A. Presentation of the Court

The Court of Justice of the European Union (CJEU) is the institution of the European Union, which encompasses the whole judiciary related to EU Law, a body of treaties and legislation that enacts laws concerning European affairs and policies and has direct or indirect effect on the legislation of the Union’s member states. The CJEU was established in Luxembourg in 1952 and has adapted itself to the various legal changes that were introduced in the European Treaties during the last 60 years of its existence.

Today, still residing at the city of Luxembourg, the CJEU’s mission is to ensure that “the law is observed in the interpretation and application of the Founding Treaties.” The three main axes of its objective are the review of the legality of the acts of the institutions of the European Union, the protection of the Treaties and the control of the compliance of member states to their obligations emerged by them, and finally the interpretation of EU Law at the request of national courts and tribunals.

With the entry into force of the Treaty of Lisbon in 2009 and the official establishment of the European Union, the Court of Justice of the European Communities, as it was formerly known, was renamed to its current title, which concentrates the jurisdiction for the whole EU, unifying the European Law and the Union’s three pillars, and is now comprised by three chambers: the Court of Justice, the General Court and the Civil Service Tribunal.
The Civil Service Tribunal undertakes to solve the disputes arisen between the European Union and its servants mainly regarding working relations and the social security system. Moreover, any disagreements occurred between all European bodies or agencies or their staff come under the Civil Service Tribunal. However, it may not intervene in cases between national administrations and their employees. The General Court (formerly the Court of First Instance) has jurisdiction to hear mostly actions brought by natural or legal persons against acts of the institutions, bodies, offices or agencies of the European Union, actions brought by the member states against The European Commission or the Council of the European Union, actions seeking compensation for damage, actions related to Community trademarks.

Finally, simulated by this year’s MILMUN ECJ, the Court of Justice (also known as the European Court of Justice or ECJ) is the highest court in the EU, the most powerful jurisdictional body of the Court of Justice of the European Union. It is composed of 27 Judges and 8 Advocates-General, whose term of office last 6 years and is renewable. The Judges, one of each member state, elect one of themselves as President of the Court for a renewable term of three years. The Advocates-General (AGs) assist the Court. They are responsible for presenting, with complete impartiality and independence, a legal opinion in the cases assigned to them. The AGs opinions are advisory and do not bind the Court, but they are nonetheless very influential and are followed in the majority of cases. As of 2003, Advocates-General are only required to give an opinion if the Court considers that the case raises a new point of law. The Registrar is the institution’s secretary general and manages its departments under the authority of the President of the Court. The Court may sit as a full court, in a Grand Chamber of 13 Judges or in Chambers of three or five Judges. The ECJ’s types
of proceedings include references of preliminary rulings, actions for failure to fulfill obligations, actions for annulment, actions for failure to act, appeals and reviews.

The Court of Justice promotes the respect of the fundamental principles cited in the Founding Treaties of the Union. Most of its judgments refer to significant areas European Union Law, such as free movement of goods, persons and capital, freedom to provide services, equal treatment and social rights, fundamental human rights and the European citizenship. The ECJ makes its rulings binding on nations and citizens via the principles of EU law known as “Direct Effect”, which the court established in the case of Van Gend en Loos vs. Nederlandse in 1963, and “Supremacy”, established in the case of Costa v ENEL in 1964. Through these principles it has gained powers that were previously the reserve of nation states. It is worth mentioning that there is no record of dissenting opinions.

In May 2012, during the 7th MILMUN Conference, the European Court of Justice will be simulating a case examined by the Court of Justice in a Chamber of five Judges. The ECJ will issue a decision on the case number C-560/08, which refers to the failure of the Kingdom of Spain to fulfill its obligations emerged by the Council Directives 85/337/EEC and 92/43/EEC. The European Commission takes legal action and asks from the Court to settle the issue occurred.
B. The Legal Case: European Commission v. Kingdom of Spain (C-560/08)

1. Introduction to the Case

On 17 December 2008, the European Commission exercised recourse against the Kingdom of Spain, claiming that the state had failed to fulfill its obligations under the Council Directives 85/337/EEC and 92/43/EEC, which institute legal provisions concerning the assessment of the effects of certain public and private projects on the environment and the conservation of natural habitats and of wild fauna and flora respectively.

