

Defendant: Kingdom of Spain

Form of order sought

- Declare that the Kingdom of Spain has failed to fulfil its obligations under Commission Decision 91/1/EEC of 20 December 1989 concerning aids in Spain which the central and several autonomous governments have granted to Magefesa, producer of domestic articles of stainless steel, and small electric appliances (OJ 1991 L 5, p. 18; 'Decision 91/1') and under Article 260 TFEU, since it has failed to take all the measures necessary to comply with the judgment of the Court of Justice of 2 July 2002 in Case C-499/99 *Commission v Spain* [2002] ECR I-603 ('the 2002 judgment'), concerning the Kingdom of Spain's failure to fulfil its obligations under Decision 91/1;
- Order the Kingdom of Spain to pay to the Commission a penalty payment of EUR 131 136 for each day of delay in complying with the 2002 judgment, running from the day on which judgment is delivered in the present proceedings until the day on which the 2002 judgment is fully complied with;
- Order the Kingdom of Spain to make a lump sum payment to the Commission, to be calculated by multiplying a daily amount of EUR 14 343 by the number of days over which the infringement continued, from the date of the 2002 judgment until:
 - the date on which the Kingdom of Spain recovered the aids declared unlawful by Decision 91/1, if the Court of Justice finds that those aids have in fact been recovered before judgment is delivered in the present proceedings;
 - the date of judgment in the present proceedings, if the 2002 judgment has not been fully complied with by that date.
- Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The measures adopted by Spain have not resulted in immediate enforcement of the 2002 judgment or Decision 91/1; nor have they resulted in full and immediate recovery of the unlawful and incompatible aid.

According to settled case-law, the only defence available to a Member State which has failed to fulfil its obligations is to plead that it was absolutely impossible for it properly to implement the decision.

In the present case, in the course of an extremely lengthy correspondence between the Commission's staff and the Spanish authorities concerning the measures adopted for the purpose of complying with Decision 91/1, the Spanish authorities have not claimed that it is absolutely impossible to enforce that decision and have merely referred to imprecise internal difficulties.

Action brought on 22 December 2010 — European Commission v Republic of Austria

(Case C-614/10)

(2011/C 72/22)

Language of the case: German

Parties

Applicant: European Commission (represented by: B. Martenczuk and B.-R. Killmann, acting as Agents)

Defendant: Republic of Austria

Form of order sought

- Declare that the Republic of Austria has infringed its obligations under the second subparagraph of Article 28(1) of Directive 95/46/EC because the legal situation in Austria of a Data Protection Commission created as data protection inspection body does not fulfil the criterion of complete independence.
- order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that the independence of the Data Protection Commission as inspection body for the control of data protection regulations in Austria is not guaranteed.

The Data Protection Commission is organisationally closely connected with the Federal Chancellor's Office (Bundeskanzleramt). The latter supervises the employees of the Data Protection Commission and is also responsible for that commission's material provisions. Furthermore, an administrative officer of the Federal Chancellor's Office is responsible for the management of the Data Protection Commission, who is also for the duration of his duties bound by the directions of his supervisor and subject to that supervision. That situation leads to clear conflicts of loyalty and interests.

Moreover, the Federal Chancellor (Bundeskanzler), who like other public posts is subject to the control of the Data Protection Commission, has a comprehensive right to supervise and instruct that commission. As a result, it is possible for the Federal Chancellor at any time and without any concrete ground to inform himself about all aspects of the management of the Data Protection Commission. There exists thereby the risk that that right could be used in order to exercise political influence.