

JUDGMENT OF THE COURT (Second Chamber)

5 March 2020 (*)

(Reference for a preliminary ruling — Approximation of laws — Telecommunications sector — Harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services — Decision No 626/2008/EC — Article 4(1)(c), Article 7(1), and Article 8(1) — Complementary ground components — Authorisations issued by Member States — Requirement for operators to provide service coverage for a certain percentage of the population and the territory — Non-compliance — Effect)

In Case C-100/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), made by decision of 23 January 2019, received at the Court on 8 February 2019, in the proceedings

Viasat UK Ltd,

Viasat Inc.

v

Institut belge des services postaux et des télécommunications (IBPT),

Other parties to the proceedings:

Inmarsat Ventures Ltd c.o.,

Eutelsat SA,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz and A. Kumin (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Viasat UK Ltd and Viasat Inc., by P. de Bandt, M.R. Gherghinaru and L. Panepinto, avocats, and by J. Ruiz Calzado, abogado,
- Inmarsat Ventures Ltd c.o., by C. Spontoni, avvocato, and by A. Verheyden, avocat,
- Eutelsat SA, by L. de la Brosse and C. Barraco-David, avocats,

- the Belgian Government, by C. Pochet, P. Cottin and J.-C. Halleux, acting as Agents, and by S. Depré, E. de Lophem and F. Humblet, avocats,
- the French Government, by A.-L. Desjonquères and R. Coesme, acting as Agents,
- the European Commission, by G. Braun, É. Gippini Fournier and L. Nicolae, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(1)(c), Article 7(1) and Article 8(1) of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) (OJ 2008 L 172, p. 15) ('the MSS decision').
- 2 The request has been made in proceedings between Viasat UK Ltd and Viasat Inc. (collectively, 'Viasat'), on the one hand, and the Institut belge des services postaux et des télécommunications (national regulatory authority for postal services and telecommunications in Belgium) ('the IBPT'), on the other, concerning the IBPT's decision to grant Inmarsat Ventures Ltd c.o. ('Inmarsat') rights of use in respect of complementary ground components ('CGCs') of mobile satellite systems.

Legal context

European Union law

The MSS decision

- 3 According to recitals 18 and 25 of the MSS decision:

'(18) [CGCs] are an integral part of a mobile satellite system and are used, typically, to enhance the services offered via the satellite in areas where it may not be possible to retain a continuous line of sight with the satellite due to obstructions in the skyline caused by buildings and terrain. ... The authorisation of such [CGCs] will therefore mainly rely on conditions related to local circumstances. They should therefore be selected and authorised at national level, subject to conditions established by Community law. ...

...

(25) Since the objective of this Decision, namely to establish a common framework for the selection and authorisation of operators of mobile satellite systems, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. ...'

4 Article 1(1) of that decision is worded as follows:

‘The purpose of this Decision is to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States.

This Decision creates a Community procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band in accordance with [Commission Decision 2007/98/EC of 14 February 2007 on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services (OJ 2007 L 43, p. 32)], comprising radio spectrum from 1 980 to 2 010 MHz for earth to space communications, and from 2 170 to 2 200 MHz for space to earth communications. It also lays down provisions for the coordinated authorisation by Member States of the selected operators to use the assigned radio spectrum within this band for the operation of mobile satellite systems.’

5 Article 2(2) of the MSS decision states:

‘...

(a) “mobile satellite systems” shall mean electronic communications networks and associated facilities capable of providing radio-communications services between a mobile earth station and one or more space stations, or between mobile earth stations by means of one or more space stations, or between a mobile earth station and one or more [CGCs] used at fixed locations. Such a system shall include at least one space station;

(b) “[CGCs]” of mobile satellite systems shall mean ground-based stations used at fixed locations, in order to improve the availability of MSS in geographical areas within the footprint of the system’s satellite(s), where communications with one or more space stations cannot be ensured with the required quality.’

