

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 September 2005

in Case C-500/03: Commission of the European Communities v Portuguese Republic ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 98/34/EC — Technical standards and regulations — National rules applicable to recreational craft)

(2005/C 271/10)

(Language of the case: Portuguese)

In Case C-500/03 **Commission of the European Communities** (Agent: A. Caeiros) v **Portuguese Republic** (Agents: L. I. Fernandes and M. J. Lois) — action under Article 226 EC for failure to fulfil obligations, brought on 26 November 2003 — the Court (Fifth Chamber), composed of R. Silva de Lapuerta, President of the Chamber, R. Schintgen and P. Kúris (Rapporteur), Judges; F. G. Jacobs, Advocate General; R. Grass, Registrar, gave a judgment on 8 September 2005, in which it:

1. Declares that, by adopting Ministerial Decree No 783/98 of 19 September 1998 without having notified it to the Commission of the European Communities at the draft stage, the Portuguese Republic has failed to fulfil its obligations under Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and the rules on information society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998;
2. Orders the Portuguese Republic to pay the costs.

⁽¹⁾ OJ C 21 of 24.1.2004.

JUDGMENT OF THE COURT

(First Chamber)

of 8 September 2005

in Joined Cases C-544/03 and C-545/03: References for a preliminary ruling from the Conseil d'État Mobistar SA v Commune de Fléron, and Belgacom Mobile SA v Commune de Schaerbeek ⁽¹⁾

(Article 59 of the EC Treaty (now, after amendment, Article 49 EC) — Telecommunications services — Directive 90/388/EEC — Article 3c — Lifting of all restrictions — Municipal taxes on transmission pylons, masts and antennae for GSM)

(2005/C 271/11)

(Language of the case: French)

In Joined Cases C-544/03 and C-545/03: references for a preliminary ruling under Article 234 EC from the Conseil d'État (Belgium), made by decisions of 8 December 2003, received at the Court on 23 December 2003, in the proceedings between Mobistar SA (C-544/03) v Commune de Fléron, and Belgacom Mobile SA (C-545/03) v Commune de Schaerbeek — the Court (First Chamber) composed of P. Jann, President of the Chamber, K. Lenaerts, N. Colneric (Rapporteur), E. Juhász and M. Ilešič, Judges; P. Léger, Advocate General, M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 8 September 2005, the operative part of which is as follows:

1. Article 59 of the EC Treaty (now, after amendment, Article 49 EC) must be interpreted as not precluding the introduction, by legislation of a national or local authority, of a tax on mobile and personal communications infrastructures used to carry on activities provided for in licences and authorisations, which applies without distinction to national providers of services and to those of other Member States and affects in the same way the provision of services within one Member State and the provision of services between Member States.
2. Tax measures applying to mobile communications infrastructures are not covered by Article 3c of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, as amended, with regard to the implementation of full competition in telecommunications markets, by Commission Directive 96/19/EC of 13 March 1996, except where those measures favour, directly or indirectly, operators which have or have had exclusive or special rights to the detriment of new operators and appreciably affect the competitive situation.

⁽¹⁾ OJ C 47, 21.02.2004.