In July 2005, the Community of Madrid decided to launch the extension of the M-501 highway in its region, without having processed the necessary evaluation of the project’s potential consequences on the environment. The execution of the project provoked and would provoke direct impacts harmful to the environment. The spaces set in danger are the Special Protection Area “Encinares del río Alberche y río Cofio” and the two Sites of Community Importance, “Cuencas de los ríos Alberche y Cofio” and “Cuenca del río Guadarrama”, which all come under the authority of the Community of Madrid and have been designated as such by the European Union.

The European Commission received complaints regarding the infringement by the Kingdom of Spain of the aforementioned directives. Since then, the two opponents had been trying to reach an agreement always aiming at the best implementation of the primary and secondary European Union Law. However, on 26 June 2008, the Commission decided to bring the case before the Court of Justice, to which the application initiating proceedings was lodged 6 months later.

2. Important Elements of the Case

a. The M-501 Highway

The M-501 highway is an autovía in the Spanish region of Madrid. It is managed by the Madrid regional government as a primary road in the Madrid network. Only the first 48 kilometres (30 mi), from the beginning near Madrid to the current end at Navas del
Rey are motorway-grade, while a two-lane road also called M-501 continues on to the regional border with the province of Ávila (Castile and León).

The M-501 begins at the intersection of the M-40 beltway and the M-511 dual carriageway near Pozuelo de Alarcón and Boadilla del Monte. It borders the latter town, intersecting the M-50 beltway and is later joined by the M-506 near Villaviciosa de Odón and the European University of Madrid. It then crosses the future highway M-600 south of Brunete and continues west to Chapinería and Navas del Rey, where the autovía ends at a roundabout.

b. Special Protection Area (SPA) and Natura 2000

A Special Protection Area (SPA) is a designation under the European Union Directive on the Conservation of Wild Birds. Under the Directive, Member States of the European Union (EU) have a duty to safeguard the habitats of migratory birds and certain particularly threatened birds. Together with Special Areas of Conservation (SACs), the SPAs form a network of protected sites across the EU, called Natura 2000.

Natura 2000 is an ecological network of protected areas in the territory of the European Union. Natura 2000 protects around 18% of land in the EU countries, and it can be considered almost completed in the EU terrestrial environment. During the
process, the European Commission has warned several EU member states over non-compliance with the EU nature directives (Habitats and Birds Directive), in particular in relation with the insufficiency of the Natura 2000 network, e.g. the European Commission started an "infringement procedure" against Poland in April 2006.

In respect to wilderness and wild land areas, Members of the European Parliament in the plenary session of 3 February 2009 backed a report calling for further protection of Europe's wilderness. The report also calls for more European funding to protect existing sites and "re-wild" ones that are currently being used by humans or agriculture.

As far as the examined case is concerned, the construction along with the expansion of the M-501 road has been proved to be destructive for “Encinares del río Alberche y río Cofio”, a Special Protection Area of birds, included in Natura 2000.

c. Site of Community Importance (SCI)

A Site of Community Importance (SCI) is defined in the European Commission Habitats Directive (92/43/EEC) as a site which, “in the bio-geographical region or regions to which it belongs, contributes significantly to the maintenance or restoration - at a favorable conservation status - of a natural habitat type or of a species.” It may also be of great aid towards the coherence of Natura 2000, and promote the maintenance of biological diversity within the bio-geographical region or regions concerned.

In Spain, and particularly within the borders of the Autonomous Community of Madrid, “Cuencas de los ríos Alberche y Cofio” and “Cuenca del río Guadarrama” have been officially noted as Sites of Community Importance (SCI), but their habitats are endangered by the road project launched for the M-501 highway.

3. Historical Background of the Case

The project of doubling the width of the M-501 highway, which covers a distance of approximately 56km, divided in 5 sections, was subjected to the evaluation procedure of environmental impact during the month of June 1996. After consultation with organizations and entities likely to be affected by the work, the project, which covered only the sections 1 and 2 of the initial one, has been the object of an environmental impact statement on April 2nd, 1998, which resulted in a favorable
commentary on certain conditions for Section 1 and in a disapproving review regarding Section 2. The proposed Section 1 was the first to be carried out. Regarding Section 2, studies have concluded that the road would seriously affect the species for which the area had been classified as an SPA and suggested as a Site of Community Importance. Consequently, the Government of the Community of Madrid renounced the rest of the realization of the project in November 2000.

