

**The applicant claims that the Court should:**

- declare that by imposing minimum and maximum retail prices for cigarettes, Ireland has failed to comply with its obligations under Article 9(1) of Council Directive 95/59/EC<sup>(1)</sup> of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco;
- declare that by failing to provide the necessary information on the applicable Irish legislation in order to enable the Commission to fulfil its duty to monitor compliance with Directive 95/59, Ireland has failed to comply with its obligations under Article 10 EC;
- order Ireland to pay the costs.

**Pleas in law and main arguments**

By virtue of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (No 2) Regulations 1986 and the arrangements made in implementation of those regulations with tobacco manufacturers and importers, Ireland imposes a minimum price for cigarettes corresponding to a level no more than 3 % below the weighted average price for cigarettes in the category in question. Moreover, in so far as manufacturers and importers may not set prices more than 3 % above that weighted average price, Ireland also imposes a maximum price for cigarettes. Such a system is contrary to Article 9(1) of directive 95/59, under which tobacco manufacturers are 'free to determine the maximum retail selling price for each of their products'.

Pursuant to Article 10 EC, the Member States have a duty to facilitate the Commission's tasks, in particular by complying with requests for information made in the course of infringement proceedings. The Commission submits that by failing to provide any information on the applicable Irish legislation, despite the Commission's repeated requests, Ireland has failed to comply with its obligations under Article 10 EC.

<sup>(1)</sup> OJ L 291, p. 40.

**Action brought on 21 May 2008 — Commission of the European Communities v Kingdom of Belgium**

(Case C-222/08)

(2008/C 209/35)

*Language of the case: Dutch*

**Parties**

*Applicant:* Commission of the European Communities (represented by: H. van Vliet and A. Nijenhuis, acting as Agents)

*Defendant:* Kingdom of Belgium

**Form of order sought**

- Declare that, by virtue of the transposition into national law of the provisions on the costing and financing of universal service obligations, the Kingdom of Belgium has failed to fulfil its obligations under Articles 12(1), 13(1), and Annex IV, part A, of Directive 2002/22/EC;
- order Kingdom of Belgium to pay the costs.

**Pleas in law and main arguments**

The objective of Directive 2002/22 is, inter alia, to define the situations in which the market does not satisfactorily meet the needs of end-users and the directive contains provisions regarding the availability of the universal service. Article 12(1) of the directive provides that where national regulatory authorities consider that the provision of universal service may represent an unfair burden on undertakings designated to provide universal service, they are to calculate the net costs of its provision in the manner set out in that article. Annex IV, part A, contains provisions concerning the calculation of the net costs. Article 13(1) provides that where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, the Member States are, upon request from a designated undertaking, to decide to introduce a compensation mechanism.

According to the Commission, Belgium has not correctly transposed the provisions of Article 12(1), Article 13(1) and Annex IV, part A, of the directive. The Belgian legislation provides for no assessment of the question whether the provision of social tariffs in the course of performing the universal service represents an unfair burden for the undertakings concerned. Furthermore the Belgian legislation does not satisfy the requirement concerning the costing of net costs set out more particularly in the last section of Annex IV, part A, to the directive.

**Reference for a preliminary ruling from the Verwaltungsgericht Oldenburg (Germany) lodged on 26 May 2008 — Stadt Papenburg v Bundesrepublik Deutschland**

(Case C-226/08)

(2008/C 209/36)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Oldenburg