6 Title II of the MSS decision, headed ‘Selection procedure’, contains, inter alia, Articles 3 and 4 of that decision. Article 3(1) of that decision provides:

‘A comparative selection procedure shall be organised by the Commission for the selection of operators of mobile satellite systems. ...’

7 Article 4(1) thereof provides:

‘The following admissibility requirements shall apply:

...

(c) applications shall include a commitment on the part of the applicant that:

...

(ii) MSS shall be available in all Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State by the time stipulated by the applicant but in any event no later than seven years from the date of publication of the Commission’s decision [on the selection of applicants].’

8 Title III of the MSS decision, headed 'Authorisation', contains Articles 7, 8 and 9 of that decision. Under Article 7 thereof:

'1. Member States shall ensure that the selected applicants, in accordance with the time frame and the service area to which the selected applicants have committed themselves, in accordance with Article 4(1)(c), and in accordance with national and Community law, have the right to use the specific radio frequency identified in the Commission decision [on the selection of applicants] and the right to operate a mobile satellite system. They shall inform selected applicants of those rights accordingly.

2. The rights covered by paragraph 1 shall be subject to the following common conditions:

(a) selected applicants shall use the assigned radio spectrum for the provision of MSS;

...

(c) selected applicants shall honour any commitments they give in their applications or during the comparative selection procedure, irrespective of whether the combined demand for radio spectrum exceeds the amount available;

...'

9 Article 8 of the MSS decision provides:

'1. Member States shall, in accordance with national and Community law, ensure that their competent authorities grant to the applicants selected in accordance with Title II and authorised to use the spectrum pursuant to Article 7 the authorisations necessary for the provision of [CGCs] of mobile satellite systems on their territories.

2. Member States shall not select or authorise operators of [CGCs] of mobile satellite systems before the selection procedure provided for in Title II is completed by a Commission decision [on the selection of applicants]. This is without prejudice to the use of the 2 GHz frequency band by systems other than those providing MSS in accordance with Decision 2007/98/EC.

3. Any national authorisations issued for the operation of [CGCs] of mobile satellite systems in the 2 GHz frequency band shall be subject to the following common conditions:

(a) operators shall use the assigned radio spectrum for the provision of [CGCs] of mobile satellite systems;

(b) [CGCs] shall constitute an integral part of a mobile satellite system and shall be controlled by the satellite resource and network management mechanism; they shall use the same direction of transmission and the same portions of frequency bands as the associated satellite components and shall not increase the spectrum requirement of the associated mobile satellite system;

(c) independent operation of [CGCs] in case of failure of the satellite component of the associated mobile satellite system shall not exceed 18 months;

(d) rights of use and authorisations shall be granted for a period of time ending no later than the expiry of the authorisation of the associated mobile satellite system.'

10 Article 9 of the MSS decision provides:

‘1. Selected operators shall be responsible for compliance with any conditions attached to their authorisations

2. Member States shall ensure that rules on enforcement, including rules on penalties applicable in the event of breaches of the common conditions provided for in Article 7(2), are in accordance with Community law Penalties must be effective, proportionate and dissuasive.

Member States shall ensure monitoring of compliance with these common conditions and take appropriate measures to address non-compliance. Member States shall inform the Commission of the results of such monitoring on an annual basis, in the event that any common conditions have not been complied with and in the event that any enforcement measures have been taken.

The Commission may, with the assistance of the Communications Committee referred to in Article 10(1), examine any alleged specific breach of the common conditions. Where a Member State informs the Commission of a particular breach, the Commission shall examine the alleged breach with the assistance of the Communications Committee.

3. The measures defining any appropriate modalities for coordinated application of the rules on enforcement referred to in paragraph 2, including rules for the coordinated suspension or withdrawal of authorisations for breaches of the common conditions provided for in Article 7(2), designed to amend non-essential elements of this Decision by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(4).’

