

Respondent: Istituto per la Vigilanza Sulle Assicurazioni (Ivass)

Question referred

Does Community law, in particular Article 40(6) of Directive 92/49/EEC, ⁽¹⁾ Commission Interpretative Communication 2000/C/43/03, paragraph 5, and the Community principle of *home country control* preclude an interpretative approach (such as that applied to Article 193(4) of the Codice delle Assicurazioni private, the Private Insurance Code) approved by Legislative Decree No 209 of 7 September 2005, endorsed by this Court) in accordance with which the supervisory authority of a State hosting an insurance operator under the freedom to provide services may, in cases of urgency and for the protection of the interests of insured persons and of persons entitled to insurance benefits, issue injunctions specifically prohibiting the conclusion of new contracts within the territory of the host State, on the grounds of the identified failure, whether pre-existing or supervening, assessed discretionarily, to satisfy a subjective precondition laid down for the purpose of the issue of authorisation to engage in insurance business, in particular the requirement of good repute?

⁽¹⁾ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 30 October 2015 — Europa Way Srl, Persidera SpA v Autorità per le Garanzie nelle Comunicazioni and Others

(Case C-560/15)

(2016/C 038/34)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Europa Way Srl, Persidera SpA

Respondents: Autorità per le Garanzie nelle Comunicazioni, Ministero dello Sviluppo Economico, Presidenza del Consiglio dei Ministri, Ministero dell'Economia and delle Finanze

Questions referred

1. Do the contested legislation and the consequential implementing measures infringe the rules according to which the functions of regulating the television market are vested in an independent administrative authority (Articles 3 and 8 of Directive 2002/21/EC, ⁽¹⁾ 'the Framework Directive', as amended by Directive 2009/140/EC ⁽²⁾);
2. Do the contested legislation and the consequential implementing measures infringe the provisions (Article 7 of Directive 2002/20/EC, ⁽³⁾ 'the Authorisation Directive', and Article 6 of Directive 2002/21/EC, the Framework Directive) which provide for prior public consultation by the national independent authority regulating the sector;
3. Does EU law, and in particular Article 56 TFEU, Article 9 of Directive 2002/21/EC, the Framework Directive, Articles 3, 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, and Articles 2 and 4 of Directive 2002/77/EC, ⁽⁴⁾ 'the Competition Directive', and the principles of non-discrimination, transparency, freedom of competition, proportionality, effectiveness and pluralism of information, preclude annulment of the *beauty contest* procedure — which was commenced in order to remedy, within the system for the allocation of digital television frequencies, the unlawful exclusion of operators from the market and to allow access for small operators — and substitution for it of another payment-based tendering procedure, which provides for the imposition on participants of requirements and obligations not previously required of *incumbents*, rendering engagement in competitive bidding onerous and uneconomic;

4. Does EU law, in particular Article 56 TFEU, Article 9 of Directive 2002/21/EC, the Framework Directive, Articles 3, 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, Articles 2 and 4 of Directive 2002/77/EC, the Competition Directive, and Article 258 TFEU, and the principles of non-discrimination, transparency, freedom of competition, proportionality, effectiveness and pluralism of information, preclude the re-configuration of the Plan for the allocation of frequencies, reducing national networks from 25 to 22 (and retention of the same availability of multiplexes for the *incumbents*), the reduction of lots in the competition to 3 multiplexes, the allocation of frequencies in the VHF-III band involving the risk of severe interference;
5. Is the upholding of the principle of the protection of legitimate expectations, as expounded by the Court of Justice, compatible with the annulment of the *beauty contest* procedure which has not allowed the appellants, already admitted to the free procedure, to be sure of being awarded some of the lots put out to tender;
6. Is the enactment of a provision, such as that contained in Article 3 *quinquies* of Legislative Decree No 16 of 2012, which is out of harmony with the characteristics of the radio and television market, compatible with EU legislation on the allocation of user rights for frequencies (Articles 8 and 9 of Directive 2002/21/EC, the Framework Directive, Articles 5 and 7 of Directive 2002/20/EC, the Authorisation Directive, Articles 2 and 4 of Directive 2002/77/EC, the Competition Directive).

-
- ⁽¹⁾ 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) (OJ 2002 L 108, p. 33).
- ⁽²⁾ Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ 2009 L 337, p. 37).
- ⁽³⁾ 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).
- ⁽⁴⁾ Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 4 November 2015 — Hans-Peter Ofenböck

(Case C-565/15)

(2016/C 038/35)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Party to the main proceedings

Appellant: Hans-Peter Ofenböck

Questions referred

1. Does Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ⁽¹⁾ preclude the application of national legislation under which the freedom of service station operators to change fuel prices is restricted in such a way that they may lawfully increase the sale price only once a day?
2. If Question 1 cannot automatically be answered in the affirmative, and, in accordance with the case-law of the Court of Justice, the examination of the lawfulness of such a restriction in the light of the provisions of Articles 5 to 9 of the Unfair Commercial Practices Directive must instead be conducted with reference to the circumstances of each individual case: