— The appellant also submits that the General Court breached Article 7(1)(e)(ii) CTMR. It should have observed that a two-dimensional sign may be, not only applied to, but also incorporated in a three-dimensional object. Applying Article 7(1)(e)(ii) CTMR thus requires to take account of all possible manners in which it can be envisaged, on the date of filing, that the sign in question could be embodied in a three-dimensional object. The General Court distorted the evidence by ruling that the Board of Appeal had based its examination exclusively on the goods actually marketed. In fact, the Board of Appeal made it clear that its findings are primarily based on the patents submitted by Pi-Design. In any event, reference to additional material, including patents and the goods actually marketed, should not be prohibited where such material corroborate the conclusion that the features of the contested sign, as filed, are liable to achieve a technical result once incorporated in a three dimensional object. This is the only appropriate approach for preserving the legal security and the public interest underlying Article 7(1)(e)(ii) CTMR.

Reference for a preliminary ruling from the Tribunal do Trabalho de Viseu (Portugal) lodged on 18 July 2012 — Worten — Equipamentos para o Lar, S.A. v ACT — Autoridade para as Condições de Trabalho

(Case C-342/12)

(2012/C 295/37)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho de Viseu

Parties to the main proceedings

Applicant: Worten — Equipamentos para o Lar, S.A.

Defendant: ACT — Autoridade para as Condições de Trabalho

Questions referred

1. Is Article 2 of Directive 95/46/EC [1] to be interpreted as meaning that the record of working time, that is, the indication, in relation to each worker, of the times when working hours begin and end, as well as breaks and intervals not included in that period, is included within the concept of personal data?

2. If so, is the Portuguese State obliged, under Article 17(1) of Directive 95/46/EC, to provide for appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network?

3. Likewise, if Question 2 is answered in the affirmative, when the Member State does not adopt any measure pursuant to Article 17(1) of Directive 95/46/EC and when the employer, responsible for processing that data, adopts a system of restricted access to that data which does not allow automatic access by the national authority responsible for inspecting working conditions, is the principle of the primacy of European law to be interpreted as meaning that the Member State cannot penalise that employer for such behaviour?

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[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Reference for a preliminary ruling from the Krajský soud v Plzni (Czech Republic) lodged on 24 July 2012 — Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA) v Léčebné lázně Mariánské Lázně, a.s.

(Case C-351/12)

(2012/C 295/38)

Language of the case: Czech

Referring court

Krajský soud v Plzni

Parties to the main proceedings

Applicant: Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA)

Defendant: Léčebné lázně Mariánské Lázně, a.s.

Questions referred

1. **Must Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [1] be interpreted as meaning that an exception disallowing remuneration to authors for the communication of their work by television or radio transmission by means of television or radio receivers to patients in rooms in a spa establishment which is a business is contrary to Articles 3 and 5 (Article 5(2)(e), (3)(b) and (5))?**