



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 September 2014*

(Failure of a Member State to fulfil obligations — Directive 96/67/EC — Article 11 — Air transport — Groundhandling service — Selection of suppliers)

In Case C-277/13,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 21 May 2013,

European Commission, represented by P. Guerra e Andrade and F.W. Bulst, acting as Agents,

applicant,

v

Portuguese Republic, represented by L. Inez Fernandes, T. Falcão and V. Moura Ramos, acting as Agents,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits, M. Berger, S. Rodin (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 14 May 2014,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the European Commission asks the Court to declare that, by failing to take the necessary measures for the organisation of a procedure for the selection of suppliers authorised to provide groundhandling services in the categories of 'baggage handling', 'ramp handling' and 'freight and mail handling' at Lisbon, Porto and Faro airports, in accordance with Article 11 of Council

* Language of the case: Portuguese.

Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36), the Portuguese Republic has failed to fulfil its obligations under that Article 11.

Legal context

EU law

- 2 Recital 5 in the preamble to Directive 96/67 states:

‘... the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users’.

- 3 Recital 16 in the preamble to Directive 96/67 states:

‘... if effective and fair competition is to be maintained where the number of suppliers of groundhandling services is limited, the latter need to be chosen according to a transparent and impartial procedure; ... airport users should be consulted when it comes to selecting suppliers of groundhandling services, since they have a major interest in the quality and price of the groundhandling services which they require’.

- 4 Article 2(e) of Directive 96/67, in defining the notion of ‘groundhandling’, refers to the annex to that directive for the categories of services included within that notion. In accordance with that annex, the following services are included within the notion of groundhandling services:

‘...’

3. Baggage handling ...

...

4. Freight and mail handling ...

...

5. Ramp handling ...

...’

- 5 Article 6 of Directive 96/67 is worded as follows:

‘1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties.

...

2. Member States may limit the number of suppliers authorised to provide the following categories of groundhandling services:

— baggage handling,

- ramp handling,
- ...,
- freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service.

3. Moreover, as from 1 January 2001 at least one of the authorised suppliers may not be directly or indirectly controlled by:

- the managing body of the airport,
- any airport user who has carried more than 25% of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,
- a body controlling or controlled directly or indirectly by that managing body or any such user.

However, at 1 July 2000, a Member State may request that the obligation in this paragraph be deferred until 31 December 2002.

The Commission, assisted by the Committee referred to in Article 10, shall examine such request and may, having regard to the evolution of the sector and, in particular, the situation at airports comparable in terms of traffic volume and pattern, decide to grant the said request.

4. Where, pursuant to paragraph 2, they restrict the number of authorised suppliers, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling service subject to restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.'

6 Article 11 of Directive 96/67 provides:

'1. Member States shall take the necessary measures for the organisation of a selection procedure for suppliers authorised to provide groundhandling services at an airport where their number is limited in the cases provided for in Article 6(2) or Article 9. This procedure must comply with the following principles:

- (a) In cases where Member States require the establishment of standard conditions or technical specifications to be met by the suppliers of groundhandling services, those conditions or specifications shall be established following consultation with the Airport Users' Committee. The selection criteria laid down in the standard conditions or technical specifications must be relevant, objective, transparent and non-discriminatory.

...

- (b) An invitation to tender must be launched and published in the *Official Journal of the European Communities*, to which any interested supplier of groundhandling services may reply.

(c) Suppliers of groundhandling services shall be chosen:

- (i) following consultation with the Airport Users' Committee by the managing body of the airport, provided the latter:
 - does not provide similar groundhandling services; and
 - has no direct or indirect control over any undertaking which provides such services; and
 - has no involvement in any such undertaking;
- (ii) in all other cases, by competent authorities of the Member States which are independent of the managing body of the airport concerned, and which shall first consult the Airport Users' Committee and that managing body.

(d) Suppliers of groundhandling services shall be selected for a maximum period of seven years.

(e) Where a supplier of groundhandling services ceases his activity before the end of the period for which he was selected, he shall be replaced on the basis of the same procedure.

2. Where the number of suppliers of groundhandling services is limited in accordance with Article 6(2) or Article 9, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure laid down in paragraph 1. Similarly, it may, without submitting it to the said procedure, authorise an undertaking to provide groundhandling services at the airport in question:

- if it controls that undertaking directly or indirectly; or
- if the undertaking controls it directly or indirectly.

