

2. If such national legislation is consistent with the Directive:

Does Article 18(a) of the Directive preclude the application by analogy of the national legislation concerning the exclusion of the indemnity claim to a case where a serious ground for the immediate termination of the contract because of the agent's default arose only after contractual notice of termination was given and the principal became aware of that ground only after the contract ended, so that he was no longer able to give a further notice of immediate termination of the contract based on the agent's default?

⁽¹⁾ OJ 1986 L 382, p. 17.

Action brought on 5 June 2009 — Commission of the European Communities v Italian Republic

(Case C-206/09)

(2009/C 180/60)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro, Agent)

Defendant: Italian Republic

Forms of order sought

— Declare that the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 2(1) of Commission Directive 2007/68/EC ⁽¹⁾ of 27 November 2007 amending Annex IIIa to Directive 2000/13/EC ⁽²⁾ of the European Parliament and of the Council as regards certain food ingredients, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/68/EC or, in any event, by failing to communicate them to the Commission;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period within which Directive 2007/68/EC had to be transposed expired on 31 May 2008.

⁽¹⁾ OJ 2007 L 310, p. 11.

⁽²⁾ OJ 2000 L 109, p. 29.

Action brought on 11 June 2009 — Commission of the European Communities v Portuguese Republic

(Case C-212/09)

(2009/C 180/61)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— Declare that, by maintaining the State's special rights and those of other public bodies or the Portuguese public-sector in GALP Energia, SGPS S.A., the Portuguese Republic has failed to fulfil its obligations under Articles 56 EC and 43 EC.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under the Portuguese legislation, the State holds golden shares in GALP. The State has the right to appoint the Chairman of the Board of Directors. In matters within its competence, company resolutions are subject to its approval.

Any resolutions which seek to alter the articles of association, authorise the entering into joint contracts between companies, stipulating a controlling company or joint control, or which may in any way endanger the supply of oil, gas or derivatives thereof to the country, are subject to the State's approval.

The Commission considers that both the State's right to appoint a director with powers to approve resolutions and its right of veto in significant corporate actions severely restrict direct investment and portfolio investment.

Those special rights of the State constitute State measures since the golden shares are not the result of the normal application of company law.

Secondary Community law does not allow the State special rights in retailers of oil and of petroleum products. GALP has no responsibility for guaranteeing supply. The State sought to make GALP a company whose centre of decision-making is in Portugal. In any event, the Portuguese State has failed to comply with the principle of proportionality since the measures in question are not apt to ensure the attainment of the objectives pursued and go beyond what is necessary in order to attain them.