

**Parties to the main proceedings**

*Appellant:* Connexxion Taxi Services BV

*Respondents:* Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport), Transvision BV, Rotterdamse Mobiliteit Centrale RMC BV, Zorgvervoercentrale Nederland BV

**Questions referred**

- 1 (a) Does EU law, in particular Article 45(2) of Directive 2004/18/EC<sup>(1)</sup> on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, preclude national law from obliging a contracting authority to assess, by application of the principle of proportionality, whether a tenderer which is guilty of grave professional misconduct must indeed be excluded?
- (b) Is it significant in this regard that a contracting authority has stated in the tender conditions that a tender to which a ground for exclusion applies must be set aside and is not to be eligible for further substantive assessment?
2. If the answer to Question 1(a) is in the negative: does EU law preclude a situation in which the national courts fail to carry out an 'unrestricted' judicial review of an assessment conducted on the basis of the principle of proportionality, such as the assessment conducted by a contracting authority in the present case, but merely carry out a ('marginal') review as to whether the contracting authority could reasonably have come to the decision not to exclude a tenderer notwithstanding the fact that that tenderer was guilty of grave professional misconduct within the meaning of the first subparagraph of Article 45(2) of Directive 2004/18/EC?

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<sup>(1)</sup> OJ 2004 L 134, p. 114.

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**Request for a preliminary ruling from the Rechtbank Den Haag (Netherlands) lodged on 17 April 2015 — Vereniging Openbare Bibliotheken v Stichting Leenrecht; interveners: Nederlands Uitgeversverbond and Others**

(Case C-174/15)

(2015/C 213/27)

*Language of the case: Dutch*

**Referring court**

Rechtbank Den Haag

**Parties to the main proceedings**

*Applicant:* Vereniging Openbare Bibliotheken

*Defendant:* Stichting Leenrecht

*Interveners:* Nederlands Uitgeversverbond, Stichting LIRA, Stichting Pictoright

**Questions referred**

- 1) Are Articles 1(1), 2(1)(b) and 6(1) of Directive 2006/115<sup>(1)</sup> to be construed as meaning that 'lending' as referred to in those provisions also means making copyright-protected novels, collections of short stories, biographies, travelogues, children's books and youth literature available for use, not for direct or indirect economic or commercial advantage, via a publicly accessible establishment

— by placing a digital copy (reproduction A) on the server of the establishment and enabling a user to reproduce that copy by downloading it on to his/her own computer (reproduction B),

- in such a way that the copy made by the user when downloading (reproduction B) is no longer usable after a limited period, and
  - in such a way that other users cannot download the copy (reproduction A) on to their computers during that period?
- 2) If Question 1 is to be answered in the affirmative: does Article 6 of Directive 2006/115 and/or any other provision of EU law preclude Member States from imposing on the application of the restriction on the lending right included in Article 6 of Directive 2006/115 a condition that the copy of the work made available by the establishment (reproduction A) must have been brought into circulation by an initial sale or other transfer of ownership of that copy within the European Union by the rightholder or with his consent within the meaning of Article 4(2) of Directive 2001/29 <sup>(2)</sup>?
- 3) If Question 2 is to be answered in the negative: does Article 6 of Directive 2006/115 lay down other requirements for the source of the copy (reproduction A) provided by the establishment, for instance the requirement that the copy was obtained from a lawful source?
- 4) If Question 2 is to be answered in the affirmative: is Article 4(2) of Directive 2001/29 to be construed as meaning that the initial sale or other transfer of ownership of material as referred to in that provision also means making available remotely by downloading, for use for an unlimited period, a digital copy of copyright-protected novels, collections of short stories, biographies, travelogues, children's books and youth literature?

<sup>(1)</sup> Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (OJ 2006 L 376, p. 28).

<sup>(2)</sup> 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 (OJ 2001 L 167, p. 10).

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 21 April 2015 —  
Nelsons GmbH v Ayonnax Nutripharm GmbH, Bachblütentreff Ltd**

(Case C-177/15)

(2015/C 213/28)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Appellant on a point of law:* Nelsons GmbH

*Respondents in the appeal on a point of law:* Ayonnax Nutripharm GmbH, Bachblütentreff Ltd

**Questions referred**

1. Are liquids with an alcohol content of 27 % by volume, which are described as spirit drinks and are sold through pharmacies in 10 ml or 20 ml dropper bottles or as sprays, beverages containing more than 1,2 % by volume of alcohol within the meaning of Article 4(3) of Regulation (EC) No 1924/2006 <sup>(1)</sup>, where, according to the dosage instructions given on the packaging,
- (a) four drops of the liquid are to be added to a glass of water and drunk at intervals over the course of the day or four drops are to be taken undiluted, as required,