or stays in the national territory — Whether it is possible for an illegal stay to constitute a criminal offence — Whether it is possible to replace the fine with immediate expulsion for a period of not less than five years or a penalty entailing curtailment of liberty ('permanenza domiciliare') — Member States' obligations during the period for transposition of a directive

Operative part of the judgment

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as:

— *not precluding Member State legislation, such as that at issue in the main proceedings, which penalises illegal stays by third-country nationals by means of a fine which may be replaced by an expulsion order, and*

— *precluding Member State legislation which allows illegal stays by third-country nationals to be penalised by means of a home detention order without guaranteeing that the enforcement of that order must come to an end as soon as the physical transportation of the individual concerned out of that Member State is possible.*

([1]) OJ C 25, 28.1.2012.

Judgment of the Court (Fourth Chamber) of 6 December 2012 — European Commission v Verhuizingen Coppens NV

(Case C-441/11 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Article 81 EC and Article 53 of the EEA Agreement — International removal services market in Belgium — Cartel involving three individual agreements — Single and continuous infringement — Failure to prove that an undertaking party to an individual agreement was aware of the other individual agreements — Annulment, in whole or in part, of the Commission decision — Articles 263 TFEU and 264 TFEU)

(2013/C 26/24)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: A. Bouquet, S. Noë and F. Ronkes Agerbeek, Agents)

Other party to the proceedings: Verhuizingen Coppens NV (represented by: J. Stuyck and I. Buelens, advocaten)

Re:

Appeal brought against the judgment delivered by the General Court (Eighth Chamber) on 16 June 2011 in Case T-210/08 *Verhuizingen Coppens* v *Commission* by which the General Court annulled Article 1(i) and Article 2(k) of Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 16 June 2011 in Case T-210/08 Verhuizingen Coppens v Commission;*

2. *Annuls Article 1(i) of Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article [81 EC] and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services) in so far as, by that provision, the European Commission does not simply find that Verhuizingen Coppens NV had participated in the agreement on a system of false quotes, known as 'cover quotes', from 13 October 1992 to 29 July 2003, but finds that company liable for the agreement on a system of financial compensation for rejected offers or for not quoting at all, known as 'commissions', and attributes to it liability for the single and continuous infringement;*

3. *Sets the amount of the fine imposed on Verhuizingen Coppens NV under Article 2(k) of Decision C(2008) 926 final at EUR 35 000;*

4. *Orders the European Commission, in addition to bearing its own costs at first instance and on appeal, to pay two thirds of the costs incurred by Coppens in both those sets of proceedings;*

5. *Orders Coppens to bear one third of its own costs at first instance and on appeal.*

([1]) OJ C 331, 12.11.2011.

Judgment of the Court (Fifth Chamber) of 6 December 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Société d'Exportation de Produits Agricoles SA (SEPA) v Hauptzollamt Hamburg-Jonas

(Case C-562/11) ([1])

(Agriculture — Regulation (EEC) No 3665/87 — Article 11 — Export refunds — Request for a refund in respect of exported goods which do not confer entitlement to a refund — Administrative penalty)

(2013/C 26/25)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: Société d'Exportation de Produits Agricoles SA (SEPA)

Respondent on a point of law: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) as amended by Commission Regulation (EC) No 495/97 of 18 March 1997 (OJ 1997 L 77, p. 12), in particular Article 11(1) thereof — Request for an export refund in a situation in which no refund is provided for — Whether a penalty may be imposed on the person making the request

Operative part of the judgment

Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 and by Commission Regulation (EC) No 495/97 of 18 March 1997, must be interpreted as meaning that, subject to the exemptions laid down in the third subparagraph of Article 11(1), the reduction referred to in point (a) of the first subparagraph of Article 11(1) must be applied, inter alia, in the case where it turns out that the goods for export in respect of which a refund was requested were not of sound and fair marketable quality, notwithstanding the fact that the exporter acted in good faith and correctly described the nature and origin of those goods.

([1]) OJ C 39, 11.02.2012.

Judgment of the Court (Third Chamber) of 22 November 2012 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Josef Probst v mr.nexnet GmbH

(Case C-119/12) ([1])

(Electronic communications — Directive 2002/58/EC — Article 6(2) and (5) — Processing of personal data — Traffic data necessary for billing and debt collection — Debt collection by a third company — Persons acting under the authority of the providers of public communications networks and electronic communications services)

(2013/C 26/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Josef Probst

Defendant: mr.nexnet GmbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 6(2) and (5) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) — Passing of traffic data relating to subscribers and users, processed and held by the provider of a public communications network — National legislation permitting such data to be passed to the assignee of a claim for payment in respect of telecommunications services, in the case where contractual stipulations safeguard confidential treatment of the data passed and make it possible for each party to check that the other has ensured that those data are protected

Operative part of the judgment

Article 6(2) and (5) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) must be interpreted as authorising a provider of public communications networks and of publicly-accessible electronic communications services to pass traffic data to the assignee of its claims for payment in respect of the supply of telecommunications services for the purpose of recovery of those claims, and as authorising that assignee to process those data on condition, first, that the latter acts under the authority of the service provider as regards the processing of those data and, second, that that assignee confines itself to processing the traffic data necessary for the purposes of recovering the claims assigned.

Irrespective of the classification of the contract of assignment, the assignee is deemed to act under the authority of the service provider, within the meaning of Article 6(5) of Directive 2002/58, where, for the processing of traffic data, it acts exclusively on the instructions and under the control of that provider. In particular, the contract concluded between them must contain provisions capable of guaranteeing the lawful processing, by the assignee, of the traffic data and of enabling the service provider to ensure, at all times, that that assignee is complying with those provisions.

([1]) OJ C 174, 16.06.2012.

Judgment of the Court (Full Court) of 27 November 2012 (reference for a preliminary ruling from the Supreme Court — Ireland) — Thomas Pringle v Government of Ireland, Ireland and the Attorney General

(Case C-370/12) ([1])

(Stability mechanism for the Member States whose currency is the euro — Decision 2011/199/EU — Amendment of Article 136 TFEU — Validity — Article 48(6) TEU — Simplified revision procedure — ESM Treaty — Economic and monetary policy — Competence of the Member States)

(2013/C 26/27)

Language of the case: English

Referring court

Supreme Court