

## **Case C-196/07 Commission v Spain, judgment of 6 March 2008**

**Facts:** E.ON, a German company operating in the energy sector, was looking to buy Endesa, a company which also specialised in energy. A notification was made to the Commission, following which the Commission authorised the proposed buyout in a Regulation. The relevant Spanish authority had conditioned its authorisation on very stringent controls and checks, and the Commission subsequently addressed a decision to Spain indicating that most of these conditions were incompatible with EU law.

Negotiations between the Commission and the Spanish authority fell through, and the decisions became final, and so Spain had failed to comply with the decisions. On the back of this, the Commission brought an action for failure to fulfil the decisions.

The Spanish government contended firstly that the case was devoid of purpose owing to the fact that, after the expiry of the deadline for responding to the reasoned opinion, the concentration operation was abandoned, and secondly that the protection of the general interest in energy supply security justified the disputed conditions.

**Held:** The Court examined both of Spain's contentions, concluding that Spain had failed to fulfil its obligations in respect of the Commission decisions.

Firstly, the Court considered the argument that the case was devoid of purpose owing to the fact that, after the expiry of the deadline for responding to the reasoned opinion, the concentration operation was abandoned. The Court concluded that the issue of whether there had been a failure to meet those obligations would be analysed in relation to the situation prevailing at the end of the period laid down in the decision, without subsequent changes being taken into account. Moreover, proceedings to establish the failure to fulfil such obligations could not be dropped simply because the default had been remedied after the time limit, as some parties may have benefited from such default.

Secondly, the Court examined the claim that the protection of the general interest in energy supply security justified the disputed conditions. The Court held that to allow this submission would be to allow a finding of compatibility of the conditions with Community law, contrary to the content in the Decisions. A Member State could not plead the unlawfulness of a decision addressed to it as a defence in an action for a declaration that it had failed to fulfil its obligations based on the failure to implement a decision.