Judgment of the Court (Third Chamber) of 6 May 2010 — Commission v Poland

(Case C-545/08)

(Failure of a Member State to fulfil obligations — Electronic communications — Directives 2002/21/EC and 2002/22/EC — High-speed internet access provider — Obligation to obtain authorisation for the access tariffs to high-speed internet services and to fix those tariffs on the basis of the costs of the provision of such services — No market analysis)

1. *Procedure — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based (Rules of Procedure of the Court of Justice, Art. 38(1)(c)) (see paras 25-26)*

2. *Actions for failure to fulfil obligations — Right of the Commission to bring judicial proceedings — Exercise of that right not dependent on a specific interest in bringing an action (Art. 226 EC) (see para 30)*

3. *Approximation of laws — Telecommunications sector — Electronic communications networks and services — Legislative background — Directive 2002/21 — Universal service and users' rights — Directive 2002/22 — Transitional arrangements (European Parliament and Council Directives 2002/21, Arts 16 and 27(1) and 2002/22, Arts 16 and 17) (see paras 46-50, 57-72, operative part)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 16 and 17 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) (OJ 2002 L 108, p. 51), and Articles 16 and 27 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) — Imposing on an operator a requirement to obtain authorisation for the tariff for providing retail access services to high-speed internet without a market analysis having been carried out.

Operative part:

The Court:

1. Declares that, by regulating retail tariffs for access to high-speed internet without previously carrying out a market analysis, the Republic of Poland has failed to fulfil its obligations under Articles 16 in conjunction with 17 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) and Articles 16 and 27 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

2. Orders the Republic of Poland to pay the costs.

Judgment of the Court (Seventh Chamber) of 6 May 2010 — Commission v Poland

(Case C-311/09)

(Failure of a Member State to fulfil obligations — Taxation — VAT — International carriage of persons — Flat-rate taxation of transporters domiciled outside the national territory)

1. *Member States — Obligations — Failure to fulfil obligations — Justification (Art. 226 EC) (see para 18)*

2. *Actions for failure to fulfil obligations — Right of the Commission to bring judicial proceedings — To be exercised at its discretion (Art. 226 EC) (see para 19)*

3. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para 31)*

4. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on Commission (Art. 226 EC) (see point 34)*