

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 7 December 2016 — CX

(Case C-629/16)

(2017/C 104/38)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Appellant on a point of law: CX

Other party: Bezirkshauptmannschaft Schärding

Question referred

Does EU law, and in particular the Agreement establishing an Association between the European Economic Community and Turkey (64/733/EEC), *Journal Officiel* 1964, 217, p. 3687/64, the Additional Protocol to the Association Agreement, *Journal Officiel* 1972, L 293, p. 3, and Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC), OJ 1996 L 35, p. 1, preclude national legislation under which goods transport undertakings established in the Republic of Turkey may engage in cross-border commercial carriage of goods to or through the territory of the Republic of Austria only if they have, in respect of the motor vehicles concerned, passes issued as part of a quota established between Austria and Turkey pursuant to a bilateral agreement, or if they are granted authorisation for the individual carriage of goods, in which case there must be a significant public interest in the individual carriage of goods and the applicant must demonstrate that the journey cannot be avoided by organisational measures or by the choice of a different means of transport?

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 December 2016 — Junek Europ-Vertrieb GmbH v Lohmann & Rauscher International GmbH & Co. KG

(Case C-642/16)

(2017/C 104/39)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Junek Europ-Vertrieb GmbH

Defendant: Lohmann & Rauscher International GmbH & Co. KG

Questions referred

Must Article 13(2) of Regulation (EC) No 207/2009⁽¹⁾ be interpreted as meaning that the proprietor of the mark can oppose further commercialisation of a medical device imported from another Member State in its original internal and external packaging, to which the importer has affixed an additional external label, unless

- it is established that reliance on trade-mark rights by the proprietor in order to oppose the marketing of the overstickered product under that trade mark would contribute to an artificial partitioning of the markets between Member States;
- it is shown that the new labelling cannot adversely affect the original condition of the product inside the packaging;
- the packaging states clearly who overstickered the product and the name of the manufacturer;