

**Parties to the main proceedings**

*Applicants:* SC Star Storage SA (C-439/14), SC Max Boegl România SRL, SC UTI Grup SA, Astaldi SpA, SC Construcții Napoca SA (C-488/14)

*Defendants:* Institutul Național de Cercetare-Dezvoltare în Informatică (ICI) (C-439/14), RA Aeroportul Oradea, SC Porr Construct SRL, Teerag-Asdag Aktiengesellschaft SC Col-Air Trading SRL, AVZI SA, Trameco SA, Iamsat Muntenia SA (C-488/14)

**Operative part of the judgment**

Article 1(1) to (3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, and Article 1(1) to (3) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66, and read in the light of Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which makes the admissibility of any action against an act of the contracting authority subject to the obligation for the applicant to constitute a good conduct guarantee that it provides to the contracting authority, if that guarantee must be refunded to the applicant whatever the outcome of the action.

<sup>(1)</sup> OJ C 448, 15.12.2014.  
OJ C 26, 26.01.2015.

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**Judgment of the Court (Third Chamber) of 15 September 2016 (request for a preliminary ruling from the Landgericht München I — Germany) — Tobias Mc Fadden v Sony Music Entertainment Germany GmbH**

(Case C-484/14) <sup>(1)</sup>

*(Reference for a preliminary ruling — Information society — Free movement of services — Commercial wireless local area network (WLAN) — Made available to the general public free of charge — Liability of intermediary service providers — Mere conduit — Directive 2000/31/EC — Article 12 — Limitation of liability — Unknown user of the network — Infringement of rights of rightholders over a protected work — Duty to secure the network — Tortious liability of the trader)*

(2016/C 419/05)

Language of the case: German

**Referring court**

Landgericht München I

**Parties to the main proceedings**

*Applicant:* Tobias Mc Fadden

*Defendant:* Sony Music Entertainment Germany GmbH

**Operative part of the judgment**

1. Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce'), read in conjunction with Article 2(a) of that directive and with Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, must be interpreted as meaning that a service such as that at issue in the main proceedings, provided by a communication network operator and consisting in making that network available to the general public free of charge constitutes an 'information society service' within the meaning of Article 12(1) of Directive 2000/31 where the activity is performed by the service provider in question for the purposes of advertising the goods sold or services supplied by that service provider.
2. Article 12(1) of Directive 2000/31 must be interpreted as meaning that, in order for the service referred to in that article, consisting in providing access to a communication network, to be considered to have been provided, that access must not go beyond the boundaries of a technical, automatic and passive process for the transmission of the required information, there being no further conditions to be satisfied.
3. Article 12(1) of Directive 2000/31 must be interpreted as meaning that the condition laid down in Article 14(1)(b) of that directive does not apply *mutatis mutandis* to Article 12(1) of Directive 2000/31.
4. Article 12(1) of Directive 2000/31, read in conjunction with Article 2(b) of that directive, must be interpreted as meaning that there are no conditions, other than the one mentioned in that provision, to which a service provider supplying access to a communication network is subject.
5. Article 12(1) of Directive 2000/31 must be interpreted as meaning that a person harmed by the infringement of its rights over a work is precluded from claiming compensation from an access provider on the ground that the connection to that network was used by a third party to infringe its rights and the reimbursement of the costs of giving formal notice or court costs incurred in relation to its claim for compensation. However, that article must be interpreted as meaning that it does not preclude such a person from claiming injunctive relief against the continuation of that infringement and the payment of the costs of giving formal notice and court costs from a communication network access provider whose services were used in that infringement where such claims are made for the purposes of obtaining, or follow the grant of injunctive relief by a national authority or court to prevent that service provider from allowing the infringement to continue.
6. Having regard to the requirements deriving from the protection of fundamental rights and to the rules laid down in Directives 2001/29 and 2004/48, Article 12(1) of Directive 2000/31, read in conjunction with Article 12(3) of that directive, must be interpreted as, in principle, not precluding the grant of an injunction such as that at issue in the main proceedings, which requires, on pain of payment of a fine, a provider of access to a communication network allowing the public to connect to the internet to prevent third parties from making a particular copyright-protected work or parts thereof available to the general public from an online (peer-to-peer) exchange platform via an internet connection, where that provider may choose which technical measures to take in order to comply with the injunction even if such a choice is limited to a single measure consisting in password-protecting the internet connection, provided that those users are required to reveal their identity in order to obtain the required password and may not therefore act anonymously, a matter which it is for the referring court to ascertain.

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(<sup>1</sup>) OJ C 46, 9.2.2015.