

7. The third sentence of Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as requiring the Member States to ensure that the national courts with jurisdiction in relation to the protection of intellectual property rights are able to order the operator of an online marketplace to take measures which contribute, not only to bringing to an end infringements of those rights by users of that marketplace, but also to preventing further infringements of that kind. Those injunctions must be effective, proportionate, and dissuasive and must not create barriers to legitimate trade.

(<sup>1</sup>) OJ C 267, 7.11.2009.

**Judgment of the Court (Third Chamber) of 21 July 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) — Secretary of State for Work and Pensions v Maria Dias**

(Case C-325/09) (<sup>1</sup>)

*(Free movement of persons — Directive 2004/38/EC — Article 16 — Right of permanent residence — Periods completed before the date of transposition of that directive — Legal residence — Residence based solely on a residence permit issued pursuant to Directive 68/360/EEC, without the conditions governing eligibility for any right of residence having been satisfied)*

(2011/C 269/06)

Language of the case: English

**Referring court**

Court of Appeal (England and Wales) (Civil Division)

**Parties to the main proceedings**

Applicant: Secretary of State for Work and Pensions

Defendant: Maria Dias

**Re:**

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Article 16(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Interpretation of Article 18(1) of the EC Treaty — Right of permanent residence — Concept of legal residence — Citizen of the Union, holder of a five-year residence permit for the United Kingdom issued in accordance with Article 4(2) of Directive 68/360/EEC, whose period of residence was interrupted by a period of voluntary unemployment — Permit issued before entry into force of Directive 2004/38/EC —

Taking into consideration of periods of residence completed before the date of entry into force of the directive?

**Operative part of the judgment**

Article 16(1) and (4) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that:

— periods of residence completed before 30 April 2006 on the basis solely of a residence permit validly issued pursuant to Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, without the conditions governing entitlement to any right of residence having been satisfied, cannot be regarded as having been completed legally for the purposes of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38, and

— periods of residence of less than two consecutive years, completed on the basis solely of a residence permit validly issued pursuant to Directive 68/360, without the conditions governing entitlement to a right of residence having been satisfied, which occurred before 30 April 2006 and after a continuous period of five years' legal residence completed prior to that date, are not such as to affect the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38.

(<sup>1</sup>) OJ C 256, 24.10.2009.

**Judgment of the Court (Third Chamber) of 21 July 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Scheuten Solar Technology GmbH v Finanzamt Gelsenkirchen-Süd**

(Case C-397/09) (<sup>1</sup>)

*(Taxation — Directive 2003/49/EC — Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States — Business tax — Determination of the basis of assessment)*

(2011/C 269/07)

Language of the case: German

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

Applicant: Scheuten Solar Technology GmbH

Defendant: Finanzamt Gelsenkirchen-Süd

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157, p. 49) — Whether or not interest payments are included in the basis of assessment to trade tax of the debtor company

**Operative part of the judgment**

Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States must be interpreted as not precluding a provision of national tax law under which loan interest paid by a company established in one Member State to an associated company in another Member State is incorporated into the basis of assessment of the business tax payable by the former company.

(<sup>1</sup>) OJ C 312, 19.12.2009.

**Judgment of the Court (Second Chamber) of 7 July 2011 (reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — IMC Securities BV v Stichting Autoriteit Financiële Markten**

(Case C-445/09) (<sup>1</sup>)

**(Directive 2003/6/EC — Market manipulation — Securing prices at an abnormal or artificial level)**

(2011/C 269/08)

Language of the case: Dutch

**Referring court**

College van Beroep voor het Bedrijfsleven

**Parties to the main proceedings**

Appellant: IMC Securities BV

Respondent: Stichting Autoriteit Financiële Markten

**Re:**

Reference for a preliminary ruling — College van Beroep voor het Bedrijfsleven — Interpretation of Article 1(2)(a), second indent, of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16) — Securing prices at an abnormal or artificial level — Meaning — Transactions and orders bringing about a brief fluctuation of prices

**Operative part of the judgment**

Article 1(2)(a), second indent, of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) must be interpreted as not requiring, in order for the price of one or more financial instruments to be considered to have been fixed at an abnormal or artificial level, that that price must maintain an abnormal or artificial level for more than a certain duration.

(<sup>1</sup>) OJ C 24, 30.01.2010.

**Judgment of the Court (Second Chamber) of 21 July 2011 (reference for a preliminary ruling from the Upper Tribunal (United Kingdom)) — Lucy Stewart v Secretary of State for Work and Pensions**

(Case C-503/09) (<sup>1</sup>)

**(Social security — Regulation (EEC) No 1408/71 — Articles 4, 10 and 10a — Short-term incapacity benefit in youth — Sickness benefit or invalidity benefit — Conditions of residence, presence on the date on which the claim is made and past presence — Citizenship of the Union — Proportionality)**

(2011/C 269/09)

Language of the case: English

**Referring court**

Upper Tribunal

**Parties to the main proceedings**

Appellant: Lucy Stewart

Respondent: Secretary of State for Work and Pensions

**Re:**

Reference for a preliminary ruling — Upper Tribunal — Interpretation of Articles 10, 19, 28, 29 and 95a of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) — Payments made to unemployed persons from 16 to 25 years of age who are resident in the United Kingdom and have been incapable of work for at least seven months ('short-term incapacity benefit in youth') — Classification as a sickness benefit or as an invalidity benefit — Benefit subject to a residence condition