

The Commission therefore concludes that the arguments put forward by the Slovak Republic during the pre-litigation procedure in the present case cannot succeed, and reiterates its own position that the Slovak Republic is failing to fulfil its obligations as set out in the application.

⁽¹⁾ 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).

⁽²⁾ Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council (OJ 2013 L 182, p. 1).

Request for a preliminary ruling from the Amtsgericht Kehl (Germany) lodged on 28 September 2018 — Criminal proceedings against UY

(Case C-615/18)

(2018/C 445/11)

Language of the case: German

Referring court

Amtsgericht Kehl

Parties to the main proceedings

Staatsanwaltschaft Offenburg

v

UY

Question referred

1. Is EU law, in particular Directive 2012/13 ⁽¹⁾ and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ('Tatbestandswirkung') even if the accused was not actually aware of the penalty order and the accused actually learning of the penalty order is not guaranteed to the same extent as it would have been if the penalty order been served on the accused had he been resident in that Member State?
2. In the event that the first question is answered in the negative: is EU law, in particular Directive 2012/13 and Articles 21, 45, 49 and 56 TFEU, to be interpreted as meaning that it precludes legislation of a Member State which makes it possible, in the course of criminal proceedings, solely because the accused is not resident in that State but in another Member State, to make an order that the accused has to appoint a person authorised to accept service of a penalty order made against him, with the result that the penalty order would acquire the force of *res judicata* and thus form the legal prerequisite for the criminal liability of any later action taken by the accused ('Tatbestandswirkung') and, given that he has to make sure that he actually learns of the penalty order, the accused is subject to more stringent subjective obligations in the prosecution of that criminal offence than he would have been had he been resident in that Member State, resulting in a possible prosecution for negligence on the part of the accused?

⁽¹⁾ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1).