3. The managing body of the airport shall inform the Airport Users' Committee of decisions taken under this Article.'

7 Article 18 of Directive 96/67, entitled 'Social and environmental protection', provides:

'Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.'

8 Article 23 of Directive 96/67, entitled 'Implementation', provides in its paragraph (1):

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of its publication in the *Official Journal of the European Communities*. They shall forthwith inform the Commission thereof.

...'

9 Directive 96/67, which was published on 25 October 1996, therefore had to be transposed by 25 October 1997 at the latest.

Portuguese law

- 10 The Portuguese Republic transposed Directive 96/67 by Decree-Law No 275/99 of 23 July 1999. The preamble to that decree-law is worded as follows:

‘The need to ensure, in so far as possible, a smooth transition to the new regime, while striving to maintain continuity of services and to safeguard the employment and the rights of workers in the sector, is also to be taken into consideration.’

- 11 Article 27 of that decree-law, entitled ‘Selection of suppliers’, reads as follows:

‘1. Where the number of suppliers provided for in Article 22(2) and Article 24(1)(a) and (b) is limited, the selection of authorised suppliers shall be made through a call for tenders published in the *Official Journal of the European Communities*.

...

7. Suppliers shall be selected for a minimum period of four years and for a maximum period of seven years.’

- 12 Article 39 of Decree-Law No 275/99, entitled ‘Transitional regime’, provides:

‘1. Without prejudice to paragraph 2, the bodies which, on the date of the entry into force of the present Law, are authorised, by law or by the managing body, to self-handle or to provide groundhandling services in an airport shall be automatically authorised to use the public airport domain in the airport concerned, for the purpose of carrying out their respective duties, until the statutory end of the existing authorisation or for a period of four years if the existing authorisation does not have an expiry date or if that expiry date is set beyond the expiry of a four-year period.

...

2. Within one year from the date of publication of the present Law, the bodies referred to in paragraph 1 must obtain a licence to carry out their activities, in accordance with Chapter II — failing which the corresponding authorisations shall lapse — or obtain specific authorisations which are valid from that date.’

Pre-litigation procedure

- 13 According to the information gathered by the Commission, the ‘baggage handling’, ‘freight and mail handling’ and ‘ramp handling’ service operators in Portugal are Portway — Handling de Portugal SA (‘Portway’) and Serviços Portugueses de Handling SA, known, since 2005, under its commercial designation Groundforce Portugal (‘Groundforce’).
- 14 The objects of Portway, a company wholly owned by ANA SA, are the management of airport infrastructure and the provision of airport services at Lisbon, Porto and Faro airports pursuant to an administrative licensing contract.
- 15 Groundforce is a company, 50.1% of which is owned by the Urbanos group. Groundforce was owned by Transportes Aéreos Portugueses (‘TAP’) before the Urbanos group became a Groundforce shareholder. In the course of 2003, Portuguese legislation authorised TAP to transfer its majority shareholding in Groundforce through an international open invitation to tender, addressed to investors meeting the requirements set out in the standard conditions. Globalia Corporación

Empresarial SA ('Globalia'), having been selected as the best tenderer, acquired the majority of Groundforce's shares in the course of 2004. Following a series of transactions, the Urbanos group acquired that majority shareholding, which it holds to the present day.

