

2. Must the provisions of Article 4(6) of Framework Decision 2002/584/JHA, read in conjunction with Articles 25 and 4(2) of Framework Decision 2008/909/JHA, be interpreted as meaning that the refusal to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence, without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, [cause] the sentencing State to forfeit its right to enforce the sentence under Article 22(1) of Framework Decision 2008/909/JHA?
3. Must Article 8(1)(c) of Framework Decision 2002/584/JHA be interpreted as meaning that a judgment imposing a custodial sentence on the basis of which a European arrest warrant has been issued, the execution of which has been refused under Article 4(6) [of that Framework Decision], with recognition of the judgment passing sentence but without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, is no longer enforceable?
4. Must the provisions of Article 4(5) of Framework Decision 2002/584/JHA be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of Framework Decision 2002/584/JHA, but without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State (EU Member State), and without obtaining the consent of the sentencing State in the context of the recognition procedure, amounts to a judgment 'by a third State in respect of the same acts'?

If Question 4 is answered in the affirmative:

5. Must the provisions of Article 4(5) of Framework Decision 2002/584/JHA be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of Framework Decision 2002/584/JHA, with the suspension of the sentence in accordance with the law of the executing State, amounts to a sentence that 'is currently being served' where supervision of the sentenced person has not yet commenced?

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(<sup>1</sup>) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

(<sup>2</sup>) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States — Statements made by certain Member States on the adoption of the Framework Decision (OJ 2002 L 190, p. 1).

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**Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 9 March 2022 —  
Finanzamt Hamm v Harry Mensing**

**(Case C-180/22)**

**(2022/C 222/27)**

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Appellant in the appeal on a point of law:* Finanzamt Hamm

*Respondent in the appeal on a point of law:* Harry Mensing

### Questions referred

1. In circumstances such as those in the main proceedings, in which a taxable person relies, on the basis of the judgment in *Mensing*,<sup>(1)</sup> on the fact that the supply of works of art that were supplied to him in the context of an exempt intra-Community supply by the creator (or his successors in title) also falls under the margin scheme of Article 311 et seq. of Directive 2006/112/EC,<sup>(2)</sup> is the taxable amount to be determined, in accordance with paragraph 49 of that judgment, exclusively on the basis of EU law, with the result that it is not permissible for the national court adjudicating at last instance to interpret a provision of national law (in the present case: the third sentence of Paragraph 25a(3) of the Umsatzsteuergesetz (the Law on turnover tax) to the effect that the tax due on the intra-Community acquisition does not form part of the taxable amount?
2. If the answer to Question 1 is in the affirmative: is Article 311 et seq. of Directive 2006/112 to be understood as meaning that, where the margin scheme is applied to supplies of works of art that were previously acquired from the creator (or his successors in title) within the Community, the tax due on the intra-Community acquisition reduces the profit margin, or is there an unintentional loophole in EU law in that respect that can only be removed by the EU legislature, not by the development of the law through case-law?

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<sup>(1)</sup> Judgment of 29 November 2018 (C-264/17, EU:C:2018:968).

<sup>(2)</sup> Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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### Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 11 March 2022 — FI v Bayerische Motoren Werke AG

(Case C-192/22)

(2022/C 222/28)

*Language of the case: German*

### Referring court

Bundesarbeitsgericht

### Parties to the main proceedings

*Appellant:* FI

*Respondent:* Bayerische Motoren Werke AG

### Questions referred

1. Do Article 7 of Directive 2003/88/EC<sup>(1)</sup> or Article 31(2) of the Charter of Fundamental Rights of the European Union preclude an interpretation of a rule of national law such as Paragraph 7(3) of the German Bundesurlaubsgesetz (Federal Law on Leave; 'the BUrlG') according to which a worker's entitlement to paid annual leave acquired during the work phase of a progressive retirement relationship but as yet unexercised is forfeited in the release phase at the end of the holiday year or at a later time?
- Should the Court of Justice answer Question 1 in the negative:
2. Do Article 7 of Directive 2003/88/EC or Article 31(2) of the Charter of Fundamental Rights of the European Union preclude an interpretation of a rule of national law such as Paragraph 7(3) BUrlG according to which the as yet unexercised entitlement to paid annual leave of a worker who, in the course of the holiday year, moves from the work phase to the release phase is forfeited at the end of the holiday year or at a later time if the employer — without having previously fulfilled its obligations to cooperate in the realisation of the leave entitlement — has granted the worker the entire annual leave in line with his or her application for a period immediately prior to the start of the release phase, but the leave entitlement could not be fulfilled — at least in part — because the worker became unfit for work due to illness after the leave was granted?

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<sup>(1)</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).