

### Questions referred

1. Is the concept of 'supply of goods' within the meaning of Article 14(1) of Council Directive 2006/112/EC<sup>(1)</sup> of 28 November 2006 on the common system of value added tax in conjunction with Article 345 of the Treaty on the Functioning of the European Union to be interpreted as meaning that, in the circumstances of the main proceedings, it allows the person to whom a supply is made to acquire the right to dispose of the goods (movable property specified only by type) by acquiring the ownership of those goods from a non owner through bona fide possession acquired for consideration, which is permissible under the national law of the Member State, although it should be borne in mind that, under that law, the right of ownership of such property is transferred by delivery?
  
2. Does proof of effecting a 'supply of goods' within the meaning of Article 14(1) of Directive 2006/112 with respect to a specific invoice in connection with the exercise of the right under Article 178(a) of the Directive to deduct the tax actually paid and shown in that invoice presuppose that the person to whom the supply is made demonstrates the supplier's rights of ownership where the supply relates to movable property specified according to its type and under the national law of the Member State the right of ownership of such property is transferred by delivery, although under that law the acquisition of the right of ownership of such property by bona fide possession acquired for consideration from a non owner is also permitted?
  

Is a 'supply of goods' for the purposes of deduction of input tax within the meaning of the Directive to be regarded as proved where, in the circumstances of the main proceedings, the person to whom the supply is made has effected a subsequent supply of the same goods (animals subject to compulsory identification) by exportation with the submission of a customs declaration and there is no evidence of rights of third parties in those goods?

  
3. For the purposes of demonstrating that a 'supply of goods' within the meaning of Article 14(1) of Directive 2006/112 has been effected with respect to a specific invoice in connection with the exercise of the right under Article 178(a) of the Directive to deduct the tax actually paid and shown in that invoice, must it be assumed that the supplier and the person to whom the supply is made, who are not agricultural producers, are acting in bad faith where, on receipt of the goods, no document mentioning the animals' ear tags in accordance with the requirements of European Union veterinary legislation was provided by the previous owner, and the animals' ear tags are not mentioned in the veterinary certificate which was issued by an administrative authority and which accompanies the animals during transport in order to effect the specific supply?

Where the supplier and the person to whom the supply is made have independently made lists of the ear tags, must it then be assumed that they have complied with the requirements of that European Union veterinary legislation

if the administrative authority has not shown the animals' ear tags in the veterinary certificate which accompanies the animals during their shipment?

4. Are the supplier and the person to whom the supply is made in the main proceedings, who are not agricultural producers, required under Article 242 of Directive 2006/112 to show the goods supplied (animals subject to compulsory identification or 'biological assets') in their accounts pursuant to International Accounting Standard 41, Agriculture, and to prove control of the assets in accordance with that standard?
  
5. Does Article 226(6) of Directive 2006/112 require the ear tags of the animals, which are subject to compulsory identification under the European Union veterinary legislation and are the goods supplied, also to be shown in VAT invoices such as those at issue in the main proceedings where the national law of the Member State does not expressly lay down such a requirement for the transfer of the right of ownership of such animals and the persons involved in the supply are not agricultural producers?
  
6. Is it permissible under Article 185(1) of Directive 2006/112, on the basis of a national provision such as that in the main proceedings, to adjust the deduction of input tax on account of the conclusion that the supplier's right of ownership of the goods which are the content of the supply was not proved, where the supply was not cancelled by any of the persons involved in it, the person to whom the supply was made effected a subsequent supply of the same goods, there is no evidence of rights claimed by third parties in those goods (animals subject to compulsory identification), no bad faith on the part of the person to whom the supply was made is alleged and under the law of the Member State the right of ownership of such goods specified only according to their type is transferred by delivery?

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

**Reference for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 17 February 2012 — Ezatollah Rahmanian Koushkaki v Federal Republic of Germany**

(Case C-84/12)

(2012/C 133/31)

*Language of the case: German*

### Referring court

Verwaltungsgericht Berlin

### Parties to the main proceedings

*Applicant:* Rahmanian Koushkaki

*Defendant:* Federal Republic of Germany

### Questions referred

1. In order for the court to direct the defendant to issue a Schengen visa to the applicant, must the court be satisfied that, pursuant to Article 21(1) of the Visa Code,<sup>(1)</sup> the applicant intends to leave the territory of the Member States before the expiry of the visa applied for, or is it sufficient if the court, after examining Article 32(1)(b) of the Visa Code, has no doubts based on special circumstances as to the applicant's stated intention to leave the territory of the Member States before the expiry of the visa applied for?
2. Does the Visa Code establish a non-discretionary right to the issue of a Schengen visa if the entry conditions, in particular those of Article 21(1) of the Visa Code, are satisfied and there are no grounds for refusing the visa pursuant to Article 32(1) of the Visa Code?
3. Does the Visa Code preclude a national provision whereby a foreigner may, in accordance with Regulation (EC) No 810/2009, be issued with a visa for transit through or an intended stay in the territory of the Schengen States of no more than three months within a six-month period from the date of first entry (Schengen visa)?

<sup>(1)</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ 2009, L 243, p. 1.

### Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 17 February 2012 — Rose Marie Bark v Galileo Joint Undertaking, in liquidation

(Case C-89/12)

(2012/C 133/32)

*Language of the case: Dutch*

#### Referring court

Hof van Cassatie (Belgium)

#### Parties to the main proceedings

*Appellant in cassation:* Rose Marie Bark

*Respondent in cassation:* Galileo Joint Undertaking, in liquidation

#### Question referred

Should Article 11(2) of the Statutes of the Galileo Joint Undertaking, annexed to Council Regulation (EC) No 876/2002<sup>(1)</sup> of 21 May 2002 setting up the Galileo Joint Undertaking, in conjunction with Article 2 of that regulation be interpreted as meaning that the conditions of employment of other servants of

the European Union, and more specifically the pay conditions of those conditions of employment, are applicable to staff of the Galileo Joint Undertaking who are employed on fixed-term contracts?

<sup>(1)</sup> OJ 2002 L 138, p. 1.

### Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 17 February 2012 — Health Service Executive v SC, AC

(Case C-92/12)

(2012/C 133/33)

*Language of the case: English*

#### Referring court

High Court of Ireland

#### Parties to the main proceedings

*Applicant:* Health Service Executive

*Defendants:* SC, AC

#### Questions referred

1. Does a judgment which provides for the detention of a child for a specified time in another Member State in an institution providing therapeutic and educational care come within the material scope of Council Regulation No 2201/2003<sup>(1)</sup>?
2. If the answer to Question one is yes, what obligations, if any, arise out of Article 56 of Council Regulation No 2201/2003 as to the nature of the consultation and consent mechanism to ensure the effective protection of a child who is to be so detained.
3. Where a Court of a Member State has contemplated the placement of a child for a specified time in a residential care institution in another Member State and has obtained the consent of that State in accordance with Article 56 of Council Regulation 2201/2003, must the judgment of the court directing the placement of a child for a specified time in a residential care institution situated in another Member State be recognised and/or declared enforceable in that other Member State as a precondition to the placement being effected?
4. Does a judgment of the court directing the placement of the child for a specified time in a residential care institution situated in another Member State and which has been consented to by that Member State in accordance with Article 56 of Council Regulation 2201/2003 have any legal effect in that other Member State prior to the grant of a declaration of recognition and/or enforceability upon the completion of the proceedings seeking such declaration of recognition and/or enforceability?