

**Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 27 December 2013 — Belgacom SA v Commune de Fléron**

(Case C-685/13)

(2014/C 61/09)

*Language of the case: French*

**Referring court**

Tribunal de première instance de Liège

**Parties to the main proceedings**

*Applicant:* Belgacom SA

*Defendant:* Commune de Fléron

**Question referred**

Do the provisions of the Authorisation Directive,<sup>(1)</sup> and in particular Article 13 thereof pertaining to the methods of imposition of fees for rights of use for radiofrequencies and rights to install facilities on or under public or private property, preclude the imposition on mobile telecommunications operators by the communal administrative authorities of a Member State, by way of a municipal regulation, of a tax comprising a single and flat-rate fee of EUR 2 500 per pylon or mast, the fact giving rise to which is the presence of such pylon or mast on the territory of the commune on 1 January of the year of assessment, in the case where that tax does not represent remuneration and is motivated by budgetary and environmental objectives?

<sup>(1)</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

**Appeal brought on 15 January 2014 by European Commission against the judgment of the General Court (Second Chamber) delivered on 12 November 2013 in Case T-499/10: MOL Magyar Olaj- és Gázipari Nyrt. v European Commission**

(Case C-15/14 P)

(2014/C 61/10)

*Language of the case: English*

**Parties**

*Appellant:* European Commission (represented by: L. Flynn, K. Talabér-Ritz, agents)

*Other party to the proceedings:* MOL Magyar Olaj- és Gázipari Nyrt.

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Second Chamber) of 12 November 2013 in Case T-499/10 MOL Magyar Olaj- és Gázipari Nyrt. v European Commission; and
  - reject the application to annul Commission Decision C(2010) 3553 final of 9 June 2010 in Case C-1/09 (ex NN-69/2008) on the State aid implemented by Hungary in favour of MOL Nyrt.<sup>(1)</sup>;
  - order the applicant at first instance to pay the costs;
- alternatively,
- refer back the case to the General Court for reconsideration;
  - reserve the costs of the proceedings at first instance and on appeal.

**Pleas in law and main arguments**

The Commission maintains that the judgment under appeal should be set aside because several aspects of that judgment misinterpret or misapply the concept of selectivity.

First, the judgment misapplies the case-law on selectivity in relation to measures for which the national authorities have discretion on the treatment they accord to undertakings.

Second, the General Court incorrectly states the law in considering that the presence of objective criteria necessarily excludes the presence of selectivity.

Third, the judgment erroneously links the presence of selectivity to the intention of the Member State to shield one or more operators from a new regime of fees and thereby overlooked the requirement that the presence of State aid rests on the effects of the measure under examination.

Fourth, the considerations set out in the judgment regarding the ‘subsequent modification of the conditions external to [an agreement preserving a particular level of fees]’ could not be relevant to the case in hand since the subsequent modification of the conditions external to the agreement examined by the Commission was a change in a legislative regime.

<sup>(1)</sup> OJ L 34, p. 55.