

Re:

Failure of Member State to fulfil obligations — Failure to take, in the prescribed period, the provisions necessary to comply with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council (OJ 2005 L 191, p. 29)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council, the Hellenic Republic has failed to fulfil its obligations under that directive;
2. Orders the Hellenic Republic to pay the costs.

(¹) OJ C 153, 4.7.2009

**Judgment of the Court (Seventh Chamber) of 24 June 2010
— European Commission v Hellenic Republic**

(Case C-478/09) (¹)

(Merger or division of public limited liability companies — Requirement of an independent expert's report — Failure to transpose within the prescribed period)

(2010/C 221/22)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: S. La Pergola and M. Karanasou Apostolopoulou, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou and V. Karra, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to take within the prescribed period the measures necessary to comply

with Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

Operative part of the judgment

The Court:

1. Declares that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;
2. Orders the Hellenic Republic to pay the costs.

(¹) OJ C 24, 30.1.2010.

**Judgment of the Court (Grand Chamber) of 22 June 2010
(references for a preliminary ruling from the Cour de cassation (France)) — Proceedings against Aziz Melki (C-188/10) and Sélim Abdeli (C-189/10)**

(Joined Cases C-188/10 and C-189/10) (¹)

(Reference for a preliminary ruling — Article 267 TFEU — Examination of whether a national law is consistent both with European Union law and with the national constitution — National legislation granting priority to an interlocutory procedure for the review of constitutionality — Article 67 TFEU — Freedom of movement for persons — Abolition of border control at internal borders — Regulation (EC) No 562/2006 — Articles 20 and 21 — National legislation authorising identity checks in the area between the land border of France with States party to the Convention Implementing the Schengen Agreement and a line drawn 20 kilometres inside that border)

(2010/C 221/23)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Aziz Melki (C-188/10), Sélim Abdeli (C-189/10)

Re:

Reference for a preliminary ruling — Cour de cassation — Interpretation of the general principles of European Union law and Articles 67 and 267 TFEU — Mandatory requirement to first refer the matter to the Conseil constitutionnel when a provision of domestic legislation, because it is contrary to European Union law, is presumed to be in breach of the Constitution — Primacy of European Union law over national law — Freedom of movement for persons — Absence of internal border controls for persons

Operative part of the judgment

1. Article 267 TFEU precludes Member State legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the priority nature of that procedure prevents — both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question — all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, Article 267 TFEU does not preclude such national legislation, in so far as the other national courts or tribunals remain free:

— to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality, any question which they consider necessary,

— to adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order, and

— to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to European Union law.

It is for the referring court to ascertain whether the national legislation at issue in the main proceedings can be interpreted in accordance with those requirements of European Union law.

2. Article 67(2) TFEU, and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.

(¹) OJ C 161, 19.6.2010.

Appeal brought on 7 December 2009 by Goldman Management AD against the judgment delivered on 16 November 2009 in Case T-354/09

(Case C-507/09 P)

(2010/C 221/24)

Language of the case: Bulgarian

Parties

Appellant: Goldman Management AD (represented by: I. Lilkova, advokat)

Other parties to the proceedings: European Commission, Republic of Bulgaria

By Order of 6 May 2010, the Court of Justice (Seventh Chamber) declared the appeal manifestly inadmissible.