

The applicant claims that the Court should:

- declare that by imposing minimum and maximum retail prices for cigarettes, Ireland has failed to comply with its obligations under Article 9(1) of Council Directive 95/59/EC⁽¹⁾ of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco;
- declare that by failing to provide the necessary information on the applicable Irish legislation in order to enable the Commission to fulfil its duty to monitor compliance with Directive 95/59, Ireland has failed to comply with its obligations under Article 10 EC;
- order Ireland to pay the costs.

Pleas in law and main arguments

By virtue of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (No 2) Regulations 1986 and the arrangements made in implementation of those regulations with tobacco manufacturers and importers, Ireland imposes a minimum price for cigarettes corresponding to a level no more than 3 % below the weighted average price for cigarettes in the category in question. Moreover, in so far as manufacturers and importers may not set prices more than 3 % above that weighted average price, Ireland also imposes a maximum price for cigarettes. Such a system is contrary to Article 9(1) of directive 95/59, under which tobacco manufacturers are 'free to determine the maximum retail selling price for each of their products'.

Pursuant to Article 10 EC, the Member States have a duty to facilitate the Commission's tasks, in particular by complying with requests for information made in the course of infringement proceedings. The Commission submits that by failing to provide any information on the applicable Irish legislation, despite the Commission's repeated requests, Ireland has failed to comply with its obligations under Article 10 EC.

⁽¹⁾ OJ L 291, p. 40.

Defendant: Kingdom of Belgium

Form of order sought

- Declare that, by virtue of the transposition into national law of the provisions on the costing and financing of universal service obligations, the Kingdom of Belgium has failed to fulfil its obligations under Articles 12(1), 13(1), and Annex IV, part A, of Directive 2002/22/EC;
- order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The objective of Directive 2002/22 is, inter alia, to define the situations in which the market does not satisfactorily meet the needs of end-users and the directive contains provisions regarding the availability of the universal service. Article 12(1) of the directive provides that where national regulatory authorities consider that the provision of universal service may represent an unfair burden on undertakings designated to provide universal service, they are to calculate the net costs of its provision in the manner set out in that article. Annex IV, part A, contains provisions concerning the calculation of the net costs. Article 13(1) provides that where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, the Member States are, upon request from a designated undertaking, to decide to introduce a compensation mechanism.

According to the Commission, Belgium has not correctly transposed the provisions of Article 12(1), Article 13(1) and Annex IV, part A, of the directive. The Belgian legislation provides for no assessment of the question whether the provision of social tariffs in the course of performing the universal service represents an unfair burden for the undertakings concerned. Furthermore the Belgian legislation does not satisfy the requirement concerning the costing of net costs set out more particularly in the last section of Annex IV, part A, to the directive.

Action brought on 21 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-222/08)

(2008/C 209/35)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. van Vliet and A. Nijenhuis, acting as Agents)

Reference for a preliminary ruling from the Verwaltungsgericht Oldenburg (Germany) lodged on 26 May 2008 — Stadt Papenburg v Bundesrepublik Deutschland

(Case C-226/08)

(2008/C 209/36)

Language of the case: German

Referring court

Verwaltungsgericht Oldenburg

Parties to the main proceedings

Applicant: Stadt Papenburg

Defendant: Bundesrepublik Deutschland

Action brought on 29 May 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-232/08)

(2008/C 209/37)

Language of the case: Dutch

Questions referred

1. Does the first subparagraph of Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁾ allow a Member State to refuse to agree to the Commission's draft list of sites of Community importance, in relation to one or more sites, on grounds other than nature conservation grounds?
2. If Question 1 is answered in the affirmative: Do those grounds include the interests of municipalities and associations of municipalities, in particular their plans, planning intentions and other interests with regard to the further development of their area?
3. If Questions 1 and 2 are answered in the affirmative: Do the third recital in the preamble to Directive 92/43/EEC, Article 2(3) of the directive or other provisions of Community law even require that such grounds be taken into account by the Member States and the Commission when giving agreement and establishing the list of sites of Community importance?
4. If Question 3 is answered in the affirmative: Would it be possible — under Community law — for a municipality which is affected by the inclusion of a particular site in the list to claim in legal proceedings after final adoption of the list that the list infringes Community law, because its interests were not, or not sufficiently, taken into account?
5. Must ongoing maintenance works in the navigable channels of estuaries, which were definitively authorised under national law before the expiry of the time-limit for transposition of Directive 92/43/EEC, undergo an assessment of their implications pursuant to Article 6(3) or (4) of the directive where they are continued after inclusion of the site in the list of sites of Community importance?

⁽¹⁾ OJ 1992 L 206, p. 7.

Parties

Applicant: Commission of the European Communities (represented by: T. van Rijn and K. Banks, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

- Declare that, by allowing fishing vessels to have a higher engine power than permitted under Article 29(2) of Regulation (EC) No 850/98 ⁽¹⁾, has failed to fulfil its obligations under Article 23 of Regulation (EC) No 2371 ⁽²⁾ and Article 2(1) of Regulation (EEC) No 2847/93 ⁽³⁾;
- order Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission considers that the Netherlands Government has failed to fulfil its obligations, as it has consciously allows infringements of the rule regarding the maximum engine power with which fishing may be carried out in the 'plaice box'.

First, it is apparent from the information provided by the Netherlands Government that it permits Netherlands 'Eurokotters' participating in the private arrangement to satisfy the maximum permitted engine power of 300 hp only with effect from 1 May 2009. Second, it is apparent from this information that when monitoring compliance with this rule a margin of tolerance of 12,5 % is applied systematically and therefore penalties are not imposed on infringements of the maximum permitted engine power within that margin.

⁽¹⁾ Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1).

⁽²⁾ Council Regulation of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59).

⁽³⁾ Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1).