

Questions referred

1. Do Article 67(2) TFEU and Articles 22 and 23 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Control) ⁽¹⁾ preclude a provision of national law of a Member State which has the effect of requiring bus undertakings operating regular services across a Schengen internal border to check their passengers' travel documents before crossing an internal border in order to prevent foreign nationals not in possession of a passport or residence permit from being brought into the territory of the Federal Republic of Germany?

In particular:

- (a) Does the general statutory duty, or the administrative obligation directed at individual carriers, not to bring into federal territory foreign nationals not in possession of a passport or residence permit as required, which is properly discharged only if carriers check all passengers' travel documents before crossing an internal border, constitute, or fall to be treated as, a check on persons at internal borders within the meaning of Article 22 of the Schengen Borders Code?
 - (b) Is the imposition of the duties referred to in point 1 to be assessed by reference to Article 23(a) of the Schengen Borders Code, even though carriers do not exercise 'police powers' within the meaning of that provision and, moreover, do not formally enjoy any powers of public authority by virtue of the State-imposed obligation to carry out checks?
 - (c) If the answer to Question 1(b) is in the affirmative, do the checks which carriers are required to carry out, taking into account the criteria laid down in the second sentence of Article 23(a) of the Schengen Borders Code, constitute an impermissible measure having an effect equivalent to border checks?
 - (d) Is the imposition of the duties referred to in point 1, in so far as it concerns bus undertakings operating regular services, to be assessed by reference to Article 23(b) of the Schengen Borders Code, which provides that the absence of border control at internal borders is not to affect the power of carriers to carry out security checks on persons at ports and airports? Does it follow from this that checks within the meaning of Question 1 are impermissible even when carried out other than at ports and airports if they do not constitute security checks and are not also carried out on persons travelling within a Member State?
2. Do Articles 22 and 23 of the Schengen Borders Code permit provisions of national law under which, for the purposes of ensuring compliance with that duty, an order imposing a prohibition on pain of a penalty payment may be made against a bus undertaking in cases where the failure to carry out checks has enabled even foreign nationals not in possession of a passport or residence permit to be brought into the territory of the Federal Republic of Germany?

⁽¹⁾ OJ 2016 L 77, p. 1.

**Request for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 9 August 2017 —
Frank Montag v Finanzamt Köln-Mitte**

(Case C-480/17)

(2017/C 382/39)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Frank Montag

Defendant: Finanzamt Köln-Mitte

Questions referred

1. Does Article 49 TFEU in conjunction with Article 54 TFEU preclude a national rule under which compulsory contributions to an occupational pension scheme made by a non-resident taxpayer (on the basis of his membership of a bar association in the Member State, which is mandatory on professional grounds for the purposes of his activity carried on in several Member States) are not treated as deductible from income within the framework of limited tax liability, whereas in the case of resident taxpayers national law permits their deduction from income up to a specific ceiling within the framework of unlimited tax liability?
2. Does Article 49 TFEU in conjunction with Article 54 TFEU preclude the national rule described in Question 1 in the case where, in addition to his compulsory contributions, the taxpayer makes additional (voluntary) contributions to the occupational pension scheme and the Member State does not treat these as deductible from income although, under national law, future pension benefits payable in that Member State may be taxable even in the framework of limited tax liability?
3. Does Article 49 TFEU in conjunction with Article 54 TFEU preclude the national rule described in Question 1 in the case where the taxpayer, independently of his admission as a lawyer and his contributions to an occupational pension scheme, makes contributions to a voluntary private pension scheme and the Member State does not treat these as deductible from income although, under national law, future pension benefits payable in that Member State may be taxable even in the framework of limited tax liability?

**Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 22 August 2017 —
Administrative penalty proceedings against Josef Baumgartner**

(Case C-513/17)

(2017/C 382/40)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Josef Baumgartner

Other parties: Bundesamt für Güterverkehr, Staatsanwaltschaft Köln

Question referred

Is the first sentence of Article 19(2) of Regulation (EC) No 561/2006⁽¹⁾ to be interpreted as meaning that a penalty imposed on an undertaking or a manager of an undertaking pursuant to Paragraphs 30, 9 and 130 of the Gesetz über Ordnungswidrigkeiten (German Law on administrative offences, 'OWiG') for an administrative offence committed at the seat of the undertaking may be imposed only by the Member State in whose territory the undertaking has its seat? Or are other Member States also authorised to impose a penalty for the administrative offence when that offence has been detected on their territory?

⁽¹⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).