

JUDGMENT OF THE COURT (Fourth Chamber)

18 March 2010*

In Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08,

REFERENCES for a preliminary ruling under Article 234 EC from the Giudice di Pace di Ischia (Italy), made by decisions of 4 April 2008, received at the Court on 15 July 2008, in the proceedings

Rosalba Alassini

v

Telecom Italia SpA (C-317/08)

and

Filomena Califano

* Language of the case: Italian.

v

Wind SpA (C-318/08)

and

Lucia Anna Giorgia Iacono

v

Telecom Italia SpA (C-319/08)

and

Multiservice Srl

v

Telecom Italia SpA (C-320/08),

I - 2232

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting for the President of the Fourth Chamber, R. Silva de Lapuerta (Rapporteur), G. Arestis, J. Malenovský and T. von Danwitz, Judges,

Advocate General: J. Kokott,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2009,

after considering the observations submitted on behalf of:

- Wind SpA, by D. Cutolo, avvocato,

- the Italian Government, by P. Gentili, avvocato dello Stato,

- the German Government, by M. Lumma and J. Kemper, acting as Agents,

- the Polish Government, by M. Dowgielewicz, acting as Agent,

— the Commission of the European Communities, by N. Bambara, A. Nijenhuis, I.V. Rogalski and S. La Pergola, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 November 2009,

gives the following

Judgment

- 1 These references for a preliminary ruling concern the interpretation of the principle of effective judicial protection in relation to national legislation under which an attempt to achieve an out-of-court settlement is a mandatory condition for the admissibility before the courts of actions in certain disputes between providers and end-users under Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

- 2 The references were submitted in the context of four disputes brought, on the one hand, by Ms Alassini, Ms Iacono and Multiservice Srl against Telecom Italia SpA and, on the other hand, by Ms Califano against Wind SpA, regarding alleged breaches of the contracts binding the parties to the main proceedings and concerning the provision of telephone services to the applicants in the main proceedings by Telecom Italia SpA or Wind SpA, providers of those services.

Legal context

The European Convention for the Protection of Human Rights and Fundamental Freedoms

- 3 Paragraph 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), which is entitled 'Right to a fair trial', provides:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...'

Law of the European Union ('EU law')

- 4 Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000 (OJ 2000 C 364, p. 1), as adjusted at Strasbourg on 12 December 2007 (OJ 2007 C 303, p. 1), which is entitled 'Right to an effective remedy and to a fair trial', provides:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.'

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

5 Recital 47 in the preamble to the Universal Service Directive states:

'In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users rights. Effective procedures should be available to deal with disputes between consumers, on the one hand, and undertakings providing publicly available communications services, on the other. Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes [(OJ 1998 L 115, p. 31)] ...'

6 Article 1 of the Universal Service Directive states:

'1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services

to end-users. The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market.

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of Universal Service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services such as the retail provision of leased lines.⁷

- ⁷ Article 34 of the Universal Service Directive, which is entitled ‘Out-of-court dispute resolution’, provides:

‘1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

2. Member States shall ensure that their legislation does not hamper the establishment of complaints offices and the provision of on-line services at the appropriate territorial level to facilitate access to dispute resolution by consumers and end-users.

3. Where such disputes involve parties in different Member States, Member States shall coordinate their efforts with a view to bringing about a resolution of the dispute.

4. This Article is without prejudice to national court procedures.’

8 Article 1 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12), which is entitled ‘Scope and definitions’, provides:

‘1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.

2. For the purposes of this Directive:

...

(b) consumer goods: shall mean any tangible movable item, with the exception of:

- goods sold by way of execution or otherwise by authority of law,

- water and gas where they are not put up for sale in a limited volume or set quantity,

- electricity;

...

Recommendations 98/257/EC and 2001/310/EC

- 9 The fifth, sixth and ninth recitals in the preamble to Commission Recommendation 98/257 state:

‘Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes — provided certain essential principles are respected — have had good results, both for consumers

and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

...

Whereas this recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent.’

