

**Judgment of the Court (Eighth Chamber) of 3 September 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland**

(Case C-527/08) <sup>(1)</sup>

**(Failure of a Member State to fulfil obligations — Directive 2005/65/EC — Transport policy — Port facility security — Failure to transpose within the prescribed period)**

(2009/C 256/12)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Simonsson and A.-A. Gilly, Agents)

*Defendant:* United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent)

**Re:**

Failure of a Member to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ 2005 L 310, p. 28)

**Operative part of the judgment**

*The Court:*

1. Declares that, by failing to adopt, within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 18 of that directive;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

<sup>(1)</sup> OJ C 19, 24.1.2009.

**Action brought on 22 July 2009 — Commission of the European Communities v Portuguese Republic**

(Case C-280/09)

(2009/C 256/13)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by P. Oliver and G. Braga da Cruz, Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

— a declaration that, by failing to adopt the national measures required for the application of Articles 10 and 12 of Regulation (EC) No 273/2004 <sup>(1)</sup> of the European Parliament and of the Council of 11 February 2004 on drug precursors, by

failing to communicate them in accordance with Article 16 of that act and by failing to adopt the national measures required for the application of Articles 26(3) and 31 of Council Regulation (EC) No 111/2005 <sup>(2)</sup> of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, the Portuguese Republic has failed to fulfil its obligations under Regulations (EC) No 273/2004 and (EC) No 111/2005;

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

**Pleas in law and main arguments**

Regulation No 273/2004 entered into force on 18 August 2005 and Regulation No 111/2005 entered into force on 15 February 2005, being applicable from 18 August 2005.

Not having received any communication at all of any measures taken by the Portuguese Republic to give effect to the above-mentioned provisions of those two regulations, and not being in possession of any other information that might allow it to conclude that the necessary measures have been adopted, the Commission supposes that the Portuguese Republic has not yet adopted those measures and so has not fulfilled its obligations under those regulations.

<sup>(1)</sup> OJ 2004 L 47, p. 1

<sup>(2)</sup> OJ 2005 L 22, p. 1

**Action brought on 22 July 2009 — Commission of the European Communities v Kingdom of Spain**

(Case C-281/09)

(2009/C 256/14)

*Language of the case: Spanish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: L. Lozano Palacios and C. Vrignon, Agents)

*Defendant:* Kingdom of Spain

**Form of order sought**

— Declare that, by allowing flagrant, repeated and serious infringements of the rules laid down in Article 18(2) of Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of

television broadcasting activities (89/552/EEC <sup>(1)</sup>), the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive, read in conjunction with Article 10 of the EC Treaty;

— Order the Kingdom of Spain to pay the costs.

### Pleas in law and main arguments

The Commission submits that the restrictive interpretation which the Kingdom of Spain gives to the concept of advertising spots — which results in certain advertising practices (in particular, infomercials, telepromotion spots, sponsorship spots and micro-advertising spots) not being regarded as advertising spots, and therefore not being subject to the hourly limits imposed by Directive 89/552/EEC — infringes that directive.

<sup>(1)</sup> OJ 1989 L 298, p. 23.

## Action brought on 23 July 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-284/09)

(2009/C 256/15)

*Language of the case: German*

### Parties

*Applicant:* Commission of the European Communities (represented by: R. Lyal and B.-R. Killmann, acting as Agents)

*Defendant:* Federal Republic of Germany

### Form of order sought

— Declare that, by taxing dividends paid to a company with its registered office in another Member State or in the European Economic Area at a higher rate than dividends paid to a company with its registered office in the Federal Republic of Germany, the Federal Republic of Germany has failed to fulfil its obligations under Article 56 EC where the minimum threshold for the parent company's shareholdings in the share capital of the subsidiary set out in Directive 90/435 <sup>(1)</sup> is not reached, and, with regard to the Republic of Iceland and the Kingdom of Norway, under Article 40 of the Agreement on the European Economic Area.

— order the Federal Republic of Germany to pay the costs.

### Pleas in law and main arguments

The subject-matter of the present action is the German law on the taxation of dividends. The provisions of the German income

tax law lay down that parent companies with unlimited tax liability in Germany can offset the withholding tax paid during the tax assessment procedure against their liability to corporation tax. Consequently, German parent companies were exempted from the withholding tax. Parent companies with limited tax liability in Germany, on the other hand, have the possibility of being fully exempted from the withholding tax only where the applicable minimum threshold for the relevant parent company's shareholdings in the share capital of the subsidiary as set out in Directive 90/435 is reached. Below that minimum threshold it is not possible, under German law, for parent companies with limited tax liability to be exempted in the same way as companies with unlimited tax liability. As a result of that law, therefore, German dividend payments of parent companies from other Member States were treated for tax purposes differently from those of parent companies with unlimited tax liability in Germany.

The Commission regards that discrimination as incompatible with the principle of the free movement of capital as tax payers resident in other Member States or in the EEA could, as a result, be dissuaded from making investments in Germany.

It follows from the free movement of capital, which is guaranteed by the EC Treaty and the EEA Agreement, that, if a Member State grants advantages with regard to the taxation of dividends, those advantages cannot be restricted to domestic recipients of dividends. Fiscal discrimination between domestic recipients of dividends and those of other Member States or EEA States is prohibited; domestically granted tax advantages are to be extended also to shareholders from other Member States or EEA States. Where the relevant Member State has also, as in the present case, concluded a double taxation convention with the other Member States, that Member State may rely on that convention only if its rules concerning offsetting fully compensate the possible economic multiple taxation of shareholders from other Member States or EEA States, and in the same way as is guaranteed to domestic shareholders by its own tax system.

That is not, however, the case with respect to the conventions concluded by Germany with the other Member States; in order to prevent double taxation, those conventions provide, indeed, for rules concerning offsetting the German withholding tax against the tax burden in the Member State of the parent company, however, the amount to be taken into account may not exceed the part of the tax assessed prior to the offset, which is imposed on income from Germany. The offset is consequently restricted, a refund of possible funds from the difference between the tax burden in the relevant Member State and the German withholding tax is not provided for in that convention and is therefore excluded.