

8. Article 4(1) of Regulation No 2887/2000, read in conjunction with Article 5a(3) of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision, as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997, requires that the national courts interpret and apply the domestic rules of procedure governing the bringing of appeals in such a way that a decision of the national regulatory authority concerning the authorisation of rates for unbundled access to the local loop may be challenged before the courts, not only by the undertaking to which such a decision is addressed but also by beneficiaries within the meaning of that regulation whose rights are potentially affected by it.
9. Regulation No 2887/2000 must be interpreted as meaning that, during the procedure supervising the pricing for unbundled access to the local loop conducted by a national regulatory authority pursuant to Article 4 of that regulation, it is for the notified operator to provide the evidence that its rates respect the principle that rates are to be set on the basis of cost-orientation. On the other hand, it is for the Member States to allocate the burden of proof between the national regulatory authority which made the decision to authorise the rates of the notified operator and the beneficiary challenging that decision. It is also for the Member States to establish, in accordance with their rules of procedure and the Community principles of effectiveness and equivalence of judicial protection, the rules on the allocation of that burden of proof when a decision of the national regulatory authority authorising the rates of a notified operator for unbundled access to its local loop is challenged before the courts.

(¹) OJ C 96, 22.4.2006.

Judgment of the Court (Second Chamber) of 17 April 2008
(reference for a preliminary ruling from the *Rechtbank van koophandel, Hasselt (Belgium)*) — *Confederatie van Immobiliën-Beroepen België and Beroepsinstituut van Vastgoedmakelaars v Willem Van Leuken*

(Case C-197/06) (¹)

(*Recognition of diplomas — Directive 89/48/EEC — Estate agent*)

(2008/C 142/04)

Language of the case: Dutch

Referring court

Rechtbank van koophandel, Hasselt

Parties to the main proceedings

Applicants: *Confederatie van Immobiliën-Beroepen van België and Beroepsinstituut van Vastgoedmakelaars*

Defendant: *Willem Van Leuken*

Re:

Request for a preliminary ruling — *Rechtbank van koophandel, Hasselt* — Interpretation of Articles 3 and 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Obligation on an estate agent established in one Member State and engaged in agency activities in another Member State to satisfy the conditions governing the exercise of that profession which are imposed by the legislation of that latter State in pursuance of the directive — Requirement imposed even in the case where there is a contract of collaboration between that estate agent and an estate agent who is authorised by that latter State

Operative part of the judgment

Articles 3 and 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001, preclude legislation of a Member State which makes the performance, on its territory, of activities such as those at issue in the main proceedings by a service provider established in another Member State, and in a situation such as that of the defendant in the main proceedings, subject to obtaining an authorisation the grant of which is conditional upon success in an aptitude test in law.

(¹) OJ C 165, 15.7.2006.

Judgment of the Court (Grand Chamber) of 15 April 2008
(reference for a preliminary ruling from the *Labour Court (Ireland)*) — *Impact v Minister for Agriculture and Food, Minister for Arts, Sport and Tourism, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport*

(Case C-268/06) (¹)

(*Directive 1999/70/EC — Clauses 4 and 5 of the framework agreement on fixed-term work — Fixed-term employment in the public sector — Employment conditions — Pay and pensions — Renewal of fixed-term contracts for a period of up to eight years — Procedural autonomy — Direct effect*)

(2008/C 142/05)

Language of the case: English

Referring court

Labour Court

Parties to the main proceedings

Applicant: Impact

Defendants: Minister for Agriculture and Food, Minister for Arts, Sport and Tourism, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport

Re:

Preliminary ruling — Labour Court — Interpretation of Clause 4(1) (principle of non-discrimination) and Clause 5(1) (measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships) of the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Action seeking to rely on the direct effect of those provisions — Lack of jurisdiction, under national law, of the court seised — Jurisdiction under Community law, in particular pursuant to the principles of equivalence and effectiveness

Operative part of the judgment

1. Community law, in particular the principle of effectiveness, requires that a specialised court which is called upon, under the, albeit optional, jurisdiction conferred on it by the legislation transposing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, to hear and determine a claim based on an infringement of that legislation, must also have jurisdiction to hear and determine an applicant's claims arising directly from the directive itself in respect of the period between the deadline for transposing the directive and the date on which the transposing legislation entered into force if it is established that the obligation on that applicant to bring, at the same time, a separate claim based directly on the directive before an ordinary court would involve procedural disadvantages liable to render excessively difficult the exercise of the rights conferred on him by Community law. It is for the national court to undertake the necessary checks in that regard.
2. Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case, however, as regards Clause 5(1) of the framework agreement.
3. Article 10 EC, the third paragraph of Article 249 EC, and Directive 1999/70 must be interpreted as meaning that an authority of a Member State acting in its capacity as a public employer may not adopt measures contrary to the objective pursued by that directive and the framework agreement on fixed-term work as regards prevention of the abusive use of fixed-term contracts, which consist in the renewal of such contracts for an unusually long term in the period between the deadline for transposing Directive 1999/70 and the date on which the transposing legislation entered into force.
4. In so far as the applicable national law contains a rule that precludes the retrospective application of legislation unless there is a clear and unambiguous indication to the contrary, a national court

hearing a claim based on an infringement of a provision of national legislation transposing Directive 1999/70 is required, under Community law, to give that provision retrospective effect to the date by which that directive should have been transposed only if that national legislation includes an indication of that nature capable of giving that provision retrospective effect.

5. Clause 4 of the framework agreement on fixed-term work must be interpreted as meaning that employment conditions within the meaning of that clause encompass conditions relating to pay and to pensions which depend on the employment relationship, to the exclusion of conditions relating to pensions arising under a statutory social-security scheme.

(¹) OJ C 212, 2.9.2006.

Judgment of the Court (First Chamber) of 17 April 2008 — Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) v Ireland, Commission of the European Communities

(Joined Cases C-373/06 P, C-379/06 P and C-382/06 P) (¹)

(Appeal — Resource conservation measures — Restructuring of the fisheries sector — Requests to increase the tonnage objectives of the multiannual guidance programme 'MAGP IV' — Dismissal of application)

(2008/C 142/06)

Language of the case: English

Parties

Appellants: Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) (represented by: D. Barry, Solicitor, and A. Collins SC (C-373/06 P, C-379/06 P and C-382/06 P), and additionally by P. Gallagher SC (C-379/06 P)

Other parties to the proceedings: Ireland, Commission of the European Communities (represented by: B. Doherty and M. van Heezik, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 13 June 2006 in Joined Cases T-218/03 to T-240/03 *Boyle and Others v Commission* annulling Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for