

**Judgment of the Court (Fourth Chamber) of 12 June 2008 — Commission of the European Communities v Portuguese Republic**

(Case C-462/05) <sup>(1)</sup>

*(Failure of a Member State to fulfil its obligations — Admissibility — Res judicata — Sixth VAT Directive — Article 4(5), first subparagraph, Article 12(3)(a) and Article 28(2)(e))*

(2008/C 209/03)

Language of the case: Portuguese

**Parties**

*Applicant:* Commission of the European Communities (represented by: R. Lyal and M. Afonso, acting as Agents)

*Defendant:* Portuguese Republic (represented by: L. Fernandes, Â. Seiça Neves and R. Laires, acting as Agents)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Articles 12 and 28 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Maintaining in force a reduced rate of 5 % on tolls on road crossings of the river Tagus in Lisbon

**Operative part of the judgment**

*The Court:*

1. Declares that, by maintaining in force a reduced rate of value added tax of 5 % applicable to road tolls for crossing the Tagus at Lisbon, the Portuguese Republic has failed to fulfil its obligations under Articles 12 and 28 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2001/4/EC of 19 January 2001;
2. Orders the Portuguese Republic to pay the costs.

<sup>(1)</sup> OJ C 60, 11.3.2006.

**Judgment of the Court (First Chamber) of 19 June 2008 — Commission of the European Communities v Federal Republic of Germany**

(Case C-39/06) <sup>(1)</sup>

*(Failure to fulfil obligations — State aid — Subsidies for investment and employment — Obligation to recover — Non-compliance — Principle of protection of legitimate expectations)*

(2008/C 209/04)

Language of the case: German

**Parties**

*Applicant:* Commission of the European Communities (represented by: K. Gross and T. Scharf, acting as Agents)

*Defendant:* Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr, Agents)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 249 EC and Articles 1, 2 and 3 of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (notified under document number C(2003) 1520; Aid No C-62/00, ex NN 142/99) (OJ 2003 L 227, p. 12) — Failure to take, within the prescribed time-limit, the measures necessary to recover aid which was declared incompatible with the common market

**Operative part of the judgment**

*The Court:*

1. Declares that, in failing to take all the measures necessary to recover certain aid declared incompatible with the common market by Article 1(2)(d) and (g) of the Commission Decision of 30 October 2002, as it appears in Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH, the Federal Republic of Germany has failed to fulfil its obligations under Articles 1 to 3 of that decision;
2. Orders the Federal Republic of Germany to pay the costs.

<sup>(1)</sup> OJ C 60, 11.3.2006.