



Reports of Cases

Case C-560/15

**Europa Way Srl
and
Persidera SpA**

v

Autorità per le Garanzie nelle Comunicazioni and Others

(Request for a preliminary ruling from the Consiglio di Stato)

(Reference for a preliminary ruling — Electronic communications networks and services — Telecommunication services — Directives 2002/20/EC, 2002/21/EC and 2002/77/EC — Allocation of the rights to use digital terrestrial broadcasting radio frequencies for radio and television — Annulment of a free of charge on-going selection procedure ('beauty contest') and substitution of a fee-based auction for that procedure — Intervention of the national legislature — Independence of the national regulatory authorities — Prior consultation — Award criteria — Legitimate expectations)

Summary — Judgment of the Court (Fourth Chamber), 26 July 2017

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Examination of the compatibility of national law with EU — Precluded — Providing the national court with full guidance on the interpretation of EU law — Included*

(Art. 267 TFEU)

2. *Questions referred for a preliminary ruling — Admissibility — Reference giving no details of the relevant facts or legislation and not setting out the reasons for making that reference to the Court of Justice — Inadmissibility*

(Art. 267 TFEU; Rules of Procedure of the Court of Justice, Art. 94)

3. *Approximation of laws — Telecommunications sector — Electronic communications networks and services — Regulatory framework — Directive 2002/21 — Independence of the national regulatory authorities — Annulment, by a national legislature, of a selection procedure for the allocation of radio frequencies conducted by that authority — Unlawful*

(European Parliament and Council Directive 2002/21, Art. 3(3)(a))

4. *Approximation of laws — Telecommunications sector — Electronic communications networks and services — Regulatory framework — Directives 2002/20, 2002/21 and 2002/77 — Replacement of a selection procedure free of charge for the allocation of radio frequencies, commenced in order to*

remedy the unlawful exclusion of certain operators from the market, by a fees-based procedure initiated under an amended Radio Frequency Allocation Plan subsequent to a reduction in the number of those frequencies — Lawfulness — Conditions — Verification by the national court

(European Parliament and Council Directives 2002/20, Arts 3, 5 and 7 and 2002/21, Arts 8(2) to (4) and 9; Commission Directive 2002/77, Arts 2 and 4)

5. *EU law — Principles — Protection of legitimate expectations — Annulment of a selection procedure for the allocation of radio frequencies — No breach of principle of the protection of legitimate expectations)*

1. See the text of the decision.

(see paras 35, 36)

2. See the text of the decision.

(see paras 39-41, 45-48)

3. Article 3(3a) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as precluding the annulment, by a national legislature, of an on-going selection procedure for the allocation of radio frequencies conducted by the competent national regulatory authority in circumstances such as those of the case in the main proceedings which was suspended by ministerial order.

(see para. 58, operative part 1)

4. Article 9 of Directive 2002/21, as amended by Directive 2009/140, Articles 3, 5 and 7 of 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), as amended by Directive 2009/140, and Articles 2 and 4 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, must be interpreted as not precluding a selection procedure for the allocation of radio frequencies free of charge, which was commenced in order to remedy the unlawful exclusion of certain operators from the market, from being replaced by a fees-based procedure initiated under an amended Radio Frequency Allocation Plan subsequent to a reduction in their number, provided that the new selection procedure is based on objective, transparent, non-discriminatory and proportionate criteria and that it is in line with the objectives laid down in Article 8(2) to (4) of Directive 2002/21, as amended. It is for the referring court to ascertain, taking into account all the relevant circumstances of the case, whether the conditions set out in the fee-based selection procedure are such as to allow an actual entry of new entrants into the digital television market without unduly favouring analogue or digital incumbents.

(see para. 77, operative part 2)

5. The principle of the protection of legitimate expectations must be interpreted as not precluding the annulment of a selection procedure for the allocation of radio frequencies on the sole ground that operators, such as the applicants in the main proceedings, had been invited to tender and, as the only tenderers, would have been granted rights to use digital terrestrial broadcasting frequencies for radio and television had the procedure not been annulled.

(see para. 83, operative part 3)