

JUDGMENT OF THE COURT (Second Chamber)

22 December 2010*

In Case C-279/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Kammergericht (Germany), made by decision of 30 June 2009, received at the Court on 22 July 2009, in the proceedings

DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH

v

Bundesrepublik Deutschland,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of Chamber, A. Rosas (Rapporteur), U. Lõhmus, A. Ó Caoimh and P. Lindh, Judges,

* Language of the case: German.

Advocate General: P. Mengozzi,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 3 June 2010,

after considering the observations submitted on behalf of:

- DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH, by L. Schwarz, Rechtsanwältin,

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

- the Danish Government, by V. Pasternak Jørgensen and R. Holdgaard, acting as Agents,

- the French Government, by G. de Bergues, S. Menez and B. Beaupère-Manokha, acting as Agents,

- the Italian Government, by G. Palmieri, acting as Agent, and by G. Aiello, avvocato dello Stato,

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

— the European Commission, by J.-P. Keppenne and F. Hoffmeister, acting as Agents,

— the EFTA Surveillance Authority, by F. Simonetti, I. Hauger and L. Armati, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2010

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of the principle of effectiveness, as enshrined in the case-law of the Court of Justice of the European Union, in order to ascertain whether that principle requires legal aid to be granted to legal persons.

- 2 The reference has been made in the course of proceedings between DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH ('DEB') and the Bundesrepublik Deutschland with regard to an application for legal aid submitted by that company to the German courts.

Legal context

European Union (EU) law

- 3 Recitals 5 and 11 in the preamble to Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, and corrigendum OJ 2003 L 32, p. 15), read as follows:

‘(5) This Directive seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. The generally recognised right to access to justice is also reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union [“the Charter”].

...

- (11) Legal aid should cover pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings, legal assistance in bringing a case before a court and representation in court and assistance with or exemption from the cost of proceedings.’

- 4 The scope *ratione personae* of the right to legal aid is defined as follows in Article 3(1) of Directive 2003/8:

‘Natural persons involved in a dispute covered by this Directive shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice in accordance with the conditions laid down in this Directive.’

- 5 Article 6(3) of that directive states:

‘When taking a decision on the merits of an application and without prejudice to Article 5, Member States shall consider the importance of the individual case to the applicant but may also take into account the nature of the case when the applicant is claiming damage to his or her reputation but has suffered no material or financial loss or when the application concerns a claim arising directly out of the applicant’s trade or self-employed profession.’

- 6 Article 94(2) and (3) of the Rules of Procedure of the General Court of the European Union of 2 May 1991 (consolidated version published in OJ 2010 C 177, p. 37) is worded as follows:

‘2. Any natural person who, because of his economic situation, is wholly or partly unable to meet the costs referred to in paragraph 1 shall be entitled to legal aid.’

The economic situation shall be assessed, taking into account objective factors such as income, capital and the family situation.

3. Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.’

- 7 Article 95(2) and (3) of the Rules of Procedure of the European Union Civil Service Tribunal of 25 July 2007 (consolidated version published in OJ 2010 C 177, p. 71) is identical to Article 94(2) and (3) of the Rules of Procedure of the General Court.

National law

- 8 Paragraph 12(1) of the Law on Court Costs (Gerichtskostengesetz), which sets out the principle, applicable to all applicants in civil litigation, of advance payment in respect of the costs of proceedings is worded as follows:

‘In civil litigation, the originating application may, in general, be served only after payment of the administrative charge for the proceedings. Should the grounds of the action be extended, no judicial action may, in general, be undertaken before payment of the administrative charge for the proceedings has been made; this also applies with regard to appellate proceedings.’

- 9 Paragraph 78(1) of the German Code of Civil Procedure (Zivilprozessordnung; ‘the ZPO’) provides:

‘In proceedings before the Landgericht [Regional Court] and the Oberlandesgericht [Higher Regional Court], the parties must be represented by a lawyer. ...’

- 10 In the words of Paragraph 114 of the ZPO:

‘A party which, on account of its personal and financial circumstances, is unable to pay the costs of the proceedings, or is able to pay them only in part or in instalments, shall receive legal aid, upon application, if the intended action or defence at law presents a sufficient prospect of success and does not appear to be frivolous. ...’

- 11 Paragraph 116 of the ZPO provides:

‘Upon application, legal aid shall be received by

1. ...

2. a legal person or an entity capable of being a party to legal proceedings, which is established and has its principal office in Germany ... if the costs can be paid neither by that party nor by any parties having an economic involvement in the subject-matter of the proceedings, and where the failure to pursue or defend the action would run counter to the public interest.’

12 Paragraph 122(1) of the ZPO provides:

‘In light of the grant of legal aid

1. the Federal or *Land* Collection Office may demand payment of

(a) the court and bailiff costs already due or falling due

(b) the debts owed to the appointed lawyers which have been passed to that office

from the party concerned only in accordance with the arrangements established by the court;

2. the party shall be exempted from the obligation to provide security for the costs of the legal proceedings;

3. the appointed lawyers may not claim fees from the party concerned.

...’

13 Paragraph 123 of the ZPO is worded as follows:

‘The grant of legal aid shall be without prejudice to the obligation to reimburse the costs incurred by the opposing party.’

The main proceedings and the question referred for a preliminary ruling

14 DEB has applied for legal aid in order to bring an action to establish that the Bundesrepublik Deutschland has incurred State liability under EU law.

15 DEB is seeking reparation from that Member State for the delay in the transposition of Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ 1998 L 204, p. 1) and of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57), which were intended to make non-discriminatory access to the national gas networks possible. DEB submits that, as a result of that delay, it was unable to obtain access to the gas networks of the German network operators and was therefore obliged to forgo profits amounting to approximately EUR 3.7 thousand million under contracts with suppliers for the supply of gas.

16 Owing to its lack of income and assets, DEB — which at the moment has no employees or creditors — is unable to make the necessary advance payment of court costs required under Paragraph 12(1) of the Law on Court Costs, which amounts to EUR 274 368.

- 17 Nor has DEB at its disposal the financial means to pay for representation by a lawyer, whose instruction is compulsory in the main proceedings.
- 18 The Landgericht Berlin (Regional Court, Berlin) refused to grant legal aid on the ground that the conditions laid down in Paragraph 116(2) of the ZPO were not satisfied.
- 19 The Kammergericht (Higher Regional Court), hearing the case on appeal, also takes the view that the conditions laid down in Paragraph 116(2) of the ZPO are not satisfied.
- 20 Referring to the case-law of the Bundesgerichtshof (Federal Court of Justice) on that provision, the Kammergericht finds that, in the present case, discontinuance of the action before the courts is not contrary to the public interest. That could be so only if the decision were to affect a sizeable proportion of the population or the business community, or if it were liable to have social repercussions (see decision of the Bundesgerichtshof of 20 December 1989, VIII ZR 139/89). Discontinuance of an action could run counter to the public interest if it were to mean that a legal person would be unable to continue to fulfil duties in the general public interest, or if the existence of that legal person depended on the action that it had intended to bring and that, accordingly, jobs might be lost or a great many creditors adversely affected. That is not the position in the present case, as DEB currently has neither employees nor creditors.
- 21 The Kammergericht acknowledges that the legal concept of ‘public interest’ makes it possible to take into account all conceivable general interests for the benefit of the legal person (see decision of the Bundesgerichtshof of 24 October 1990, VIII ZR 87/90). It adds, however, that, as a general rule, the fact that a correct decision is taken does not necessarily mean that it is in the public interest. Nor is it sufficient that, in order to settle the dispute, a ruling must be given on legal issues of public interest (see decision of the Bundesgerichtshof of 20 December 1989). In such cases — as in the

present case — there is a lack of any genuine drawback which affects the general public, and which goes beyond the mere fact of a decision not being delivered. DEB itself concedes that a ruling against the Bundesrepublik Deutschland cannot directly result in the liberalisation of the energy market on which it has relied as justification for its claim that its action is a matter of public interest within the meaning of Paragraph 116(2) of the ZPO.

- 22 Interpretation of that national provision in the light of the intention of the German legislature provides no basis for extending it and applying it to cover any effect, even one that is indirect. The case-law, which relies on the drafting history of the ZPO, has always required that, in addition to the parties with an economic interest in the proceedings, a significant group of people should be affected by discontinuance of the action before the courts.
- 23 Moreover, the rule laid down in Paragraph 116(2) of the ZPO is in conformity with the Grundgesetz (German Basic Law). In particular, the fact that the conditions governing the granting of legal aid to legal persons are more stringent than those required of natural persons is constitutionally unobjectionable.
- 24 The Bundesverfassungsgericht (Federal Constitutional Court) has repeatedly ruled to that effect. In the final analysis, the granting of legal aid is a measure of social assistance which is derived from the principle of the social State and is necessary for the safeguarding of human dignity, something which is not applicable in the case of legal persons. The latter are artificial creations vested with a legal form which is permitted by the legal system of a State for reasons of practicality. That legal form offers shareholders economic advantages, in particular the limitation of their liability to the amount represented by the company's assets. Accordingly, the legal person must have sufficient assets. That is a pre-condition both for the creation and for the continued existence of the company. It is the reason why, as a general rule, the legal system recognises a legal person as having a right to exist only if it is in a position to accomplish

its objects and to fulfil its duties using its own resources. The rule in Paragraph 116(2) of the ZPO accordingly takes the special circumstances of legal persons into account (see decision of the Bundesverfassungsgericht of 3 July 1973, 1 BvR 153/69).

²⁵ The Kammergericht is uncertain, however, whether the refusal of legal aid to DEB for the pursuit of an action seeking to establish State liability under EU law might be inconsistent with the principles of that law, in particular with the principle of effectiveness. If DEB is refused legal aid, it will simply be unable to pursue the action seeking to establish State liability under that law. In practice, therefore, it would be impossible or, at the very least, excessively difficult, for DEB to obtain reparation. That interpretation is also supported by the fact that the Court of Justice has derived the concept of State liability under EU law from the requirement that that law, in particular with regard to the protection of individual rights, must be fully effective (see Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357).

²⁶ In the light of the foregoing, the Kammergericht decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘In view of the fact that Member States may not, through the structuring of conditions under national law governing the award of damages and of the procedure for pursuing a claim seeking to establish State liability under [EU] law, make the award of compensation in accordance with the principles of State liability in practice impossible or excessively difficult, must there be reservations with regard to a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs, and a legal person, which is unable to make that advance payment, does not qualify for legal aid?’

The question referred for a preliminary ruling

- 27 By its question, the referring court asks whether EU law and, more specifically, the principle of effectiveness, must be interpreted as meaning that, in the context of a procedure for pursuing a claim seeking to establish State liability under EU law, that principle precludes a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs and under which a legal person does not qualify for legal aid even though it is unable to make that advance payment.
- 28 As is apparent from well-established case-law on the principle of effectiveness, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (see, inter alia, Case 33/76 *Rewe-Zentralfinanz and Rewe-Zentral* [1976] ECR 1989, paragraph 5; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 43; and Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 46). The referring court essentially asks whether the fact that a legal person is unable to qualify for legal aid renders the exercise of its rights impossible in practice in the sense that that legal person would not be able to gain access to a court because it would be impossible for it to make the advance payment in respect of the costs of proceedings and to obtain the assistance of a lawyer.
- 29 The question referred thus concerns the right of a legal person to effective access to justice and, accordingly, in the context of EU law, it concerns the principle of effective judicial protection. That principle 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 European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') (Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19; Case 222/86 *Heylens and*

Others [1987] ECR 4097, paragraph 14; Case C-424/99 *Commission v Austria* [2001] ECR I-9285, paragraph 45; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 39; Case C-467/01 *Eribrand* [2003] ECR I-6471, paragraph 61; and *Unibet*, paragraph 37).

- 30 As regards fundamental rights, it is important, since the entry into force of the Lisbon Treaty, to take account of the Charter, which has ‘the same legal value as the Treaties’ pursuant to the first subparagraph of Article 6(1) TEU. Article 51(1) of the Charter states that the provisions thereof are addressed to the Member States when they are implementing EU law.
- 31 In that connection, the first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. Under the second paragraph of Article 47, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone is to have the possibility of being advised, defended and represented. The third paragraph of Article 47 of the Charter provides specifically that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
- 32 According to the explanations relating to that article, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter, the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the ECHR.
- 33 In the light of the above, it is necessary to recast the question referred so that it relates to the interpretation of the principle of effective judicial protection as enshrined in

Article 47 of the Charter, in order to ascertain whether, in the context of a procedure for pursuing a claim seeking to establish State liability under EU law, that provision precludes a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs and under which a legal person does not qualify for legal aid even though it is unable to make that advance payment.

³⁴ It is apparent from Paragraph 122(1) of the ZPO that legal aid may cover both court costs and debts owed to lawyers. Since the national court has not specified whether the question referred relates to the aspect of court costs alone, it is necessary to examine both aspects.

³⁵ As regards the Charter, Article 52(3) thereof states that, in so far as the Charter contains rights which correspond to those guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR. According to the explanation of that provision, the meaning and the scope of the guaranteed rights are to be determined not only by reference to the text of the ECHR, but also, *inter alia*, by reference to the case-law of the European Court of Human Rights. The second sentence of Article 52(3) of the Charter provides that the first sentence of Article 52(3) is not to preclude the grant of wider protection by EU law (see, to that effect, Case C-400/10 PPU *McB* [2010] ECR I-8965, paragraph 53).

³⁶ As regards in particular Article 47(3) of the Charter, the last paragraph of the Explanation relating to Article 47 mentions the judgment in *Airey v. Ireland* of 9 October 1979 (Eur. Court H.R., Series A, No 32, p. 11), according to which provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy. No indication is given as to whether such aid must be granted to a legal person or of the nature of the costs covered by that aid.

- 37 That provision must be interpreted in its context, in the light of other provisions of EU law, the law of the Member States and the case-law of the European Court of Human Rights.
- 38 As the Commission of the European Communities observed in its written submissions, the word ‘person’ used in the first two paragraphs of Article 47 of the Charter may cover individuals, but, from a purely linguistic point of view, it does not exclude legal persons.
- 39 It should be noted in that connection that, although the explanations relating to the Charter do not provide any clarification in this regard, the use of the word ‘Person,’ in the German language version of Article 47, as opposed to the word ‘Mensch,’ which is used in numerous other provisions — for example, in Articles 1, 2, 3, 6, 29, 34 and 35 of the Charter — may be an indication that legal persons are not excluded from the scope of that article.
- 40 Moreover, the right to an effective remedy before a court, enshrined in Article 47 of the Charter, is to be found under Title VI of that Charter, relating to justice, in which other procedural principles are established which apply to both natural and legal persons.
- 41 The fact that the right to receive legal aid is not to be found in Title IV of the Charter, relating to solidarity, indicates that that right is not conceived primarily as social assistance, whereas in German law it does appear to be conceived as such, a factor on which the German Government has relied in support of its argument that that assistance must be reserved to natural persons.

- 42 Similarly, the inclusion of the provision relating to the grant of legal aid in the article of the Charter relating to the right to an effective remedy indicates that the assessment of the need to grant that aid must be made on the basis of the right of the actual person whose rights and freedoms as guaranteed by EU law have been violated, rather than on the basis of the public interest of society, even if that interest may be one of the criteria for assessing the need for the aid.
- 43 The other provisions of EU law relied on by the parties to the main proceedings and by the Member States which submitted observations and the Commission — such as Directive 2003/8, the Rules of Procedure of the General Court and of the Civil Service Tribunal — do not make provision for legal aid to be granted to legal persons. However, no conclusion of general application can be drawn from this, since it is apparent, first, from the scope of Directive 2003/8 and, second, from the jurisdiction of the General Court and of the Civil Service Tribunal that those provisions relate to specific categories of litigation.
- 44 As the Advocate General pointed out in points 76 to 80 of his Opinion, examination of the law of the Member States brings to light the absence of a truly common principle which is shared by all those States as regards the award of legal aid to legal persons. However, in point 80 of that Opinion, the Advocate General also pointed out that, in the practice of the Member States which allow legal aid to be granted to legal persons, there is a relatively widespread distinction between profit-making and non-profit-making legal persons.
- 45 Review of the case-law of the European Court of Human Rights shows that, on several occasions, that court has stated that the right of access to a court constitutes an element which is inherent in the right to a fair trial under Article 6(1) of the ECHR (see, inter alia, Eur. Court H.R., judgment in *McVicar v. the United Kingdom* of 7 May 2002, ECHR 2002-III, § 46). It is important in this regard for a litigant not to be denied the

opportunity to present his case effectively before the court (Eur. Court H.R., judgment in *Steel and Morris v. the United Kingdom* of 15 February 2005, ECHR 2005-II, § 59). The right of access to a court is not, however, absolute.

- ⁴⁶ Ruling on legal aid in the form of assistance by a lawyer, the European Court of Human Rights has held that the question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent himself effectively (Eur. Court H.R., judgments in *Airey v. Ireland*, § 26; *McVicar v. the United Kingdom*, §§ 48 and 49; *P., C. and S. v. the United Kingdom* of 16 July 2002, ECHR 2002-VI, § 91, and *Steel and Morris v. the United Kingdom*, § 61). Account may be taken, however, of the financial situation of the litigant or his prospects of success in the proceedings (Eur. Court H.R., judgment in *Steel and Morris v. the United Kingdom*, § 62).
- ⁴⁷ As regards legal aid in the form of dispensation from payment of the costs of proceedings or from provision of security for costs before an action is brought, the European Court of Human Rights has similarly examined all the circumstances in order to determine whether the limitations applied to the right of access to the courts had undermined the very core of that right, whether those limitations pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see, to that effect, Eur. Court H.R., judgments in *Tolstoy-Miloslavsky v. the United Kingdom* of 13 July 1995, Series A No 316-B, §§ 59 to 67, and *Kreuz v. Poland* of 19 June 2001, ECHR 2001-VI, §§ 54 and 55).
- ⁴⁸ It is apparent from those decisions that legal aid may cover both assistance by a lawyer and dispensation from payment of the costs of proceedings.