¹⁰ Under the title ‘Principle of liberty’, Section VI of Recommendation 98/257 states:

‘The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.'

- ¹¹ Under the title 'Scope,' Section I of Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes (OJ 2001 L 109, p. 56) provides:

'1. This recommendation applies to third party bodies responsible for out-of-court consumer dispute resolution procedures that, no matter what they are called, attempt to resolve a dispute by bringing the parties together to convince them to find a solution by common consent.

2. It does not apply to customer complaint mechanisms operated by a business and concluded directly with the consumer or to such mechanisms carrying out such services operated by or on behalf of a business.'

National law

- ¹² The Italian Republic transposed the Universal Service Directive into national law by Legislative Decree No 259 of 1 August 2003, relating to the Electronic Communications Code (GURI No 214 of 15 September 2003, p. 3).

13 Under Article 84 of the Electronic Communications Code:

‘1. The Authority, for the purposes of Article 1(11), (12) and (13) of Law No 249 of 31 July 1997 [establishing the Communications Regulatory Authority and laying down rules relating to the telecommunications and radiotelevision systems (Ordinary Supplement to GURI No 177 of 31 July 1997)] shall adopt transparent, simple and inexpensive out-of-court procedures for examining disputes, involving consumers and end-users, relating to the provisions of this Chapter, to enable disputes to be settled fairly and promptly and may, where warranted, provide for a system of reimbursement or compensation.

2. The Authority shall, in agreement with the Standing Conference for relations between the State, the regions and the autonomous provinces of Trento and Bolzano, and under Article 1(13) of Law No 249 of 31 July 1997, encourage the creation at the appropriate territorial level, using current staff resources and the equipment which can be acquired using the ordinary budget credits without subsequent amendment of expenditure, of complaints offices and on-line complaints services, with responsibility for facilitating access to dispute resolution mechanisms by consumers and end-users.

3. Where the disputes involve nationals of other Member States, the Authority shall coordinate its efforts with those of the other regulatory authorities concerned to bring about a resolution of the dispute.

4. This Article is without prejudice to the provisions in force concerning the judicial resolution of disputes and, pending the implementation of paragraphs 1 and 2, to the provisions in force concerning out-of-court dispute resolution, at the date of publication of the Code in the *Gazzetta ufficiale della Repubblica italiana* (Official Journal of the Italian Republic).’

- 14 Pursuant to Law No 249 of 31 July 1997, disputes in the electronic communications field between end-users and operators which arise as a result of non-compliance with the rules on Universal Service and on the rights of end-users fall within the competence of the Communications Regulatory Authority.
- 15 By Decision 173/07/CONS (GURI No 120 of 25 May 2007, p. 19), the Communications Regulatory Authority adopted the procedural rules for the settlement of disputes between telecommunications operators and end-users ('the dispute settlement rules').
- 16 Under Article 3 of the dispute settlement rules:

'1. In respect of disputes of the kind referred to in Article 2(1), no court proceedings may be brought until the mandatory attempt to settle the dispute has been undertaken using the services of the Co.Re.Com (Regional Communications Commission) responsible for the geographical area concerned and authorised to conduct a settlement procedure, or using the services of the out-of-court dispute resolution bodies referred to in Article 13.

2. If the Co.Re.Com responsible for the geographical area concerned is not authorised in accordance with paragraph 1 to conduct a settlement procedure, the mandatory attempt to settle the dispute must be undertaken using the services of the bodies referred to in Article 13.

3. The time-limit for completion of the settlement procedure shall be 30 days as from the date of the request; on expiry of the deadline the parties may bring court proceedings even if the procedure has not been completed.'

17 Under Article 13 of the dispute settlement rules:

‘1. As an alternative to having the settlement procedure conducted by the Co.re.com, the parties concerned may undertake the mandatory attempt to settle the dispute, whether by means of electronic communication or otherwise, using the services of the out-of-court bodies for the resolution of consumer disputes referred to in point (o) of Article 1 of this decision.

