

3. Articles 3(9) and 9(2) to (4) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that:

— when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive as amended must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law, and

— if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

4. Article 6(9) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters and Article 9(1) of Directive 85/337, as amended by Directive 2003/35, must be interpreted as not requiring that the decision should itself contain the reasons for the competent authority's decision that it was necessary. However, if an interested party so requests, the competent authority is obliged to communicate to him the reasons for that decision or the relevant information and documents in response to the request made.

5. Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as not allowing a national authority, even if it is a legislative authority, to authorise a plan or project without having ascertained that it will not adversely affect the integrity of the site concerned.

6. Article 6(4) of Directive 92/43 must be interpreted as meaning that the creation of infrastructure intended to accommodate a management centre cannot be regarded as an imperative reason of overriding public interest, such reasons including those of a social or economic nature, within the meaning of that provision, capable of justifying the implementation of a plan or project that will adversely affect the integrity of the site concerned.

Judgment of the Court (Third Chamber) of 16 February 2012 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel — Belgium) — Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam) v Netlog NV

(Case C-360/10) ⁽¹⁾

(Information society — Copyright — Internet — Hosting service provider — Processing of information stored on an online social networking platform — Introducing a system for filtering that information in order to prevent files being made available which infringe copyright — No general obligation to monitor stored information)

(2012/C 98/07)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam)

Defendant: Netlog NV

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Brussel — Interpretation of Directives: — 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), — 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), — 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), — 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) (OJ 2000 L 178, p. 1), — 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), — Processing of data conveyed over the Internet — Introduction by an online hosting service provider of a system for filtering electronic communications, *in abstracto* and as a preventive measure, in order to identify consumers deemed to use files infringing a copyright or related right — Application of its own motion by the national court of the principle of proportionality — European Convention for the Protection of Human Rights and Fundamental Freedoms — Right to respect for private life — Right to freedom of expression

⁽¹⁾ OJ C 179, 3.7.2010.

Operative part of the judgment

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; and
- 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights,

read together and construed in the light of the requirements stemming from the protection of the applicable fundamental rights, must be interpreted as precluding a national court from issuing an injunction against a hosting service provider which requires it to install a system for filtering:

- information which is stored on its servers by its service users;
- which applies indiscriminately to all of those users;
- as a preventative measure;
- exclusively at its expense; and
- for an unlimited period,

which is capable of identifying electronic files containing musical, cinematographic or audio-visual work in respect of which the applicant for the injunction claims to hold intellectual property rights, with a view to preventing those works from being made available to the public in breach of copyright.

⁽¹⁾ OJ C 288, 23.10.2010.

Judgment of the Court (Fourth Chamber) of 16 February 2012 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Pak-Holdco sp. z o.o. v Dyrektor Izby Skarbowej w Poznaniu,

(Case C-372/10) ⁽¹⁾

(Taxation — Indirect taxes on the raising of capital — Capital duty levied on capital companies — Obligation on a Member State to take account of directives which were no longer in force at the time of that State's accession — Exclusion, from the amount on which capital duty is charged, of the amount of the assets belonging to the capital company which are allocated to the increase in capital and which have already been subjected to capital duty)

(2012/C 98/08)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Pak-Holdco sp. z o.o.

Respondent: Dyrektor Izby Skarbowej w Poznaniu,

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Articles 5(3), first indent, and 7(1) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) and of Council Directive 73/79/EEC of 9 April 1973 (OJ 1973 L 103, p. 13) and Council Directive 73/80/EEC of 9 April 1973 (OJ 1973 L 103, p. 15) amending Directive 69/335/EEC — Capital duty levied on capital companies — Obligation on a Member State to take account of directives which were no longer in force at the time of that State's accession

Operative part of the judgment

1. In the case of a State such as the Republic of Poland, which acceded to the European Union on 1 May 2004, in the absence of derogating provisions in the Act of Accession of that State to the European Union or in any other European Union document, Article 7(1) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended by Council Directive 85/303/EEC of 10 June 1985, must be interpreted to mean that the mandatory exemption provided for in that provision applies only to those transactions coming within the scope of that directive, as amended, which, on 1 July 1984, were exempted, in that State, from capital duty or were subject to that duty at a reduced rate of 0,50% or less.