The selection decision

- 11 Under Article 2 of Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (OJ 2009 L 149, p. 65) (‘the selection decision’):

‘Inmarsat ... and Solaris Mobile Limited are eligible applicants as a result of the first selection phase of the comparative selection procedure provided in Title II of [the MSS decision].

As the combined demand for radio spectrum requested by the eligible applicants retained as a result of the first selection phase of the comparative selection procedure provided in Title II of [the MSS decision] does not exceed the amount of radio spectrum available identified in Article 1(1) of [that decision], Inmarsat ... and Solaris Mobile Limited are selected.’

- 12 Article 3 of the selection decision states:

‘The frequencies which each selected applicant shall be authorised to use in each Member State in accordance with Title III of [the MSS decision] shall be the following:

- (a) Inmarsat ...: from 1 980 to 1 995 MHz for earth to space communications and from 2 170 to 2 185 MHz for space to earth communications;

...’

- 13 The selection decision was published in the *Official Journal of the European Union* on 12 June 2009.

The enforcement decision

- 14 Under recital 8 of Commission Decision 2011/667/EU of 10 October 2011 on modalities for coordinated application of the rules on enforcement with regard to mobile satellite services (MSS) pursuant to Article 9(3) of Decision No 626/2008 (OJ 2011 L 265, p. 25) ('the enforcement decision'):

'The cross-border nature of the common conditions provided for in Article 7(2) of [the MSS decision] requires coordination at Union level of the national procedures leading to enforcement by Member States. Inconsistencies in the application of national enforcement procedures, in particular regarding the investigation, the timing and the nature of any measures taken, would result in a patchwork of enforcement measures in contradiction to the pan-European nature of MSS.'

- 15 Article 2(2) of the enforcement decision provides:

'...

- "authorised operator" shall mean an operator selected pursuant to [the selection decision] which has been granted the right under general authorisation or individual rights of use to use the specific radio frequencies identified in [that decision] and/or the right to operate a mobile satellite system,
- "common conditions" shall mean the common conditions to which the rights of an authorised operator are subject in accordance with Article 7(2) of [the MSS decision],

...'

- 16 Article 3 of the enforcement decision provides:

'1. Where an authorising Member State finds that an authorised operator does not comply with one or more of the common conditions and informs that operator of its findings pursuant to Article 10(2) of Directive 2002/20/EC [of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21)], it shall at the same time inform the Commission which shall in turn inform the other Member States.

2. Following the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the other authorising Member States shall investigate whether there is a breach of the relevant common conditions within their jurisdiction and give the authorised operator concerned the opportunity to state its views.

3. Within 5 months of the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the authorising Member States shall notify a summary of their findings and of the views submitted by the authorised operator concerned to the Commission, which shall inform all the other Member States. Within 8 months from the transmission by the Commission to the Member States of the information as referred to in paragraph 1, the Commission shall convene a meeting of the Communications Committee in order to examine the alleged breach and, if applicable, to discuss any appropriate measures aimed at ensuring compliance, in line with the objectives referred to in Article 1 (2).

4. Member States shall refrain from adopting any final decision on the alleged breach before the meeting of the Communications Committee as referred to in paragraph 3.

5. After the meeting of the Communications Committee as referred to in paragraph 3, each authorising Member State which has notified the authorised operator concerned of its findings pursuant to Article 10(2) of Directive 2002/20/EC and concludes that one or more common conditions have been breached shall take appropriate and proportionate measures, including financial penalties, aimed at ensuring compliance by the authorised operator concerned with the common conditions, with the exception of withdrawal, or suspension if applicable in accordance with their national law, of any authorisation or right of use held by the authorised operator concerned.

6. In the event of serious or repeated breaches of the common conditions, any authorising Member State which after having taken the measures referred to in paragraph 5 intends to adopt a decision to withdraw the authorisation pursuant to Article 10(5) of Directive 2002/20/EC shall inform the Commission of its intention and provide a summary of any measure taken by the authorised operator concerned to comply with the enforcement measures. The Commission shall communicate this information to the other Member States.

7. Within 3 months of the transmission by the Commission to the Member States of the information as referred to in paragraph 6, a meeting of the Communications Committee shall be convened with the objective to coordinate any withdrawal of an authorisation in line with the objectives referred to in Article 1(2). In the meantime, all authorising Member States shall refrain from adopting decisions entailing withdrawal, or suspension if applicable in accordance with their national law, of any authorisation or right of use held by the authorised operator concerned.

8. Following the meeting of the Communications Committee as referred to in paragraph 7, the authorising Member States may adopt appropriate decisions with a view to withdrawing the authorisation granted to the authorised operator concerned.

9. Any enforcement decision referred to in paragraphs 5 and 8 and the reasons on which it is based shall be communicated to the authorised operator concerned within 1 week from its adoption, as well as to the Commission, which shall inform the other Member States.'

Belgian law

- 17 Article 2 of the arrêté royal du 11 février 2013 relatif aux systèmes fournissant des services mobiles par satellite (Belgian Royal Decree of 11 February 2013 on systems providing mobile satellite services) (*Moniteur belge* of 8 March 2013, p. 14068) ('the MSS Royal Decree') states:

'The selected operators who have provided notification for the provision of electronic communications services ... shall be authorised to operate a mobile satellite system in the following frequency bands:

1° Inmarsat ...: a maximum of 15 MHz in the 1 980 — 1 995 MHz frequency band for earth to space communications (uplink) and a maximum of 15 MHz in the 2 170 — 2 185 MHz frequency band for space to earth communications (downlink);

...'

- 18 Article 3 of that decree provides:

'At least 50% of the population and 60% of the territory of Belgium shall be covered by 13 June 2016.'

19 Under Article 8 of that decree:

‘The selected operators shall be authorised to install one or more [CGCs] in Belgium under the following conditions:

1° they have provided notification for the provision of electronic communications networks ...;

2° each complementary ground component shall be approved by the [IBPT] before it is put into operation;

3° the technical characteristics and the place of installation of each [CGC] shall be communicated to the [IBPT] at least 1 month before the date on which it is to be put into operation.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 At the end of the selection procedure referred to in Title II of the MSS decision, Inmarsat was selected by the Commission, pursuant to the second paragraph of Article 2 of the selection decision, as a mobile satellite system operator. The MSS Royal Decree was adopted following that decision.

21 On 17 June 2014 that undertaking notified the IBPT of the provision of electronic communications services, consisting in the provision of in-flight connection services to planes flying over the European Union using a system, comprising both a satellite and a network of mobile satellite system CGCs, referred to as the ‘European Aviation Network’ (‘EAN’). As can be seen from Article 2 of the MSS Royal Decree, that notification entailed, for Inmarsat, an authorisation to operate a mobile satellite system in the frequency bands indicated in paragraph 1 of that article.

22 Following the annulment on appeal of an initial decision, the IBPT adopted, on 7 August 2018, a second decision granting Inmarsat the rights necessary for the provision of mobile satellite system CGCs which it had requested.

23 Viasat, a telecommunications service provider offering, inter alia, in-flight connection services, brought an action for annulment of that decision before the cour d’appel de Bruxelles (Court of Appeal, Brussels, Belgium). That undertaking claims, in particular, that it follows from both Article 4(1)(c)(ii) of the MSS decision and Article 3 of the MSS Royal Decree that Inmarsat was required to provide service coverage for at least 50% of the population and 60% of the Belgian territory by 13 June 2016. However, that requirement was not met by Inmarsat, with the result that, after that date, the IBPT could not authorise the provision of the mobile satellite system CGCs at issue.

24 The satellite operator Eutelsat SA, Viasat’s partner in providing in-flight connection services, intervened in support of the action for annulment brought by Viasat.

