

### Operative part of the judgment

Article 7(2) of 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 must be interpreted as meaning that a trade mark proprietor may object to the continued marketing of a medicinal product by a parallel importer, where that importer has repackaged that medicinal product in a new, outer packaging and reaffixed the trade mark, where, first, the medicinal product at issue can be marketed in the importing State party to the EEA Agreement, of 2 May 1992, in the same packaging as that in which it is marketed in the exporting State party to the EEA Agreement and, second, the importer has not demonstrated that the imported product can only be marketed in a limited part of the importing State's market, and those are matters which it is for the referring court to determine.

<sup>(1)</sup> OJ C 294, 7.9.2015.

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### Judgment of the Court (Third Chamber) of 16 November 2016 (request for a preliminary ruling from the Conseil d'État — France) — Marc Soulier, Sara Doke v Premier ministre, Ministre de la Culture et de la Communication

(Case C-301/15) <sup>(1)</sup>

*(Reference for a preliminary ruling — Intellectual and industrial property rights — Directive 2001/29/EC — Copyright and related rights — Articles 2 and 3 — Rights of reproduction and communication to the public — Scope — 'Out-of-print' books which are not or no longer published — National legislation giving a collecting society rights to exploit out-of-print books for commercial purposes — Legal presumption of the authors' consent — Lack of a mechanism ensuring authors are actually and individually informed)*

(2017/C 014/13)

Language of the case: French

### Referring court

Conseil d'État

### Parties to the main proceedings

Applicants: Marc Soulier, Sara Doke

Defendants: Premier ministre, Ministre de la Culture et de la Communication

Intervening parties: Société française des intérêts des auteurs de l'écrit (SOFIA), Joëlle Wintrebert and Others

### Operative part of the judgment

Article 2(a) and Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as precluding national legislation, such as that at issue in the main proceedings, that gives an approved collecting society the right to authorise the reproduction and communication to the public in digital form of 'out-of-print' books, namely, books published in France before 1 January 2001 which are no longer commercially distributed by a publisher and are not currently published in print or in digital form, while allowing the authors of those books, or their successors in title, to oppose or put an end to that practice, on the conditions that that legislation lays down.

<sup>(1)</sup> OJ C 294, 7.9.2015.