- 16 On 25 November 2010, the Commission sent a letter of formal notice to the Portuguese Republic, in which it claimed that that Member State had failed to fulfil its obligations resulting from Directive 96/67 in that it had not organised a procedure for the selection of suppliers of groundhandling services pursuant to Article 11 of that directive.
- 17 The Portuguese Republic replied by letter dated 31 January 2011, in which it rejected the allegation of failure to fulfil obligations.
- 18 On 20 May 2011, the Commission sent to the Portuguese Republic a reasoned opinion, in which it confirmed its objections. In particular, during the period from 1999 to 2003, the Portuguese Republic had, the Commission claimed, put in place a transitional regime of automatic authorisation which allowed Portway, controlled by ANA SA, the airport managing body, and on the same date, Groundforce, controlled by TAP, the main Portuguese carrier, to continue to provide the services at issue. Over the course of 2004, following an international open invitation to tender, Groundforce passed into the possession of the Globalia group, while at the same time retaining the authorisation to provide groundhandling services.
- 19 The Portuguese Republic responded by letter of 27 July 2011 and informed the Commission that two calls for tenders had been launched, one for Faro airport and the other for Lisbon and Porto airports. It considered that those two calls for tenders had run until the end of October and November 2011, respectively. As regards the Airport Users' Committees concerned, these had, it submitted, been informed of the tendering procedures, but the email sent to the Faro Airport Users' Committee had not been successfully delivered.
- 20 On 22 June 2012, the Commission sent to the Portuguese Republic a supplementary reasoned opinion in which it stressed that that Member State had not selected new suppliers but had, by means of Decree-Law No 19/2012 of 27 January 2012, had recourse to a special regime with retroactive effect to 31 December 2011 in order to extend Groundforce's access authorisation until new authorisations could be granted. The Commission also observed that, despite indicating the dates for opening and analysing the tenders submitted by those tendering to supply groundhandling services, the Portuguese Republic stated that it was not possible to determine the precise closing date of the calls for tenders. So far as the Airport Users' Committees were concerned, it added that no consultations on the choice of suppliers had taken place.
- 21 On 3 October 2012, the Portuguese Republic replied that it considered the transitional regime to be necessary in order to maintain continuity of services and also to protect the employment and rights of workers in that sector. According to that Member State, the purpose of the automatic authorisation was to protect the legitimate legal expectations of the bodies which were already engaged in groundhandling activities in the airports concerned.
- 22 With regard to the ongoing calls for tenders, the Portuguese Republic stated that the selection board was, in October 2012, at the stage of assessing the tenders but that that process was a matter of particular complexity. According to that Member State, it had not been possible for the selection board to complete the preliminary assessment report on the tenders. However, it expressed its intention to engage in consultations with the Airport Users' Committees before selecting the suppliers of groundhandling services.
- 23 As it was not satisfied by the responses provided by the Portuguese Republic, the Commission brought the present action for failure to fulfil obligations.

The action

Arguments of the parties

- 24 It should be observed that the Portuguese Republic raised, for the first time at the hearing, an objection of inadmissibility against the action, arguing that the Commission has not provided it with precise instructions to enable it to transpose Directive 96/67 correctly.
- 25 As regards the substance, the Commission argues that, after limiting access to certain categories of groundhandling services to two suppliers — one of which, Portway, was not concerned by the selection procedure due to the fact that it was wholly controlled by the body managing Lisbon, Porto and Faro airports — the Portuguese Republic did not take the measures necessary to organise a procedure for the selection of the second supplier of groundhandling services for those airports, in accordance with Article 11(1) of Directive 96/67.
- 26 The Commission states that the transitional regime put in place by the Portuguese Republic by means of Article 39 of Decree-Law No 275/99 automatically preserved the authorisation granted to Groundforce for the provision of groundhandling services. During that period, that Member State did not organise a procedure for the selection of other suppliers. Since the restructuring and transfer of Groundforce's shares from TAP to Globalia, during the course of 2004, Groundforce has retained that authorisation.
- 27 With regard to the international open invitation to tender concerning that transfer, the Commission states that the suppliers of groundhandling services could not obtain the authorisation without acquiring Groundforce's shares. It follows, according to the Commission, that that call for tenders was not a procedure for the selection of suppliers, but a procedure for the selection of investors. In any event, that procedure did not comply with the principles set out in Article 11 of Directive 96/67. Specifically, the authorisations granted were not limited to a maximum period of seven years. Likewise, the Airport Users' Committees concerned had not been consulted.
- 28 While it accepts that the Portuguese Republic organised, over the course of 2011, three new procedures for selecting the second supplier of groundhandling services, the Commission states that those procedures have never been completed. Furthermore, the Portuguese administration put in place, in 2012, a special regime with retroactive effect, introduced by Decree-Law No 19/2012, to extend the authorisation granted to Groundforce.
- 29 The Portuguese Republic replies that, since Directive 96/67 is silent on whether or not it is possible to introduce a transitional regime, the introduction of that regime was not contrary to the provisions of that directive. That regime was put in place in order to preserve the rights of bodies which, at the time when Decree-Law No 275/99 entered into force, were authorised to provide groundhandling services for certain categories of services. Similarly, that regime ensured continuity of services and safeguarded the employment and rights of workers, in accordance with the resolution of the European Parliament of 14 February 1995 on civil aviation in Europe, in which the Parliament emphasised the need to take account of the impact that access to the groundhandling market would have on employment and safety conditions at airports within the European Union.
- 30 The Portuguese Republic adds that the authorisations at issue have been automatically renewed until the statutory end of the existing authorisations or for a period of four years if the existing authorisation did not have an expiry date or if that expiry date was set beyond the expiry of a four-year period.

