

**Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on
28 September 2017 — Openbaar Ministerie v Daniel Adam Popławski**

(Case C-573/17)

(2017/C 412/27)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Openbaar Ministerie

Defendant: Daniel Adam Popławski

Questions referred

1. If the executing judicial authority cannot interpret the national provisions implementing a framework decision in such a way that their application leads to an outcome in conformity with the framework decision, must it then, in accordance with the principle of primacy, disapply those national provisions not in conformity with that framework decision?
2. Does a declaration of a Member State within the meaning of Article 28(2) of Framework Decision 2008/909/JHA ⁽¹⁾ that it did not make 'on the adoption of this Framework Decision', but at a later date, have legal effect?

⁽¹⁾ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

**Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 3 October
2017 — Oy Hartwall Ab**

(Case C-578/17)

(2017/C 412/28)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Oy Hartwall Ab

Other interested parties: Patentti- ja rekisterihallitus

Questions referred

1. For the interpretation of Article 2 of Directive 2008/95/EC ⁽¹⁾ and the condition relating to the distinctive character of a trade mark within the meaning of Article 3(1)(b) thereof, is it of relevance whether the trade mark is to be registered as a figurative mark or a colour mark?
2. If the classification of the mark as a colour mark or figurative mark is of importance in the assessment of its distinctive character, is the mark, regardless of its representation as an image, to be registered as a colour mark in accordance with the trade mark application, or can it be registered only as a figurative mark?

3. If it is possible to register, as a colour mark, a mark represented in the form of a drawing in the trade mark application, is it necessary for the registration as a colour mark of a mark which has been graphically illustrated in the trade mark application with the accuracy required by the case-law of the Court of Justice relating to colour marks (and which is not the registration as a mark of a colour in itself, abstract, without shape or contours), is it necessary to submit in addition solid evidence of use as required by the Patentti- ja rekisterihallitus or any such evidence?

⁽¹⁾ OJ 2008 L 299, p. 25.

**Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 4 October 2017 —
Mittetulundusühing Järvelaev v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)**

(Case C-580/17)

(2017/C 412/29)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: Mittetulundusühing Järvelaev

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Questions referred

1. In the event of the recovery of project funding awarded as part of a *Leader* measure, if the funding was approved on 6 September 2011, the final instalment was paid on 19 November 2013, the infringement was established on 4 December 2014 and the recovery decision was issued on 27 January 2015, must Article 72 of Council Regulation (EC) No 1698/2005 ⁽¹⁾ or Article 71(1) of Regulation (EU) No 1303/2013 ⁽²⁾ of the European Parliament and of the Council be applied in relation to the requirement concerning the durability of the project? In those circumstances, does Article 33(1) of Council Regulation (EC) No 1290/2005 ⁽³⁾ or Article 56 of Regulation (EU) No 1306/2013 ⁽⁴⁾ of the European Parliament and of the Council form the basis for the recovery?
2. If the answer to Question 1 is that Regulation No 1698/2005 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the not-for-profit association which received the funding to another not-for-profit association which uses the sailing boat for the same operation for which the funding was granted to the beneficiary be regarded as a substantial modification within the meaning of Article 72(1) (a) of Regulation No 1698/2005, which affects the nature or implementation conditions of the operation or gives undue advantage to a firm? Must the payment body of a Member State determine what the advantage specifically is in order for the condition relating to undue advantage to be satisfied? If the answer is in the affirmative, can the undue advantage lie in the fact that the actual user of the asset would not have obtained the project funding if it had itself submitted an application with the same content?
- 2a. If the answer to Question 1 is that Regulation No 1303/2013 is applicable, must the leasing of an asset (a sailing boat) acquired by means of project funding granted as part of a *Leader* measure by the not-for-profit association which received the funding to another not-for-profit association which uses the sailing boat in the same manner for which the funding was granted to the beneficiary be regarded as a substantial change within the meaning of Article 71(1)(c) of Regulation No 1303/2013, which affects its nature, objectives or implementation conditions in a manner which would result in undermining its original objectives?