



Competition

The Portuguese State may be subject to pay copious fine in case it decides to keep the "golden share" in EDP.

Contacts

António Macedo Vitorino

mva@macedovitorino.com

Cláudia Martins

mva@macedovitorino.com

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European Commission asks the Portuguese State on the maintenance of the 'golden share' in EDP

In November 2010, the Court of Justice of the European Union has decided the "golden share" of the Portuguese State in Energias de Portugal SGPS SA ("EDP") contravenes the European Union ("EU") rules.

This ruling was not, however, novel, as the Court of Justice had already decided in a similar sense regarding the "golden share" of Portugal Telecom SGPS SA ("PT").

The "golden share" grants the Portuguese State voting rights on key matters on the managing and controlling of EDP, including mergers, divestitures or relevant changes in shareholders' powers.

Repeating the merits of the PT case, the Court of Justice held that the exercise of those special rights arising from the "golden share" by the Portuguese State constitutes an unjustified restraint on the free movement of capital and the right of establishment under the Treaty on Functioning of the EU.

According to the Court of Justice, the influence of the Portuguese State in the management and control of EDP may discourage direct investments from operators of another Member States, which are abstained from participating in the management and control of the company.

In 2008, the European Commission had decided in the same sense.

Further to the ruling of the Court of Justice, the European Commission has announced that it will ask the Portuguese Government on the status of this matter, including the measures adopted by the Portuguese State in order to comply with the EU rules, as stated in the case law of the Court of Justice.

The Portuguese State had an indicative deadline of two months from the publication of the ruling of the Court of Justice to make known the adopted measures, which did not occur or the European Commission has considered the proposed measures were not satisfactory taking into account the content of its latest announcement.

The Portuguese Government has already reacted to the announcement of the European Commission and forwarded the resolution of the current situation to the shareholders of EDP.

However, in case the Portuguese Government does not take the necessary measures to eliminate the "golden share" in EDP, the European Commission may decide to begin other infringement proceedings against the Portuguese State.

Given the fact that there is a previous ruling of the Court of Justice on this matter, it is likely that the time resolution of new proceedings could be faster.

In case the Portuguese Government reiterates not to accept the decision of the Court of Justice, it may be subject to pay copious fines for each day of failure to comply with the ruling of the Court of Justice.

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