25 For its part, the IBPT remarks that, in order to authorise the provision of the mobile satellite system CGCs in question, it could rely only on the conditions laid down in Article 8 of the MSS Royal Decree, as the coverage requirement stemming from Article 4(1)(c) of the MSS decision, to which Viasat refers, concerns only a commitment which the operator must give in its application. However, according to the IBPT, the coverage requirement and the time limit laid down in that regard are not without effect, in so far as it is for the IBPT, in the

context of its monitoring powers after the provision of mobile satellite system CGCs has been approved, to penalise Inmarsat for non-compliance, where appropriate.

- 26 Inmarsat, which shares the IBPT's point of view, states that it has built a ground-based satellite station in Greece and that it launched its EAN satellite on 28 June 2017, which was put into operation on 29 August 2017. Furthermore, it states that it applied for and obtained the authorisations necessary for placing mobile satellite system CGCs in all the Member States except for Romania, as well as in Norway and Switzerland.
- 27 According to the Court of Appeal, Brussels, it is common ground that Inmarsat, in its application for selection as a mobile satellite service operator, gave the commitments referred to in Article 4(1)(c) of the MSS decision. In addition, it has been established that Inmarsat did not comply with the requirement to provide coverage for 50% of the population and 60% of the Belgian territory by 13 June 2016, on which date its EAN service was not yet operational as the satellite had not yet been launched.
- 28 In that context, the referring court considers that, in order to give useful effect to Article 3 of the MSS Royal Decree, that provision should, a priori, be interpreted as meaning that compliance with the coverage requirement set out therein is a necessary prerequisite for the exercise of the rights which selected operators are recognised as having and, in particular, of the right to install one or more mobile satellite system CGCs in Belgium. It is, however, necessary to ascertain the scope to be ascribed to that provision under the MSS decision which it is designed to implement.
- 29 In that regard, the referring court specifies that Article 3 of the MSS Royal Decree differs from Article 4(1)(c) of the MSS decision inasmuch as the latter provision concerns a commitment which the operator applying for selection must give before being selected. However, Article 7(2) of the MSS decision provides that the rights granted to selected applicants are subject to various conditions, including the condition that selected applicants 'honour any commitments they give in their applications or during the comparative selection procedure'. In addition, Article 8 of the MSS decision provides that the Member States must ensure that their competent authorities 'grant to the applicants selected in accordance with Title II and authorised to use the [radio] spectrum pursuant to Article 7' the authorisations necessary for the provision of mobile satellite system CGCs on their territories.
- 30 In a situation such as that at issue in the case in the main proceedings, where a failure to comply with the coverage requirement by the prescribed date has been definitively established, the Court of Appeal, Brussels, considers that it would be preferable, a priori, in the interests of procedural economy, for the competent national authority to have the duty or the power not to authorise the provision of mobile satellite system CGCs, rather than to authorise such provision and subsequently penalise a failure to comply with that requirement. It could be maintained in that regard that a selected applicant which has not complied, by 13 June 2016, with the coverage requirement laid down in Article 4(1)(c)(ii) of the MSS decision no longer has rights of use in respect of the radio frequencies in question nor the right to operate a mobile satellite system.
- 31 The referring court adds that a failure to penalise non-adherence to the time frame by a selected operator would render the coverage commitment given by applicant operators at the selection stage ineffective.
- 32 In those circumstances, the cour d'appel de Bruxelles (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Are Article 4(1)(c)(ii), Article 7(1) and Article 8(1) of [the MSS decision] to be interpreted as meaning that, where it is established that the operator selected in accordance with Title II of that decision has not provided mobile satellite services through a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the decision, the competent authorities of the Member States referred to in Article 8(1) of the decision must refuse to grant authorisations allowing that operator to deploy [mobile satellite system CGCs] on the ground that that operator has failed to honour the commitment given in its application?
- (2) If the answer to the first question is in the negative, are those same provisions to be interpreted as meaning that, in the context given, the competent authorities of the Member States referred to in Article 8(1) of the decision may refuse to grant authorisations allowing that operator to deploy [mobile satellite system CGCs] on the ground that it has not honoured the commitment to provide certain coverage by 13 June 2016?’

