

Question referred

Is Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾ to be interpreted as meaning that it also applies to non-fulfilment of those obligations which are to be fulfilled only after discharge of the relevant customs procedure which has been used, so that where goods imported under an inward processing procedure in the form of a system of suspension have been partly re-exported within the time-limit the failure to fulfil the obligation to supply the bill of discharge to the supervising office within 30 days of the expiry of the time-limit for discharging the procedure gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge if the requirements of Article 859(9) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 ⁽²⁾ establishing the Community Customs Code, as amended by Article 1(30)(b) of Commission Regulation (EC) No 993/2001 of 4 May 2001 ⁽³⁾ are not fulfilled?

⁽¹⁾ OJ 1992 L 302, p. 1.

⁽²⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; OJ 1993 L 253, p. 1.

⁽³⁾ Commission Regulation (EC) No 993/2001 of 4 May 2001 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; OJ 2001 L 141, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 2 June 2010 — Residex Capital IV CV v Gemeente Rotterdam

(Case C-275/10)

(2010/C 246/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Residex Capital IV CV

Defendant: Gemeente Rotterdam

Question referred

Does the provision in the last sentence of Article 88(3) EC, now Article 108(3) TFEU, mean that, in a case such as the present, where the unlawful aid measure was implemented by granting the lender a guarantee which enabled the borrower to obtain a loan from the lender which would not have been available to it under normal market conditions, the national courts, within the framework of their obligation to remedy the consequences of the unlawful aid measure, are obliged, or at any rate authorised to cancel the guarantee, even if that does not result in the cancellation of the loan granted under the guarantee?

Reference for a preliminary ruling from the Handelsgericht Vienna (Austria) lodged on 3 June 2010 — Martin Luksan v Petrus van der Let

(Case C-277/10)

(2010/C 246/31)

Language of the case: German

Referring court

Handelsgericht Vienna

Parties to the main proceedings

Applicant: Martin Luksan

Defendant: Petrus van der Let

Questions referred

1. Must the provisions of European Union law concerning copyright and related rights, and in particular Article 2(2), (5) and (6) of Directive 92/100, ⁽¹⁾ Article 1(5) of Directive 93/83/EEC ⁽²⁾ and Article 2(1) of Directive 2006/116, ⁽³⁾ in conjunction with Article 4 of Directive 92/100, Article 2 of Directive 93/83 and Articles 2 and 3 and Article 5(2)(b) of Directive 2001/29, ⁽⁴⁾ be interpreted as meaning that the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States are directly (primarily) entitled in all events, by law, to the exploitation rights in respect of reproduction, satellite broadcasting and other communication to the public through the making available to the public and that the film-maker is not entitled thereto directly (primarily) and exclusively;

Are laws of the Member States which assign the exploitation rights by law directly (primarily) and exclusively to the film-maker inconsistent with European Union law?

If the answer to Question 1 is in the affirmative:

2a. Does European Union law grant the legislatures of the Member States the option of providing for a legal presumption in favour of a transfer to the film-maker of the exploitation rights within the meaning of paragraph 1 to which the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States are entitled, even in respect of rights other than rental and lending rights, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?

2b. Must the primary ownership of rights of the principal director of a cinematographic or audiovisual work, or of other authors of films designated by the legislature of a Member State also be applied to the rights granted by the legislature of a Member State to equitable remuneration, such as 'empty cassette remuneration' pursuant to Paragraph 42b of the Austrian Urhebergesetz (Copyright law), or to rights to fair compensation within the meaning of Article 5(2)(b) of Directive 2001/29?

If the answer to Question 2b is in the affirmative:

3. Does European Union law grant the legislatures of the Member States the option of providing for a legal presumption in favour of a transfer to the film-maker of the rights to remuneration within the meaning of paragraph 2 to which the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States are entitled, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?

If the answer to Question 3 is in the affirmative:

4. If a legal provision of a Member State accords to the principal director of a cinematographic or audiovisual work or other authors of films designated by the legislatures of the Member States a right to half of the statutory rights to remuneration, but provides that that right is capable of alteration and not therefore unwaivable, is that provision consistent with the aforementioned provisions of European Union law in the area of copyright and related rights?

(²) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15)

(³) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ 2006 L 372, p. 12)

(⁴) 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 (OJ 2001 L 167, p. 10)

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Telefónica de España, S.A. v Administración del Estado

(Case C-284/10)

(2010/C 246/32)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Telefónica de España, S.A

Defendant: Administración del Estado

Question referred

Does Directive 97/13/EC (¹) of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services and, in particular, Article 6 thereof, permit Member States to charge holders of general authorisations an annual fee which is calculated on the basis of a percentage of gross operating income invoiced in the relevant year, subject to such amount not exceeding two per thousand, and which is applied for the purpose of defraying the costs, including management costs, incurred by the telecommunications regulatory body in the implementation of the scheme of licences and general authorisations, as provided for in Article 71 of Law 11/1998 of 24 April 1998 on telecommunications?

(¹) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61)

(¹) OJ 1997 L 117, p. 15.