Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Article 26(3) of 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)

Operative part of the judgment

The Court:

1. *Declares that, by failing, for all calls to the single European emergency call number '112', to make caller location information available, to the extent technically feasible, to the authorities handling emergencies, the Italian Republic has failed to fulfil its obligations under Article 26(3) of 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);*

2. *Orders the Italian Republic to pay the costs.*

([1]) OJ C 37 of 9.2.2008.

Judgment of the Court (Sixth Chamber) of 15 January 2009 — Commission of the European Communities v Hellenic Republic

(Case C-259/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Preservation and maintenance of habitats — Classification of special protection areas — Prohibition of hunting and capture — Incorrect transposition)

(2009/C 55/07)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Recchia, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose Article 3(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Incorrect transposition of Article 3(2), Article 4(1), Article 5 and Article 8(1) of that directive

Operative part of the judgment

The Court:

1. *Declares that, by failing to take all the measures necessary to transpose fully and/or correctly the obligations under Article 3(1) and (2), Article 4(1), Article 5 and Article 8(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the Hellenic Republic has failed to fulfil its obligations under those provisions;*

2. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 209 of 15.8.2008.

Appeal brought on 24 September 2008 by Calebus SA against the judgment delivered on 14 July 2008 in Case T-366/06 Calebus SA v Commission of the European Communities, supported by the Kingdom of Spain

(Case C-421/08 P)

(2009/C 55/08)

Language of the case: Spanish

Parties

Appellant: Calebus SA (represented by: R. Bocanegra Sierra, lawyer)

Other parties to the proceedings: Commission of the European Communities and the Kingdom of Spain

Form of order sought

Take note of the fact that the appeal was lodged against the order of the Court of First Instance of 14 July 2008 declaring inadmissible the action brought by Calebus SA in Case T-366/06, allow the appeal and, after completion of all the legal formalities, give a judgment upholding the appeal, setting aside the judgment under appeal, declaring the action admissible and uphold its claims.

Pleas in law and main arguments

The appeal is brought against the order of 14 July 2008 of the Court of First Instance declaring inadmissible the action brought in Case T-366/06 by Calebus SA against Decision 2006/613/EC ([1]) of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region as regards the inclusion of the farm 'Las Cuerdas' as the SCI 'ES61110006 Ramblas de Gergal, Tabernas y Sur de Sierra Alhamilla', which appears on that list.

In the appeal, the appellant takes the view that the order under appeal is vitiated by an error of law when it states that the action is inadmissible because the appellant company has no direct interest in the annulment of the decision. Contrary to the findings in the order, Decision 2006/613 requires Member States, in any event, per se and automatically to make sites classified as Sites of Community Importance (SCI), including the farm 'Las Cuerdas', to a protection scheme which necessarily limits the uses to which it may be put, reducing their profitability and sale value. The Member States have discretion to determine the specific content of those measures, but not to decide whether or not to submit the farms to measures of that type, so that the existence of that discretion is not contrary to the direct effect of the decision on the legal status of the appellant undertaking.

(1) OJ 2006 L 259, p. 1.

Appeal brought on 14 November 2008 by the Kingdom of Sweden against the judgment of the Court of First Instance (Third Chamber, Extended Composition) delivered on 9 September 2008 in Case T-403/05 MyTravel Group plc v Commission of the European Communities

(Case C-506/08 P)

(2009/C 55/09)

Language of the case: English

Parties

Appellant: Kingdom of Sweden (represented by: K. Petkovska, A. Falk, and S. Johannesson, Agents)

Other parties to the proceedings: MyTravel Group plc, Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— set aside paragraph 2 of the operative part of the judgment of the Court of First Instance of 9 September 2008 (1) in Case T-403/05,

— annul the Commission Decision of 5 September 2005 (D(2005) 8461), in accordance with the form of order sought by MyTravel Group plc in the Court of First Instance, in so far as concerns the refusal of access to the Commission's report and other working documents,

— annul the Commission Decision of 12 October 2005 (D(2005) 9763), in accordance with the form of order sought by MyTravel Group plc in the Court of First Instance, in so far as concerns the refusal of access to the Commission's other internal documents, and

— order the Commission to reimburse the Kingdom of Sweden with its legal costs at the Court of Justice.

Pleas in law and main arguments

1. The principle of openness and access to the institutions' documents is of great importance in *all* the institutions' activities, and thus also in the administrative procedure within an institution. Article 2(3) of the transparency regulation also provides that the regulation is to apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union. However, the reasoning of the Court of First Instance on the main issues implies that there should be a general requirement of confidentiality in respect of internal documents in administrative matters. That is not consistent with the principle of the greatest possible openness.

2. In the appellant's view, the reasoning of the Court of First Instance in the matter of the first Decision — regarding the report and the documents relating to it — implies that it was not necessary for the Commission to examine the question of disclosure in relation to the content of each individual document and to assess the sensitivity of the information in the report and the other documents but that, on the contrary, it was correct to refuse disclosure on the ground that officials would otherwise not be able to present their opinions freely. On the basis of the general reasoning of the Court of First Instance as regards the protection of document authors' freedom of opinion, it is not possible to decide when internal documents could be disclosed at all.

3. The appellant considers that the Court of First Instance also fails in the second decision — regarding other documents in the file — to uphold the fundamental requirement of an examination to determine whether the content of each individual document is so sensitive that disclosure would seriously undermine the decision-making process. The general reasoning of the Court of First Instance is essentially that it would be impossible for officials in the Commission to communicate freely if information not appearing in the final decision were to become public. On the basis of such reasoning, no examination is necessary to determine whether the content of the documents in question is so sensitive that disclosure would prejudice the decision-making process.

4. The appellant questions whether the hearing officer's report and the note from the Directorate-General for Competition to the advisory committee can really be regarded as documents prepared for internal use which can therefore be kept confidential under the provisions on the protection of the internal decision-making procedure.