Consideration of the questions referred

- 33 By its questions, which must be examined together, the referring court asks, in essence, whether Article 8(1) of the MSS decision, read in conjunction with Article 7(1) thereof, is to be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 thereof has failed to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the MSS decision, the competent authorities of the Member States must, or, at least, may, refuse to grant the authorisations necessary for the provision of mobile satellite system CGCs to that operator on the ground that that operator has failed to honour the commitment given in its application.
- 34 In order to answer those questions, it should be borne in mind, as a preliminary point, that, pursuant to the second subparagraph of Article 1(1) of the MSS decision, that decision creates, at EU level, a procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band and lays down provisions for the coordinated authorisation by Member States of the selected operators to use the assigned radio spectrum within that band for the operation of mobile satellite systems.
- 35 Regarding, first, the selection of operators, Article 3(1) of the MSS decision, which is part of Title II of that decision, provides that the Commission is to organise a comparative selection procedure to that end.
- 36 In that regard, Article 4(1) of that decision sets out the applicable admissibility criteria. Included in those criteria, in Article 4(1)(c)(ii), is the criterion of a commitment on the part of the applicant that the mobile satellite service will be available in all Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State by the time stipulated by the applicant but in any event no later than 7 years from the date of publication of the Commission’s decision on the selection of applicants.
- 37 Regarding, secondly, the coordinated authorisation by Member States of the selected operators to use specific radio frequencies for the operation of mobile satellite systems, Title III of the MSS decision, headed ‘Authorisation’, contains Articles 7, 8 and 9 thereof. Article 7 of that decision, entitled ‘Authorisation of the selected applicants’, provides, in paragraph 1 thereof, that Member States are to ensure that the selected applicants, in accordance with the time frame and the service area to which the selected applicants have committed themselves, in accordance with Article 4(1)(c) of that decision, and in

accordance with national and EU law, have the right to use the specific radio frequency identified in the Commission's decision on the selection of applicants and the right to operate a mobile satellite system.

- 38 In that context, Article 7(2) of the MSS decision provides that the rights covered by paragraph 1 of that article are subject to certain common conditions. In that regard, Article 7(2)(c) of that decision lays down the condition that selected applicants are to honour any commitments they give in their applications or during the comparative selection procedure.
- 39 Furthermore, under Article 8(1) of the MSS decision, that article being entitled 'Complementary ground components', Member States are to ensure, in accordance with national and EU law, that their competent authorities grant to the applicants selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 thereof the authorisations necessary for the provision of mobile satellite system CGCs on their territories. According to Article 8(3), any national authorisations issued for the operation of mobile satellite system CGCs in the 2 GHz frequency band are subject to the common conditions listed in subparagraphs (a) to (d) thereof.
- 40 For its part, Article 9 of the MSS decision is entitled 'Monitoring and enforcement' and states, *inter alia*, in paragraph 2 thereof, that Member States are to ensure that rules on enforcement, including rules on penalties applicable in the event of breaches of the common conditions provided for in Article 7(2) of that decision, are in accordance with Community law and are also to ensure monitoring of compliance with those conditions and take appropriate measures to address non-compliance. The Commission adopted the enforcement decision on modalities for coordinated application of those rules on the basis of Article 9(3) of the MSS decision.
- 41 Having set out those preliminary considerations, it should be noted that, under the second paragraph of Article 2 of the selection decision, Inmarsat is one of the two undertakings selected as mobile satellite service system operators.
- 42 In the present case, it is apparent from the documents before the Court that, following its selection, Inmarsat obtained, in Belgium, the rights covered by Article 7(1) of the MSS decision.
- 43 Regarding the authorisation necessary for the provision of mobile satellite system CGCs referred to in Article 8(1) of the MSS decision, the IBPT granted Inmarsat the authorisation relating to the Belgian territory by its decision of 7 August 2018.
- 44 However, it is common ground that that undertaking failed to honour the coverage commitment which it gave in its application pursuant to Article 4(1)(c)(ii) of the MSS decision, namely that its service would be available in all Member States and to at least 50% of the population and over at least 60% of the aggregate land area of each Member State no later than 7 years from the date of publication of the selection decision, which took place on 12 June 2009. Indeed, on 12 June 2016, its satellite had not yet been launched and the service which Inmarsat had offered to provide was not yet operational.
- 45 It is in that context that the referring court, called upon to exercise its power of review of the legality of the IBPT's decision of 7 August 2018, is attempting to ascertain the consequences to be drawn from that breach in the context of the authorisation necessary for the provision of mobile satellite system CGCs. More specifically, it questions whether such a breach is to be regarded as a mandatory or, as the case may be, optional ground for refusing to grant such authorisation.

