

Judgment of the Court (First Chamber) of 10 November 2011 — European Commission v Portuguese Republic

(Case C-212/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 43 EC and 56 EC — Free movement of capital — Golden shares held by the Portuguese State in GALP Energia SGPS SA — Participation in the management of a privatised company)

(2012/C 25/03)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: G. Braun, M. Teles Romão and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, and by C. Botelho Moniz, M. Rosado da Fonseca and P. Gouveia e Melo, advogados)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 56 EC — Special rights of the State and other public bodies in the company GALP Energia, SGPS SA ('golden shares')

Operative part of the judgment

The Court (First Chamber):

1. Declares that, by maintaining in favour of the Portuguese State and other public bodies special rights in GALP Energia SGPS SA, such as those provided for in the present case by Law No 11/90 of 5 April 1990 concerning the Framework Law on Privatisations (Lei n^o 11/90, Lei Quadro das Privatizações), by Decree-Law No 261-A/99 of 7 July 1999 approving the first phase of the privatisation of the share capital of GALP — Petróleos e Gás de Portugal SGPS SA (Decreto-Lei n^o 261-A/99 aprova a 1.^a fase do processo de privatização do capital social da GALP — Petróleos e Gás de Portugal, SGPS, SA), and by the articles of association of that company, granted in connection with the Portuguese State's golden shares in the share capital of that company, the Portuguese Republic has failed to fulfil its obligations under Article 56 EC;
2. Orders the Portuguese Republic to pay the costs.

⁽¹⁾ OJ C 180, 1.8.2009.

Judgment of the Court (First Chamber) of 24 November 2011 — European Commission v Kingdom of Spain

(Case C-281/09) ⁽¹⁾

(Failure by a Member State to fulfil its obligations — Directive 89/552/EEC — Television broadcasting — Advertising spots — Transmission time)

(2012/C 25/04)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and C. Vrignon, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Intervening party: United Kingdom of Great Britain and Northern Ireland, (represented by S. Behzadi-Spencer and S. Hathaway, Agents)

Re:

Failure by a Member State to fulfil its obligations — Infringement of Article 3(2) and Article 18(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23) — Transmission time granted to advertising spots

Operative part of the judgment

The Court:

1. Declares that, by tolerating a situation in which the broadcasting of certain types of advertising, such as advertorials, telepromotion spots, sponsorship credits and micro-ads, on Spanish television channels has a duration which exceeds the maximum limit of 20 % of the transmission time within a clock hour, as laid down in Article 18(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and the Council of 30 June 1997, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive;
2. Orders the Kingdom of Spain to pay the costs.

⁽¹⁾ OJ C 256, 24.10.2009.

Judgment of the Court (Fourth Chamber) of 24 November 2011 — European Commission v Kingdom of Spain

(Case C-404/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Open-cast coal mines — 'Alto Sil' site — Special protection area — Site of Community importance — Brown bear (Ursus arctos) — Capercaillie (Tetrao urogallus))

(2012/C 25/05)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: D. Recchia and by F. Castillo de la Torre and J.-B. Laignelot, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EEC (OJ L 175, p. 40) and Article 6(2)(3) and (4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, p. 7) — Opencast mining — ‘Alto Sil’ special conservation area (ES0000210) — Habitat of Cantabrian capercaillie.

Operative part of the judgment

The Court:

1. Declares that, by authorising the ‘Nueva Julia’ and ‘Ladrones’ open-cast mines but failing to subject that authorisation to an assessment in order to identify, describe and assess in an appropriate manner the direct, indirect and cumulative effects of the existing open-cast mining projects, save, in relation to the ‘Ladrones’ mine, as regards the brown bear (*Ursus arctos*), the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997;
2. Declares that, from 2000, the date of designation of the ‘Alto Sil’ area as a special protection area under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997,
 - by authorising the ‘Nueva Julia’ and ‘Ladrones’ open-cast mining operations, without making the grant of the authorisations relating thereto subject to the carrying out of an appropriate assessment of the possible impacts of those projects, and, in any event, without complying with the conditions in which a project might be realised despite the risk posed by that project for the capercaillie (*Tetrao urogallus*), which constitutes one of the natural assets which motivated the classification of the ‘Alto Sil’ site as a special protection area, namely the absence of alternative solutions, the existence of imperative reasons of major public interest and communication to the European Commission of the necessary compensatory measures to ensure the overall coherence of the Natura 2000 network, and
 - by failing to adopt the necessary measures to prevent the deterioration of habitats including the habitats of species, and to prevent significant disturbance of the capercaillie, the presence of which on the ‘Alto Sil’ site was the reason for the designation of that area as a special protection area, caused by the ‘Feixolín’, ‘Salguero-Prégame-Valdesegadas’, ‘Fonfría’, ‘Ampliación de Feixolín’ and ‘Nueva Julia’ mines,

the Kingdom of Spain has failed to fulfil its obligations in relation to the ‘Alto Sil’ special protection area under Article 6(2) to (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 thereof;

3. Declares that, from December 2004, by failing to adopt the necessary measures to prevent the deterioration of habitats, including the habitats of species, and the disturbances caused to species by the ‘Feixolín’, ‘Fonfría’ and ‘Ampliación de Feixolín’ operations, the Kingdom of Spain has failed, in relation to the ‘Alto Sil’ site of Community importance, to fulfil its obligations under Article 6(2) of Directive 92/43;
4. Dismisses the action as to the remainder;
5. Orders the Kingdom of Spain to pay, in addition to its own costs, two thirds of the Commission’s costs. The Commission is ordered to pay one third of its own costs.

(¹) OJ C 11, 16.1.2010.

Judgment of the Court (Fifth Chamber) of 24 November 2011 — Italian Republic v European Commission

(Case C-458/09 P) (¹)

(Appeal — Aide granted by the Italian authorities in favour of newly listed companies — Legislation granting fiscal advantages)

(2012/C 25/06)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri and P. Gentili, Agents)

Other party to the proceedings: European Commission (represented by: V. Di Bucci, D. Grespan and E. Righini, Agents)

Intervener in support of the applicant: Republic of Finland (represented by: M. Pere and H. Leppo, Agents)

Re:

Appeal against the judgment of 4 September 2009 in Case T-211/05 Italy v Commission, by which the Court of First Instance (Third Chamber) dismissed the application for annulment of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (OJ 2006 L 94, p. 42)