

**Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Bundespatentgericht — Germany) — proceedings brought by Boston Scientific Ltd**

(Case C-527/17) <sup>(1)</sup>

*(Reference for a preliminary ruling — Intellectual and industrial property — Supplementary protection certificate for medicinal products — Regulation (EC) No 469/2009 — Scope — Medical device incorporating as an integral part a substance which, used separately, may be considered to be a medicinal product — Directive 93/42/EEC — Article 1(4) — Concept of ‘administrative authorisation procedure’)*

(2019/C 4/10)

Language of the case: German

**Referring court**

Bundespatentgericht

**Party to the main proceedings**

Boston Scientific Ltd

In the presence of: Deutsches Patent- und Markenamt

**Operative part of the judgment**

Article 2 of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that a prior authorisation procedure, under Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Directive 2007/47/EC of the European Parliament and of the Council of 5 September 2007, for a device incorporating as an integral part a substance, within the meaning of Article 1(4) of that directive as amended, cannot be treated in the same way, for the purposes of applying that regulation, as a marketing authorisation procedure for that substance under Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004, even if that substance was the subject of the assessment provided for in the first and second paragraphs of section 7.4 of Annex I to Directive 93/42, as amended by Directive 2007/47.

<sup>(1)</sup> OJ C 402, 17.11.2017.

**Judgment of the Court (Ninth Chamber) of 25 October 2018 (request for a preliminary ruling from the Vrhovno sodišče — Slovenia) — Milan Božičević Ježovnik v Republika Slovenija**

(Case C-528/17) <sup>(1)</sup>

*(Reference for a preliminary ruling — Value added tax (VAT) — Directive 2006/112/EC — Article 143(1) (d) — Exemption from import VAT — Importation followed by an intra-Community supply — Risk of tax evasion — Good faith of the taxable importer and supplier — Assessment — Duty of care of the taxable importer and supplier)*

(2019/C 4/11)

Language of the case: Slovene

**Referring court**

Vrhovno sodišče

**Parties to the main proceedings**

Applicant: Milan Božičević Ježovnik

Defendant: Republika Slovenija

**Operative part of the judgment**

Article 143(1)(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, must be interpreted to the effect that, in circumstances where the taxable importer and supplier benefitted from an exemption from import value added tax on the basis of an authorisation issued after a prior examination by the competent customs authorities in the light of the evidence provided by that taxable person, the latter is not required to pay value added tax after the event where it is revealed, during a subsequent examination, that the substantive conditions for the exemption had not been met, except where it is established, in the light of objective evidence, that that taxable person knew, or should have known, that the supplies subsequent to the imports at issue were involved in fraud committed by the customer and that he did not take all reasonable steps in his power to avoid that fraud, which is a matter for the referring court to determine.

<sup>(1)</sup> OJ C 374, 6.11.2017.

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**Judgment of the Court (Third Chamber) of 24 October 2018 (request for a preliminary ruling from the Cour de cassation — France) — Apple Sales International, Apple Inc., Apple retail France EURL v MJA, acting as liquidator of eBizcuss.com**

(Case C-595/17) <sup>(1)</sup>

*(Reference for a preliminary ruling — Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 23 — Jurisdiction clause in a distribution contract — Action for damages by the distributor based on the infringement of Article 102 TFEU by the supplier)*

(2019/C 4/12)

Language of the case: French

**Referring court**

Cour de cassation

**Parties to the main proceedings**

Applicants: Apple Sales International, Apple Inc., Apple retail France EURL

Defendants: MJA, acting as liquidator of eBizcuss.com

**Operative part of the judgment**

1. Article 23 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application, in the context of an action for damages brought by a distributor against its supplier on the basis of Article 102 TFEU, of a jurisdiction clause within the contract binding the parties is not excluded on the sole ground that that clause does not expressly refer to disputes relating to liability incurred as a result of an infringement of competition law.