2. Users may also, for those purposes, bring their case to the bodies established by agreement between the operators and the national associations of consumers’ representatives, provided that those bodies provide their services free of charge and observe the principles of transparency, fairness and effectiveness referred to in Recommendation 2001/310/EC.

3. The up-to-date list of the bodies referred to in the preceding paragraphs shall be available on the Authority’s internet site.

4. The bodies established in accordance with paragraph 2 shall be registered on the list referred to in paragraph 3 on presentation of a specific application, signed by the parties, together with the agreement between the operator and at least two-thirds of the national associations of consumers’ representatives and a copy of the rules of procedure, after it has been ascertained that the principles referred to in paragraph 2 have been complied with.

5. The application must be renewed every two years in accordance with the same procedure. In the absence of an application for renewal, the Authority shall automatically remove the body from the list referred to in paragraph 3.

6. On the declaration of any interested person, the authority may decide to remove from the list bodies which it finds have failed to comply with the principles set out in paragraph 2.’

The disputes before the referring court and the question referred for a preliminary ruling

- 18 It is apparent from the orders for reference that, in all the actions brought by the applicants in the proceedings before the referring court, the defendants have argued by way of a preliminary objection under Articles 3 and 13 of the dispute settlement rules that the actions are inadmissible because the applicants had not first initiated the mandatory attempt to settle the dispute before the Co.re.com, as provided for under those provisions.
- 19 According to the referring court, although provided for under Italian legislation, the Co.re.com has not yet been set up in the region of Campania, which means that the mandatory settlement procedure must be brought before other bodies, namely those referred to in Article 13 of the dispute settlement rules. However, it has not been verified that those bodies comply with the principles set out in Recommendation 2001/310 and, in particular, it has not been ascertained whether settlement attempts before those bodies are free of charge or for fees set at an appropriate level, or whether they are well-publicised and easy to use.
- 20 In any event, even if the Co.re.com had been set up in Campania, the referring court takes the view that the mandatory nature of the settlement procedure, as provided for under the legislation at issue, could impede end-users from exercising their rights, in particular because the settlement must be carried out by electronic means. The referring court also points out that there is already provision, under the ordinary court procedure, for attempts at settlement to be undertaken in the course of the first hearing.

- 21 It was in that context that the Giudice di Pace di Ischia (Magistrates Court, Ischia) (Italy) decided, in each pending case, to stay the proceedings and to refer to the Court the following question for a preliminary ruling:

‘Do the Community rules referred to above (Article 6 of the [ECHR], [the Universal Service] Directive ..., Directive [1999/44], ... Recommendation [2001/310] and [Recommendation [98]/257]) have direct effect and must they be interpreted as meaning that disputes “in the area of electronic communications between end-users and operators concerning non-compliance with the rules on Universal Service and on the rights of end-users, as laid down in legislation, decisions of the Regulatory Authority, contractual terms and service charters” (the disputes contemplated by Article 2 of [the regulation annexed to] Decision No 173/07/CONS of the Regulatory Authority) must not be made subject to a mandatory attempt to settle the dispute without which proceedings in that regard may not be brought before the courts, thus taking precedence over the rule laid down in Article 3(1) of [the regulation annexed to] Decision No 173/07/CONS?’

- 22 By order of the President of the Court of 16 September 2008, Cases C-317/08 to C-320/08 were joined for the purposes of the written and oral procedures and of the judgment.

The question referred for a preliminary ruling

Admissibility

- 23 At the hearing, the Italian Government argued that the question referred for a preliminary ruling is inadmissible. According to that government, since the referring court has not specified which rights under EU law are disputed in the main proceedings, the issue raised is purely hypothetical.

