

In his second ground of appeal, the appellant argues that the statement of reasons for the finding that the word element 'Bullerjan', added to the mark at issue when in use, has a distinctive character is contradictory and inadequate. The judgment under appeal, he contends, failed to state what degree of distinctiveness the General Court attributed to the added word element. Without a finding as to the degree of distinctiveness of the added element, it is impossible to make a finding as to whether the distinctiveness of the mark at issue had been influenced by that element. The judgment under appeal is also, he argues, contradictory in that regard. The General Court thus, on the one hand, took the view that the word element makes it easier to determine the commercial origin of the goods, while, on the other hand, it stated that that element has no effect on the distinctiveness of the three-dimensional mark at issue. A facilitation of determination of commercial origin and an absence of effect on the degree of distinctiveness are, however, mutually exclusive.

In his third ground of appeal, the appellant argues that an incorrect legal test was applied in determining the distinctiveness of the three-dimensional mark at issue. For the purpose of determining the degree of distinctiveness of a three-dimensional mark, the protected shape has to be compared with the shapes available on the market. The General Court, however, bases its reasoning, not on the available shapes, but on 'the shape of an oven in general'. Such an average shape of an oven does not, however, exist.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 19 December 2017 — Anke Hartog v British Airways plc

(Case C-711/17)

(2018/C 134/18)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: Anke Hartog

Defendant: British Airways plc

Question referred

Must the condition laid down in Article 3(2)(a) for the applicability of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ⁽¹⁾ be interpreted as meaning that passengers, who have a confirmed reservation, have 'present[ed] themselves for check-in' if, where no time is indicated, they have joined the queue for the check-in desks used by the air carrier for the check-in in question no later than 45 minutes before the published departure time?

⁽¹⁾ OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Kielcach (Poland) lodged on 29 December 2017 — ECO-WIND Construction S.A., established in Warsaw v Samorządowe Kolegium Odwoławcze w Kielcach

(Case C-727/17)

(2018/C 134/19)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Kielcach

Parties to the main proceedings

Appellant: ECO-WIND Construction S.A., established in Warsaw

Public administrative authority: Samorządowe Kolegium Odwoławcze w Kielcach

Questions referred

1. Should Article 1(1)(f) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ⁽¹⁾ ... be interpreted as meaning that a statutory provision which introduces a restriction on the location of wind farms by establishing a minimum distance between a wind farm and a residential building or mixed-use building used for residential purposes, stating that this distance is to be equal to or greater than ten times the height of the wind farm measured from ground level ... to the highest point of the structure, including technical elements, in particular the rotor and rotor blades, is a 'technical regulation', a draft of which should be communicated to the Commission pursuant to Article 5(1) of that directive?
2. Should Article 15(2)(a) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽²⁾ ... be interpreted as meaning that a statutory provision which introduces a restriction on the location of wind farms by establishing a minimum distance between a wind farm and a residential building or mixed-use building used for residential purposes, stating that this distance is to be equal to or greater than ten times the height of the wind farm measured from ground level to the highest point of the structure, including technical elements, in particular the rotor and rotor blades, is a provision that makes access to a service activity or the exercise of it subject to territorial restrictions, in particular in the form of limits fixed according to a minimum geographical distance between providers, of which a Member State is to notify the Commission pursuant to Article 15(7) of that directive?
3. Should the first subparagraph of Article 3(1) and the first subparagraph of Article 13(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC ⁽³⁾ ... be interpreted as precluding national legislation which introduces a restriction on the location of wind farms by establishing a minimum distance between a wind farm and a residential building or mixed-use building used for residential purposes, stating that this distance is to be equal to or greater than ten times the height of the wind farm measured from ground level to the highest point of the structure, including technical elements, in particular the rotor and rotor blades?

⁽¹⁾ OJ 2015 L 241, p. 1.

⁽²⁾ OJ 2006 L 376, p. 36.

⁽³⁾ OJ 2009 L 140, p. 16.

**Request for a preliminary ruling from the Oberlandesgericht Karlsruhe (Germany) lodged on
4 January 2018 — Criminal proceedings against Detlef Meyn**

(Case C-9/18)

(2018/C 134/20)

Language of the case: German

Referring court

Oberlandesgericht Karlsruhe

Parties to the main proceedings

Accused party: Detlef Meyn