

JUDGMENT OF THE COURT (First Chamber)

4 October 2001 *

In Case C-450/00,

Commission of the European Communities, represented by X. Lewis, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by N. Mackel, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to bring into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 32 of that directive,

* Language of the case: French.

THE COURT (First Chamber),

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

Advocate General: S. Alber,
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 June 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 7 December 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to bring into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 32 of that directive.

- 2 Under the first subparagraph of Article 32(1) of Directive 95/46, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive, at the latest at the end of a period of three years from the date of its adoption, which was 24 October 1998, and immediately notify the Commission thereof.

- 3 Taking the view that Directive 95/46 had not been incorporated into Luxembourg law within the prescribed period, the Commission initiated the infringement procedure. Having given the Grand Duchy of Luxembourg formal notice to submit its observations, the Commission, on 26 August 1999, sent a reasoned opinion to that Member State requesting it to adopt the measures necessary to comply therewith, within a period of two months from the date of its notification.

- 4 By letter dated 27 October 1999, the Luxembourg authorities informed the Commission that there was a preliminary draft law on the matter, which was to be submitted to the *Chambre des députés* before the end of that year, and that the delay in the process of incorporation was due to the change of government in 1999.

- 5 Since it had received no further information that the incorporation of Directive 95/46 had been completed, the Commission commenced this action.

- 6 Noting the obligations which devolve on the Member States under Article 10 EC and the third paragraph of Article 249 EC, the Commission submits that the Grand Duchy of Luxembourg should have adopted the measures necessary to comply with Directive 95/46 within the prescribed period and immediately notified the Commission thereof.

7 The Grand Duchy of Luxembourg, which explains that the delay resulted from the new distribution of ministerial powers following the change of government in 1999, states that the incorporation of Directive 95/46 is in hand.

8 In that regard, it must be pointed out that, in accordance with settled case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see Case C-470/98 *Commission v Greece* [2000] ECR I-4657, paragraph 11, and Case C-423/99 *Commission v Italy* [2000] ECR I-11167, paragraph 10).

9 Therefore, since the incorporation of the directive had not been effected within the prescribed period, the Commission's action must be considered to be well founded.

10 As a result it must be held that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 95/46, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 32 of 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, all the laws, regulations and administrative provisions necessary to comply with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 32 of that directive;
2. Orders the Grand Duchy of Luxembourg to pay the costs.

Wathelet

Jann

Sevón

Delivered in open court in Luxembourg on 4 October 2001.

R. Grass

M. Wathelet

Registrar

President of the First Chamber