OPINION OF ADVOCATE GENERAL LÉGER

delivered on 10 February 2000 *

1. By this action, the Commission of the European Communities is applying for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, [1] the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

2. The Commission observes that the purpose of the Directive is to harmonise national legislation relating to the legal protection of databases. It points out that under Article 16 of the Directive, the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 January 1998 and to communicate to the Commission the text of the provisions of domestic law which they adopt in the field in question.

3. On 31 March 1998, since it had received no communication of the measures which the Grand Duchy of Luxembourg had to adopt to implement the Directive, the Commission instituted the procedure under Article 169 of the EC Treaty (now Article 226 EC) by sending the Grand Duchy of Luxembourg a letter of formal notice calling upon it to submit its observations within two months from receipt of that letter. The Luxembourg Government did not reply to that letter.

4. On 30 September 1998 the Commission sent the Grand Duchy of Luxembourg a reasoned opinion reminding it that it was under a duty to adopt the necessary measures to transpose the Directive into Luxembourg law and to inform the Commission that transposition was complete.

5. It points out that to date it has received no further news from the Luxembourg Government nor any information such as to suggest that the measures necessary to transpose the Directive have been adopted.

6. Relying on the third paragraph of Article 249 EC and the first paragraph of Article 10 EC and on Article 16 of the Directive, the Commission asks the Court to uphold its application and to order the Grand Duchy of Luxembourg to pay the costs.

7. In its defence, the Luxembourg Government does not dispute that it is under a duty to adopt the necessary measures to

* Original language: French.

1 — OJ 1996 L 77, p. 20, hereinafter 'the Directive'.

comply with the Directive. However, it argues that a draft law on copyright, neighbouring rights and databases, intended to transpose the Directive, was submitted to the Chambre des Députés (Parliament) on 17 April 1998, but that there have been delays in the legislative process. Since the purpose of the draft law goes beyond the protection of databases, covering the area of copyright, and completely reworking the law of copyright, it was necessary to form a working group, to undertake a major consultation exercise with the interested parties and to organise a seminar on copyright law.

8. It is the view of the Luxembourg Government that, in so far as the draft law fully transposes the Directive, the action before the Court will become devoid of purpose upon adoption by the Chambre des Députés of that law. It therefore asks that the Court stay proceedings on the application or, in the alternative, that the application be dismissed and the Commission ordered to pay the costs.

9. It is clear that the provisions needed properly and fully to transpose the Directive have not been adopted within the prescribed period, and the Luxembourg Government does not contest this. A finding that the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive is therefore appropriate. The Luxembourg Government has not provided any information such as to justify staying these proceedings, given that its failure to fulfil its obligations is in any case clear-cut.

10. Under Article 69(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Conclusion

11. I would therefore propose that the Court rule as follows:

(1) By failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 16 of that Directive.

(2) The Grand Duchy of Luxembourg is ordered to pay the costs.