

Operative part of the judgment

Articles 29 and 39(2) and (3) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive) and Article 8(3) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 92/49, must be interpreted as not precluding legislation of a Member State which provides, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted annually only:

- on the basis of the consumer price index, or
- on the basis of a so-called ‘medical index’, if and in so far as the changes in that index exceed that in the consumer price index, or
- after obtaining authorisation from an administrative authority responsible for the supervision of insurance undertakings, at the request of the insurance undertaking concerned, where that authority finds that the application of the premium rate of that undertaking, notwithstanding the adaptations calculated on the basis of those two types of indices, gives rise to, or is likely to give rise to losses.

Articles 49 TFEU and 56 TFEU must be interpreted as not precluding such legislation, provided that there are no less restrictive measures which might be used to achieve, under the same conditions, the objective of protecting consumers against sharp, unexpected increases in insurance premium rates, which it is for the national court to ascertain.

⁽¹⁾ OJ C 32, 4.2.2012.

Judgment of the Court (Fourth Chamber) of 7 March 2013 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — ITV Broadcasting Limited and Others v TVCatchup Limited

(Case C-607/11) ⁽¹⁾

(Directive 2001/29/EC — Article 3(1) — Broadcasting by a third party over the internet of signals of commercial television broadcasters — ‘Live streaming’ — Communication to the public)

(2013/C 123/08)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: ITV Broadcasting Ltd, ITV 2 Ltd, ITV Digital Channels Ltd, Channel 4 Television Corporation, 4 Ventures Ltd, Channel 5 Broadcasting Ltd, ITV Studios Ltd

Defendant: TVCatchup Ltd

Re:

Request for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Concept of ‘communication to the public’ — Authorisation, by right holders, of the television broadcasting of their works on the free terrestrial network covering either the whole territory of a Member State or a limited geographical area within that Member State — Continuous transmission service, operated by a third party broadcaster, available to individual subscribers who have paid the television licence fee, meaning that those subscribers can receive the programmes live via video streams on the internet

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1. The concept of ‘communication to the public’, within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that it covers a retransmission of the works included in a terrestrial television broadcast
 - where the retransmission is made by an organisation other than the original broadcaster,
 - by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server,
 - even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver.
2. The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is funded by advertising and is therefore of a profit-making nature.
3. The answer to Question 1 is not influenced by the fact that a retransmission, such as that at issue in the main proceedings, is made by an organisation which is acting in direct competition with the original broadcaster.

⁽¹⁾ OJ C 65, 3.3.2012.