

Case C-364/92

SAT Fluggesellschaft mbH
v
European Organization for the Safety
of Air Navigation (Eurocontrol)

(Reference for a preliminary ruling
from the Belgian Cour de Cassation)

(Articles 86 and 90 of the Treaty — Concept of undertaking —
International organization)

Opinion of Mr Advocate General Tesauro delivered on 10 November 1993	I - 45
Judgment of the Court, 19 January 1994	I - 55

Summary of the Judgment

- 1. Preliminary rulings — Jurisdiction of the Court — Reference for a ruling on the interpretation of the Treaty — Impossible for a party to the main proceedings to challenge the jurisdiction of the Court*
(EEC Treaty, Art. 177)

2. *Preliminary rulings — Admissibility — Impossible for a party to the main proceedings to challenge the admissibility of the question by arguing that the national court took erroneous findings into account in making the reference*
(EEC Treaty, Art. 177)
3. *Competition — Community rules — Undertaking — Concept — Eurocontrol an international organization — Activities connected with the exercise of public authority — Excluded*
(EEC Treaty, Arts 86 and 90)

1. The Court has jurisdiction to give preliminary rulings on the interpretation of Treaty provisions pursuant to Article 177 of the Treaty, which establishes direct cooperation between the Court and national courts or tribunals by way of a non-contentious procedure excluding any initiative of the parties who are merely invited to be heard.

Therefore, if a national court refers a question on the interpretation of the Treaty to the Court, a party to the main proceedings may not effectively challenge the jurisdiction of the Court.

2. A party to the main proceedings may not effectively challenge the admissibility of a question submitted for a preliminary ruling on the ground that the national court based its decision to set in motion the

procedure under Article 177 of the Treaty on findings which the party claims are incorrect.

3. Articles 86 and 90 of the Treaty are to be interpreted as meaning that an international organization such as Eurocontrol does not constitute an undertaking within the meaning of those articles.

Taken as a whole, Eurocontrol's activities, including the collection of route charges on behalf of the Contracting States, are connected with their nature, their aim and the rules to which they are subject, to the exercise of powers relating to the control and supervision of air space which are typically those of a public authority and are not of an economic nature justifying the application of the Treaty rules of competition.