

2. Orders the Republic of Austria to pay the costs;
3. Orders the Italian Republic and the Kingdom of the Netherlands to bear their own costs.

(¹) OJ C 69, 21.3.2009.

Judgment of the Court (Third Chamber) of 21 December 2011 — European Commission v Republic of Poland

(Case C-271/09) (¹)

(Failure of a Member State to fulfil obligations — Free movement of capital — Scope — Open pension funds — Limitation on the investment of capital assets outside the Member State concerned — Proportionality)

(2012/C 49/04)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: E. Montaguti and K. Herrmann, Agents)

Defendant: Republic of Poland (represented by: M. Dowgiewlecz, M. Szpunar, M. Jarosz and P. Kucharski, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 56 EC — Pension funds forming part of a national system of compulsory affiliation and based on the capitalisation system — National rules limiting and discouraging the investment by such funds of capital assets outside Poland

Operative part of the judgment

The Court (Third Chamber):

1. Declares that, by maintaining in force Articles 143, 136(3) and 136a(2) of the Law of 28 August 1997 on the organisation and operation of pension funds (*Ustawa o organizacji i funkcjonowaniu funduszy emerytalnych*), as amended, in that they limit investments by Polish open pension funds in the other Member States, the Republic of Poland has failed to fulfil its obligations under Article 56 EC;
2. Orders the Republic of Poland to pay the costs.

(¹) OJ C 233, 26.9.2009.

Judgment of the Court (Sixth Chamber) of 21 December 2011 — A2A SpA, formerly ASM Brescia SpA v European Commission

(Case C-318/09 P) (¹)

(Appeals — State aid — Aid granted to public utilities — Tax exemptions — Decision declaring the aid scheme incompatible with the common market — Action for annulment — Admissibility — Standing — Legal interest — Article 87 EC — Concept of ‘aid’ — Article 88 EC — Concept of ‘new aid’ — Article 10 EC — Duty of loyal cooperation — Regulation (EC) No 659/1999 — Articles 1 and 14 — Lawfulness of a recovery order — Principle of legal certainty — Duty to state reasons)

(2012/C 49/05)

Language of the case: Italian

Parties

Appellant: A2A SpA, formerly ASM Brescia SpA (represented by: A. Santa Maria, A. Giardina, C. Croff and G. Pizzonia, avvocati)

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

Re:

Appeal brought against the judgment of the Court of First Instance (now the General Court) (Eighth Chamber, Extended Composition) of 11 June 2009 in Case T-189/03 *ASM Brescia SpA v Commission* by which the General Court dismissed the action brought for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. Dismisses the main appeal and the cross-appeal.
2. Orders A2A SpA to pay the costs of the main appeal.
3. Orders the European Commission to pay the costs of the cross-appeal.

(¹) OJ C 267, 7.11.2009.