- 24 While it does not submit that the question referred is inadmissible, the Commission also points out the need for a factor connecting the disputes before the referring court with EU law, it being impossible, according to the Commission, to infer such a factor automatically from the orders for reference.
- 25 In that regard, it should be borne in mind that, in proceedings under Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, inter alia, Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43; Case C-414/07 *Magoora* [2008] ECR I-10921, paragraph 22; and Case C-12/08 *Mono Car Styling* [2009] ECR I-6653, paragraph 27).
- 26 Thus, the Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Joined Cases C-94/04 and C-202/94 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; *Magoora*, paragraph 23; and *Mono Car Styling*, paragraph 28).
- 27 With regard to the present reference for a preliminary ruling, it must be stated that the orders for reference contain a reasoned statement of the factual and legal context of the main proceedings and the reasons why the national court considered that an answer to the question referred in each dispute was necessary to enable it to give judgment.

- 28 In addition, while admittedly the orders for reference do not set out in detail the disputes in the main proceedings and, more specifically, do not identify the specific rights and obligations which are in dispute, the fact remains that those disputes concern electronic communications services between end-users and providers, and out-of-court procedures for the settlement of those disputes; and, moreover, the national court refers expressly to recital 47 in the preamble to the Universal Service Directive and to Article 34 thereof.
- 29 It must therefore be concluded that the question referred concerns the interpretation of EU law and that such interpretation is necessary for the resolution of the disputes in the main proceedings.
- 30 Consequently, the question referred for a preliminary ruling must be declared admissible.

Substance

- 31 It should be observed at the outset that the question refers not only to the Universal Service Directive, to Recommendation 98/257 and to the right to effective legal protection, as laid down in Article 6 of the ECHR, but also to Directive 1999/44 and Recommendation 2001/310.
- 32 So far as Directive 1999/44 is concerned, since — pursuant to Article 1 thereof — communication services are not covered by that directive, it must be held that Directive 1999/44 is not applicable to the cases before the referring court.

- 33 In relation to Recommendation 2001/310, it should be noted that, in accordance with recital 47 in the preamble to the Universal Service Directive, when making available the procedures referred to in that directive for dealing with disputes, Member States should take due account of Recommendation 98/257.
- 34 However, according to the ninth recital in the preamble to Recommendation 98/257, the scope of that recommendation is limited to procedures which — no matter what they are called — lead to the settling of a dispute through the active intervention of a third party who proposes or imposes a solution, and it does not concern procedures, such as those provided for in Recommendation 2001/310, which merely involve an attempt to bring the parties together to convince them to find a solution by common consent.
- 35 It must therefore be held that the procedures referred to by the Universal Service Directive for dealing with disputes must not merely involve an attempt to bring the parties together to convince them to find a solution by common consent, but must lead to the settling of the dispute through the active intervention of a third party who proposes or imposes a solution.
- 36 In the cases before the referring court, the mandatory out-of-court procedure provided for under the national legislation at issue does not merely seek to bring the parties together, but proposes a solution for them through the active intervention of a settlement body. In consequence, it must be held that Recommendation 2001/310, too, is not applicable to the disputes in the main proceedings.
- 37 Consequently, the question referred must be construed as seeking to ascertain, in essence, whether Article 34 of the Universal Service Directive and the principle of effective judicial protection must be interpreted as precluding legislation of a Member State under which the admissibility before the courts of actions relating to electronic

communications services between end-users and providers of those services, concerning the rights conferred by that directive, is conditional upon an attempt to settle the dispute out of court.

Article 34 of the Universal Service Directive

- ³⁸ Under Article 34 of the Universal Service Directive, Member States must ensure that transparent, simple and inexpensive out-of-court procedures are available, enabling disputes involving consumers and relating to issues covered by that directive to be settled fairly and promptly. Those procedures are always to be without prejudice to national court procedures.
- ³⁹ As was observed in paragraph 33 of this judgment, when making available those out-of-court procedures, the Member States must take due account of Recommendation 98/257.
- ⁴⁰ In that connection, it should be borne in mind that the Court has consistently held that, even if recommendations are not intended to produce binding effects and are not capable of creating rights that individuals can rely on before a national court, they are not without any legal effect. The national courts are bound to take recommendations into consideration in order to decide disputes brought before them, in particular where such recommendations cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding provisions of EU law (see Case C-322/88 *Grimaldi* [1989] ECR 4407, paragraphs 7, 16 and 18, and Case C-207/01 *Altair Chimica* [2003] ECR I-8875, paragraph 41).

