

2. Article 1(a)(iii) of Framework Decision 2005/214, as amended by Framework Decision 2009/299, must be interpreted as meaning that a person is to be regarded as having had the opportunity to have a case tried before a court having jurisdiction in particular in criminal matters in the situation where, prior to bringing his appeal, that person was required to comply with a pre-litigation administrative procedure. Such a court must have full jurisdiction to examine the case as regards both the legal assessment and the factual circumstances.

(<sup>1</sup>) OJ C 109, 14.4.2012.

**Judgment of the Court (Second Chamber) of 7 November 2013 (request for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Gemeinde Altrip, Gebrüder Hört GbR and Willi Schneider v Land Rheinland-Pfalz**

(Case C-72/12) (<sup>1</sup>)

**(Request for a preliminary ruling — Environment — Directive 85/337/EEC — Environmental impact assessment — Aarhus Convention — Directive 2003/35/EC — Right to challenge a development consent decision — Temporal application — Development consent procedure initiated before the period prescribed for transposing Directive 2003/35/EC expired — Decision taken after that date — Conditions of admissibility of the action — Impairment of a right — Nature of the procedural defect that may be invoked — Scope of the review)**

(2014/C 9/08)

Language of the case: German

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

Applicants: Gemeinde Altrip, Gebrüder Hört GbR, Willi Schneider

Defendant: Land Rheinland-Pfalz

Intervening party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

**Re:**

Request for a preliminary ruling — Bundesverwaltungsgericht Leipzig — Interpretation of Article 6 of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up

of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) and of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC — Construction of a flood retention scheme — Right to challenge a development consent decision — Temporal application — Situation in which the development consent procedure was initiated before the date on which the period for transposition of Directive 2003/35/EC expired and the decision was adopted after that date

**Operative part of the judgment**

1. By providing that it was to be transposed into national law by 25 June 2005 at the latest, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, which inserted Article 10a into Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the rules of national law adopted for the purposes of transposing that article into national law were intended also to apply to administrative development consent procedures initiated before 25 June 2005 when the latter resulted in the granting of consent after that date.
2. Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as precluding the Member States from limiting the applicability of the provisions transposing that article to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment was carried out, while not extending that applicability to cases in which such an assessment was carried out but was irregular.
3. Subparagraph (b) of Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as not precluding national courts from refusing to recognise impairment of a right within the meaning of that article if it is established that it is conceivable, having regard to the circumstances of the case, that the contested decision would not have been different without the procedural defect invoked by the applicant. None the less, that will be the case only if the court of law or body hearing the action does not in any way make the burden of proof fall on the applicant and makes its ruling, where appropriate, on the basis of the evidence provided by the developer or the competent authorities and, more generally, on the basis of all the documents submitted to it, taking into account, inter alia, the seriousness of the defect invoked and ascertaining, in particular, whether

that defect has deprived the public concerned of one of the guarantees introduced with a view to allowing that public to have access to information and to be empowered to participate in decision-making, in accordance with the objectives of Directive 85/337.

(<sup>1</sup>) OJ C 133, 5.5.2012.

## **Judgment of the Court (Ninth Chamber) of 7 November 2013 — European Commission v Republic of Poland**

(Case C-90/12) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Air transport — Agreements relating to air services between Member States and third countries — Obligation on Member States to distribute traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure and to inform the Commission of that procedure without delay)*

(2014/C 9/09)

Language of the case: Polish

### **Parties**

*Applicant:* European Commission (represented by: K. Simonsson and M. Owsiany-Hornung, acting as Agents)

*Defendant:* Republic of Poland (represented by: B. Majczyna and M. Szpunar, acting as Agents)

### **Re:**

Failure of a Member State to fulfil obligations — Infringement of Articles 5 and 6 of Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries (OJ 2004 L 157, p. 7) — Obligation on the Member States to distribute traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure and to inform the Commission of that procedure without delay

### **Operative part of the judgment**

*The Court:*

1. Declares that, by not taking the necessary measures to comply with Articles 5 and 6 of Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries, the Republic of Poland has failed to fulfil its obligations under those provisions;

2. Orders the Republic of Poland to pay the costs.

(<sup>1</sup>) OJ C 126, 28.4.2012.

**Judgment of the Court (First Chamber) of 14 November 2013 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — SFIR — Società Fondiaria Industriale Romagnola SpA, Italia Zuccheri SpA, Co.Pro.B. — Cooperativa Produttori Bieticoli Soc. coop. Agricola, Eridania Sadam SpA v AGEA — Agenzia per le Erogazioni in Agricoltura, Ministero delle Politiche agricole, alimentari e forestali**

(Joined Cases C-187/12 to C-189/12) (<sup>1</sup>)

*(Request for a preliminary ruling — Regulation (EC) No 320/2006 — Regulation (EC) No 968/2006 — Agriculture — Temporary scheme for the restructuring of the sugar industry — Conditions for granting restructuring aid — Concepts of ‘production facilities’ and ‘full dismantling’)*

(2014/C 9/10)

Language of the case: Italian

### **Referring court**

Consiglio di Stato

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

*Appellants:* SFIR — Società Fondiaria Industriale Romagnola SpA, Italia Zuccheri SpA, Co.Pro.B. — Cooperativa Produttori Bieticoli Soc. coop. Agricola, Eridania Sadam SpA

*Respondents:* AGEA — Agenzia per le Erogazioni in Agricoltura, Ministero delle Politiche agricole, alimentari e forestali

### **Re:**

Requests for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 3 and 4 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42) and Article 4 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Regulation No 320/2006 (OJ 2006 L 176, p. 32) — Conditions for granting the full amount of aid — Concepts of ‘production facilities’ and ‘full dismantling’ — Whether it is possible for the full amount of aid to be granted for sugar, isoglucose and inulin syrup factories in the event that they retain facilities which are not connected with the production of those products, but are used for other products