- 31 The Portuguese Republic contends that the transfer of Groundforce's shares was directed at selecting a supplier of groundhandling services by taking into account the requirements appearing in the standard conditions and imposed by national legislation and EU law. The procedure was, it submits, organised in accordance with the relevant, objective, transparent and non-discriminatory selection criteria provided for in Article 11 of Directive 96/67.
- 32 According to the Portuguese Republic, the transfer of shares made it possible to avoid disruption to the normal functioning of the activity of groundhandling services not only as regards service availability and quality but also as regards the price of that activity. Had the authorisation granted to Groundforce not been renewed, the second supplier, Portway, would, the Portuguese Republic argues, have had a monopoly in the market for groundhandling services until the end of the procedure for the selection of other suppliers.
- 33 As regards the calls for tenders launched in 2011 for the airports concerned, the Portuguese Republic submits that these are in accordance with the conditions set out in Article 11 of Directive 96/67. The attribution period of the authorisations was limited to seven years and the Airport Users' Committees were consulted before the calls for tenders were launched. It adds that those committees will also be consulted on the choice of the other supplier.
- 34 The complexity of the selection procedure is, the Portuguese Republic argues, attributable to the changes in national legislation relating to human resources, at the level of recruitment and remuneration, following from budgetary restrictions which led to the signature of the Memorandum of Understanding between the Portuguese Republic, the Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF) on 17 May 2011. The operation of the selection board responsible for the appraisal of the tenders at issue was interrupted by the resignation of several of its members following a substantial reduction in their remuneration, which had a decisive impact on the entire procedure for the selection board's appraisal of the tenders. The Portuguese Republic expresses the view that the competent authority made all possible efforts to enable the selection board to complete the appraisal of those tenders.
- 35 The Portuguese Republic adds that, since the EU legislation concerning the market for groundhandling services is due to be amended soon, any new changes, if adopted, would affect Lisbon airport and, potentially, the other airports concerned. That Member State considers that such an amendment, were it to come about, would have the inevitable effect of making it impossible to award ongoing public procurement contracts.
- 36 In its reply, the Commission submits that Directive 96/67 does not omit any provision and does not contain any lacuna which would allow the Portuguese Republic to introduce a transitional regime. It maintains that that Member State failed to transpose Directive 96/67 correctly during the 14 years which followed its entry into force. The Commission adds that the purpose of the transitional regime was to protect the position of national operators already active on the market concerned. According to the Commission, in the event that Groundforce were to lose its status as a service supplier, that would not have excluded the possibility of its employees finding work with other undertakings, including with whichever undertaking might secure the contract to provide groundhandling services.
- 37 Concerning the new procedures for the selection of suppliers, it follows, according to the Commission, from the case-law of the Court that a Member State cannot plead situations resulting from its domestic legal order to justify a failure to comply with obligations prescribed by EU law. Accordingly, changes affecting staff organisation or an absence of human resources cannot justify non-compliance with EU law. The Commission adds that the possibility of a change in EU legislation cannot have any bearing on the current obligations of the Member States.

- 38 Finally, according to the Commission, the organisation of a procedure to select the suppliers authorised to provide groundhandling services, provided for by Article 11 of Directive 96/67, is an obligation as to results. Consequently, where a Member State has organised a selection procedure which did not achieve a result, the view must be taken that that Member State has not complied with that directive. Were the Member State merely obliged to organise such a selection procedure without being subject to any obligation as to results, that directive would be rendered entirely ineffective.
- 39 In its rejoinder, the Portuguese Republic adds that, in so far as Globalia, which acquired Groundforce's shares, is a supplier of groundhandling services, the transfer of those shares should be regarded as being a procedure for the selection of another supplier.
- 40 Concerning the new procedures for the selection of suppliers of groundhandling services, the Portuguese Republic contends that the Commission cannot disregard the procedure for financial assistance to Portugal and the fact that one of the conditions, under the Memorandum of Understanding concluded between the Portuguese Republic, the Commission, the ECB and the IMF, specifically concerns the privatisation of Aeroportos de Portugal SA, the body which manages the airports concerned. The financial problems of the Portuguese Republic are not simple administrative or bureaucratic problems.