- 41 However, it must be held that neither the Universal Service Directive nor Recommendation 98/257 sets out the precise content or the specific nature of the out-of-court procedures which have to be introduced, apart from the criteria referred to in Article 34 of the Universal Service Directive and set out in paragraph 38 of this judgment, and the principles set out in Recommendation 98/257, namely the principles of impartiality and transparency, the adversarial principle and the principles of effectiveness, legality, liberty and representation.
- 42 It must be observed that none of the criteria or principles mentioned above implies a limitation of the powers of the Member States in terms of being able to make out-of-court procedures for the settlement of disputes mandatory.
- 43 To that effect, it should be noted that, in accordance with Article 34(4) of the Universal Service Directive and the principle of liberty set out in Section VI of Recommendation 98/257, the only requirement imposed in that connection is that the right to bring an action before the courts for the settlement of disputes must be maintained.
- 44 Consequently, since the Universal Service Directive does not make more detailed provision as regards the precise content of the procedures provided for in Article 34 thereof or the nature of those procedures, it is for the Member States to lay down those rules and to define the nature — which may be mandatory — of those procedures, while ensuring that the directive remains effective.
- 45 In that connection, it must be stated that Article 34(1) of the Universal Service Directive assigns Member States the objective of establishing out-of-court procedures for dealing with unresolved disputes involving consumers and relating to issues covered by that directive. Accordingly, the fact that national legislation such as that at issue in the main proceedings has not only put in place an out-of-court settlement procedure, but has also made it mandatory to have recourse to that procedure before bringing an action before a judicial body, is not such as to jeopardise the attainment of that

objective. On the contrary, such legislation, in so far as it ensures that out-of-court procedures are systematically used for settling disputes, is designed to strengthen the effectiveness of the Universal Service Directive.

- ⁴⁶ However, in so far as the establishment of a mandatory settlement procedure is a condition for the admissibility of actions before the courts, it is necessary to consider whether it is compatible with the right to effective judicial protection.

The principles of equivalence and effectiveness and the principle of effective judicial protection

- ⁴⁷ First, the Court has consistently held that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, but the Member States are nevertheless responsible for ensuring that those rights are effectively protected in each case (see Case C-268/06 *Impact* [2008] ECR I-2483, paragraphs 44 and 45, and *Mono Car Styling*, paragraph 48).

- ⁴⁸ On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (see, to that effect, *Impact*, paragraph 46 and the case-law cited).

- 49 Those requirements of equivalence and effectiveness embody the general obligation on the Member States to ensure judicial protection of an individual's rights under EU law. They apply both as regards the designation of the courts and tribunals having jurisdiction to hear and determine actions based on EU law and as regards the definition of detailed procedural rules (see *Impact*, paragraphs 47 and 48, and Case C-63/08 *Pontin* [2009] ECR I-10467, paragraph 44).
- 50 In the cases before the referring court, it is clear that the principle of equivalence has been observed.
- 51 First, the referring court has not mentioned any evidence to suggest infringement of the principle of equivalence. Secondly, the Italian Government confirmed at the hearing that the national rule at issue applies without distinction, it being immaterial whether the infringement alleged is of EU law or national law on electronic communications.
- 52 As regards the principle of effectiveness, it is admittedly true that making the admissibility of legal proceedings conditional upon the prior implementation of an out-of-court settlement procedure affects the exercise of rights conferred on individuals by the Universal Service Directive.
- 53 However, various factors show that a mandatory settlement procedure, such as that at issue, is not such as to make it in practice impossible or excessively difficult to exercise the rights which individuals derive from that directive.
- 54 First, the outcome of the settlement procedure is not binding on the parties concerned and thus does not prejudice their right to bring legal proceedings.

55 Secondly, the settlement procedure does not, in normal circumstances, result in a substantial delay for the purposes of bringing legal proceedings. The time-limit for completion of the settlement procedure is 30 days as from the date of the request and, on expiry of the deadline, the parties may bring legal proceedings even if the procedure has not been completed.

