 40 In the United Kingdom's submission, the Commission must be willing to grant the Member State concerned a reasonable period for the completion not just of the minimum works necessary, but of a more ambitious and environmentally beneficial project that a Member State may wish to undertake in order to comply with a judgment under Article 258 TFEU.

Findings of the Court

- 41 Since it is acknowledged that the Grand Duchy of Luxembourg has not complied with the judgment in *Commission v Luxembourg*, implementation of which is sought by the Commission, the Court may, pursuant to the second subparagraph of Article 260(2) TFEU, impose the payment of a lump sum or penalty payment.
- 42 In that connection, the reference date which must be used for assessing whether there has been a failure to fulfil obligations under Article 260(1) TFEU is that of the expiry of the period prescribed in the letter of formal notice issued under that provision (*Commission v Spain*, paragraph 67, and *Commission v Czech Republic*, paragraph 23). Where, however, as in the case at hand, the proceedings for failure to fulfil obligations were commenced on the basis of Article 228(2) EC, the reference date for assessing whether there has been a failure to fulfil obligations is the date of expiry of the period prescribed in the reasoned opinion issued before entry into force of the Lisbon Treaty, that is, 1 December 2009 (see, to that effect, Case C-496/09 *Commission v Italy* [2011] ECR I-11483, paragraph 27).

The penalty payment

– The principle of the imposition of a penalty payment

- 43 According to settled case-law, the imposition of a penalty payment is, in principle, justified only in so far as the failure to comply with an earlier judgment of the Court continues up to the time of the Court's examination of the facts (Case C-374/11 *Commission v Ireland* [2012] ECR, paragraph 33 and the case-law cited).
- 44 In the present case it is clear that, as at the time of that examination and on the date of the hearing, the measures necessary for compliance with the judgment in *Commission v Luxembourg* have not been fully taken.

45 In those circumstances, the Court considers that the imposition of a penalty payment on the Grand Duchy of Luxembourg constitutes an appropriate financial means to ensure full compliance with the judgment in *Commission v Luxembourg*.

– The amount of the penalty payment

46 It should be recalled that, in exercising its discretion in the matter, it is for the Court to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability of the Member State concerned to pay (see *Commission v Ireland*, paragraph 36 and the case-law cited).

47 In the assessment carried out by the Court, the criteria which must be taken into account in order to ensure that penalty payments have coercive force and that European Union law is applied uniformly and effectively are, in principle, the duration of the infringement, its degree of seriousness and the ability of the Member State concerned to pay. In applying those criteria, the Court is required to have regard, in particular, to the effects on public and private interests of failure to comply and to the urgency with which the Member State concerned must be induced to fulfil its obligations (see *Commission v Spain*, paragraph 119 and the case-law cited).

48 In the present case, the Commission suggests, for the purposes of calculating the quantity of the daily penalty payment, the progressive reduction in the quantity of non-compliant p.e. that is to say, p.e. not collected or not treated, or treated in an unsatisfactory manner. This would allow account to be taken of progress made by the Grand Duchy of Luxembourg in complying with the judgment in *Commission v Luxembourg*, and of the principle of proportionality.

49 In its application, the Commission proposes adapting the system for calculating the penalty payment so as not to penalise the Grand Duchy of Luxembourg in ordering it to pay for an infringement established by the Court which has ceased during the period necessary to establish that the necessary compliance has been brought about, meaning that, at the end of that period, it transpires that the treatment applied was in compliance with Directive 91/271 during that period.

50 To that end, the Commission proposes not to include in the calculation of the amount of the penalty payment, for a six-month period, the total quantity of p.e. concerned by tertiary treatment. At the end of that six-month period, first, if the results are in compliance with Directive 91/271 in terms of the frequency of samples and the correct values, the water treatment plant will then be considered as applying compliant treatment and the corresponding p.e. deducted definitively from the calculation of the penalty payment. Second, if the results over six months show that the operation of the water treatment plant is not compliant, the corresponding p.e. will then be re-included in the calculation of the penalty payment. Lastly and thirdly, in the case of mediocre results which are nevertheless compliant over a 12-month period, as indicated in Directive 91/271, a new six-month suspension period may be ordered. If non-compliance is confirmed, the corresponding p.e. will then be re-included in the calculation of the penalty payment and therefore owing for the entire 12-month suspension period.

51 Although it is true that, according to the Grand Duchy of Luxembourg, discharges from non-compliant p.e. in Luxembourg declined in 2011, bringing the rate of non-compliance (in p.e.) from 64% down to 21%, the aggravating circumstances established by the Commission must nevertheless be taken into account.

52 In the first place, as found by the Commission, over five years have passed since the judgment in *Commission v Luxembourg*. During that period the Grand Duchy of Luxembourg has had more than sufficient time in which to comply fully with that judgment; Directive 91/271 initially gave it five years in which to comply with its obligations.