- 46 In that regard, it should be noted, regarding the wording of Article 8(1) of the MSS decision, that, according to that provision, the grant of the authorisation necessary for the provision of mobile satellite system CGCs is subject to two conditions, namely that the operator seeking that authorisation is an applicant selected in accordance with Title II of the MSS decision and that that operator is authorised to use the radio spectrum pursuant to Article 7 of that decision.
- 47 In the present case, the first of the two conditions mentioned in the previous paragraph is satisfied, inasmuch as Inmarsat has the status of an ‘applicant selected’ under Article 2 of the selection decision, a decision which has been neither amended nor repealed.
- 48 Regarding the second condition, it is apparent from the documents before the Court that Inmarsat has obtained, in Belgium, the rights covered by Article 7(1) of the MSS decision, including the right to use the specific radio frequencies identified in the selection decision. The Court has no other evidence before it indicating that the latter right has been withdrawn from Inmarsat in the meantime.
- 49 Accordingly, an operator such as Inmarsat satisfies the two conditions to which the grant of the authorisation necessary for the provision of mobile satellite system CGCs is subject, as set out in paragraph 46 above. It follows that, according to a literal interpretation of Article 8 (1) of the MSS decision, such an authorisation cannot be refused on the ground that the operator concerned has failed to honour the coverage commitment given in its application by the deadline set in Article 4(1)(c)(ii) of that decision.
- 50 The context of that provision confirms such an interpretation.
- 51 It should be noted, first, that Article 8(3) of the MSS decision, which provides that national authorisations for the operation of mobile satellite system CGCs are to be issued subject to other common conditions, listed under subparagraphs (a) to (d) of that provision, makes no reference to honouring the commitments given by a selected applicant in its application, including the coverage commitment referred to in Article 4(1)(c)(ii) of that decision. Second, as is apparent from paragraph 38 above, honouring those commitments is one of the common conditions listed in Article 7(2) of the MSS decision, to which the rights covered by Article 7(1) of that decision are subject.
- 52 It follows from Article 9(2) of the MSS decision that there must be coordinated application of the consequences to be drawn in the event of breaches of the common conditions set out in Article 7(2) of that decision. Furthermore, those consequences are specified in the enforcement decision, adopted on the basis of Article 9(3) of the MSS decision.
- 53 More specifically, the procedure to be followed in that context is set out in detail in Article 3 of the enforcement decision.
- 54 In that regard, it is apparent from Article 3(5) of that decision, read in conjunction with paragraphs 1 to 4 of that article, that, as a first step, a Member State which finds that there has been a breach of one or more of the common conditions, after having informed the Commission, which in turn is to inform the other Member States and convene a meeting of the Communications Committee in order to examine the alleged breach, is to take appropriate and proportionate measures, with the exception of the withdrawal or suspension of any authorisation or right of use held by the authorised operator concerned.
- 55 Furthermore, it follows from paragraphs 6 to 8 of that article that, in the event of serious or repeated breaches of the common conditions, authorising Member States may, as a second step, after having taken the measures referred to in paragraph 5 of that article and informed

the Commission beforehand, and following a meeting of the Communications Committee, adopt appropriate decisions with a view to withdrawing the authorisation granted to the authorised operator concerned.