On 21 July 2005, the Government of the Community of Madrid has decided to proceed with the fulfillment of Section 2 due to compelling reasons of road safety, without re-submitting the project to an evaluation procedure on environmental impacts. This decision was subjected to an administrative appeal before the Tribunal Superior de Justicia de Madrid.

As far as the sections of the initial project are concerned, on June 22nd, 2000, Section 4 was examined by an Environmental Impact Statement, which was made public based on the decision of July 5th, 2000. Finally, Section 4 was executed. Sections 3 and 5 have not been constructed yet.

The SPA ES0000056, also known as “Encinares del río Alberche y río Cofio” was announced as such in January 1990. Separate projects relating to Sections 2 and 4 of the M-501 directly affect this site for a length of just over 20 km. In addition, the separate project on Section 1 indirectly affects the SPA, also due to the increased accessibility of this area to private vehicles. The SCI ES3110007, called “Cuencas de los ríos Alberche y Cofio, proposed in April 1999, coincides with the boundaries of the SPA “Encinares del río Alberche y río Cofio” and the issues the latter is facing are also applied to the mentioned SCI. Moreover, it is directly affected by separate projects related to Sections 2 and 4 and indirectly by the separate project on Section 1. The SCI ES3110005, called “Cuenca del río Guadarrama”, which was proposed as such in April 1999 and was finally rendered in July 2006, nowadays is directly affected by 3.5km of the separate project for Section 1.

All of the aforementioned three spaces of great importance, both for Spain and the European Union, are experiencing the danger that the habitats they maintain for amphibians, mammals, reptiles and insects may be irreversibly destroyed and vanquished.
Considering that the Kingdom of Spain had failed to fulfill its obligations under Directives 85/337 and 92/43 due to the project of development of the M-501 highway, the Commission sent – under Article 226 EC – a letter of formal notice to the Spanish state, dated October 18th, 2006. In its response, the Member State denied having infringed Directive 85/337 and the Union’s legislation regarding the SCIs "Cuenca del Río Guadarrama" and "Cuencas de los ríos Alberche y Cofio" and the SPA "Encinares del río Alberche y río Cofio". It also argued that it had taken many steps to avoid any possible deterioration of natural habitats.

Considering unsatisfactory the response of the Kingdom of Spain to the letter of formal notice, the Commission, on March 23rd, 2007, sent a reasoned opinion to the Member State, requesting its taking the necessary measures to comply with that notice within two months after having received it. By a letter of May 29th, 2007, the Spanish authorities reiterated the arguments they had already developed in response to the letter of formal notice.

Recognizing that the Kingdom of Spain had not terminated the failings, the Commission decided on 18 July 2007, to exercise recourse to the European Court of Justice under Article 226 EC. The Spanish authorities, by a letter dated October 29th, 2007, sent to the Commission a proposal for conducting the assessment of environmental impacts for those Sections that had not been subjected to this procedure, in order to take any mitigated or compensating measures thereafter.

In their reply on December 12th, 2007, the Commission agreed to the implementation of that proposal, the latter being, in its opinion, likely to put an end to the alleged violations, while stressing that the favorable opinion was given without prejudice to the potential decisions that the Commission could have adopted regarding the infringement procedure. The Spanish authorities have reiterated their commitment in a letter dated January 18th, 2008, and consequently the Commission decided, on January 31st, 2008, to temporarily suspend the execution of its decision to appeal for a declaration of failure from the ECJ towards Spain.

However, given the Spanish authorities' decision, on March 5th, 2008, to appeal the judgment of the Tribunal Superior de Justicia de Madrid of February 14th, 2008 and proceed with the project of Section 2, the Commission agreed that the behavior of the
Member State was incompatible with the recognition of its situation of having violated the EU Law and with the commitment of the Spanish authorities to comply with their obligations to minimize the damage already done, decided June 26, 2008, to lift the suspension and ask from the Court of Justice for a declaration that the Kingdom of Spain has failed to fulfill its obligations.

By a document lodged on March 5th, 2009, the Kingdom of Spain raised an objection of inadmissibility under Article 91, paragraph 1, first section of the Rules of Procedure of the Court. Nevertheless, on November 10th, 2009, it decided to join the motion raised by the European Commission in order for it to dismiss the accusations on the merits in accordance with paragraph 4 of the same Article.

