

Judgment of the Court (Fifth Chamber) of 1 March 2012 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación para la Calidad de los Forjados (Ascafor), Asociación de Importadores y Distribuidores de Acero para la Construcción (Asidac) v Administración del Estado and Others

(Case C-484/10) ⁽¹⁾

(Free movement of goods — Quantitative restrictions and measures having equivalent effect — Directive 89/106/EEC — Construction products — Non-harmonised standards — Labels of quality — Requirements relating to certification bodies)

(2012/C 118/07)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Asociación para la Calidad de los Forjados (Ascafor), Asociación de Importadores y Distribuidores de Acero para la Construcción (Asidac)

Defendants: Administración del Estado, Calidad Siderúrgica SL, Colegio de Ingenieros Técnicos Industriales, Asociación Española de Normalización y Certificación (AENOR), Consejo General de Colegios Oficiales de Aparejadores y Arquitectos Técnicos, Asociación de Investigación de las Industrias de la Construcción (Aidico) Instituto Tecnológico de la Construcción, Asociación Nacional Española de Fabricantes de Hormigón Preparado (Anefhop), Ferrovial Agromán SA, Agrupación de Fabricantes de Cemento de España (Oficemen), Asociación de Aceros Corrugados Reglamentarios y su Tecnología y Calidad (Acerteq)

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Articles 28 and 30 EC (now Articles 34 and 36 TFEU) — Construction products — Products not covered by harmonisation measures such as those provided for by Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12) — Placing on the market made subject either to a superior quality certificate issued in accordance with methods satisfying detailed conditions equivalent to those imposed by the national authorities or to prior approval with regard to those conditions, even though obtained in the Member State of origin

Operative part of the judgment

Articles 34 TFEU and 36 TFEU must be interpreted as meaning that the requirements laid down in Article 81 of the structural concrete regulations (EHE-08) approved by Royal Decree No 1247/2008 of

18 July 2008, read in conjunction with Annex 19 to those regulations, for official recognition of certificates demonstrating the quality level of reinforcing steel for concrete granted in a Member State other than the Kingdom of Spain constitute a restriction on the free movement of goods. Such a restriction may be justified by the objective of the protection of human life and health, provided the requirements laid down are not higher than the minimum standards required for the use of reinforcing steel for concrete in Spain. In such a case, it is for the referring court to ascertain — where the entity granting the certificate of quality which must be officially recognised in Spain is an approved body within the meaning of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Council Directive 93/68/EEC of 22 July 1993 — which of those requirements go beyond what is necessary for the purposes of attaining the objective of the protection of human life and health.

⁽¹⁾ OJ C 346, 18.12.2010.

Judgment of the Court (Third Chamber) of 1 March 2012 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Football Dataco Ltd and Others v Yahoo! UK Limited and Others

(Case C-604/10) ⁽¹⁾

(Directive 96/9/EC — Legal protection of databases — Copyright — Football league fixture lists)

(2012/C 118/08)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Football Dataco Ltd, Football Association Premier League Ltd, Football League Ltd, Scottish Premier League Ltd, Scottish Football League, PA Sport UK Ltd

Defendants: Yahoo! UK Ltd, Stan James (Abingdon) Ltd, Stan James plc, Enetpulse ApS

Re:

Reference for a preliminary ruling — Court of Appeal, United Kingdom — Interpretation of Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 2003 L 77, p. 20) — Concept of 'databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation' — Computerised catalogues of the football matches planned for the coming season

Operative part of the judgment

1. Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that a 'database' within the meaning of Article 1(2) of that directive is protected by the copyright laid down by that directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine.

As a consequence:

- the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right;
 - it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and
 - the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection or arrangement of the data which that database contains.
2. Directive 96/9 must be interpreted as meaning that, subject to the transitional provision contained in Article 14(2) of that directive, it precludes national legislation which grants databases, as defined in Article 1(2) of the directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.

(¹) OJ C 89, 19.3.2011.

Judgment of the Court (Grand Chamber) of 28 February 2012 (reference for a preliminary ruling from the Conseil d'État — Belgium) — Inter-Environnement Wallonie ASBL, Terre wallonne ASBL v Région wallonne

(Case C-41/11) (¹)

(Protection of the environment — Directive 2001/42/EC — Articles 2 and 3 — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Plan or programme — No prior environmental assessment — Annulment of a plan or programme — Possibility of maintaining the effects of the plan or programme — Conditions)

(2012/C 118/09)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Inter-Environnement Wallonie ASBL, Terre wallonne ASBL

Defendant: Région wallonne

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Annulment of a national rule found to be contrary to Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Possibility of maintaining, for a short period, the effects of that rule

Operative part of the judgment

Where a national court has before it, on the basis of its national law, an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and it finds that the 'plan' or 'programme' was adopted in breach of the obligation laid down by that directive to carry out a prior environmental assessment, that court is obliged to take all the general or particular measures provided for by its national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested 'plan' or 'programme'. However, in view of the specific circumstances of the main proceedings, the referring court can exceptionally be authorised to make use of its national provision empowering it to maintain certain effects of an annulled national measure in so far as:

- that national measure is a measure which correctly transposes Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;
- the adoption and entry into force of the new national measure containing the action programme within the meaning of Article 5 of that directive do not enable the adverse effects on the environment resulting from the annulment of the contested measure to be avoided;
- annulment of the contested measure would result in a legal vacuum in relation to the transposition of Directive 91/676 which would be more harmful to the environment, in the sense that the annulment would result in a lower level of protection of waters against pollution caused by nitrates from agricultural sources and would thereby run specifically counter to the fundamental objective of that directive; and
- the effects of such a measure are exceptionally maintained only for the period of time which is strictly necessary to adopt the measures enabling the irregularity which has been established to be remedied.

(¹) OJ C 113, 9.4.2011.