

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 20 September 2010 — Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget Aktiebolag, Storyside AB v Perfect Communication Sweden AB

(Case C-461/10)

(2010/C 317/42)

*Language of the case: Swedish*

#### Referring court

Högsta domstolen

#### Parties to the main proceedings

*Applicants:* Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget Aktiebolag, Storyside AB

*Defendant:* Perfect Communication Sweden AB

#### Questions referred

1. Does Directive 2006/24/EC <sup>(1)</sup> of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (the data storage directive), and in particular Articles 3, 4, 5 and 11 thereof, preclude the application of a national provision which is based on Article 8 of Directive 2004/48/EC <sup>(2)</sup> of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights and which permits an internet service provider in civil proceedings, in order to identify a particular subscriber, to be ordered to give a copyright holder or its representative information on the subscriber to whom the internet service provider provided a specific IP address, which address, it is claimed, was used in the infringement? The question is based on the assumption that the applicant has adduced evidence of the infringement of a particular copyright and that the measure is proportionate.
2. Is the answer to Question 1 affected by the fact that the Member State has not implemented the data storage directive despite the fact that the period prescribed for implementation has expired?

Appeal brought on 24 September 2010 by Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (Fifth Chamber) delivered on 8 July 2010 in Case T-331/06: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Environmental Agency (EEA)

(Case C-462/10 P)

(2010/C 317/43)

*Language of the case: English*

#### Parties

*Appellant:* Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, Δικηγόρος)

*Other party to the proceedings:* European Environmental Agency (EEA)

#### Form of order sought

The appellant claims that the Court should:

- set aside the decision of the General Court
- annul the decision of the EEA to evaluate the Appellant's bid as not successful and award the contract to the successful contractor;
- order EEA to pay the Appellant's legal expenses incurred in connection with the Application in case T-331/06 and this Appeal, even if the current Appeal is rejected.

#### Pleas in law and main arguments

1. The Appellant argues that the General Court committed an error in law by adopting a wrong interpretation or by not applying Art.97 of the Financial Regulation <sup>(1)</sup> and Art.138 of the Implementing Rules, since the announcement of the sub-criteria before the submission of the tenders is essential so that tenderers can present their best offer. The General Court erroneously rejected the Appellant's argument concerning the mixing of the selection and award-criteria on the grounds that it was introduced out of time. It is submitted that even if the approach of the General Court was correct it misinterpreted the content of the tender specifications when examining whether the use of the individual CVs in the award phase infringed the tender specifications.
2. Furthermore, the Appellant argues that the fact that the Evaluation Report is drafted in such way as not to demonstrate how the Evaluation Committee arrived at its conclusions cannot be attributed to the Appellant. If the

<sup>(1)</sup> OJ L 105, p. 54.

<sup>(2)</sup> OJ L 157, p. 45.