

It must accordingly be declared that, in not restricting the requirement of Luxembourg nationality to access to civil servants' and public employees' posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities in the public sectors of research, education, health, inland transport, posts and telecommunications, and in the water, gas and electricity distribution services, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 48 of the Treaty and Article 1 of Regulation No 1812/68.

On the request for a period of grace

<sup>31</sup> In the event that the Court should find that it is in breach of its obligations the Grand Duchy of Luxembourg asks that it be granted a long period of grace in order to comply with its Community obligations. It observes in this regard that any amendments to the rules and regulations in question could only be carried out through massive reform, both at constitutional and legislative level, which will take considerable time.

<sup>32</sup> That request cannot be granted. Article 171 of the EC Treaty does not confer any power on the Court to grant a period of time for compliance with its judgments.

Costs

<sup>33</sup> Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Grand Duchy of Luxembourg has failed in its submissions it must be ordered to pay the costs.

On those grounds,

#### THE COURT

hereby:

1. Declares that, in not restricting the requirement of Luxembourg nationality to access to civil servants' and public employees' posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities in the public sectors of research, education, health, inland transport, posts and telecommunications, and in the water, gas and electricity distribution services, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 1 of Regulation (EEC) No 1812/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

[Report: [1996] ECR I-3207]

Treaties—Application—Obligation of good faith—Duty not to defeat object and purpose of treaty prior to its entry into force—Whether constituting a rule of customary international law—Vienna Convention on the Law of Treaties, 1969, Article 18—Whether binding on the European Community—Whether preventing adoption by the European Community of a measure contrary to international agreement concluded by the Community which has not yet entered into force—Principle of legitimate expectations under Community law—Whether corollary of principle of good faith under international law

Treaties—Effect in municipal law—Agreements between the European Community and third States—Direct effect of provisions—Conditions—European Economic Area Agreement, 1991 ("EEA Agreement") — Article 10 — Whether containing unconditional and precise obligation

Treaties — Interpretation — EEA Agreement — Article 6 — Requirement that provisions identical in substance to EC Treaty provisions should be interpreted in conformity with previous case-law of the Court of Justice of the European Communities — Application to rules concerning free movement of goods—EC Treaty, Articles 9 and 12—EEA Agreement, Article 10

International organizations — European Community — Legality of measures enacted by institutions—Application to Court of Justice of European Communities for annulment of regulation under Article 173 of EC Treaty — Whether legality to be assessed at date of adoption or date of entry into force of measure — Principle of legal certainty — Whether infringed by backdating of publication of regulation in official journal—The law of the European Community

OPEL AUSTRIA GMBH v. COUNCIL OF THE EUROPEAN UNION

(Case T-115/94)

Court of First Instance of the European Communities (Fourth Chamber)

(Lieners, President, Lindh and Cooke, Judges)

22 January 1997

SUMMARY: The facts—EC Council Regulation No 3697/93 introduced a duty of 4.9 per cent on certain gearboxes produced by General Motors



and the 23rd recital in its preamble refers to 'the introduction of duties at a level [81] equal to the level of customs duties which would have prevailed if the [FTA] had not entered into force'. Finally, at the hearing, the Council's representative accepted, in replying to a question put by the Court, that the characterization of the measure is of little significance, since, whether it be characterized as an anti-dumping duty, a countervailing duty, the withdrawal of a tariff concession, the introduction of a duty or a *ius generis* safeguard measure, its effect is identical.

<sup>119</sup> In addition, it is settled case-law that 'any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty, even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product' (*Société Fondis voor de Diamantarbeiders v Braubfeld*, paragraph 13/18).

<sup>120</sup> The measure introduced by the contested regulation constitutes a pecuniary charge imposed unilaterally by the Community on F-15 gearboxes by reason of the fact that they cross a frontier. Consequently, it must be held that the measure constitutes, at the very least, a charge having equivalent effect within the meaning of Article 10 of the EEA Agreement and it is unnecessary to determine whether it must be regarded as a customs duty on imports in the strict sense. It is therefore clear that, following the entry into force of the EEA Agreement, the contested regulation was contrary to that article.

<sup>121</sup> It follows that, by adopting the contested regulation in the period preceding the entry into force of the EEA Agreement after the Communities had deposited their instruments of approval, the Council infringed the applicant's legitimate expectations.

<sup>122</sup> According to the case-law, moreover, Community legislation must be certain and its application foreseeable by individuals. The principle of legal certainty requires that every measure of the institutions having legal effects must be clear and precise and must be brought to the notice of the person concerned in such a way that he can ascertain exactly the time at which the measure comes into being and starts to have legal effects. That requirement of legal certainty must be observed all the more strictly in the case of a measure liable to have financial consequences in order that those concerned may know precisely the extent of the obligations which it imposes on them (see Case 169/80 *Administración del Duasas v González Prieto and González* (1981) ECR 1931, paragraph 17; Case 2083 *Köppelberg v Finanzamt Ley* (1984) ECR 1073, paragraph 11; Case 325/85 *Ireland v Commission* (1987) ECR 5041, paragraph 18, joined Cases T-10/89 and T-24/89 *Tageras v Court of Justice* (1991) ECR II-53, paragraph 40).

<sup>123</sup> By adopting the contested regulation on 20 December 1993 when it knew with certainty that the EEA Agreement would enter into force on 1 January 1994, the Council knowingly created a situation in which, with effect from January 1994, two contradictory rules of law would co-exist, namely the contested regulation, which is directly applicable in the national legal system and re-establishes a 4.9% import duty on F-15 gearboxes produced by the applicant, and Article 10 of the EEA Agreement, which has direct effect and prohibits customs duties on imports and any charges having equivalent effect. Consequently, the contested regulation cannot be regarded as Community legislation which is certain and its operation/application cannot be regarded as foreseeable by those subject to it. It follows that the Council also infringed the principle of legal certainty.

<sup>124</sup> Although those two infringements of general legal principles must be regarded as being in themselves sufficiently serious to warrant the annulment of the contested regulation, it should also be established whether, as the applicant alleges, the Council deliberately backdated the issue of the Official Journal in which the regulation was published.