

### Question referred

In relation to the wording in Article [3](1)(c) of Directive 2008/95/EC, <sup>(1)</sup> ‘indications which may serve, in trade, to designate other characteristics of the goods or service’, when used in the assessment of the permissibility of the registration of signs or indications intended to be adopted in order to designate wine products, must that wording be interpreted to the effect that it covers, in the verbal expressions adopted as a mark, including a protected geographical name as a designation of origin of wine, a reference to the word ‘*adega*’ [winery] — in the sense of a term currently used to identify the facilities and sites where the production process for such goods takes place — in the verbal expression adopted as a mark, in situations where that word (*adega*) is one of the various verbal elements which make up the corporate name of the legal entity seeking to register the mark?

<sup>(1)</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

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### Request for a preliminary ruling from the Tribunal Judicial da Comarca de Lisboa (Portugal) lodged on 15 November 2017 — Cogeco Communications Inc v Sport TV Portugal and Others

(Case C-637/17)

(2018/C 032/21)

Language of the case: Portuguese

### Referring court

Tribunal Judicial da Comarca de Lisboa

### Parties to the main proceedings

*Applicant:* Cogeco Communications Inc

*Defendants:* Sport TV Portugal, SA, Controlinveste-SGPS SA, NOS-SGPS, SA

### Questions referred

1. May Articles 9(1) and 10(2), (3) and (4) of Directive 2014/104/EU of 26 November 2014, <sup>(1)</sup> as well as the remaining provisions of that directive or general principles of EU law applicable, be interpreted as creating rights for a private party (in this case, a commercial limited company subject to Canadian law) which it may enforce in court proceedings against another private party (in this case, a commercial limited company subject to Portuguese law) in the context of an action seeking compensation for alleged damage sustained as a result of an infringement of competition law, in particular, when as at the date on which the action in question was brought (27 February 2015), the deadline for Member States to transpose that directive into national law, as provided for in Article 21(1) of that directive, had not yet even expired?
2. May Article 10(2), (3) and (4) of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 498 (1) of the Portuguese Civil Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date:
  - (a) lays down a three-year limitation period for a right to compensation based on non-contractual civil liability;
  - (b) lays down that that three-year period starts to run from the date on which the injured party was aware of its right, even if unaware of the identity of the person liable and the full extent of the damage; and

- (c) does not include any provision requiring or authorising the suspension or interruption of that period simply because a competition authority has taken measures in the context of an investigation or a process relating to an infringement of competition law to which the action for compensation relates?
3. May Article 9(1) of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, a national provision, such as Article 623 of the Portuguese Civil Procedure Code which, when applied to facts which occurred before the Directive entered into force and before the date laid down for its transposition, in an action also brought before that last date:
- (a) provides that a final order in infringement proceedings does not produce effects in any civil actions in which legal relationships depending on the commission of the infringement are discussed? Or (depending on the interpretation)
- (b) lays down that such a final order in infringement proceedings constitutes, in relation to third parties, only a rebuttable presumption as regards the existence of the facts which satisfy the conditions for the imposition of a penalty and the elements of an offence, in any civil actions in which legal relationships depending on the commission of the infringement are discussed?
4. May Articles 9(1) and 10(2),(3) and (4) of the Directive, the third paragraph of Article 288 of the Treaty on the Functioning of the European Union, or any other provisions of primary or secondary law, case-law precedents or general principles of the European Union applicable, be interpreted as precluding, as incompatible therewith, the application of provisions of national law, such as Article 498(1) of the Portuguese Civil Code and Article 623 of the Portuguese Civil Procedure Code which, when applied to facts which occurred before the publication of the Directive, before its entry into force and before the date laid down for its transposition, in an action also brought before that last date, do not take into consideration the text and purpose of the Directive and do not seek to achieve the result pursued by it?
5. In the alternative, and only if the Court of Justice of the European Union answers any of the preceding questions in the affirmative, may Article 22 of the Directive, as well as the remaining provisions of the Directive or general principles of EU law applicable, be interpreted as precluding, as incompatible therewith, the application to the case by the national court of Article 498(1) of the Portuguese Civil Code or Article 623 of the Portuguese Civil Procedure Code in their current version, but interpreted and applied in such a way as to be compatible with the provisions of Article 10 of the Directive?
6. If question 5 is answered in the affirmative, may a private party rely on Article 22 of the Directive against another private party before a national court in an action seeking compensation for the alleged damage sustained as a result of an infringement of competition law?

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<sup>(1)</sup> Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union ('the Directive') (OJ 2014 L 349, p. 1).

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**Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije lodged on  
27 November 2017 — E. G. v Republic of Slovenia**

**(Case C-662/17)**

(2018/C 032/22)

*Language of the case: Slovenian*

**Referring court**

Vrhovno sodišče Republike Slovenije

**Parties to the main proceedings**

*Appellant:* E. G.

*Respondent:* Republic of Slovenia