

**Pleas in law and main arguments**

The period prescribed for transposition of the Directive into domestic law expired on 19 April 2006.

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<sup>(1)</sup> OJ 2005 L 255, p. 149.

**Action brought on 18 September 2007 — Commission of the European Communities v Portuguese Republic**

(Case C-435/07)

(2007/C 269/66)

*Language of the case: Portuguese*

**Parties**

*Applicant:* Commission of the European Communities (represented by: C. Zadra and M. Telles Romão, Agents)

*Defendant:* Portuguese Republic

**Form of order sought**

- a declaration that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2005/39/EC <sup>(1)</sup> of the European Parliament and of the Council of 7 September 2005 amending Council Directive 74/408/EEC relating to motor vehicles with regard to the seats, their anchorages and head restraints or, in any case, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive;
- an order that the Portuguese Republic should pay the costs.

**Pleas in law and main arguments**

The period prescribed for transposition of the Directive into domestic law expired on 19 April 2006.

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<sup>(1)</sup> OJ 2005 L 255, p. 143.

**Appeal brought on 14 September 2007 by the Commission of the European Communities against the judgment delivered on 12 July 2007 in Case T-312/05 Commission of the European Communities v Efrosini Alexiadou**

(Case C-436/07 P)

(2007/C 269/67)

*Language of the case: Greek*

**Parties**

*Appellant:* Commission of the European Communities (represented by: D. Triandafillou)

*Other party to the proceedings:* Evfrosini Alexiadou

**Form of order sought**

The appellant asks the Court to:

- set aside the judgment of the Court of First Instance of 12 July 2007 in Case T-312/05 *Commission of the European Communities v Alexiadou* which was notified to the Commission on 18 July 2007;
- uphold the Commission's claims in its action;
- order the respondent to pay the costs of the appeal and of the proceedings before the Court of First Instance.

**Pleas in law and main arguments**

The Court of First Instance misinterpreted the general conditions of the contract (law of the parties) and in particular the provision concerning financial audit which refers to audit in a loose way as a mere possibility. Another provision which was relied upon of its own motion by the Court of First Instance does not even refer to audit, although it concerns defective performance of a contract. The requirement to carry out an audit thus proves to be independent of the contractual provision relied upon.

In any event, financial audit could not be required if there was nothing to audit, since nobody is bound to do the impossible and contractual provisions must be construed in such a way as to ensure practical effectiveness.

The principle of sound budgetary management requires that the Commission should not carry out audits without reason. The Court of First Instance excluded at the outset application of the principles of good faith and commercial usage which could have offered guidance in its interpretation.

Since it gave judgment by default, the Court of First Instance cannot blame the Commission for not explaining some of its arguments (in particular the preceding argument above), without infringing the principle of judicial protection.