

2. Must Articles 43 EC, 49 EC and 56 EC and the concept of a 'purely internal situation', which is liable to limit reliance on those provisions by a litigant in proceedings before a national court, be interpreted as precluding the application of [EU] law in proceedings between a Belgian citizen and the Belgian State in which redress is sought for damage caused by an alleged infringement of Community law resulting from the adoption and maintaining in force of Belgian legislation of the same kind as Article 3 of Royal Decree No 143 of 30 December 1982 which applies without distinction to Belgian nationals and nationals of other Member States?
3. Must the principle of the primacy of Community law and Article 4(3) TEU be interpreted as not allowing the rule of the authority of *res judicata* to be disapplied in connection with the re-examination or setting aside of a judicial decision which has become *res judicata* and which proves to be contrary to [EU] law but, on the contrary, as allowing a national rule establishing the authority of *res judicata* to be disapplied when the latter requires the adoption, on the basis of that judicial decision which has become *res judicata* but is contrary to [EU] law, of another judicial decision which would perpetuate the infringement of [EU] law by the first judicial decision?
4. Could the Court confirm that the question whether the rule of the authority of *res judicata* must be set aside in the event of a judicial decision which has become *res judicata* but is contrary to [EU] law in the context of an application for review or setting aside of that decision is not a question materially identical, within the meaning of the judgments [*DaCosta and Others* (28/62 to 30/62, EU:C:1963:6) and *Cilfit and Others* (283/81, EU:C:1982:335)], to the question whether the rule of the authority of *res judicata* is contrary to [EU] law in the context of an application for a (new) decision which would repeat the infringement of [EU] law, so that the court giving judgment at last instance cannot escape its obligation to make a reference for a preliminary ruling?

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**Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on  
8 June 2015 — Swiss International Air Lines AG v The Secretary of State for Energy and Climate  
Change, Environment Agency**

(Case C-272/15)

(2015/C 279/25)

*Language of the case: English*

**Referring court**

Court of Appeal (England & Wales) (Civil Division)

**Parties to the main proceedings**

*Applicant:* Swiss International Air Lines AG

*Defendants:* The Secretary of State for Energy and Climate Change, Environment Agency

**Questions referred**

1. Does Decision 377/2013/EU<sup>(1)</sup> of the European Parliament and of the Council of 24 April 2013 ('the Decision') infringe the general EU principle of equal treatment insofar as it establishes a moratorium on the requirements to surrender emissions allowances imposed by Directive 2003/87/EC<sup>(2)</sup> of the European Parliament and of the Council of 13 October 2003 (as amended by various instruments, including Directive 2008/101/EC<sup>(3)</sup> of the European Parliament and of the Council of 19 November 2008) in respect of flights between EEA states and almost all non-EEA states, but does not extend that moratorium to flights between EEA states and Switzerland?
2. If so, what remedy must be provided to a claimant in the position of Swiss International Airlines AG, which has surrendered emissions allowances in respect of flights that took place during 2012 between EEA states and Switzerland, to restore that claimant to the position it would have been in, but for the exclusion from the moratorium of flights between EEA states and Switzerland? In particular:

- a) Must the register be rectified to reflect the lesser number of allowances that such a claimant would have been required to surrender if flights to or from Switzerland had been included in the moratorium?
- b) If so, what (if any) action must the national competent authority and/or the national court take to procure that the additional allowances surrendered are returned to such a claimant?
- c) Does such a claimant has the right to claim damages under Article 340 of the TFEU against the European Parliament and the Council for any loss that it has suffered by reason of having surrendered additional allowances as a result of the Decision?
- d) Must the claimant be granted some other form of relief, and if so what relief?

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- (<sup>1</sup>) Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community OJ L 113, p. 1.
  - (<sup>2</sup>) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance) OJ L 275, p. 32.
  - (<sup>3</sup>) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance) OJ L 8, p. 3.

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**Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 8 June 2015 — ITV Broadcasting Limited, ITV2 Limited, ITV Digital Channels Limited, Channel Four Television Corp., 4 Ventures Limited, Channel 5 Broadcasting Limited, ITV Studios Limited v TVCatchup Limited, Media Resources Limited, TVCatchup (UK) Limited**

**(Case C-275/15)**

(2015/C 279/26)

*Language of the case: English*

### **Referring court**

Court of Appeal (England & Wales) (Civil Division)

### **Parties to the main proceedings**

*Applicants:* ITV Broadcasting Limited, ITV2 Limited, ITV Digital Channels Limited, Channel Four Television Corp., 4 Ventures Limited, Channel 5 Broadcasting Limited, ITV Studios Limited

*Defendants:* TVCatchup Limited, Media Resources Limited, TVCatchup (UK) Limited

*Interveners:* The Secretary of State for Business, Innovation and Skills, Virgin Media Limited

### **Questions referred**

On the interpretation of Article 9 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (<sup>1</sup>) ('the Directive'), specifically of the phrase 'This Directive shall be without prejudice in particular to ... access to cable of broadcasting services':

1. Does the quoted phrase permit the continued application of a provision of national law with the scope of 'cable' as defined by national law, or is the scope of this part of Article 9 determined by a meaning of 'cable' that is defined by EU law?
2. If 'cable' in Article 9 is defined by EU law, what is that meaning? In particular: