3. Having regard to the principle of procedural autonomy: is the national court obliged to take account of binding directions given to it by a higher court when its decision is set aside and the case referred back for reconsideration if there is reason to assume that such directions are inconsistent with Community law?

4. If the particular treatment concerned cannot be given on the territory of the Member State in which the person with medical insurance resides is it then sufficient, in order for that Member State to be obliged to issue authorisation for treatment in another Member State under Article 22(1)(c) of Regulation (EEC) No 1408/71, for the type of treatment concerned to be included within the benefits provided for under the legislation of the first mentioned Member State even if that legislation does not expressly stipulate the specific method of treatment?

5. Are Article 49 EC and Article 22 of Regulation (EEC) No 1408/71 inconsistent with a national provision such as Article 36(1) of the Law on health insurance, according to which persons insured under the compulsory scheme have the right to receive partially or in full the value of the expenses for medical care abroad only if they have received a preliminary permit?

6. Must the national court oblige the competent institution of the State in which the patient has medical insurance to issue the document for treatment abroad (form E 112) if it considers the refusal to issue such a document to be unlawful, where the application for the issue of the document has been lodged before the treatment was carried out abroad and the treatment has been completed by the date on which the court decision is pronounced?

7. If the aforementioned question should be answered in the affirmative and the court should consider the refusal of authorisation for treatment abroad to be unlawful how is the person with medical insurance to be reimbursed the costs of his treatment:

   a) directly by the State in which he is insured or by the State in which the treatment has been given, following submission of authorisation for treatment abroad;

   b) to what extent, if the range of benefits that are provided for under the legislation of the Member State where he resides should differ from the range of benefits provided for under the legislation of the Member State in which the treatment is given; in the light of Article 49 EC, which prohibits restrictions on freedom to provide services?

(1) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1974 L 148, p. 35) as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1)

Action brought on 15 May 2009 — Grand Duchy of Luxembourg v European Parliament and Council of the European Union

(Case C-176/09)

(2009/C 180/50)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent and P. Kinsch, avocat)

Defendants: European Parliament and Council of the European Union

Form of order sought

— Delete, in Article 1(2) of Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (1), the following phrase: 'and to the airport with the highest passenger movement in each Member State';

— Alternatively, annul the directive in its entirety;

— Order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Grand Duchy of Luxembourg raises two pleas in support of its action.

By its first plea, the applicant alleges a breach of the principle of non discrimination in so far as an airport such as that of Luxembourg-Findel, as a result of the extension of the scope of Directive 2009/12/EC to airports 'with the highest passenger movement in each Member State', finds itself subject to administrative and financial obligations which other airports in a comparable situation are able to avoid, without such difference in treatment being objectively justified. The applicant invokes in particular, in that regard, the situation of Hahn and Charleroi airports, serving the same catchment area as Findel airport and each generating a higher volume of passengers than Findel, but which are not subject to the same obligations. The existence of borders between the three airports can in no way justify that they be treated differently.

By its second plea, the applicant claims furthermore that the provision at issue does not comply with the principles of

subsidiarity and proportionality. First, action at European level is not necessary so as to regulate a situation which could perfectly well have been regulated at national level as long as the threshold of 5 million passengers is not reached. Secondly, the application of the directive would result in supplementary procedures and costs which are not justified for an airport such as Findel, which has the sole particularity of having the highest passenger movement in a Member State, without that having a real relevance with regard to the objectives of the directive.

(1) OJ 2009 L 70, p. 11.

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 15 May 2009 — Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Jean-Marie Solvay de la Hulpe, Alix Walsh v Région wallonne

(Case C-177/09)

(2009/C 180/51)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Jean-Marie Solvay de la Hulpe, Alix Walsh

Defendant: Région wallonne

Questions referred

1. Must Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (1) be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Directive 97/11/EC (2) and Directive 2003/35/EC, (3) preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

(b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, (4) be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

(c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

(2) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

(3) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17).

(4) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).