

**Parties to the main proceedings**

Applicant: Erzeugerorganisation Tiefkühlgemüse eGen

Defendant: Agrarmarkt Austria

**Operative part of the judgment**

1. Point 23 of Annex IX to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, in so far as it refers to investments made 'on holdings and/or premises of producer organisations', must be interpreted as meaning that:
  - the mere fact that an investment made in the context of an operational programme covered by Article 60(1) of that regulation is located on land which is owned by a third party, and not the producer organisation concerned, is not, in principle, under point 23 of Annex IX, a ground for non-eligibility of aid for the expenditure incurred, by that producer organisation, in respect of that investment;
  - point 23 of Annex IX relates to investments made on holdings and/or premises which are, in law and in fact, under the exclusive control of that producer organisation, so that any use of those investments for the benefit of a third party be excluded.
2. The principle of the protection of legitimate expectations must be interpreted as not precluding, in circumstances such as those at issue in the case in the main proceedings, the competent national authority, first, refusing payment of the amount of the financial aid which had been requested by a producer organisation for an investment finally considered to be ineligible for that aid pursuant to point 23 of Annex IX to Implementing Regulation No 543/2011 and, second, requesting the producer organisation to reimburse the aid already received for that investment.
3. In circumstances such as those at issue in the case in the main proceedings, EU law must be interpreted as meaning that, in the absence of a temporal limitation of the effects of the present judgment, it does not preclude the principle of legal certainty being taken into account in order to exclude the recovery of aid unduly paid, provided that the conditions laid down be the same as for the recovery of purely national financial payments, that the interests of the European Union be taken fully into account and that the good faith of the beneficiary of the aid be established.

<sup>(1)</sup> OJ C 462, 12.12.2016.

**Judgment of the Court (First Chamber) of 20 December 2017 (request for a preliminary ruling from the Finanzgericht München — Germany) — Hamamatsu Photonics Deutschland GmbH v Hauptzollamt München**

(Case C-529/16) <sup>(1)</sup>

*(Reference for a preliminary ruling — Common Customs Tariff — Customs Code — Article 29 — Determination of the customs value — Cross-border transactions between related companies — Advance transfer pricing arrangement — Agreed transfer price composed of an amount initially invoiced and a flat-rate adjustment made after the end of the accounting period)*

(2018/C 072/33)

Language of the case: German

**Referring court**

Finanzgericht München

**Parties to the main proceedings**

*Applicant:* Hamamatsu Photonics Deutschland GmbH

*Defendant:* Hauptzollamt München

**Operative part of the judgment**

Articles 28 to 31 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that they do not permit an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, without it being possible to know at the end of the accounting period whether that adjustment would be made up or down.

<sup>(1)</sup> OJ C 30, 30.1.2017.

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**Judgment of the Court (First Chamber) of 20 December 2017 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Peter Valach and Others v Waldviertler Sparkasse Bank AG and Others**

(Case C-649/16) <sup>(1)</sup>

**(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Scope — Action for liability in tort against the members of a committee of creditors which rejected a restructuring plan in insolvency proceedings)**

(2018/C 072/34)

Language of the case: German

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Applicants:* Peter Valach, Alena Valachová, SC Europa ZV II a.s., SC Europa LV a.s., VAV Parking a.s., SC Europa BB a.s., Byty A s.r.o

*Defendants:* Waldviertler Sparkasse Bank AG, Československá obchodná banka a.s., Mesto Banská Bystrica

**Operative part of the judgment**

Article 1(2)(b) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it applies to an action for liability in tort brought against the members of a committee of creditors because of their conduct in voting on a restructuring plan in insolvency proceedings, and that such an action is therefore excluded from the scope *ratione materiae* of that regulation.

<sup>(1)</sup> OJ C 104, 3.4.2017.