

(d) in Article 3(1)(a) of Directive 2004/25/EC of 21 April 2004 on takeover bids, read together with the eight recital in the preamble thereto <sup>(4)</sup>

manifestations of a general principle of Community law and did that general principle exist as such before the adoption of Directive 2004/25/EC?

2. Does that general principle of Community law apply only to the relations between a company and its shareholders or, on the contrary, does it also apply to the relations between majority shareholders exercising or acquiring control of a company and the minority shareholders of that company?
3. If the answer to the foregoing two questions is in the affirmative, must that general principle of Community law be regarded, having regard to the development in time of the references referred to in Question 1, as having existed and being binding on the relations between majority and minority shareholders within the meaning of Question 2 before the entry into force of the abovementioned Directive 2004/25/EC and before the facts at issue, which occurred during the first half of 2001?

<sup>(1)</sup> Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1).

<sup>(2)</sup> OJ 1977 L 212 p. 37.

<sup>(3)</sup> OJ 1979 L 66, p. 21.

<sup>(4)</sup> OJ 2004 L 142, p. 12.

**Action brought on 6 March 2008 — Commission of the European Communities v Portuguese Republic**

(Case C-105/08)

(2008/C 116/26)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by R. Lyal and M. Afonso, Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

— A declaration that, by taxing payment of interest abroad more heavily than payment of interest to entities resident in

Portuguese territory, the Portuguese Republic imposes restrictions on the provision of mortgage and other loan services by financial institutions resident in other Member States and in States party to the EEA Agreement, and it has therefore failed to fulfil its obligations under Articles 49 EC and 56 EC and Articles 36 and 40 of the EEA Agreement;

— an order that the Portuguese Republic should pay the costs.

**Pleas in law and main arguments**

The Código do Imposto sobre o Rendimento das Pessoas Colectivas (CIRC) (the Corporation Tax Code) provides for different tax treatment of income relating to interest paid to financial institutions, depending on whether they are resident or not in Portuguese territory.

The taxation applicable in Portugal to interest paid to non-resident financial institutions leads to a far heavier real tax burden than that borne by resident taxpayers in respect of similar income. The national legislation thus dissuades non-resident financial institutions from offering their services on the Portuguese market, in particular mortgage loan services, and prevents persons resident in Portugal from gaining access to the loan services that might be offered them by those institutions. Such legislation therefore constitutes a restriction of the fundamental freedoms enshrined in Articles 49 EC and 56 EC and in the corresponding provisions of the EEA Agreement.

**Action brought on 10 March 2008 — Commission of the European Communities v Hellenic Republic**

(Case C-109/08)

(2008/C 116/27)

*Language of the case: Greek*

**Parties**

*Applicant:* Commission of the European Communities (represented by: Maria Patakia)

*Defendant:* Hellenic Republic

**Form of order sought**

— declare that, by failing to take the necessary measures to comply with the judgment delivered by the Court of Justice on 26 October 2006 in Case C-65/05, the Hellenic Republic has failed to fulfil its obligations under Articles 28 EC, 43 EC and 49 EC and Article 8 of Directive 98/34/EC <sup>(1)</sup>;