

concerning Corporación Bancaria de España SA (Argentaria) (BOE No 15 of 17 January 1998, p. 1851), Royal Decree No 552/1998 of 2 April 1998 concerning Tabacalera SA (BOE No 80 of 3 April 1998, p. 11370), and Royal Decree No 929/1998 of 14 May 1998 concerning Endesa SA (BOE No 129 of 30 May 1998, p. 17939), in so far as they implement a system of prior administrative approval

- which is not justified by any overriding requirements of the general interest,
- which does not lay down objective and stable criteria which have been made public, and
- which does not comply with the principle of proportionality,

are incompatible with Article 43 EC and Article 56 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechet, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 13 May 2003, in which it:

1. Declares that, by maintaining in force the provisions of Article 2 and Article 3(1) and (2) of Ley 5/1995 de régimen jurídico de enajenación de participaciones públicas en determinadas empresas (Law 5/1995 on the legal arrangements for disposal of public shareholdings in certain undertakings) of 23 March 1995, as well as Royal Decree No 3/1996 of 15 January 1996 concerning Repsol SA, Royal Decree No 8/1997 of 10 January 1997 concerning Telefónica de España SA and Telefónica Servicios Móviles SA, Royal Decree No 40/1998 of 16 January 1998 concerning Corporación Bancaria de España SA (Argentaria), Royal Decree No 552/1998 of 2 April 1998 concerning Tabacalera SA, and Royal Decree No 929/1998 of 14 May 1998 concerning Endesa SA, in so far as they implement a system of prior administrative approval, the Kingdom of Spain has failed to fulfil its obligations under Article 56 EC;
2. Orders the Kingdom of Spain to pay the costs;
3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

(<sup>1</sup>) OJ C 61 of 24.2.2001.

## JUDGMENT OF THE COURT

of 13 May 2003

**in Case C-98/01: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (<sup>1</sup>)**

**(Failure by a Member State to fulfil its obligations — Articles 43 EC and 56 EC — Rights attaching to the United Kingdom's Special Share in BAA plc)**

(2003/C 158/05)

(Language of the case: English)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-98/01, Commission of the European Communities (Agents: F. Benyon and M. Patakia) v United Kingdom of Great Britain and Northern Ireland (Agents: R. Magrill, assisted by D. Wyatt, QC, and J. Crow, barrister): Application for a declaration that the provisions limiting the possibility of acquiring voting shares in BAA plc as well as the procedure requiring consent to the disposal of the company's assets, to control of its subsidiaries and to winding-up are incompatible with Articles 43 EC and 56 EC, the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissechet, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur), V. Skouris, F. Macken, N. Colneric, S. von Bahr and A. Rosas, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 13 May 2003, in which it:

1. Declares that, by maintaining in force the provisions limiting the possibility of acquiring voting shares in BAA plc as well as the procedure requiring consent to the disposal of the company's assets, to control of its subsidiaries and to winding-up, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 56 EC;
2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

(<sup>1</sup>) OJ C 134 of 5.5.2001.