OPINION OF ADVOCATE GENERAL JACOBS

delivered on 14 November 2002 [1]

1. In this case the Commission seeks, pursuant to Article 226 EC, a compendious declaration which in my view can more conveniently be considered as raising two separate though related issues.

2. By its first complaint the Commission initially challenged a requirement in Luxembourg legislation for patent agents when providing services either to have an address on Luxembourg territory or, failing that, to adopt an address with an approved representative. The Commission contended that that requirement was contrary to Article 49 EC.

3. The second complaint concerns Luxembourg's failure to supply information on the exact conditions for the application of certain provisions of its legislation, namely Article 85, paragraph 2, of the Law on patents of 20 July 1992 and Articles 19 and 20 of the Law of 28 December 1988 governing access to certain occupations. That failure, the Commission contends, infringes Article 10 EC.

4. As regards the first complaint, the Luxembourg Government relied in its defence on certain recent legislative amendments, as a result of which the Commission has limited in its reply the scope of the declaration which it seeks. It now seeks a declaration that by maintaining the obligation for patent agents to have an address with an approved representative when providing services, the Grand Duchy of Luxembourg has failed to fulfil its obli-

1 — Original language: English

gations under Article 49 EC. Luxembourg has effectively conceded that the Commission is entitled to that declaration.

5. Luxembourg states in its defence that in the relevant part of the amendment the requirement of an actual address in the Grand Duchy was retained ('avec domicile réel au Grand-Duché de Luxembourg'), and states that that 'error' will be corrected in two draft laws which are in preparation.

6. Accordingly the Court should grant the declaration sought by the Commission on the first claim, as amended in the Commission's reply.

7. As for the second ground of the Commission's action, Luxembourg has not dealt specifically with the Commission's complaint that the combined effect of the relevant provisions of the Luxembourg legislation of 1992 and 1988 is unclear and that Luxembourg has failed to provide the necessary clarification.

8. It is apparent from the case-law that Member States are required by Article 10 EC to cooperate in good faith with the enquiries of the Commission pursuant to Article 226 EC, and to provide the Commission with all the information requested for that purpose. [2] However, Luxembourg did not reply either to the supplementary letter of the Commission prior to the reasoned opinion, nor to the reasoned opinion itself; nor has it provided any explanation of the legislation in the course of the present proceedings.

9. Accordingly the Commission is entitled to succeed on the second claim also.

2 — See for example Case 192/84 Commission v Greece [1985] ECR 3967, paragraph 19 of the judgment.

Conclusion

In my opinion the Court should therefore:

(1) declare that, by maintaining the obligation for patent agents to have an address with an approved representative in Luxembourg when providing services, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 49 EC;

(2) declare that, by not supplying information on the exact conditions for the application of the provisions of Article 85, paragraph 2, of the Law of 20 July 1992 and Articles 19 and 20 of the Law of 28 December 1988, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 10 EC;

(3) order the Grand Duchy of Luxembourg to pay the costs.