

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) as amended by Commission Regulation (EC) No 495/97 of 18 March 1997 (OJ 1997 L 77, p. 12), in particular Article 11(1) thereof — Request for an export refund in a situation in which no refund is provided for — Whether a penalty may be imposed on the person making the request

Operative part of the judgment

Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 and by Commission Regulation (EC) No 495/97 of 18 March 1997, must be interpreted as meaning that, subject to the exemptions laid down in the third subparagraph of Article 11(1), the reduction referred to in point (a) of the first subparagraph of Article 11(1) must be applied, *inter alia*, in the case where it turns out that the goods for export in respect of which a refund was requested were not of sound and fair marketable quality, notwithstanding the fact that the exporter acted in good faith and correctly described the nature and origin of those goods.

(¹) OJ C 39, 11.02.2012.

Judgment of the Court (Third Chamber) of 22 November 2012 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Josef Probst v mr.nexnet GmbH

(Case C-119/12) (¹)

(Electronic communications — Directive 2002/58/EC — Article 6(2) and (5) — Processing of personal data — Traffic data necessary for billing and debt collection — Debt collection by a third company — Persons acting under the authority of the providers of public communications networks and electronic communications services)

(2013/C 26/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Josef Probst

Defendant: mr.nexnet GmbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 6(2) and (5) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002

concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) — Passing of traffic data relating to subscribers and users, processed and held by the provider of a public communications network — National legislation permitting such data to be passed to the assignee of a claim for payment in respect of telecommunications services, in the case where contractual stipulations safeguard confidential treatment of the data passed and make it possible for each party to check that the other has ensured that those data are protected

Operative part of the judgment

Article 6(2) and (5) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) must be interpreted as authorising a provider of public communications networks and of publicly-accessible electronic communications services to pass traffic data to the assignee of its claims for payment in respect of the supply of telecommunications services for the purpose of recovery of those claims, and as authorising that assignee to process those data on condition, first, that the latter acts under the authority of the service provider as regards the processing of those data and, second, that that assignee confines itself to processing the traffic data necessary for the purposes of recovering the claims assigned.

Irrespective of the classification of the contract of assignment, the assignee is deemed to act under the authority of the service provider, within the meaning of Article 6(5) of Directive 2002/58, where, for the processing of traffic data, it acts exclusively on the instructions and under the control of that provider. In particular, the contract concluded between them must contain provisions capable of guaranteeing the lawful processing, by the assignee, of the traffic data and of enabling the service provider to ensure, at all times, that that assignee is complying with those provisions.

(¹) OJ C 174, 16.06.2012.

Judgment of the Court (Full Court) of 27 November 2012 (reference for a preliminary ruling from the Supreme Court — Ireland) — Thomas Pringle v Government of Ireland, Ireland and the Attorney General

(Case C-370/12) (¹)

(Stability mechanism for the Member States whose currency is the euro — Decision 2011/199/EU — Amendment of Article 136 TFEU — Validity — Article 48(6) TEU — Simplified revision procedure — ESM Treaty — Economic and monetary policy — Competence of the Member States)

(2013/C 26/27)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Thomas Pringle

Defendants: Government of Ireland, Ireland and the Attorney General

Re:

Reference for a preliminary ruling — Supreme Court — Validity of European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p. 1) — Competences of the Union — Right of euro area Member States to conclude an international agreement such as the Treaty establishing the European stability mechanism

Operative part of the judgment

1. Examination of the first question referred has disclosed nothing capable of affecting the validity of European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro.
2. Articles 4(3) TEU and 13 TEU, Articles 2(3) TFEU, 3(1)(c) and (2) TFEU, 119 TFEU to 123 TFEU and 125 TFEU to 127 TFEU, and the general principle of effective judicial protection do not preclude the conclusion between the Member States whose currency is the euro of an agreement such as the Treaty establishing the European stability mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, concluded at Brussels on 2 February 2012, or the ratification of that treaty by those Member States.
3. The right of a Member State to conclude and ratify that Treaty is not subject to the entry into force of Decision 2011/199.

⁽¹⁾ OJ C 303, 6.10.2012.

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 3 October 2012 — W.P. Willems; other party: Burgemeester van Nuth

(Case C-446/12)

(2013/C 26/28)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: W.P. Willems

Other party: Burgemeester van Nuth

Questions referred

1. Is Article 1(2) of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Regulation (EC) No 2252/2004 (OJ 2009 L 142, p. 1), valid in the light of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms?
2. If the answer to Question 1 is to the effect that Article 1(2) of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Regulation (EC) No 2252/2004 (OJ 2009 L 142, p. 1), is valid, must Article 4(3) of the Regulation, in the light of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, Article 8(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 7(f) of the Privacy Directive,⁽¹⁾ read in conjunction with Article 6(1)(b) of the Privacy Directive, be interpreted to mean that, when the Member States give effect to Regulation No 2252/2004, there should be a statutory guarantee that the biometric data collected and stored pursuant to that Regulation may not be collected, processed and used for any purposes other than the issuing of the document?

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 5 October 2012 — H.J. Kooistra; other party: Burgemeester van Skarsterlân

(Case C-447/12)

(2013/C 26/29)

Language of the case: Dutch

Referring court

Raad van State