4. Poland’s Intervention

The European Commission had exercised recourse against the Republic of Poland due to a similar incident with the one examined. By order of the President of the Court of 19 May 2009, the Republic of Poland has been granted permission to intervene in support of the Kingdom of Spain.

The Polish government announced on March 20th, 2009, that the planned by-pass of the northeastern town of Augustow will not go through the Rospuda River Valley, a site protected under the EU's Natura 2000 network.

Poland had agreed earlier that it would not start the road's construction until a legal dispute with the European commission is resolved (EED 05/02/08). Bowing to pressure from Brussels as well as environmental NGOs and the media, the government said on March 24th, 2009, that the road will be built along an alternative route.

5. The Application and the Charges
The European Commission brought the action of recourse before the European Court of Justice on December 2008. In its application, it declared that the Kingdom of Spain had failed to fulfill its obligations:

- in accordance with Article 2(1), Article 3(1) and (2) as the case may be, Article 4 and Article 5 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment in relation to separate projects for widening and/or upgrading the M-501 road corresponding to sections 1, 2 and 4; in accordance with Article 6(2) and Article 8 of Council Directive 85/337/EEC in relation to separate projects for widening and/or upgrading the M-501 road corresponding to sections 2 and 4; and in accordance with Article 9 of Directive 85/337/EEC in relation to separate projects for widening and/or upgrading the M-501 road corresponding to sections 1, 2 and 4;

- in accordance with Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 thereof, with respect to the separate projects for widening and/or upgrading the M-501 road corresponding to sections 1, 2 and 4 of the special protection area for birds ES 0000056 'Encinares del río Alberche y río Cofio';

- in accordance with Directive 92/43/EEC, interpreted by the judgments of the Court of Justice of 13 January 2005 in Case C-117/03 and 14 September 2006 in Case C-244/05, and the obligations resulting from Article 12(1)(b) and (d) of the directive, with respect to separate projects for widening and/or upgrading the M-501 road corresponding to section 1 as regards the site proposed as a site of Community importance ES 3110005 'Cuenca del río Guadarrama', and sections 2 and 4 regarding the proposed site of Community interest ES 3110007 'Cuenca de los ríos Alberche y Cofio'.

6. Spanish Position on the Charges

Towards the charges based on the Directive 85/337/EEC

The Kingdom of Spain disputes the allegation that it did not assess the cumulative effects on each section of the highway or the induced effects in the short, medium and long term, permanent or temporary, positive or negative of the projects.
Furthermore, according to Spain, the proposed sections 2 and 4 correspond to those issues which were the subject of an impact statement and they should not be considered for further evaluation.

Finally, the Spanish side claims that the study and the report of the environmental impacts have been subjected to public inquiry procedures and decisions, similarly to the attribution of the labor market involved and the list of goods and rights affected by the expropriations necessary for the construction of the highway, which have been published in the official journals of the related communities.

Towards the charges based on the Directive 92/43/EEC

According to the Kingdom of Spain, the execution of the various projects of remodeling and upgrading of certain sections of the M-501 highway has been completed through the adoption of corrective measures and appropriate repair, which ensured the conservation of sites under the conditions required by Directive 92/43, even if the statements of environmental impact or plans were adopted prior to the designation of the Sites of Community Importance.

Despite the negative findings of the impact assessment on the sites and in the absence of alternatives, the Council of the Government of the Community of Madrid has estimated that the project should be executed. According to it, the requirements of this Directive have been met, since all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected have been taken. In particular, a plan for environmental integration has been developed, which includes many remedies and compensation to prevent significant deterioration of the areas concerned.

Finally, the Kingdom of Spain contends that the effects observed are not exorbitant and do not alter irreversibly the environmental integrity of sites affected. These effects would be offset by the various interventions of reparation and compensation already completed, fully or partially. The ecological and environmental situation was even improved in some cases. In addition, documents and subsequent studies, including the environmental statement of the proposed "Doubling the M-501 M-40 stretch to the limits of the Community of Madrid", conducted in December 2009, would establish the effective implementation of remedial and compensatory measures and their good results in most cases.

7. Conclusion
Before the European Court of Justice, the two opposite parties will be called to display and support their arguments and requests based upon the actual facts, the legal provisions that they invoke, as well as the special interpretation that the aforementioned directives have received by the Court in past judgments related to the case examined. As far as the latter part is concerned, emphasis should be put on the Judgments C-117/03 and C-244/05.