

- Article 19 of the regulation, which provides that the powers to issue authorisations rest with the Commission;
- Article 20 of the regulation, under which products already placed on the market and authorised pursuant to the law in force prior to the regulation's entry into force are regarded as authorised pursuant to the regulation;
- Article 34 of the regulation (clause concerning protective measures), a provision which, in view of the full harmonisation of the field in question, constitutes the only possibility for the adoption of emergency measures seeking to suspend or modify an authorisation that has been granted.

It is irrelevant in this regard that the entry into force of the prohibition at issue has been postponed under national law, because the very adoption by the legislature of the contested provisions that are contrary to European Union law and their publication infringe the obligations owed by the Republic of Poland by virtue of the regulation.

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(<sup>1</sup>) OJ 2003 L 268, p. 1.

**Reference for a preliminary ruling from the Varnenski Administrativen Sad (Bulgaria) lodged on 27 June 2011**  
**— Digitalnet OOD v Nachalnik na Mitnicheski punkt Varna Zapad pri Mitnitsi Varna**

(Case C-320/11)

(2011/C 252/45)

*Language of the case: Bulgarian*

**Referring court**

Varnenski Administrativen Sad

**Parties to the main proceedings**

*Applicant:* Digitalnet OOD

*Defendant:* Nachalnik na Mitnicheski punkt Varna Zapad pri Mitnitsi Varna

**Questions referred**

1. What is to be understood by the term 'Internet' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Community for 2009 (Commission Regulation (EC) No 1031/2008 of 19 September 2008), (<sup>1</sup>) which were published in the Official Journal of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if it is used in relation to the classification of goods under TARIC code 8528 71 13 00?
2. What is to be understood by the term 'modem' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Community for 2009 (Commission Regulation (EC) No 1031/2008 of 19 September 2008), which were published in the Official Journal of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if it is used in relation to the classification of goods under TARIC code 8528 71 13 00?
3. What is to be understood by the terms 'modulation' and 'demodulation' within the meaning of the Explanatory Notes to the Combined Nomenclature of the European Community for 2009 (Commission Regulation (EC) No 1031/2008 of 19 September 2008), which were published in the Official Journal of 30 May 2008 (OJ 2008 C 133, p. 1) (amendment in relation to subheadings 8528 90 00, 8528 71 13 and 8528 71 90), if they are used in relation to the classification of goods under TARIC code 8528 71 13 00?
4. What is the relevant function (main function) of the set-top box TF6100DCC apparatus, pursuant to which the tariff classification must be carried out: receiving television signals or the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the internet?
5. If the relevant function (main function) of the set-top box TF6100DCC apparatus is the use of a modem which facilitates interactive information exchange for the purposes of gaining access to the internet, is the type of modulation and demodulation which the modem brings about or the type of modem used relevant to the tariff classification, or does it suffice that access to the internet is provided by means of the modem?
6. Under which subheading and which code should apparatus corresponding to the description of the apparatus TF6100DCC be classified?
7. In the event that the set-top box TF6100DCC is to be classified under subheading 8521 90 00 of the combined nomenclature, is the application of a positive rate of customs duty lawful as a matter of Community law, if such classification would constitute a violation of the Community's obligations under the Information Technology Agreement and Article II:l(b) of the General Agreement on Tariffs and Trade 1994, or does classification under heading 8521 entail a conclusion that the set-top box TF6100DCC falls outside the scope of the relevant part of the Information Technology Agreement?

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(<sup>1</sup>) OJ 2009 L 291, p. 1.