- 49 The European Court of Human Rights has also held that, although a selection procedure for cases may be established in order to determine whether legal aid may be granted, that procedure must operate in a non-arbitrary manner (see, to that effect, Eur. Court H.R., judgment in *Del Sol v. France* of 26 February 2002, § 26; decision in *Puscasu v. Germany* of 29 September 2009, p. 6, last paragraph; judgment in *Pedro Ramos v. Switzerland* of 14 October 2010, § 49).
- 50 That court had occasion to examine the situation of a commercial company which had applied for legal aid in the context of French legislation, which provides for such aid only in the case of natural persons and, exceptionally, in the case of non-profit-making legal persons having their seat in France and lacking sufficient resources. The European Court of Human Rights held that the difference in treatment between profit-making companies, on the one hand, and natural persons and non-profit-making legal persons, on the other, is based on an objective and reasonable justification which relates to the tax arrangements governing legal aid, since those arrangements provide for the possibility of deducting all costs of proceedings from taxable profits and of carrying over losses to a subsequent tax year (Eur. Court H.R., decision in *VP Diffusion Sarl v. France* of 26 August 2008, pp. 4, 5 and 7).
- 51 Similarly, in the case of a community of users of communal rural property applying for legal aid in order to challenge an action for restitution of title to land, the European Court of Human Rights considered that account should be taken of the fact that funds approved by private associations and companies for their legal representation come from funds accepted, approved and paid by their members and noted that the application was made in order to intervene in civil litigation relating to the ownership of land, the outcome of which would affect only the members of the communities in question (Eur. Court H.R., decision in *CMVMC O'Limo v. Spain* of 24 November 2009, paragraph 26). That court concluded from this that the refusal to grant free legal aid to the applicant community had not undermined the very core of its right of access to a court.

- 52 It is apparent from the examination of the case-law of the European Court of Human Rights that the grant of legal aid to legal persons is not in principle impossible, but must be assessed in the light of the applicable rules and the situation of the company concerned.
- 53 The subject-matter of the litigation may be taken into consideration, in particular its economic importance.
- 54 For the purposes of taking account of the financial capacity of an applicant, where that applicant is a legal person, consideration may be given *inter alia* to the form of the company (whether it is a capital company or a partnership, whether it is a limited liability company or otherwise); the financial capacity of its shareholders; the objects of the company; the manner in which it has been set up; and, more specifically, the relationship between the resources allocated to it and the intended activity.
- 55 In its observations, the EFTA Surveillance Authority submits that, according to German law, a company will never fulfil the conditions for obtaining legal aid in a situation where it has not succeeded in becoming genuinely established, with employees and other infrastructure. That condition can specifically affect applicants for such aid who rely on rights conferred by EU law, in particular freedom of establishment or access to a particular market in a Member State.
- 56 It should be observed that such a factor must undoubtedly be taken into account by the national courts. However, it is for those courts to strike a fair balance in order to ensure that applicants relying on EU law have access to the courts, but without favouring such applicants over others. In this respect, the referring court and the German Government have stated that, according to the case-law of the Bundesgerichtshof,

the legal concept of ‘public interest’ can cover all conceivable general interests for the benefit of the legal person.

57 At the hearing, DEB drew attention, moreover, to the dual function of the Bundesrepublik Deutschland in the case before the referring court. In DEB’s submission, that Member State is not only responsible for the loss suffered; it is also under a duty to ensure that DEB has access to effective judicial protection.

58 It should be pointed out, however, that EU law does not preclude a Member State from simultaneously exercising legislative, administrative and judicial functions, provided that those functions are exercised in compliance with the principle of the separation of powers which characterises the operation of the rule of law. It has not been alleged that that is not the position in the Member State concerned in the main proceedings.

59 In the light of all of the foregoing, the answer to the question referred must be that the principle of effective judicial protection, as enshrined in Article 47 of the Charter, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

60 In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

- 61 In making that assessment, the national court must take into consideration the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the applicable law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts.
- 62 With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, inter alia, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.

Costs

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as

meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, *inter alia*, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

In making that assessment, the national court must take into consideration the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the relevant law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts.

With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, *inter alia*, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.

[Signatures]