Re:

Failure of a Member State to fulfil its obligations — Failure to adopt within the period prescribed the provisions necessary to comply with Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 142, p. 56)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, the Republic of Slovenia has failed to fulfil its obligations under that directive;*

2. *Orders the Republic of Slovenia to pay the costs.*

(1) OJ C 285, 8.11.2008.

Order of the Court (Eighth Chamber) of 19 February 2009 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2 Telecommunication GmbH

(Case C-557/07) (1)

(Article 104(3) of the Rules of Procedure — Information society — Copyright and related right — Retention and disclosure of certain traffic data — Protecting the confidentiality of electronic communication — 'Intermediaries' within the meaning of Article 8(3) of Directive 2001/29/EC)

(2009/C 113/28)

Language of the case: German

Referring court

Oberster Gerichtshof (Austria)

Parties

Applicant: LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH

Defendant: Tele2 Telecommunication GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Articles 5(1)(a) and 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), of Article 8(3) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) and of Articles 6 and 15 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) — Classification as 'intermediary' of an internet services provider — National legislation imposing an obligation on intermediaries to supply information to individuals who are victims of an infringement of copyright for the purposes of civil proceedings — Communication to a copyright protection company of the names and addresses of the users participating in file-sharing systems.

Operative part of the order

1. *Community law, in particular Article 8(3) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, read in conjunction with Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), does not preclude Member States from laying down an obligation to disclose to private third parties personal data relating to Internet traffic to enable them to initiate civil proceedings for copyright infringements. However, Community law requires that Member States, when transposing Directives 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, 2002/58 and 2004/48, ensure that they rely on an interpretation of those directives which allows a fair balance to be struck between the various fundamental rights protected by the Community legal order. Further, when implementing the measures transposing those directives, the authorities and courts of Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of Community law, such as the principle of proportionality.*

2. *An access provider, who merely provides a user with Internet access without offering other services such as inter alia email, FTP or file sharing services or exercising any control, either in law or in fact, over the services which the user makes use of, must be considered 'intermediaries' within the meaning of Article 8(3) of Directive 2001/29.*

(1) OJ C 64, 8.3.2008.