

Question referred

Does Community law, in particular Articles 15(2) and 18 of Directive 2000/31/EC ⁽¹⁾ of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market; Article 8(1) and (2) of Directive 2001/29/EC ⁽²⁾ 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; Article 8 of Directive 2004/48/EC ⁽³⁾ of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights; and Articles 17(2) and 47 of the Charter of Fundamental Rights of the European Union, permit Member States to limit the duty of operators of electronic communications networks and services, providers of telecommunications network access and providers of data storage services to retain and make available connection and traffic information generated during the supply of an information society service to where it is required in connection with a criminal investigation or the need to protect public safety and national defence, thus excluding civil proceedings?

⁽¹⁾ OJ L 178, p. 1.

⁽²⁾ OJ L 167, p. 10.

⁽³⁾ OJ L 157, p. 45.

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 26 June 2006 — Interboves GmbH v Hauptzollamt Hamburg-Jonas

(Case C-277/06)

(2006/C 212/34)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Interboves GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Questions referred

1. Does point 48.7(a) of Chapter VII of the Annex to Directive 91/628/EEC ⁽¹⁾ define the basic conditions for transport by sea so that, in principle, — provided that the conditions laid down in points 48.3 and 48.4 of Chapter VII of the Annex to Directive 91/628/EEC, except for journey times and rest periods, are met — the journey times by road before and after transport by sea are not interconnected, even where animals are being transported on so-called roll-on/roll-off ferries?
2. Does point 48.7(b) of Chapter VII of the Annex to Directive 91/628/EEC include a special provision for so-called roll-on/roll-off ferries operating in the Community which applies alongside or in addition to the conditions laid down in point 48.4(a) of Chapter VII of the Annex to Directive 91/628/EEC, so that a new maximum journey time of 29 hours (*cf.* point 48.4(d) of Chapter VII of the Annex to the Directive) does not commence after arrival of the ferry at the port of destination (the animals having instead to be rested for 12 hours) only if the journey time at sea is such that the voyage has exceeded the general scheme of points 48.2 to 48.4 of Chapter VII of the Annex to the Directive — namely 29 hours in accordance with point 48.4(d)?

⁽¹⁾ OJ L 340, p. 17.

Reference for a preliminary ruling from the Bundesverwaltungsgericht, lodged on 26 June 2006 — Manfred Otten v Landwirtschaftskammer Niedersachsen

(Case C-278/06)

(2006/C 212/35)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Manfred Otten

Defendant: Landwirtschaftskammer Niedersachsen

Question(s) referred

Is Article 7(2) of Council Regulation (EEC) No 3950/92 of 28 December 1992 ⁽¹⁾, as amended by Council Regulation (EC) No 1256/1999 of 17 May 1999 ⁽²⁾, to be interpreted as meaning that on expiry of rural leases on a milk-production holding or a milk-production area the attached reference quantities can revert to the lessor even if that lessor is not, or is not about to become, a producer himself, insofar as he transfers the reference quantity as soon as possible through a State sales office to a third party who has that status?

⁽¹⁾ OJ 1992 L 405, p. 1.

⁽²⁾ OJ 1999 L 160, p. 73.

Reference for a preliminary ruling from the Audiencia Provincial de Madrid (Spain) lodged on 27 June 2006 — CEPSA, Estaciones de Servicio SA v LV Tobar e Hijos SL

(Case C-279/06)

(2006/C 212/36)

Language of the case: Spanish

Referring court

Audiencia Provincial de Madrid

Parties to the main proceedings

Applicant: CEPSA, Estaciones de Servicio SA

Defendant: LV Tobar e Hijos SL

Questions referred

- 1 (a) Is Article 81(1) EC to be construed as meaning that a exclusive supply contract under a brand name concluded in 1996 by a distributor of petroleum products and the proprietor of a service station requiring the latter to sell exclusively the supplier's motor-vehicle and other fuels for a fixed period, and to undertake not to sell such products supplied by other distributors, falls within the ambit of that provision in so far as that obligation involves a no-competition agreement, even though that contract might, given its commercial significance, be regarded as an agency contract?
- (b) If the contract does fall within the ambit of Article 81(1) EC, is it possible to claim the benefit of exemption

from the prohibition if it satisfies the requirements of Regulation No 1984/83 ⁽¹⁾, especially those relating to duration?

- (c) If that should be the case, does the fact that Articles 10 and 12 of that regulation permit the duration of the no-competition agreement to exceed five years as consideration for the granting of commercial or financial advantages by the supplier to the service station proprietor, require those commercial or financial advantages to be substantial or is it enough that they are not insignificant? Can those provisions be interpreted as meaning that such commercial or financial advantages have been conferred in exclusive supply contracts under a brand name in which the supplier of petroleum products bears the costs of installing and maintaining its brand image in the service station, or transfers fuel-tanks and -pumps which the service station proprietor may not use without the authorisation in writing of the sole supplier for products not supplied by the latter and which it must hand back when it ceases to use them as authorised, and the value of which is covered by the guarantee on first demand that the service station proprietor has provided in favour of the supplier?
 - (d) If that exemption should not be applicable, does the automatic nullity provided for by Article 81(2) EC affect the contract in its entirety?
- 2 (a) Is Article 81(1) EC to be interpreted as meaning that an exclusive supply contract under a brand name, in so far as it provides that the service station proprietor must sell motor-vehicle and other fuels supplied by the exclusive supplier at the prices for sale to the public fixed by the supplier, is in theory caught by the prohibition of restriction of competition because it fixes sale prices, taking account of its economic significance and in particular of the risks assumed by the service-station proprietor and its contribution to the costs connected with the supply of goods under the contract or of the sales promotion of those goods, given the following relevant points:
 - (1) The service-station proprietor undertakes to sell exclusively the supplier's lubricants, vehicle products and motor-vehicle and other fuels, in accordance with the retail prices, conditions and sales and business methods stipulated by the supplier for a period of 10 years, which may be extended for successive periods each of five years by express agreement in writing on notice of at least six months.
 - (2) The service-station proprietor assumes the risk associated with the motor-vehicle and other fuels as soon as they are received from the supplier in the storage tanks, including the risk of discrepancies in volume. From the moment of receipt the proprietor assumes the obligation to keep the products in the conditions necessary to ensure that they undergo no loss or deterioration and is liable, where applicable, to the supplier and to third parties for any loss, contamination or adulteration which may affect the products and for any damage arising as a result thereof.