- 56 It follows that a failure by a selected operator to satisfy a common condition set out in Article 7(2) of the MSS decision, such as a failure to honour the coverage commitment referred to in Article 4(1)(c)(ii) of that decision, does not entail *ipso facto* the withdrawal of the authorisations referred to in Article 7(1) thereof, as such a withdrawal requires that the two-step procedure set out in Article 3 of the enforcement decision be properly followed. The argument put forward by Viasat and Eutelsat, according to which a selected operator, such as Inmarsat, which has failed to honour such a coverage commitment, no longer has the right, as a result of that failure, to use the 2 GHz frequency band and, consequently, may no longer be regarded as being authorised, under Article 7(1) of the MSS decision, to deploy a mobile satellite system in that part of the radio spectrum, cannot therefore be accepted.
- 57 On the contrary, so long as that procedure has not resulted in a withdrawal decision, the selected operator continues to hold the authorisations referred to in Article 7(1) of the MSS decision, so that the second condition for the grant of the authorisation necessary for the provision of mobile satellite system CGCs, as set out in paragraph 46 above, continues to be satisfied.
- 58 Lastly, the objectives of establishing a common framework for the authorisation of mobile satellite system operators and of improving mobile satellite services by means of CGCs pursued by the MSS decision, as is apparent from, inter alia, recitals 18 and 25 thereof, support an interpretation according to which a Member State cannot refuse to grant an operator who satisfies the two conditions set out in Article 8(1) of that decision the authorisations necessary for the provision of mobile satellite system CGCs because of a failure, by that operator, to honour the coverage commitment given in its application, but may, where appropriate, initiate the procedure laid down in Article 3 of the enforcement decision.
- 59 However, the referring court takes into consideration the fact that, in a situation such as that at issue in the main proceedings, in which the failure to honour the coverage commitment referred to in Article 4(1)(c)(ii) of the MSS decision has been definitively established, it would be preferable, in the interests of procedural economy, for the competent national authority to have the duty or, at least, the power not to grant the authorisation necessary for the provision of mobile satellite system CGCs, rather than to grant that authorisation and subsequently penalise a failure to honour that commitment.
- 60 In that regard, it should again be noted that there is no basis for such an approach in either the MSS decision or the enforcement decision and that that approach would deprive the enforcement decision of its effectiveness inasmuch as the coordinated procedure expressly laid down therein in the event of a breach of the common conditions referred to in Article 7(2) of the MSS decision would be circumvented.
- 61 As can be seen from recital 8 of the enforcement decision, that procedure is specifically designed to avoid inconsistencies in the application of national enforcement procedures, which would result in a patchwork of enforcement measures in contradiction to the pan-European nature of mobile satellite services.
- 62 In the light of all of the foregoing, the answer to the questions referred is that Article 8(1) of the MSS decision, read in conjunction with Article 7(1) thereof, must be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 thereof has failed

to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of the MSS decision, the competent authorities of the Member States are not entitled to refuse to grant the authorisations necessary for the provision of mobile satellite system CGCs to that operator on the ground that that operator has failed to honour the commitment given in its application.

Costs

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

Article 8(1) of Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS), read in conjunction with Article 7(1) thereof, must be interpreted as meaning that, where it is established that an operator selected in accordance with Title II of that decision and authorised to use the radio spectrum pursuant to Article 7 thereof has failed to provide mobile satellite services by means of a mobile satellite system by the deadline set in Article 4(1)(c)(ii) of Decision No 626/2008, the competent authorities of the Member States are not entitled to refuse to grant the authorisations necessary for the provision of complementary ground components of mobile satellite systems to that operator on the ground that that operator has failed to honour the commitment given in its application.

[Signatures]

* Language of the case: French.