



Summary of a preliminary question

Preliminary remark:

Please use this template for the entire preliminary ruling proceeding. You can fill it in step-by-step as the proceedings progress and upload the newest version.

National file reference

ECLI number

Case number of the ECJ

Subject

*To be introduced freely (350 characters including spaces maximum)
Please explain very briefly which **question(s) of law** the case deals with.*

Best practice examples:

- *Withdrawal of residence permit obtained by fraud -consequences for relatives ignorant of the fraud – Directive 2003/86/EC – Directive 2003/109/EC*
- *Detention of third country nationals with the purpose to return them to another EU Member state - already entitled to asylum in another EU Member State - Articles 3, 4, 6 and 15 of Directive 2008/115/EC (Return Directive)*
- *VAT-related treatment of medical telephone consultations - Telemedicine - Curative treatment in the domain of human medicine - Article 132 section 1 c of EC guideline 112/2006 - Tax exemption*

Identification of the parties (in accordance with the principles of the GDPR)

Background/useful facts of the case

*To be introduced freely (1000 characters including spaces maximum)
Please restrict yourself to the facts, which are necessary to understand the preliminary question at hand. The course and content of the national lawsuit must only be explained if relevant for the decision or reasoning of the ECJ.*

Best practice examples:

- *“In a reference for preliminary ruling, the Administrative Jurisdiction Division of the Council of State of the Netherlands (the Division) asked the ECJ whether the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a ‘project’ within the meaning of the Habitats Directive. The Nitrogen Action Programme 2015-2021 (PAS) and the Law on Nature Conservation 1998 does not consider ‘cattle grazing and fertilising land’ as a project and does not require a nature permit for this activity. Cattle grazing and fertilising can cause nitrogen deposition in nearby Natura 2000 areas”.*

- *“The dispute pertains to the issue of whether telephonic consultation services provided by taxable ‘health coaches’ commissioned by compulsory health insurance funds can be considered to constitute curative treatment. In case of this particular dispute, the plaintiff operated a so-called health telephone at the behest of compulsory health insurance funds in order to provide medical consultation services to insured persons. She also carried out patient support programmes in which certain insured persons used a medical hotline to receive situational information regarding their medical condition on the basis of billing data and disease patterns. The telephonic consultation services were provided by nurses and qualified medical employees, most of whom had also been trained as ‘health coaches’. A doctor was consulted in approximately a third of the cases; this doctor took over the consultations or provided instructions or a second opinion in case of queries”.*

Summary of the legal reasoning

To be introduced freely (2500 characters including spaces maximum)

Please summarise all legally relevant aspects of the court proceedings. Please progressively include in your summary all decisions taken in the course of the legal proceedings and indicate how the respective courts decided. This summary should make it clear to the reader why the decisions handed down in the proceedings could also be of interest to other EU member courts. If a court states that its final decision will not be published, please indicate this at the end of the summary.

Best practice examples:

- *“The ECJ ruled inter alia in Judgement C-293/17 that: (1) ‘Article 6(3) of the Habitats Directive must be interpreted as meaning that the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a ‘project’ within the meaning of Article 6(3), even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a ‘project’ within the meaning of Article 1(2)(a) of Directive 2011/92/EU [...]’ And (5) ‘Article 6(3) of the Habitats Directive must be interpreted as precluding national programmatic legislation, such as that at issue in the main proceedings, which allows a certain category of projects, in the present case the application of fertilisers on the surface of land or below its surface and the grazing of cattle, to be implemented without being subject to a permit requirement and, accordingly, to an individualised appropriate assessment of its implications for the sites concerned, unless the objective circumstances make it possible to rule out with certainty any possibility that those projects, individually or in combination with other projects, may significantly affect those sites, which it is for the referring court to ascertain.*

Pursuant to the ECJ-Judgement the Division rules that, because the activity of cattle grazing and fertilization of land must be classified as a project within the meaning of Article 6(3) and because it is not certain in advance that this activity will not affect nearby Nature 2000 areas, the activity cannot be made 'permit free'. The Division declares the appeals well-founded and annuls the Decisions of the Provincial executives of Limburg and Gelderland. The appellants won their case ».

- *“The BFH has doubts about the interpretation of the CJEU case law, and submitted the following questions to the ECJ (CJEU file no.: C-48/19): 1. Do circumstances such as those associated with the main proceedings - in which a taxable person provides telephone consultation services pertaining to various health-related and illness-related topics to insured persons at the behest of medical insurance companies - involve an activity that would fall under the area of application of article 132 section 1 c of directive 2006/112/EC? 2. Under circumstances like those associated with the main proceedings, and with regard to the services specified in question 1 and the revenues falling within the framework of 'patient support programmes', would the fact that the telephonic consultations are carried out by 'health coaches' (qualified medical employees and nurses) and the fact that a doctor is consulted in approximately a third of the cases be sufficient in terms of the required professional qualifications?”*

Comments

To be introduced freely (350 characters maximum)

Examples:

- *Correspondents could specify in particular whether it concerns a reversal of case law or a consistent case law.*
- *The historical background of a long judicial process.*