**Re:**

Reference for a preliminary ruling — Hajdú-Bihar Megyei Bíróság — Interpretation of Article 19(1) and (4) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 1998 L 102, p. 1) and of Articles 13 to 16 of Council Regulation (EEC) No 3820/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L370, p. 8) — National legislation imposing a fine of the same amount for all breaches of the rules on the use of the tachograph regardless of the seriousness of the breach in question and without allowing any possible defence — Obligation on Member States to impose proportionate penalties

**Operative part of the judgment**

1. *The requirement of proportionality laid down in Article 19(1) and (4) of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 must be interpreted as precluding a system of penalties, such as that introduced by Government Decree No 57/2007 fixing the amount of fines for breaches of certain provisions concerning the transport by road of goods and persons (a közúti árufuvarozáshoz és személyszállításhoz kapcsolódó egyes rendelkezések megsértése esetén kiszabható bírságok összegéről szóló 57/2007, Korm. Rendelet) of 31 March 2007, which provides for the imposition of a flat-rate fine for all breaches, no matter how serious, of the rules on the use of record sheets laid down in Articles 13 to 16 of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, as amended by Regulation No 561/2006.*

2. *The requirement of proportionality laid down in Article 19(1) and (4) of Regulation No 561/2006 must be interpreted as not precluding a system of penalties, such as that introduced by Government Decree No 57/2007 of 31 March 2007 fixing the amount of fines for breaches of certain provisions concerning the transport by road of goods and persons, which lays down strict liability. By contrast, that requirement must be interpreted as precluding the severity of the penalty provided for by that system.*

(1) OJ C 195, 17.7.2010.

**Judgment of the Court (Third Chamber) of 2 February 2012 — Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd v Council of the European Union, European Commission, Confédération européenne de l'industrie de la chaussure (CEC)**

**(Case C-249/10 P)** [1]

***(Appeal — Dumping — Regulation (EC) No 1472/2006 — Imports of certain footwear with uppers of leather originating in China and Vietnam — Regulation (EC) No 384/96 — Articles 2(7), 9(5) and 17(3) — Market economy treatment — Individual treatment — Sampling)***

(2012/C 80/04)

*Language of the case: English*

**Parties**

*Appellants:* Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd (represented by: L. Ruessmann, A. Willems, S. De Knop and C. Dackö, avocats)

*Other parties to the proceedings:* Council of the European Union (represented by: J.-P. Hix and R. Szostak, Agents, and by G. Berrisch, Rechtsanwalt, and N. Chesaites, Barrister), European Commission (represented by T. Scharf and H. van Vliet, Agents), Confédération européenne de l'industrie de la chaussure (CEC)

**Re:**

Appeal brought against the judgment of the General Court (Eighth Chamber) of 4 March 2010 in Case T 401/06 *Brosmann Footwear (HK) Ltd and Others* v *Council* by which that court dismissed an action seeking the partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1)

**Operative part of the judgment**

*The Court:*

1. *Sets aside the judgment of the General Court of the European Union of 4 March 2010 in Case T-401/06 Brosmann Footwear (HK) and Others v Council;*

2. *Annuls Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam in so far as it relates to Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co. Ltd;*

3. *Orders the Council of the European Union to pay the costs incurred by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co. Ltd both at first instance and in connection with the present proceedings;*

4. *Orders the European Commission and the Confédération européenne de l'industrie de la chaussure (CEC) to bear their own costs, both at first instance and in connection with the present proceedings.*

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([1]) OJ C 209, 31.7.2010.

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**Judgment of the Court (Third Chamber) of 9 February 2012 (reference for a preliminary ruling from the Handelsgericht Wien — Austria) — Martin Luksan v Petrus van der Let**

**(Case C-277/10)** ([1])

***(Reference for a preliminary ruling — Approximation of laws — Intellectual property — Copyright and related rights — Directives 93/83/EEC, 2001/29/EC, 2006/115/EC and 2006/116/EC — Sharing of the rights to exploit a cinematographic work, by contract, between the principal director and the producer of the work — National legislation allotting those rights, exclusively and by operation of law, to the film producer — Possibility of departing from that rule by an agreement between the parties — Subsequent rights to remuneration)***

(2012/C 80/05)

*Language of the case: German*

**Referring court**

Handelsgericht Wien

**Parties to the main proceedings**

*Applicant:* Martin Luksan

*Defendant:* Petrus van der Let

**Re:**

Reference for a preliminary ruling — Handelsgericht Wien — Interpretation of Article 2(2), (5) and (6) and Article 4 of 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), of Articles 1(5) and 2 of 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), of Articles 2, 3 and 5(2)(b) of 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) and of Article 2(1) of 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 (OJ 2006 L 372, p. 12) — Sharing of the rights to exploit a cinematographic work, by contract, between the author and the producer of the work — National legislation allotting all those rights to the producer

**Operative part of the judgment**

1. *Articles 1 and 2 of 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, and Articles 2 and 3 of 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 in conjunction with Articles 2 and 3 of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property and with Article 2 of 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, must be interpreted as meaning that rights to exploit a cinematographic work such as those at issue in the main proceedings (reproduction right, satellite broadcasting right and any other right of communication to the public through the making available to the public) vest by operation of law, directly and originally, in the principal director. Consequently, those provisions must be interpreted as precluding national legislation which allocates those exploitation rights by operation of law exclusively to the producer of the work in question.*

2. *European Union law must be interpreted as allowing the Member States the option of laying down a presumption of transfer, in favour of the producer of a cinematographic work, of rights to exploit the cinematographic work such as those at issue in the main proceedings (satellite broadcasting right, reproduction right and any other right of communication to the public through the making available to the public), provided that such a presumption is not an irrebuttable one precluding the principal director of that work from agreeing otherwise.*

3. *European Union law must be interpreted as meaning that, in his capacity as author of a cinematographic work, the principal director thereof must be entitled, by operation of law, directly and originally, to the right to the fair compensation provided for in Article 5(2)(b) of Directive 2001/29 under the 'private copying' exception.*