

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 15 July 2007.

(¹) OJ L 310, p. 28.

Action brought on 2 December 2008 — Commission of the European Communities v Republic of Hungary

(Case C-530/08)

(2009/C 19/38)

Language of the case: Hungarian

Parties

Applicant(s): Commission of the European Communities (represented by: H. Støvlbaek and B. Béres, acting as Agent(s))

Defendant(s): Republic of Hungary

Form of order sought

— Declare that by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (¹) or, at least, by failing to communicate those provisions to the Commission, the Republic of Hungary has failed to fulfil its obligations under that directive.

— order the Republic of Hungary to pay the costs.

Pleas in law and main arguments

The period prescribed for the implementation of Directive 2005/36/EC expired on 20 October 2007.

(¹) OJ 2005 L 255, p. 22.

Action brought on 2 December 2008 — Commission of the European Communities v Portuguese Republic

(Case C-531/08)

(2009/C 19/39)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by P. Guerra e Andrade and P. Demjek, Agents)

Defendant: Portuguese Republic

Form of order sought

— a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/56/EC (¹) of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies or, in any case, by failing to communicate such provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The period prescribed for the transposition of the Directive expired on 15 December 2007.

(¹) OJ 2005 L 310, p. 1.

Action brought on 4 December 2008 — Commission of the European Communities v Portuguese Republic

(Case C-543/08)

(2009/C 19/40)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

- a declaration that, by maintaining the State's special rights in the EDP — Energias de Portugal, granted in connection with the State's golden shares, the Portuguese Republic has failed to fulfil its obligations under Articles 56 EC and 43 EC;
- an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The EDP's articles of association provide for one vote for every share, but do not take into consideration the votes attaching to ordinary shares not held by the State cast by a shareholder exceeding 5 % of all votes corresponding to share capital.

Under the Portuguese legislation, the State has special rights in the EDP regardless of the number of shares it holds. Those special rights are, in particular, the right to veto resolutions of the general meeting relating to changes to the memorandum and articles of association (including decisions to increase capital, and merger, demerger and winding-up decisions), to the conclusion of joint contracts relating to groups or subsidiaries and to the abolition or limitation of the preferential subscription right of shareholders on an increase of capital.

The State also has the special right to appoint an administrator when it has voted against the choice of administrators proposed and approved.

The Commission believes that both the limiting of votes and the special rights amount to a restriction of the movement of capital and of freedom of establishment. Those measures constitute an obstacle to direct investment in the EDP, an obstacle to portfolio investment and an obstacle to the exercise of freedom of establishment.

Those special rights of the State constitute State measures, for the golden shares do not stem from the normal application of company law.

The limiting of votes, in the circumstances in which it was introduced, also amounts to a State measure.

Those golden shares and the limiting of votes do not respond to legitimate objectives in the common interest or, in particular, to those pleaded by the Portuguese State, namely, public safety and security of supply and the concession of a public service.

In any case, the Portuguese State has failed to observe the principle of proportionality, for the measures in question are not apt to ensure the attainment of the objectives pursued and they go beyond what is necessary in order to achieve them.