

Question referred

Does Article 16(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ⁽¹⁾ preclude national provisions under which custody awaiting deportation may be enforced in an ordinary custodial institution if the foreign national poses a significant threat to the life and limb of others or to significant internal security interests, in which case the detainee awaiting deportation is accommodated separately from prisoners serving criminal sentences?

⁽¹⁾ OJ 2008 L 348, p. 98.

Action brought on 25 January 2019 — European Commission v Portuguese Republic**(Case C-49/19)**

(2019/C 112/34)

*Language of the case: Portuguese***Parties**

Applicant: European Commission (represented by: P. Costa de Oliveira and L. Nicolae, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

The applicant claims that the Court of Justice should:

- Declare that, by instituting an extraordinary contribution for the purposes of sharing the net cost of universal service obligations, from 2007 to the start of the provision of universal services, by the undertaking(s) designated under Article 99(3) of Law No 5/2004, as provided for in Articles 17 and 18 of Law No 35/2012 on the Compensation Fund, the Portuguese Republic has failed to fulfil its obligations under Article 13(3) and Part B of Annex IV to Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); ⁽¹⁾ and
- Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

In accordance with the combined provisions of Article 13(3) and Part B of Annex IV to the Universal Service Directive, any mechanism for sharing the net cost of universal service obligations by electronic communications network operators and service providers is to respect the principles of transparency, least market distortion, non-discrimination and proportionality.

Portuguese Law No 35/2012 establishes a compensation fund in respect of universal electronic communications services, intended to finance the net costs arising from compliance with universal service obligations, and guarantee that those costs are shared between the undertakings that are required to contribute.

Under Article 6 of that Law, the compensation fund is intended to finance the net costs of universal services, determined in the context of the public procurement procedures referred to in Article 99(3) of Law No 5/2004 of 10 February 2004, and found to be excessive by the ICP-ANACOM. The fund is also intended to finance the net costs of universal services incurred up until the start of the provision of universal services by the undertaking(s) designated under the abovementioned provision, through the institution of an extraordinary contribution levied on undertakings that are required to contribute, in respect of each of the years 2013, 2014 and 2015.

The Commission takes the view that by levying an extraordinary contribution which was intended to cover the costs of universal services during the period prior to the adoption of Law No 35/2012, the Portuguese Republic has failed to comply with the principles of transparency, least market distortion, non-discrimination and proportionality, as required by Article 13(3) and Part B of Annex IV to the Universal Service Directive.

(¹) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Appeal brought on 25 January 2019 by Sigma Alimentos Exterior, S.L. against the judgment of the General Court (Ninth Chamber) delivered on 15 November 2018 in Case T-239/11 Sigma Alimentos Exterior v Commission

(Case C-50/19 P)

(2019/C 112/35)

Language of the case: Spanish

Parties

Appellant: Sigma Alimentos Exterior, S.L. (represented by: M. Muñoz Pérez, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant submits that the Court should:

- Uphold the present appeal;
- Set aside the judgment of the General Court of 15 November 2018, given in Case T-239/11; (¹)
- Annul Article 1(1) of Commission Decision 2011/282/EU of 12 January 2011; (²)
- In the alternative, annul Article 4 of the contested decision;
- Order the European Commission to pay the costs.

Grounds of appeal and main arguments

The present appeal is based on two grounds, the second of which is divided into three parts:

- Incorrect interpretation of the judgment in *World Duty Free*, (³) setting erroneous comparability criteria which lead, in turn, to an incorrect assessment of the existence of selectivity and, accordingly, to the assessment of unlawful aid, thus infringing the provisions of Article 107 TFEU;
- Error in holding, on the basis of an erroneous analysis of the three-step method used by the Commission in determining whether there was unlawful aid, that the finding that there may be legal obstacles to cross-border combinations does not preclude the contested measure being selective. The judgment therefore errs in the following respects:
 - Error in the identification of the national common tax scheme, infringing the provisions of Article 107 TFEU relating to the categorisation of unlawful State aid;