

## Judgment of the Court of Justice, Aid for rationalization of mining regions, case 70/72 (12 July 1973)

**Caption:** Extract from the judgment in the case: Commission of the European Communities v the Federal Republic of Germany (Aid for rationalisation of mining regions) relating to the admissibility of an action for failure to fulfil an obligation. It emerges from this judgment that it is a matter for the Community authorities responsible for ensuring that the requirements of the Treaty are observed to take measures with a view to establishing that a State has failed to fulfil its obligations under the Treaty. In this particular case, the Commission may bring before the Court an action for failure to fulfil an obligation since it has required from Germany, without success, the repayment of grants awarded in breach of the Treaty.

**Source:** Reports of Cases before the Court. 1973. [s.l.].

**Copyright:** All rights of reproduction, public communication, adaptation, distribution or dissemination via Internet, internal network or any other means are strictly reserved in all countries.

The documents available on this Web site are the exclusive property of their authors or right holders.

Requests for authorisation are to be addressed to the authors or right holders concerned.

Further information may be obtained by referring to the legal notice and the terms and conditions of use regarding this site.

**URL:**

[http://www.cvce.eu/obj/judgment\\_of\\_the\\_court\\_of\\_justice\\_aid\\_for\\_rationalization\\_of\\_mining\\_regions\\_case\\_70\\_72\\_12\\_july\\_1973-en-b362178c-606f-4d86-b1e6-37c4a678c743.html](http://www.cvce.eu/obj/judgment_of_the_court_of_justice_aid_for_rationalization_of_mining_regions_case_70_72_12_july_1973-en-b362178c-606f-4d86-b1e6-37c4a678c743.html)

**Publication date:** 22/10/2012

## Judgment of the Court of 12 July 1973 1

### Commission of the European Communities v Federal Republic of Germany

‘Aid for rationalization of mining regions’

Case 70-72

#### Summary

*1. Member States of the EEC - Obligations - Failure to fulfil - Commission - Finding - Reasoned opinion - Decision - Termination of such failure - Means - Measures of internal law - Specification by the Commission - Action - Admissibility (EEC Treaty, Article 169 and 93 (2))*

[...]

1. Since the aim of the Treaty is to achieve the practical elimination of infringements and the consequences thereof, past and future, it is a matter for the Community authorities charged with ensuring that the requirements of the Treaty are observed, to determine the extent to which the obligation of the Member State concerned is specified in reasoned opinions or decisions delivered under Articles 169 and 93 (2) respectively and in applications addressed to the Court. An application from the Commission, for a declaration that in omitting to take specific measures, a Member State has failed to fulfil an obligation under the Treaty, is admissible.

[...]

In Case 70/72

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jochen Thiesing, acting as agent, with an address for service at the office of its legal adviser Pierre Lamoureux, 4 boulevard Royal,

applicant,

v

THE FEDERAL REPUBLIC OF GERMANY, represented by Martin Seidel, Regierungsdirektor in the Federal Ministry of Economics, acting as agent, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 3 boulevard Royal,

defendant,

Application for a declaration that the Federal Republic of Germany has disregarded the Decision of the Commission of 17 February 1971 on aid granted under Article 32 of the Law on the Adaptation and Rationalization of the German Mining Industry and Mining Regions,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore (Rapporteur), (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, H. Kutscher, C. Ó Dálaigh, M. Sørensen and A. J. Mackenzie Stuart, Judges,

Advocate-General: H. Mayras

Registrar: A. Van Houtte

Gives the following

**JUDGMENT**

[...]

### Grounds of judgment

1 By an application lodged at the Registry on 2 October 1972, the Commission, under Article 93 (2) of the EEC Treaty, brought an action before the Court for a declaration:

1) that the Federal Republic of Germany has disregarded the Decision of the Commission of 17 February 1971 on aid granted under Article 32 of the Law of 15 May 1968 on the Adaptation and Rationalization of the German Mining Industry and Mining Regions (termed 'Kohlegesetz', Bundesgesetzblatt 1968 I, p. 365), extended by Article 9 of the Law of 18 August 1969 on the grant of investment subsidies, which also amended certain provisions relative to the taxation system and to the system of grants (termed 'Steueränderungsgesetz 1969', Bundesgesetzblatt 1969 I, p. 1211);

2) that the Federal Republic of Germany is obliged to require repayment from the recipients of certain grants awarded in disregard of the Decision referred to.

[...]

### Admissibility

8 The Federal Republic of Germany disputes the admissibility of the action, which has been brought on the basis of the first subparagraph to Article 93 (2), on the ground that the Decision of the Commission of 17 February 1971, contrary to a formal requirement of the Treaty, does not fix a period of time for compliance, but requires the system of aid in dispute to be ended 'without delay'; and that according to the categorical requirements of Article 93 (2) the determination of such a period of time is a necessary condition precedent to the reference of the matter to the Court in accordance with the special requirements of the provision in question.

9 In reality this plea is concerned not with the admissibility of the action but with the validity of the Decision of 17 February 1971. The plea of inadmissibility must therefore be rejected.

10 In the second place the defendant pleads in particular the inadmissibility of the second head of the action under which the defendant is to be ordered to require from the recipients the repayment, within certain time limits, of the grants awarded after the Decision of 17 February 1971. According to the defendant it follows from Article 171 of the Treaty that in the course of an action directed against a Member State, the Court of Justice must limit itself to finding a failure to fulfil an obligation, and has no power to order the Member State to take any specific steps, so that it is in fact the responsibility of the Member State alone to determine the necessary measures to comply with the judgment of the Court so as to eliminate the results of its failure to comply.

11 By the second subparagraph of Article 93 (2) 'if the State... does not comply with this decision within the prescribed time, the Commission... may refer the matter to the Court of Justice direct'.

12 The head of submissions in question requests the Court to find that the defendant, by its failure to require the repayment by the recipients of the aid wrongly received, has not fulfilled an obligation incumbent upon it by virtue of the Decision of 17 February 1971.

13 Such a request is admissible since the Commission is competent, when it has found that aid is incompatible with the Common Market, to decide that the State concerned must abolish or alter it. To be of practical effect, this abolition or modification may include an obligation to require repayment of aid granted in breach of the Treaty, so that in the absence of measures for recovery, the Commission may bring the matter before the Court. Moreover an application from the Commission, within the scope of the procedure under Articles 169 to 171, for a declaration that in omitting to take specific measures, a Member State has

failed to fulfil an obligation under the Treaty, is equally admissible.

Since the aim of the Treaty is to achieve the practical elimination of infringements and the consequences thereof, past and future, it is a matter for the Community authorities whose task it is to ensure that the requirements of the Treaty are observed to determine the extent to which the obligation of the Member State concerned may be specified in the reasoned opinions or decisions delivered under Articles 169 and 93 (2) respectively and in applications addressed to the Court.

This plea must therefore be rejected.

[...]

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 93, 169 and 171;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

**1. Dismisses the action;**

**2. Orders the applicant to pay the costs.**

Lecourt

Monaco

Pescatore

Donner

Mertens de Wilmars

Kutscher

Ó Dálaigh

Sørensen

Mackenzie Stuart

Delivered in open court in Luxembourg on 12 July 1973

A. Van Houtte

Registrar

R. Lecourt

President

1 - Language of the Case: German