

3. Must Article 9(2) and Article 9(3)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark be interpreted as meaning that, where the trade mark is included in the shape of an automotive part and in the absence in Regulation 2017/1001 of a clause that would be similar to the repairs clause in Article 110(1) of Council Regulation (EC) 6/2002 of 12 December 2001 on Community designs, <sup>(1)</sup> the trade mark does not fulfil a designation function in that situation?
4. Must Article 9(2) and Article 9(3)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark be interpreted as meaning that, where the mounting element for a trade mark, which reflects the shape of the trade mark or is confusingly similar to it, is included in the shape of an automotive part and in the absence in Regulation 2017/1001 of a clause that would be similar to the repairs clause in Article 110(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, that mounting element cannot be regarded as a trade mark with a designation function even if it is identical to the trade mark or confusingly similar to it?

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<sup>(1)</sup> OJ 2017 L 154, p. 1.

<sup>(2)</sup> OJ 2002 L 3, p. 1.

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**Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 23 May 2022 — f6 Cigarettenfabrik GmbH & Co. KG v Hauptzollamt Bielefeld**

**(Case C-336/22)**

(2022/C 318/40)

*Language of the case: German*

**Referring court**

Finanzgericht Düsseldorf

**Parties to the main proceedings**

*Applicant:* f6 Cigarettenfabrik GmbH & Co. KG

*Defendant:* Hauptzollamt Bielefeld

**Questions referred**

1. Must Article 1(2) of Council Directive 2008/118/EC <sup>(1)</sup> of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12), as amended by Council Directive (EU) 2019/475 <sup>(2)</sup> of 18 February 2019 (OJ 2019 L 83, p. 42), be interpreted as precluding national legislation of a Member State on the levying of tobacco tax on heated tobacco which provides, with regard to the calculation of the tax, that, in addition to the tax rate for pipe tobacco, a supplementary tax which is 80 per cent of the tax amount for cigarettes less the tax amount for pipe tobacco is to be levied?
2. If the supplementary tax on heated tobacco is not another indirect tax on excise goods for specific purposes within the meaning of Article 1(2) of Directive 2008/118: Must Article 14(3) of Council Directive 2011/64/EU <sup>(3)</sup> of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24) be interpreted as precluding national legislation of a Member State on the levying of tobacco tax on heated tobacco which provides, with regard to the calculation of the tax, that, in addition to the tax rate for pipe tobacco, a supplementary tax which is 80 per cent of the tax amount for cigarettes less the tax amount for pipe tobacco is to be levied?

3. If the supplementary tax on heated tobacco is not another indirect tax on excise goods for specific purposes within the meaning of Article 1(2) of Directive 2008/118: Must point (b) of the first subparagraph of Article 14(1) and point (c) of the first subparagraph of Article 14(2) of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24) be interpreted as precluding national legislation of a Member State on the levying of tobacco tax on heated tobacco which provides, with regard to the calculation of the tax, that that tax is to be determined according to an *ad valorem* tax rate and a specific tax rate based on the weight and given number of rolls of tobacco?

(<sup>1</sup>) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).

(<sup>2</sup>) Council Directive (EU) 2019/475 of 18 February 2019 amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC (OJ 2019 L 83, p. 42).

(<sup>3</sup>) Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24).

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia (Italy)  
lodged on 30 May 2022 — Autorità Garante della Concorrenza e del Mercato v Comune di Ginosa**

(Case C-348/22)

(2022/C 318/41)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per la Puglia

**Parties to the main proceedings**

*Applicant:* Autorità Garante della Concorrenza e del Mercato

*Defendant:* Comune di Ginosa

**Questions referred**

1. Is Directive 2006/123 (<sup>1</sup>) valid and binding on the Member States, or is it invalid inasmuch as, being a harmonisation directive, it was adopted only by a majority vote, rather than unanimously, in breach of Article 115 [of the Treaty on the Functioning of the European Union]?
2. Does Directive 2006/123, also known as the Bolkestein directive, lay down, objectively and in the abstract, sufficiently detailed rules and consequently preclude the exercise of any discretion by national legislatures, this being the minimum requirement for that directive to be regarded as self-executing and immediately applicable?
3. *In the event that Directive 2006/123 is held to be non-self-executing*, is the effect of mere exclusion or merely preventive disapplication of national law compatible with the principle of legal certainty even where it is impossible for a national court to interpret national law in conformity with EU law or, on the contrary, may or must national law apply in such a situation, without prejudice to the specific penalties provided for under EU law for the failure by a [Member] State to fulfil its obligations under the Treaty of Accession (Article 49 [TFEU]) or for failure to implement a directive (infringement proceedings)?
4. Does the *direct effect* of Article 12(1), (2) and (3) of Directive 2006/123 amount to recognition of the self-executing nature or immediate applicability of that directive or, in the case of a harmonising directive such as Directive 2006/123 ('[it must be considered] that Articles 9 to 13 of Directive 2006/123 provide for exhaustive harmonisation' ([paragraph 61 of] the judgment in *Promoiimpresa*)), must it be understood as requiring a [Member] State to adopt harmonisation measures which are not merely general but binding as to their content?