



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 138/13
Luxembourg, 22 October 2013

Judgment in Case C-95/12
Commission v Germany

The Court of Justice dismisses the action brought by the Commission seeking to have financial penalties imposed on Germany in relation to the Volkswagen Law

Germany complied in full with the initial judgment of the Court delivered in 2007

The German motor vehicle manufacturer Volkswagen was turned into a public limited company in 1960 by a federal Law, the 'Volkswagen Law'¹. At the time that Law was adopted, the Federal Republic of Germany and the *Land* of Lower Saxony were the two main shareholders in Volkswagen, each holding 20% of its capital. While the Federal Republic of Germany is today no longer a shareholder in Volkswagen, the *Land* of Lower Saxony still retains a shareholding of approximately 20%.

Initially, the Volkswagen Law allowed the Federal Republic of Germany and the *Land* of Lower Saxony each to appoint two members to the supervisory board on condition that the Federal Republic and that *Land* held shares in the company². That law also capped the voting rights of any shareholder to the number of votes conferred by a 20% shareholding in the share capital³. In addition, the Volkswagen Law provided for a lower blocking minority which enabled a minority holding of only 20% of the share capital to oppose important resolutions of the company, whereas the German law on public limited companies requires 25%⁴.

Taking the view that those three provisions of the Volkswagen Law were contrary to, *inter alia*, the free movement of capital guaranteed by EU law, the Commission brought an action against Germany for failure to fulfil obligations before the Court of Justice in 2005.

By judgment delivered in 2007⁵, the Court held that, by maintaining in force the provision in the Volkswagen Law relating to the appointment, by the Federal Republic of Germany and the *Land* of Lower Saxony, of members to the supervisory board, and the provision on the capping of voting rights *in conjunction with* the provision on the lower blocking minority, Germany had acted contrary to the free movement of capital.

Following that judgment, Germany repealed⁶ the first two provisions, but maintained the provision on the lower blocking minority.

The Commission took the view that it followed from the 2007 judgment that each of those three provisions constituted an independent infringement of the free movement of capital and that, consequently, the provision on the lower blocking minority should also have been repealed. It therefore brought the matter before the Court again⁷ and requested that financial penalties be

¹ Law on the privatisation of equity in the Volkswagenwerk limited company (Gesetz über die Überführung der Anteilsrechte an der Volkswagenwerk Gesellschaft mit beschränkter Haftung in private Hand) of 21 July 1960.

² Paragraph 4(1).

³ Paragraph 2(1).

⁴ Paragraph 4(3).

⁵ Case [C-112/05](#) *Commission v Germany*; see also Press Release [No 74/07](#).

⁶ By the Law amending the Law on the privatisation of equity in the Volkswagenwerk limited company (Gesetz zur Änderung des Gesetzes über die Überführung der Anteilsrechte an der Volkswagenwerk Gesellschaft mit beschränkter Haftung in private Hand) of 8 December 2008.

⁷ For general information on actions for failure to fulfil obligations before the Court, see the note at the end of this press release.

imposed on Germany because of its failure to comply in full with the 2007 judgment. The Commission requested that, from the date on which judgment is delivered in the present case until the date of compliance with the 2007 judgment, a daily penalty payment in the amount of €282 725.10 be imposed for the delay in complying with the 2007 judgment. In addition, the Commission requested that, from the date of the 2007 judgment until the date on which judgment is delivered in the present case or the date on which that Member State puts an end to the infringement, a lump sum be imposed in an amount calculated by multiplying a daily amount of €31 114.72 by the number of days over which the infringement has continued.

By today's judgment, the Court dismisses that action.

According to the Court, **it is apparent from both the operative part of the 2007 judgment, which contains the decision of the Court, and the grounds for that decision that the Court did not establish that there had been a failure to fulfil obligations resulting from the provision relating to the lower blocking minority, considered in isolation, but established that there had been such a failure solely as regards the combination of that provision with the provision relating to the cap on voting rights.**

Consequently, by repealing both the provision of the Volkswagen Law relating to the appointment, by the Federal Republic of Germany and the *Land* of Lower Saxony, of members to the supervisory board and the provision relating to the cap on voting rights, thereby putting an end to the combination between that latter provision and the provision relating to the lower blocking minority, **Germany did fulfil**, within the period prescribed, **the obligations that follow from the 2007 judgment.**

The Court, moreover, rejects as inadmissible the Commission's complaint that Germany should also have amended Volkswagen's Articles of Association, which still contain a clause relating to the lower blocking minority, which is essentially analogous to that in the Volkswagen Law, on the ground that the 2007 judgment related exclusively to the compatibility of certain provisions of the Volkswagen Law with EU law and did not relate to that company's Articles of Association.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106