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*, ([1]) 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, ([2]) 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?

([1]) Judgment of 29 November 2018 (C-264/17, EU:C:2018:968).
([2]) Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

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 ([1]) 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?

([1]) 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).