56 Thirdly, for the duration of the settlement procedure, the period for the time-barring of claims is suspended.

57 Fourthly, there are no fees for the settlement procedure before the Co.re.com. In the case of the settlement procedures before other bodies, there is nothing in the documents before the Court to suggest that they entail significant costs.

58 However, the exercise of rights conferred by the Universal Service Directive might be rendered in practice impossible or excessively difficult for certain individuals — in particular, those without access to the Internet — if the settlement procedure could be accessed only by electronic means. It is for the referring court to ascertain whether that is the case, having especial regard to Article 13(1) of the dispute settlement rules.

59 By the same token, it is for the referring court to ascertain whether, in exceptional cases where interim measures are necessary, the settlement procedure allows, or does not preclude, the adoption of such measures.

60 In those circumstances, it must be held that the national legislation at issue in the present case complies with the principle of effectiveness in so far as electronic means is not the only means by which the settlement procedure may be accessed and in so

far as interim measures are possible in exceptional cases where the urgency of the situation so requires.

- 61 Secondly, it should be borne in mind that the principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and which has also been reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union (see *Mono Car Styling*, paragraph 47 and the case-law cited).
- 62 In that regard, it is common ground in the cases before the referring court that, by making the admissibility of legal proceedings concerning electronic communications services conditional upon the implementation of a mandatory attempt at settlement, the national legislation introduces an additional step for access to the courts. That condition might prejudice implementation of the principle of effective judicial protection.
- 63 Nevertheless, it is settled case-law that fundamental rights do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (see, to that effect, Case C-28/05 *Dokter and Others* [2006] ECR I-5431, paragraph 75 and the case-law cited, and the judgment of the ECHR in *Fogarty v United Kingdom*, no. 37112/97, §33, ECHR 2001-XI (extracts)).
- 64 However, as the Italian Government observed at the hearing, it must first be noted that the aim of the national provisions at issue is the quicker and less expensive settlement of disputes relating to electronic communications and a lightening of the burden on the court system, and they thus pursue legitimate objectives in the general interest.

65 Secondly, the imposition of an out-of-court settlement procedure such as that provided for under the national legislation at issue, does not seem — in the light of the detailed rules for the operation of that procedure, referred to in paragraphs 54 to 57 of this judgment — disproportionate in relation to the objectives pursued. In the first place, as the Advocate General stated in point 47 of her Opinion, no less restrictive alternative to the implementation of a mandatory procedure exists, since the introduction of an out-of-court settlement procedure which is merely optional is not as efficient a means of achieving those objectives. In the second place, it is not evident that any disadvantages caused by the mandatory nature of the out-of-court settlement procedure are disproportionate to those objectives.

66 In the light of the foregoing, it must be held that the national procedure at issue in the main proceedings also complies with the principle of effective judicial protection, subject to the conditions referred to in paragraphs 58 and 59 of this judgment.

67 Consequently, the answer to the question referred for a preliminary ruling is that:

— Article 34 of the Universal Service Directive must be interpreted as not precluding legislation of a Member State under which the admissibility before the courts of actions relating to electronic communications services between end-users and providers of those services, concerning the rights conferred by that directive, is conditional upon an attempt to settle the dispute out of court;

— Nor do the principles of equivalence and effectiveness or the principle of effective judicial protection preclude national legislation which imposes, in respect of such disputes, prior implementation of an out-of-court settlement procedure, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal

proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.

Costs

- ⁶⁸ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- **Article 34 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive) must be interpreted as not precluding legislation of a Member State under which the admissibility before the courts of actions relating to electronic communications services between end-users and providers of those services, concerning the rights conferred by that directive, is conditional upon an attempt to settle the dispute out of court.**
- **Nor do the principles of equivalence and effectiveness or the principle of effective judicial protection preclude national legislation which imposes, in**

respect of such disputes, prior implementation of an out-of-court settlement procedure, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.

[Signatures]