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Germany will uphold the veto over Volkswagen's strategic decisions

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On 22 October, the Court of Justice of the European Union (CJEU) awarded that Germany had not breached the EU principle of the free movement of capital and could uphold its veto over Volkswagen's strategic decisions, even though the state holds only a minority stake in this company. The court confirmed that Germany had complied with the obligations imposed on it during the trial it lost in 2007 in its dispute with the European Commission. This trial commenced with a complaint the European Commission brought to the CJEU in 2005. In the opinion of the European Commission, the German Volkswagen Act of 1960 was in breach of EU law offering guarantees of certain rights to majority shareholders. Firstly, this act provided that the federal state of Lower Saxony, holding a 20% stake in VW, had the privilege to block the company's strategic decisions. Under German law, this privilege is vested in shareholders who own at least a 25% stake. Secondly, the strength of the vote of the other shareholders (the Porsche and Piech families, holding in total 50% of the shares, and the government of Qatar – 17%) was restricted to the level of 16%, as a consequence of which all decisions taken at VW were always dependent on the opinions of Lower Saxony's representatives. Thirdly, the central government and the federal state each could delegate two representatives to the company's supervisory board. In 2007, the CJEU found the regulations of this act to be contrary to EU law. Nevertheless, the German government decided to invalidate only the latter two regulations, while Lower Saxony retained its veto.

Commentary

- This verdict marks the end of the long-lasting dispute between the European Commission and Germany. The verdict also means that Germany will not pay a fine of 68 million euros. Although the outcome is favourable for Germany, the European Commission also experienced a level of success during the trial, since in 2007 it forced Germany to remove the most controversial provisions of the act: the ones setting a fixed number of central and local government representatives in the supervisory board of VW and those restricting the voting powers of shareholders other than the federal state.
- The CJEU's verdict proves that EU member states have the right to protect their strategic companies from hostile takeover. The court agreed with the arguments that the VW Act is of special significance for the German economy and in effect guarantees that the company's factories remain in Germany. This is an exception in the European Union's

legislation, which grants strategic status to companies from the telecommunication and energy sectors and those offering services of key significance from the point of view of a given state and society. Since Lower Saxony has maintained its veto, the German government does not have to prove that the company is of strategic significance for the state. This will also make it possible for the other EU member states to protect companies which are important but not necessarily strategic.

- The provisions under the VW Act turned out to be useful already in 2007, when the German government prevented Porsche from performing a hostile takeover of the company. It cannot be ruled out that, were it not for this act, in a situation of financial crisis where the company's shares could significantly drop in value, another attempt at a hostile takeover could be made, especially by Asian companies, which are backed financially by their respective states. Volkswagen has undergone numerous reforms over the past few years, and thus the management's plans to reach the position of global leader in car manufacturing by 2018 are realistic (at present VW is ranked third after Toyota and General Motors).