Findings of the Court

Admissibility

- 41 As regards the objection of inadmissibility raised for the first time by the Portuguese Republic at the hearing, by which that Member State criticises the Commission for not having provided it, during the pre-litigation procedure, with precise instructions to enable it to transpose Directive 96/67 correctly, suffice it to point out that, in accordance with Article 127(1) of the Rules of Procedure of the Court, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which came to light in the course of the procedure.
- 42 In the present case, the Commission had the opportunity to present its complaints against the Portuguese Republic and the latter had the opportunity to submit the observations which it considered relevant. Given that that Member State was aware of the Commission's alleged failure to provide instructions during the pre-litigation procedure and that its objections are not based on matters of law or fact which came to light in the course of the procedure, that objection of inadmissibility is inadmissible.

Substance

- 43 In order to rule on the present action, it should be recalled that the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment in *Dillenkofer and Others*, C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, EU:C:1996:375, paragraph 48 and the case-law cited).
- 44 In addition, by providing, in essence, that the Member States were required to bring into force the measures necessary to comply with Directive 96/67 by 25 October 1997 at the latest, Article 23 of that directive imposed an obligation on the Member States to adopt all the measures necessary to ensure that the provisions of Directive 96/67 were fully effective and so guarantee achievement of the prescribed result (see, by analogy, judgment in *Dillenkofer and Others*, EU:C:1996:375, paragraph 49).

- 45 Accordingly, the fact that Directive 96/67 makes no mention of the possibility for Member States to introduce a transitional regime does not allow the conclusion to be drawn, as the Portuguese Republic claims, that that directive contains a lacuna and that Member States are free to introduce such a transitional regime, after, moreover, the expiry of the transposition period, as occurred in the present case. That would, in effect, allow a Member State to grant itself a new transposition period.
- 46 With regard to the argument, put forward by the Portuguese Republic, that the procedure for the transfer of the shares of a company may be regarded as being equivalent to a procedure for the selection of other suppliers of groundhandling services, to the extent that that procedure satisfies the conditions set out in Article 11 of Directive 96/67, while permitting attainment of the legitimate objective of the protection of workers' rights, of the protection of the legitimate legal expectations of the bodies which were already exercising groundhandling activities in those airports, and also the continuity and quality of the services in those airports, it must be held that such an interpretation of Article 11 cannot be accepted.
- 47 Article 11(1)(b) of Directive 96/67 requires that the selection procedure be open to any interested supplier.
- 48 However, a procedure for the transfer of shares excludes all suppliers which are not at the same time investors interested in acquiring the shares of a pre-existing company. As the Portuguese Republic acknowledged at the hearing, Groundforce, after its acquisition by Globalia, retained the authorisation to provide groundhandling services which had been granted to it, with the result that it was not possible for a supplier of groundhandling services to obtain the authorisation without, at the same time, acquiring Groundforce's shares.
- 49 It follows that the procedure for the transfer of Groundforce's shares was not open to every interested supplier and that that procedure resulted in infringement of the objective pursued by Directive 96/67, namely the opening-up of the groundhandling market to competition, mentioned in recital 5 in the preamble to that directive.
- 50 That fact alone suffices for the conclusion to be drawn that such a procedure cannot be regarded as a procedure for the selection of suppliers of groundhandling services within the meaning of Article 11 of Directive 96/67. It is therefore not necessary to examine whether the other conditions laid down in that article have been met.
- 51 This conclusion cannot, moreover, be called into question by the argument, put forward by the Portuguese Republic, that such a procedure is covered by Article 18 of Directive 96/67, which allows Member States to take the necessary measures to ensure protection of the employment and rights of workers.
- 52 It should be noted, in this regard, that the Court has already held that, whilst Member States retain the power to ensure an adequate level of social protection for the staff of undertakings providing groundhandling services, it is also true that that power does not confer an unlimited jurisdiction and must be exercised in a manner that does not prejudice the effectiveness of that directive and the objectives which it pursues (see judgment in *Commission v Germany*, C-386/03, EU:C:2005:461, paragraph 28 and the case-law cited).
- 53 It must be added that, in response to a question put to it at the hearing, the Portuguese Republic stated that Groundforce's retention of the licence, on the date on which control of it was transferred to Globalia, made it possible for all employment posts in Groundforce to be preserved. The Portuguese Republic added that an obligation to protect workers and employment posts was imposed in the call for tenders; it did not, however, specify the nature of such an obligation.

