



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-95/12
Commission v Germany

Advocate General Wahl proposes to reject the Commission's action against Germany seeking financial penalties with regard to the Volkswagen law

Germany did comply fully with the Court's initial judgment of 2007

This case concerns an action brought by the Commission requesting the Court to fine Germany following an alleged failure to comply with the judgment delivered by the Court on 23 October 2007¹. In the 2007 judgment the Court of Justice found that Germany had infringed the free movement of capital by maintaining in force three provisions of the Volkswagen Law², namely (i) the provision granting the Federal State and the Land of Lower Saxony the right each to appoint two representatives to the supervisory board of the Volkswagen AG, as well as (ii) the provision capping the voting rights of any individual shareholder at 20% *'in conjunction with'* the provision affording any shareholder holding 20 % of the share capital a blocking minority to resolutions of the general assembly of Volkswagen.

The Court found that these provisions, derogating from general company law, limited the possibility for other shareholders to participate effectively in the management of that company or in its control and were therefore liable to deter direct investors from other Member States from investing in Volkswagen's capital.

Following that judgment, Germany enacted new legislation in December 2008 repealing the first two provisions of the VW law in question, that is to say the provisions on the appointing rights and on the capping of voting rights.³ However, the provision on the blocking minority of 20 % was not amended.

According to the Commission, the 2007 judgment states that each of the contested provisions taken individually is contrary to the free movement of capital. The provision on the blocking minority having remained unchanged, it brought the present action on 21 February 2012 seeking financial penalties against Germany for having failed to comply fully with the 2007 judgment.

In its action, the Commission suggests a daily penalty payment of € 282 275.20 from the date on which the judgment is delivered in the present case until the 2007 judgment has been complied with and a daily lump sum payment of € 31 114.72 multiplied by the number of days between delivery of the 2007 judgment and the date on which Germany complies with the 2007 judgment or, failing that, the date of judgment in the present case.

In his opinion today, Advocate General Nils Wahl proposes that the Court dismiss the Commission's action.

He shares the German government's reading of the 2007 judgment that the Court found two infringements: the first in relation to the provision on the appointing rights and the second in relation to the provisions on the capping of voting rights and on the blocking minority combined. Therefore, by repealing the provision constituting the first infringement and by repealing one of the

¹ Case [C-112/05](#) Commission v Germany, see also Press Release No [74/07](#).

² Law of 21 July 1960 on the privatisation of equity in the Volkswagenwerk limited company

³ Law of 8 December 2008 amending the law on the privatisation of equity in the Volkswagenwerk limited company

two provisions constituting the second infringement, Germany has complied fully with the 2007 judgment.

In the Advocate General's view, the use of the expression 'in conjunction with' in the operative part of the 2007 judgment excludes, on its own, the interpretation proposed by the Commission. In addition, he finds that the grounds of the 2007 judgment also fail to confirm the view taken by the Commission. In this respect, he emphasises that the Court – taking into account notably that the Land of Lower Saxony retained an interest in the capital of Volkswagen of approximately 20 % – considered it appropriate to analyse the provisions on the capping of voting rights and the blocking minority together and explicitly referred to the cumulative adverse effects of the two provisions on investors' interest in acquiring stakes in Volkswagen.

The Advocate General further points out that **the purpose of the present proceedings is not to determine whether the provision on the blocking minority, considered on its own, infringes EU law, but only whether Germany has complied with the 2007 judgment.**

With respect to additional **complaints** put forward by the Commission in the present action, namely **that also the Articles of the Association of Volkswagen should have been amended**, the Advocate General proposes to reject those complaints as **inadmissible**, because the Articles of Association were not scrutinised by the Court in the 2007 judgment.

If, contrary to his opinion, the Court should find that Germany has failed to comply fully with the 2007 judgment, Advocate General Wahl proposes that the Court order Germany to make a daily penalty payment of € 81 100.80 from the date on which judgment is delivered in the present case until the 2007 judgment has been complied with and a daily lump sum payment of € 8 870.40 multiplied by the number of days between delivery of the 2007 judgment and the date of the judgment in the present case.

In this respect, basing his conclusion on the purpose of Article 260 TFEU to safeguard the effective enforcement of EU law, the Advocate General takes the view that neither the alleged ambiguity of the 2007 judgment nor the unusual length of time that has elapsed between the end of the pre-litigation procedure and the referral of the present case to the Court – more than three years – justifies a reduction of the financial penalties to be imposed on Germany.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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