

**Re:**

Request for a preliminary ruling — Rechtbank Amsterdam — Interpretation of Article 45 TFEU, Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968, on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), Article 71 of Council Regulation (EEC) No 1408/71 of 14 June 1971, on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and Articles 65 and 87(8) of European Parliament and Council Regulation (EC) No 883/2004 of 29 April 2004, on the coordination of social security systems (OJ 2004 L 166, p. 1) — Wholly unemployed frontier worker — Right to benefit from the Member State of residence — Worker who has maintained personal and business links in the Member State of last employment and whose prospects of re-integration into working life are greatest there — Member State which refuses, on the basis of its national legislation and on the ground only of residence in the territory of another Member State, to grant unemployment benefit to that worker

**Operative part of the judgment**

1. After the entry into force of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, the provisions of Article 65 of Regulation No 883/2004 are not to be interpreted in the light of the judgment of the Court of Justice of 12 June 1986 in Case 1/85 Miethé. With regard to a wholly unemployed frontier worker who has maintained close personal and business links with the Member State where he was last employed of such a kind that his prospects of reintegration into working life are greatest in that State, Article 65 of Regulation No 883/2004 must be understood as allowing such a worker to make himself available as a supplementary step to the employment services of that State, not with a view to obtaining unemployment benefit in that State but only in order to receive assistance there in finding new employment.
2. The rules on the freedom of movement for workers, contained in particular in Article 45 TFEU, must be interpreted as not precluding the Member State where the person was last employed from refusing, in accordance with its national law, to grant unemployment benefit to a wholly unemployed frontier worker whose prospects of reintegration into working life are best in that Member State, on the ground that he does not reside in its territory, since, in accordance with Article 65 of Regulation No 883/2004, as amended by Regulation No 988/2009, the applicable legislation is that of the Member State of residence.
3. The provisions of Article 87(8) of Regulation No 883/2004, as amended by Regulation No 988/2009, should be applied to wholly unemployed frontier workers who, taking into account the links they have maintained in the Member State where they were last employed, receive unemployment benefit from that Member State on the basis of its legislation, pursuant to Article 71 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the

application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008.

The concept of 'unchanged situation' within the meaning of Article 87(8) of Regulation No 883/2004 as amended by Regulation No 988/2009 must be assessed in the light of national social security legislation. It is for the national court to establish whether workers such as Ms Peeters and Mr Arnold satisfy the conditions provided for in that legislation in order to be able to claim resumption of payment of the unemployment benefit which was paid to them under that legislation, in accordance with Article 71 of Regulation No 1408/71 as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.

(<sup>1</sup>) OJ C 355, 3.12.2011.

**Judgment of the Court (Fourth Chamber) of 11 April 2013  
(request for a preliminary ruling from the Landgericht  
Hamburg — Germany) — Novartis Pharma GmbH v  
Apozyt GmbH**

(Case C-535/11) (<sup>1</sup>)

*(Request for a preliminary ruling — Regulation (EC) No 726/2004 — Medicinal products for human use — Procedure for authorisation — Requirement for authorisation — Concept of medicinal products 'developed' by means of certain biotechnological processes, as referred to in point 1 of the Annex to that regulation — Repackaging process — Injectable solution distributed in single-use vials containing a larger quantity of the therapeutic solution than that actually used for the purposes of medical treatment — Part of the content of such vials drawn off, on prescription by a doctor, into syringes pre-filled with the prescribed dose, without any modification of the medicinal product)*

(2013/C 156/13)

Language of the case: German

**Referring court**

Landgericht Hamburg

**Parties to the main proceedings**

Applicant: Novartis Pharma GmbH

Defendant: Apozyt GmbH

**Re:**

Request for a preliminary ruling — Landgericht Hamburg — Interpretation of the Annex to Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1) — Meaning of 'hergestellt' ('developed' in the English version) in point 1 of that Annex — Whether that term covers the drawing off of liquid medicinal products from the original containers and the transfer into ready-to-use syringes

**Operative part of the judgment**

Activities such as those at issue in the main proceedings, provided that they do not result in a modification of the medicinal product concerned and are carried out solely on the basis of individual prescriptions calling for processes of such a kind — a matter which falls to be determined by the referring court —, do not require a marketing authorisation under Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, but remain, in any event, subject to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2010/84/EU of the European Parliament and of the Council of 15 December 2010.

(<sup>1</sup>) OJ C 13, 14.1.2012.

**Judgment of the Court (Ninth Chamber) of 21 March 2013**  
— **European Commission v Italian Republic**

(Case C-613/11) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — State aid — Aid granted by the Italian Republic to the Sardinian shipping sector — Commission Decision 2008/92/EC declaring that aid incompatible with the common market and ordering its recovery from the beneficiaries — Failure to implement within the prescribed period)*

(2013/C 156/14)

Language of the case: Italian

**Parties**

**Applicant:** European Commission (represented by: B. Stromsky and D. Grespan, agents)

**Defendant:** Italian Republic (represented by: G. Palmieri, agent, and S. Fiorentino, lawyer)

**Re:**

Failure of a Member State to fulfil obligations — State aid — Failure to adopt, within the prescribed period, all the provisions

necessary to comply with Articles 2 and 5 of Commission Decision 2008/92/EC of 10 July 2007 concerning an Italian State aid scheme to the Sardinian shipping (OJ 2008 L 29, p. 24) — Requirement for immediate and effective enforcement of Commission decisions — Inadequacy of the recovery procedure for the unlawful aid at issue

**Operative part of the judgment**

*The Court:*

1. Declares that, by failing to take, within the prescribed period, all the measures necessary to recover from the beneficiaries the State aid considered unlawful and incompatible with the internal market by Article 1 of Commission Decision 2008/92/EC of 10 July 2007 concerning an Italian State aid scheme to the Sardinian shipping, the Italian Republic has failed to fulfil its obligations under Articles 2 and 5 of that decision;
2. Orders the Italian Republic to pay the costs.

(<sup>1</sup>) OJ C 32, 4.2.2012.

**Judgment of the Court (Fourth Chamber) of 11 April 2013**  
**(request for a preliminary ruling from the Landgericht München I — Germany) — Karl Berger v Freistaat Bayern**

(Case C-636/11) (<sup>1</sup>)

*(Regulation (EC) No 178/2002 — Consumer protection — Food safety — Public information — Placing on the market of food unfit for human consumption, but not constituting a health risk)*

(2013/C 156/15)

Language of the case: German

**Referring court**

Landgericht München I

**Parties to the main proceedings**

**Applicant:** Karl Berger

**Defendant:** Freistaat Bayern

**Re:**

Request for a preliminary ruling — Landgericht München I — Interpretation of Article 10 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) — Scope *ratione temporis* — Rules of national law under which the public may be informed in cases where a foodstuff which is unfit for consumption and nauseating in appearance, but which does not constitute a specific risk to health, is placed on the market