

JUDGMENT OF THE COURT

(Third Chamber)

of 14 April 2005

in Joined Cases C-128/03 and C-129/03 (reference for a preliminary ruling from the Consiglio di Stato): AEM SpA (C-128/03), AEM Torino SpA (C-129/03) v Autorità per l'energia elettrica e per il gas and Others ⁽¹⁾

(Internal market in electricity — Increased charge for access to and use of the national electricity transmission system — State aid — Directive 96/92/EC — Access to the system — Principle of non-discrimination)

(2005/C 132/09)

(Language of the case: Italian)

In Joined Cases C-128/03 and C-129/03: reference for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by decision of 14 January 2003, received at the Court on 24 March 2003, in the proceedings pending before that court between AEM SpA (C-128/03), AEM Torino SpA (C-129/03) and Autorità per l'energia elettrica e per il gas and Others, third party: ENEL Produzione SpA — the Court (Third Chamber), composed of A. Rosas, President of the Chamber, A. Borg Barthet, S. von Bahr (Rapporteur), J. Malenovský and U. Lohmus, Judges; C. Stix-Hackl, Advocate General, L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, the operative part of which is as follows:

1. A measure such as the one at issue in the main proceedings, which imposes an increased charge for a transitional period for access to and use of the national electricity transmission system only on undertakings generating and distributing electricity from hydroelectric or geothermal installations to offset the advantage created for those undertakings, during the transitional period, by the liberalisation of the market in electricity following the implementation of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, constitutes different treatment of undertakings in relation to charges which is attributable to the nature and general scheme of the system of charges in question. That different treatment is not therefore per se State aid within the meaning of Article 87 EC.

However, aid cannot be considered separately from the effects of its method of financing. If, in a situation such as that in the main proceedings, there is hypothecation of the increased charge for access to and use of the national electricity transmission system to a national scheme of aid, in the sense that the revenue from the increase is necessarily allocated for the financing of the aid, that increase is an integral part of that scheme and must therefore be considered together with the latter.

2. The rule of non-discriminatory access to the national electricity transmission system laid down in Directive 96/92 does not

preclude a Member State from adopting a measure, such as the one at issue in the main proceedings, which imposes an increased charge for a transitional period for access to and use of that system only on certain electricity generation and distribution undertakings to offset the advantage created for those undertakings, during the transitional period, by the altered legal framework following the liberalisation of the market in electricity as a result of the implementation of that directive. However, it is a matter for the national court to satisfy itself that the increased charge does not go beyond what is necessary to offset that advantage.

⁽¹⁾ OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 12 April 2005

in Case C-145/03 Reference for a preliminary ruling from the Juzgado de lo Social nº 20 de Madrid: Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Others ⁽¹⁾

(Social security — Articles 3 and 22 of Regulation No 1408/71 — Article 22 of Regulation No 574/72 — Hospital treatment in a Member State other than the competent Member State — Need for vital urgent treatment — Transfer of the insured person to a hospital institution in a non-member country — Scope of forms E 111 and E 112)

(2005/C 132/10)

(Language of the case: Spanish)

In Case C-145/03: reference for a preliminary ruling under Article 234 EC from the Juzgado de lo Social nº 20 de Madrid (Spain), made by decision of 6 November 2001, received at the Court on 31 March 2003, in the proceedings pending before that court between the Heirs of Annette Keller and Instituto Nacional de la Seguridad Social (INSS), Instituto Nacional de Gestión Sanitaria (Ingesa), formerly Instituto Nacional de la Salud (Insalud) — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta, K. Lenaerts (Rapporteur) and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis and M. Ilešič, Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, for Registrar, gave a judgment on 12 April 2005, the operative part of which is as follows: