European Commission: Action against Belgium for Failure to Perform Obligations in its Incorrect Transposition of the Must-Carry Broadcasting Obligation into National Law

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On 24 October 2012 the European Commission announced that it had applied to the Court of Justice of the European Union (CJEU) for an order against Belgium on the grounds of the lack of transparency in its scheme of must-carry obligations for TV and radio content, as provided for in Article 31 of the Universal Service Directive (2002/22/EC).

Article 31 authorises member states to impose must-carry obligations on cable operators and telecom companies for the public broadcasting of radio and television programmes. These obligations must be necessary for the pursuit of a general interest and be clearly defined, not disproportionate, and transparent.

In 2007, the CJEU had found against the must-carry obligations in force in the bilingual region of Brussels-Capital (case C-250/06, UPC Belgium and Others v. Etat Belge). It had affirmed that, in order to be transparent, the award of must-carry status had to be subject to the fulfilment of a number of criteria: it had to be founded on criteria known in advance, suitable for securing pluralism, and non-discriminatory.

In 2008, The European Commission warned Belgium that its procedure for designating channels subject to this obligation was not transparent, leaving network operators unable to ascertain their rights and obligations.

In 2009, the European Commission instigated an action against Belgium before the CJEU for failure to perform its obligations. In a judgment issued on 3 March 2011, the CJEU found that Belgium had incorrectly transposed Article 31 of the Universal Service Directive into its national legislation because of a lack of transparency in its must-carry scheme and had thereby failed in its obligations under European law (case C134/10, European Commission v. Kingdom of Belgium).

Having noted that Belgium had not amended its national legislation, and after having sent official notice to comply, the Commission brought further action before the CJEU for failure to perform its obligations. In application of Article 260 of the Treaty on the Functioning of the European Union, the Commission called on

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the CJEU to order Belgium to pay a flat-rate fine of EUR 5 397 per day (from the date of the first judgment to the date of the second) plus a fine of EUR 31 251.20) per day in respect of enforcement of the forthcoming CJEU judgment.

European Commission press release, 24 October 2012

http://europa.eu/rapid/press-release_IP-12-1144_en.htm

Judgment in the case of UPC Belgium and Others v. Etat Belge, C-250/06, 13 December 2007

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0250:EN:HTML

Judgment in the case of European Commission v. Kingdom of Belgium, C-134/10, 3 March 2011

http://curia.europa.eu/juris/document/document.jsf?text=&docid=84220&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5632680

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