

Operative part of the judgment

1. Article 12(7) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP), as amended by Directive 98/61/EC of the European Parliament and of the Council of 24 September 1998, and Article 4c of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended by Commission Directive 96/19/EC of 13 March 1996, the latter article read in conjunction with recitals 5 and 20 in the preamble to Directive 96/19, must be interpreted as precluding a national regulatory authority from requiring an operator of a network interconnected with a public network to pay to the market-dominant subscriber network operator a connection charge which is additional to an interconnection charge and is intended to compensate the latter operator for the deficit incurred as a result of providing the local loop for the year 2003.
2. Article 4c of Directive 90/388, as amended by Directive 96/19, and Article 12(7) of Directive 97/33, as amended by Directive 98/61, produce direct effect and can be relied on directly before a national court by individuals to challenge a decision of the national regulatory authority.

⁽¹⁾ OJ C 140, 23.6.2008.

Judgment of the Court (Fourth Chamber) of 10 July 2008
(reference for a preliminary ruling from the
Oberlandesgericht Frankfurt am Main — Germany) —
Emirates Airlines Direktion für Deutschland v Diether
Schenkel

(Case C-173/07) ⁽¹⁾

*(Carriage by air — Regulation (EC) No 261/2004 —
Compensation for passengers in the event of cancellation of a
flight — Scope — Article 3(1)(a) — Concept of ‘flight’)*

(2008/C 223/21)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Emirates Airlines Direktion für Deutschland

Defendant: Diether Schenkel

Re:

Reference for a preliminary ruling — Oberlandesgericht Frankfurt am Main — Interpretation of Article 3(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Concept of ‘departure’ — Outward and return ticket from a Member State to a non-member country — Cancellation of the return flight

Operative part of the judgment

Article 3(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as not applying to the case of an outward and return journey in which passengers who have originally departed from an airport located in the territory of a Member State to which the EC Treaty applies travel back to that airport on a flight from an airport located in a non-member country. The fact that the outward and return flights are the subject of a single booking has no effect on the interpretation of that provision.

⁽¹⁾ OJ C 155, 7.7.2007.

**Judgment of the Court (Third Chamber) of 17 July 2008 —
Commission of the European Communities v Kingdom of
Spain**

(Case C-207/07) ⁽¹⁾

*(Failure of a Member State to fulfil obligations —
Articles 43 EC and 56 EC — National law making the acqui-
sition of shareholdings in undertakings which carry on regu-
lated activities in the energy sector and of the assets necessary
to carry on those activities subject to prior approval)*

(2008/C 223/22)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (repre-
sented by: H. Støvlbæk and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad,
acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 43 EC and 56 EC — National law making the acquisition of certain shareholdings in undertakings which carry on regulated activities in the energy sector subject to prior approval of a special commission

Operative part of the judgment

The Court:

1. Declares that, by adopting the first indent of the second paragraph of the single article of the fourteenth function of the National Energy Commission provided for in Supplementary Provision No 11, part 3, point 1 of Law 34/1998 of 7 October 1998 on the hydrocarbon sector (*Ley 34/1998, del sector de hidrocarburos*), as amended by Royal Decree-Law 4/2006 of 24 February 2006 (*Real Decreto-Ley 4/2006*), in order to make the acquisition of certain shareholdings in undertakings which carry on certain regulated activities in the energy sector and the acquisition of the assets necessary to carry on such activities subject to the prior approval of the National Energy Commission, the Kingdom of Spain has failed to fulfil its obligations under Articles 43 EC and 56 EC;
2. Orders the Kingdom of Spain to pay the costs.

⁽¹⁾ OJ C 140, 23.6.2007.

Judgment of the Court (Third Chamber) of 17 July 2008
(reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Flughafen Köln/Bonn GmbH v Hauptzollamt Köln

(Case C-226/07) ⁽¹⁾

(Directive 2003/96/EC — Community framework for the taxation of energy products and electricity — Article 14(1)(a) — Exemption for energy products used to produce electricity — Option to impose taxation for reasons of environmental policy — Direct effect of the exemption)

(2008/C 223/23)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Flughafen Köln/Bonn GmbH

Defendant: Hauptzollamt Köln

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51) — Direct effect — National legislation not exempting gas oil used to produce electricity from mineral oil tax

Operative part of the judgment

Article 14(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, in so far as it provides for the exemption from taxation under that directive of energy products used to produce electricity, has direct effect in the sense that it may be relied upon by an individual before national courts — in relation to a period of time during which the Member State concerned was in default of its obligation to transpose that directive into its national law within the prescribed period — in a dispute, such as that in the main proceedings, between that individual and the customs authorities of that State, for the purpose of having national legislation which is incompatible with that provision disapplied and, consequently, obtaining a refund of tax which infringed that provision.

⁽¹⁾ OJ C 155, 7.7.2007.

Judgment of the Court (Sixth Chamber) of 10 July 2008 —
Commission of the European Communities v Portuguese Republic

(Case C-307/07) ⁽¹⁾

(Failure of a Member State to fulfil its obligations — Directive 89/48/EEC — Recognition of diplomas awarded on completion of professional education and training of at least three years' duration — Failure to recognise diplomas which give access to the profession of pharmacist specialising in medical biology — Failure to transpose)

(2008/C 223/24)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and P. Andrade, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Fernandes, Agent)