

2. If the first question is to be answered in the negative, how many earlier flights involving the aircraft to be used in the scheduled flight are relevant to the existence of an extraordinary circumstance? Is there a time limit to the consideration of extraordinary circumstances which occur during earlier flights? If so, how is that time limit to be calculated?
3. If extraordinary circumstances which occur during earlier flights are also relevant to a later flight, must the reasonable measures to be taken by the operating air carrier, in accordance with Article 5(3) of the regulation, relate only to preventing the extraordinary circumstance or also to avoiding a long delay?

⁽¹⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Arbeidshof te Brussel (Belgium) lodged on 15 February 2013 — Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others

(Case C-79/13)

(2013/C 114/40)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Federaal agentschap voor de opvang van asielzoekers

Defendants: Selver Saciri, Danijela Dordevic, Danjel Saciri (represented by: Selver Saciri and Danijela Dordevic), Sanela Saciri (represented by: Selver Saciri and Danijela Dordevic), Denis Saciri (represented by: Selver Saciri and Danijela Dordevic), Openbaar Centrum voor Maatschappelijk Welzijn van Diest

Questions referred

1. When a Member State elects, pursuant to Article 13(5) of Directive 2003/9 ⁽¹⁾ of 27 January 2003 laying down minimum standards for the reception of asylum seekers, to provide the material support in the form of a financial allowance, does the Member State then still have any responsibility to ensure that the asylum applicant, in one way or another, enjoys the minimum protection measures of the Directive as contained in Articles 13(1), 13(2), 14(1), 14(3), 14(5) and 14(8) of the Directive?

2. Should the financial allowance, provided for by Article 13(5) of the Directive, be granted from the date of the application for asylum and the reception request, or from the expiry of the period provided for in Article 5(1) of the Directive, or from another date. Should the financial allowance be of such a nature that it allows the asylum seeker, in the absence of material reception facilities provided by the Member State or by an institution designated by the Member State, to provide for his own accommodation at all times, if necessary in the form of hotel accommodation, until such time as he is offered permanent accommodation or as he is able to acquire more permanent accommodation himself?
3. Is it compatible with the Directive that a Member State only grants the material reception facilities to the extent that the existing reception structures, as established by the State, are able to ensure that accommodation, and refers the asylum seeker who does not find place there for assistance which is available to all the residents of the State, without providing for the necessary statutory rules and structures so that institutions which have not been established by the State itself are effectively able to extend a dignified reception to the asylum applicants within a short period?

⁽¹⁾ Council Directive 2003/9/EC (OJ 2003 L 31, p. 18).

Action brought on 15 February 2013 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-81/13)

(2013/C 114/41)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, Agent, A. Dashwood QC)

Defendant: Council of the European Union

The applicant claims that the Court should:

- annul Council Decision 2012/776/EU on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey with regard to the adoption of provisions on the coordination of social security schemes ⁽¹⁾;

— order the Council to pay the costs of the proceedings.

Pleas in law and main arguments

1. By an action brought under Article 263 TFEU, the United Kingdom of Great Britain and Northern Ireland is seeking the annulment, pursuant to Article 264 TFEU, of Council Decision 2012/776/EU of 6 December 2012 on the position to be taken on behalf of the Union within the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey with regard to the adoption of provisions on the coordination of social security schemes.
2. The United Kingdom respectfully requests the Court:
 - (i) to annul the Decision;
 - (ii) to order the Council to pay the costs of the proceedings.
3. Article 48 TFEU is the substantive legal basis specified in the Decision.
4. The proposed Association Council Decision annexed to the Council Decision would repeal and replace Decision No. 3/80 of the Association Council on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families.
5. The United Kingdom contends that Article 48 TFEU cannot serve as the substantive legal basis of a measure intended to have such consequences. It is a provision designed to facilitate freedom of movement for nationals of Member States within the internal market. The correct legal basis is Article 79 (2) (b) TFEU. This confers competence for the adoption of measures concerning 'the definition of the rights of third country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States'. The Council Decision is precisely such a measure.
6. Article 79 (2) (b) TFEU is found in Title V of Part Three of the TFEU. Pursuant to Protocol 21 to the Treaties, measures adopted under Title V do not apply to the United Kingdom (or Ireland) unless it signals its willingness to 'opt into' them. By its erroneous choice of Article 48 TFEU, instead of Article 79 (2) (b) TFEU, as the substantive legal basis of the Decision, the Council refused to recognise the right of the United Kingdom not to take part in the adoption of the Decision and not to be bound by it.
7. The annulment of Council Decision 2012/776/EU is, therefore, sought on the ground that it was adopted on

the wrong legal basis, with the consequence that the rights of the United Kingdom under Protocol 21 were not recognised.

8. In support of its contention the United Kingdom relies upon the express provisions of Article 48 and Article 79 (2) (b) TFEU, interpreted in their Treaty context and in the light of case law. It further relies upon the fact that Council Decision 2012/776/EU is almost identical to nine Council Decisions which have been adopted under other Association Agreements on the basis of Article 79 (2) (b).

⁽¹⁾ OJ L 340, p. 19

Request for a preliminary ruling from the Arbetsdomstolen (Sweden) lodged on 19 February 2013 — Fonnship A/S, Svenska Transportarbetarförbundet v Fonnship A/S, Svenska Transportarbetarförbundet, Facket för Service och Kommunikation (SEKO)

(Case C-83/13)

(2013/C 114/42)

Language of the case: Swedish

Referring court

Arbetsdomstolen

Parties to the main proceedings

Applicants: Fonnship A/S, Svenska Transportarbetarförbundet

Defendants: Fonnship A/S, Svenska Transportarbetarförbundet, Facket för Service och Kommunikation (SEKO)

Questions referred

Is the rule in the EEA Agreement on free movement of services, maritime transport services — which rule has an equivalent in the EC Treaty — applicable to a company with its head office in an EFTA State as regards its activity in the form of transport services to an EC Member State or an EFTA State using a vessel which is registered and flagged in another country outside the EC/EEA?