- 54 In this regard, it should be noted that, first, where an undertaking has obtained a licence to supply groundhandling services upon acquiring the shares of the company acquired, that does not allow the conclusion to be drawn that the future conduct of such an undertaking will remain unchanged after it has obtained the licence and, in particular, that that undertaking will preserve all existing employment posts in the company acquired.
- 55 Second, it is not disputed that an obligation imposed on undertakings to take over the staff of the previous supplier places potential new competitors at a disadvantage in relation to established undertakings and jeopardises the opening-up of the groundhandling markets, thereby undermining the effectiveness of Directive 96/67 (see, inter alia, judgment in *Commission v Italy*, C-460/02, EU:C:2004:780, paragraph 34).
- 56 As regards the other arguments raised by the Portuguese Republic, to the effect that the regime was put in place to protect the legitimate legal expectations of the bodies which were already engaged in groundhandling activities and to ensure the continuity and quality of the services in those airports, it must be recalled that, according to settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation in which a European Union authority has caused him to entertain expectations which are justified, and a person may not plead infringement of that principle unless he has been given precise assurances by the administration (see judgment in *Belgium and Forum 187 v Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 147 and the case-law cited).
- 57 Since the third paragraph of Article 288 TFEU provides that directives are to be binding, as to the result to be achieved, upon the Member States to which they are addressed, since the period for transposing Directive 96/67 expired on 25 October 1997, and since there was no suggestion from the Commission or from any other EU institution to the effect that the Portuguese Republic was relieved from transposing that directive into its national legal order within the period prescribed or that that directive was not to apply to that Member State, neither the Portuguese Republic nor any undertaking providing groundhandling services there can rely on any legitimate expectation that the system in place in that Member State would be maintained.
- 58 Suffice it to note that, with regard to the protection of the continuity and quality of the services provided in the airports, the Portuguese Republic has not provided the Court with any evidence capable of supporting the argument that the transposition of Directive 96/67, had it been effected within the period prescribed, would have been liable to compromise the continuity and quality of the services at issue.
- 59 With regard to the grounds of justification put forward by the Portuguese Republic in relation to the fact that the procedures for the selection of suppliers of groundhandling services organised during 2011 have not been completed, it need only be pointed out that it follows from settled case-law that a Member State cannot plead provisions, practices or internal situations to justify a failure to comply with the obligations and time-limits arising under EU law (see judgments in *Commission v Portugal*, C-150/97, EU:C:1999:15, paragraph 21; *Commission v Luxembourg*, C-69/05, EU:C:2006:32, paragraph 10; and *Commission v Italy*, C-161/05, EU:C:2006:762, paragraph 12).
- 60 So far as concerns the Portuguese Republic's argument that the potential changes to the legislation at issue could render the selection of a second supplier superfluous, it should be recalled that the Court has repeatedly held that the existence of a failure to fulfil obligations must be assessed in the light of the EU legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion (see, inter alia, judgments in *Commission v Belgium*, C-377/03, EU:C:2006:638, paragraph 33 and the case-law cited, and *Commission v France*, C-170/09, EU:C:2010:97, paragraph 6 and the case-law cited). Therefore, the possibility that legislation might be amended does not relieve a Member State of its obligation to transpose the directive in force into its national legal order within the period prescribed for that transposition.

- ⁶¹ It follows from all of the foregoing that, by failing to take the necessary measures for the organisation of a procedure for the selection of suppliers authorised to provide groundhandling services for the categories of ‘baggage handling’, ‘ramp handling’ and ‘freight and mail handling’ at Lisbon, Porto and Faro airports, in accordance with Article 11 of Directive 96/67, the Portuguese Republic has failed to fulfil its obligations under that article.

Costs

- ⁶² Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Commission has applied for costs and the Portuguese Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Declares that, by failing to take the necessary measures for the organisation of a procedure for the selection of suppliers authorised to provide groundhandling services for the categories of ‘baggage handling’, ‘ramp handling’ and ‘freight and mail handling’ at Lisbon, Porto and Faro airports, in accordance with Article 11 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ 1996 L 272, p. 36), the Portuguese Republic has failed to fulfil its obligations under that article;**
2. **Orders the Portuguese Republic to pay the costs.**

[Signatures]