

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 4 July 2012 — État belge — SPF Finances v GIMLE SA

(Case C-322/12)

(2012/C 287/40)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: État belge — SPF Finances

Defendant: GIMLE SA

Question referred

Must Article 2(3), (4) and (5) of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ⁽¹⁾ be interpreted as not only providing that additional information must be provided in the notes on the annual accounts but also requiring that — where the acquisition cost clearly does not reflect the real value of the assets concerned, thus giving a distorted view of the undertaking's assets, liabilities, financial position and profit or loss — the rule that assets are to be entered in the accounts at their acquisition cost must be departed from and such assets immediately recognised as having their resale value, if that appears to be the real value?

⁽¹⁾ OJ 1978 L 222, p. 11.

Action brought on 10 July 2012 — European Commission v Portuguese Republic

(Case C-325/12)

(2012/C 287/41)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Hetsch, P. Guerra e Andrade and L. Nicolae, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2009/136/EC ⁽¹⁾ of the European Parliament and of the

Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, or, in any event, by not notifying those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 4 of Directive 2009/136/EC;

— in accordance with Article 260(3) TFEU, order the Portuguese Republic to pay a penalty in the amount of EUR 22 014,72 per day, starting from the day the Court delivers its judgment, for having failed to communicate all the measures adopted to transpose Directive 2009/136/EC;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese State has failed to adopt all the measures necessary to transpose Directive 2009/136/EC or, in any event, to communicate such measures to the Commission.

The Portuguese State attempted to transpose Directive 2009/136/EC into national law only in so far as it amends Directive 2002/22/EC. The part of Directive 2009/136/EC which amended Directive 2002/58/EC (Privacy and Electronic Communications) still needed transposing.

Pursuant to Article 260(3) TFEU, the Commission may request the Court, when bringing an action for failure to act under Article 258 TFEU, to order, in its judgment finding that the Member State has failed to comply with its obligation to notify the Commission of measures transposing a directive adopted under a legislative procedure, the Member State at issue to pay a lump sum or a penalty payment

Pursuant to the Communication from the Commission on the implementation of Article 260(3) TFEU, ⁽²⁾ a periodic penalty payment proposed by the Commission is calculated in accordance with the method set out in the Communication regarding reform of the implementation of Article 228 of the EC Treaty.

Consequently, the calculation of the fine is based on the severity of the infringement, the duration of the infringement and the need to ensure the deterrent effect of the sanction.

The Commission proposes that the coefficient for severity be set at 8, taking account of the importance of the provisions of European Union law which have been infringed and the consequences of the infringement in terms of general and particular interests.

⁽¹⁾ OJ 2009 L 337, p. 11.

⁽²⁾ OJ 2011 C 12, p. 1.