- 53 Secondly, in designating the entire national territory as a ‘sensitive area’, the Luxembourg authorities took the view that the bodies of surface water were already affected or liable to be affected in the short term by eutrophication. That designation, confirmed by correspondence of 1999 from those same authorities to the Commission, led to the conclusion that the Grand Duchy of Luxembourg could not be unaware of the need to undertake work to bring its water treatment plants into line with EU law, at least as of 1999.
- 54 In the present case, the penalty payment must not be suspended or reduced before the Grand Duchy of Luxembourg has adopted all the measures necessary to comply with the judgment in *Commission v Luxembourg* and, consequently, the performance of its obligations as provided for in Directive 91/271.
- 55 It is, however, clear that the imposition of an amount such as the one suggested by the Commission does not take due account of the fact that the Grand Duchy of Luxembourg has already complied with a large share of its obligations, which makes such an amount disproportionate.
- 56 Given the overall circumstances of the present case, the Court considers that the imposition of a penalty payment of EUR 2 800 per day, as from the day of delivery of this judgment until the date on which the Grand Duchy of Luxembourg has complied with the judgment in *Commission v Luxembourg*, is appropriate for ensuring compliance with that judgment.

The lump sum

- 57 It should be noted, as a preliminary point, that an order to pay a lump sum is based essentially on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period after the judgment initially establishing it was delivered (*Commission v Czech Republic*, paragraph 40 and the case-law cited).
- 58 Moreover, the question of whether such an order should be made and the fixing of any amount of the lump sum must, in each individual case, depend on all the relevant factors pertaining to both the particular nature of the infringement established and the individual conduct of the Member State involved in the procedure instigated pursuant to Article 260 TFEU (*Commission v Czech Republic*, paragraph 41).
- 59 That provision confers in that regard a wide discretion upon the Court in deciding whether or not to impose such a penalty and determining, if necessary, its amount. In particular, an order requiring a Member State to pay a lump sum cannot be made automatically (*Commission v Czech Republic*, paragraph 42).
- 60 For that purpose, the Commission’s suggestions cannot bind the Court and are merely guidance (see, to that effect, *Commission v Czech Republic*, paragraph 43).
- 61 The Grand Duchy of Luxembourg and the United Kingdom have submitted that the Commission should, in cases of large-scale infrastructure projects such as those at issue in the present case, allow for a reasonable period in which to complete the work, depending on the scale and difficulty involved in completing those projects, with the duration of the infringement starting to run only at the end of that period. The Court finds that the nature, complexity, cost and duration for completing those projects by the Member State found to have infringed its obligations must be taken into account both in the assessment of whether a lump sum must be imposed and in the calculation of the amount thereof.

- 62 It is, moreover, apparent from the case-file submitted to the Court that the Grand Duchy of Luxembourg is currently making considerable efforts and investments in order to comply with the judgment in *Commission v Luxembourg*. The Commission has also observed that, following that judgment, the number of agglomerations not complying with the requirements of Article 5(4) of Directive 91/271 has gone down to six agglomerations of the 12 existing ones.
- 63 Although this investment effort is undeniable, the fact remains that, in designating its entire territory as a 'sensitive area' under Article 5(1) of and Annex II to that directive, the Grand Duchy of Luxembourg recognised the need for increased environmental protection of its territory. The failure to treat urban waste water causes particularly serious harm to the environment.
- 64 It is also noteworthy that the infringement established by the judgment in *Commission v Luxembourg*, has persisted for approximately seven years, which is excessive, even if it must be recognised that the tasks to be carried out required a significant period of several years and that compliance with that judgment must be regarded as being at an advanced stage.
- 65 Consequently, the Court finds that, given the excessive duration of the infringement, it is justified in the present case to order the Grand Duchy of Luxembourg to pay a lump sum.
- 66 On the basis of the foregoing factors, the circumstances of the case will be fairly assessed by setting the amount of the lump sum which the Grand Duchy of Luxembourg will have to pay at EUR 2 000 000.
- 67 The Grand Duchy of Luxembourg must therefore be ordered to pay to the Commission, into the 'European Union own resources' account, a lump sum of EUR 2 000 000.

Costs

- 68 Under Article 138(1) 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 applied for costs and the Grand Duchy of Luxembourg's failure to fulfil its obligations has been established, the latter must be ordered to pay the costs. Under Article 140(1) of the Rules of Procedure, Member States intervening in the proceedings are to bear their own costs; it must therefore be held that the United Kingdom must bear its own costs.

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

1. Declares that, by failing to take all the measures necessary to comply with the judgment of 23 November 2006 in Case C-452/05 *Commission v Luxembourg*, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 260(1) TFEU;
2. Orders the Grand Duchy of Luxembourg to pay to the European Commission, into the 'European Union own resources' account, a lump sum of EUR 2 000 000;
3. Declares that, if the failure to fulfil obligations found in point 1 has continued until the date of delivery of this judgment, the Grand Duchy of Luxembourg shall be ordered to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 2 800 for each day of delay in taking the measures necessary to comply with the judgment of 23 November 2006 in Case C-452/05 *Commission v Luxembourg*, from the date of delivery of this judgment until the date on which the judgment in Case C-452/05 *Commission v Luxembourg* has been complied with in full;
4. Orders the Grand Duchy of Luxembourg to pay the costs;

5. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

[Signatures]