

10. In interpreting the provisions of Directive 2004/18/EC, is it permitted to use as a guide to interpretation the content of the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and of the preamble thereto, even though the period for implementing it has not expired, in so far as it explains certain assumptions and intentions of the EU legislature and is not contrary to Directive 2004/18/EC?

⁽¹⁾ OJ 2004 L 134, p. 114.

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 7 July 2014 —
Verein für Konsumenteninformation v A1 Telekom Austria AG**

(Case C-326/14)

(2014/C 339/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: A1 Telekom Austria AG

Question referred

Is the right, provided for in Article 20(2) of the Universal Service Directive ⁽¹⁾, for subscribers to withdraw from their contracts without penalty 'upon notice of ... modifications in the contractual conditions' also to be provided for in the case where an adjustment to charges derives from contractual conditions which, from the time when the contract is first concluded, provide that future charges are to be adjusted (upwards or downwards) in accordance with changes in an objective consumer price index reflecting movements in the value of money?

⁽¹⁾ Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Text with EEA relevance) (OJ 2009 L 337, p. 11).

**Reference for a preliminary ruling from Court of Session, Scotland (United Kingdom) made on 8 July
2014 — The Scotch Whisky Association and others against The Lord Advocate, The Advocate
General for Scotland**

(Case C-333/14)

(2014/C 339/05)

Language of the case: English

Referring court

Court of Session, Scotland

Parties to the main proceedings

Applicants: The Scotch Whisky Association and others

Defendants: The Lord Advocate, The Advocate General for Scotland

Questions referred

- 1) 'On a proper interpretation of EU law respecting the common organisation of the market in wine, in particular Regulation EU N° 1308/2013 ⁽¹⁾, is it lawful for a member state to promulgate a national measure which prescribes a minimum retail selling price for wine related to the quantity of alcohol in the sale product and which thus departs from the basis of free formation of price by market forces which otherwise underlies the market in wine?'
- 2) 'In the context of a justification sought under article 36 TFEU, where -

a member state has concluded that it is expedient in the interest of the protection of human health to increase the cost of consumption of a commodity — in casu alcoholic drinks — to consumers, or a section of those consumers; and

that commodity is one in respect of which the member state is free to levy excise duties or other taxes (including taxes or duties based upon alcoholic content or volume or value or a mixture of such fiscal measures),

is it permissible under EU law, and if so under what conditions, for a member state to reject such fiscal methods of increasing the price to the consumer in favour of legislative measures fixing minimum retail prices which distort intra EU trade and competition?'
- 3) 'Where a court in a member state is called upon to decide whether a legislative measure which constitutes a quantitative restriction on trade incompatible with article 34 TFEU may yet be justified under article 36 TFEU, on the grounds of the protection of human health, is that national court confined to examining only the information, evidence or other materials available to and considered by the legislator at the time at which the legislation was promulgated? And if not, what other restrictions might apply to the national court's ability to consider all materials or evidence available and offered by the parties at the time of the decision of the national court?'
- 4) 'Where a court in a member state is required, in its interpretation and application of EU law, to examine a contention by the national authorities that a measure otherwise constituting a quantitative restriction within the scope of article 34 TFEU is justified as a derogation, in the interests of the protection of human health, under article 36 TFEU, to what extent is the national court required, or entitled, to form — on the basis of the materials before it — an objective view of the effectiveness of the measure in achieving the aim which is claimed; the availability of at least equivalent alternative measures less disruptive of intra EU competition; and the general proportionality of the measure?'
- 5) 'In considering (in the context of a dispute as to whether a measure is justified on grounds of the protection of human health under article 36 TFEU) the existence of an alternative measure, not disruptive, or at least less disruptive, of intra EU trade and competition, is it a legitimate ground for discarding that alternative measure that the effects of that alternative measure may not be precisely equivalent to the measure impugned under article 34 TFEU but may bring further, additional benefits and respond to a wider, general aim?'
- 6) 'In assessing whether a national measure conceded, or found, to be a quantitative restriction in the sense of article 34 TFEU for which justification is sought under article 36 TFEU and in particular in assessing the proportionality of the measure, to what extent may a court charged with that function take into account its assessment of the nature and extent to which the measure offends as a quantitative restriction offensive to article 34?'

⁽¹⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, p. 671

**Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 11 July 2014 —
Les Jardins de Jouvence SCRL v Belgian State**

(Case C-335/14)

(2014/C 339/06)

Language of the case: French

Referring court

Cour d'appel de Mons