Question referred

Is the third example in the third indent of Article 6(3) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [1] to be interpreted as meaning that there is no right of withdrawal in respect of distance contracts for the mains supply of electricity and gas?

[1] OJ 1997 L 144, p. 19.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 24 April 2009 — Ronald Seunig v Maria Hölzel

(Case C-147/09)

(2009/C 153/50)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Appellant: Ronald Seunig

Respondent: Maria Hölzel

Questions referred

1. (a) Is the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] ('Regulation No 44/2001') applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

   If the answer to that question is in the affirmative,

   Should the provision referred to be interpreted as meaning that

   (b) the place of performance of the obligation that is characteristic of the contract must be determined by reference to the place where the service provider's centre of business is located, which is to be determined by reference to the amount of time spent and the importance of the activity;

   (c) in the event that it is not possible to determine a centre of business, an action in respect of all claims founded on the contract may be brought, at the applicant's choice, in any place of performance of the service within the Community?

2. If the answer to the first question is in the negative,

   Is Article 5(1)(a) of Regulation No 44/2001 applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

[1] OJ 2001 L 12, p. 1.

Appeal brought on 27 April 2009 by Iride SpA and Iride Energia SpA against the judgment delivered by the Court of First Instance (Second Chamber) on 11 February 2009 in Case T-25/07 Iride SpA, Iride Energia SpA v Commission of the European Communities

(Case C-150/09 P)

(2009/C 153/51)

Language of the case: Italian

Parties

Appellants: Iride SpA, Iride Energia SpA (represented by: L. Radicati di Brozolo, M. Merola, T. Ubaldi, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment;

— grant the forms of order already sought at first instance or, in the alternative, refer the case back to the Court of First Instance, pursuant to Article 61 of the Statute of the Court of Justice;

— order the Commission to pay the costs of the proceedings at first instance and the appeal proceedings.

Pleas in law and main arguments

The appellants put forward two grounds of appeal in support of their claims.

The first ground of appeal relates to an error in law in the interpretation and application of Article 253 EC with reference to a failure to state adequate reasons in the decision at issue. The Court of First Instance erred in law in finding, with regard to whether the conditions laid down in Article 87(1) EC are satisfied in the present case, that the following are sufficient for compliance with the obligation to state reasons in Article 253 EC: (i) the simple statement by the Commission that it had established that the measure in question was to be regarded as State aid; (ii) that adequate reasons could be given for the contested measure by referring to the decision to initiate the investigation procedure and an earlier separate decision of the Commission.

The second ground of appeal relates to distortion of the pleas in the action and an error in law on the part of the Court of First Instance in its assessment of the scope of the *Deggendorf* case-law for the purpose of the assessment of the present case. In particular, the appellants submit that the Court of First Instance:

(i) distorted the pleas put forward by the appellants at first instance in that it claimed that they had misused the procedure for review of State aid, without, however, in fact clarifying what that misuse consisted of;

(ii) failed to identify the error made by the Commission in its assessment of the scope of the judgment in *Deggendorf* in so far as it applies to the present case in that it failed to carry out a concrete and specific assessment of the distortion of competition and intra-Community trade resulting from the cumulative effect of the new aid and the earlier aid that had not been recovered;

(iii) failed to identify the error made by the Commission in its assessment of the scope of the judgment in *Deggendorf* in so far as it applies to the present case in that, as a matter of fact, instead of regarding it as a further criteria in the assessment of whether aid is compatible, it made the non-recovery of earlier aid an additional and decisive condition for determining whether aid is compatible that is not provided for in the Treaty;

(iv) failed to point out that the Commission's excessive and abusive interpretation of the judgment in *Deggendorf* in this case has the effect of transforming that case-law into a means of penalising conduct contrary to the Treaty on the part of Member States in a manner that is not envisaged in the Treaty or secondary legislation;

(v) failed to point out that, when it decided to initiate the formal investigation procedure as regards the measure notified by Italy, the Commission indicated that it was of the view that it had available to it all the information necessary to conduct its investigation into whether the measure was compatible. The Commission thereby contradicted the argument underlying the contested decision, namely that, in the course of the notification procedure, the Italian authorities and the recipient company failed to provide it with sufficient information to enable it to carry out an analysis as to whether the measure was compatible;

(vi) committed a serious error in law in stating that Community case-law does not impose a requirement on the Commission to carry out a specific and detailed analysis as to whether the relevant factors enabling all the conditions laid down in Article 87(1) EC to be regarded as being satisfied are present, in order to be able to qualify the measure in question as aid.

Action brought on 4 May 2009 — Commission of the European Communities v Portuguese Republic

(Case C-154/09)

(2009/C 153/52)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: P. Guerra e Andrade and A. Nijenhuis, acting as Agents)

Defendant: Portuguese Republic

Forms of order sought

— Declare that, by failing to transpose correctly into national law the rules of Community law governing the designation of the universal service provider or providers, and, in any event, by failing to ensure in practice that those rules are applied, the Portuguese Republic has failed to fulfil its obligations under Articles 3(2) and 8(2) of Directive 2002/22/EC. [1]

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Article 121 of the Portuguese Law on Electronic Communications (Law No 5/2004 of 10 February) retains the public service, the exclusive public service concession and the corresponding rights and obligations until 2025, with PT Comunicações SA holding the concession for the public telecommunications service.

The Commission submits that, in terms of designating the companies responsible for providing the universal service, the Portuguese Law on Electronic Communications is confused, incoherent and inconsistent.

Consequently, the Portuguese State has failed to designate, by means of an efficient, objective, transparent and non-discriminatory procedure, the company or companies responsible for providing the universal service, as laid down by Article 8(2) in conjunction with Article 3(2) of Directive 2002/22.

[1] Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 8 May 2009 — Ioannis Katsivardas — Nikolaos Tsitsikas O.E. v Ipourgos Ikonomikon

(Case C-160/09)

(2009/C 153/53)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Ioannis Katsivardas — Nikolaos Tsitsikas O.E.

Defendant: Ipourgos Ikonomikon

Question referred

Can an individual (an importer of bananas from Ecuador) who claims the refund of domestic excise duty as having been wrongly paid plead before the national court that the national tax rule (Article 7 of Law 1798/1988, as amended by Article 10 of Law 1914/1990) is incompatible with Article 4 of the 1984 agreement between the European Economic Community and the member countries of the Cartagena Agreement, which was approved by Council Regulation (EEC) No 1591/84? [1]

[1] OJ L 153, 8.6.1984, p. 1.