

**Parties to the main proceedings**

*Applicant:* ProRail NV

*Defendants:* Xpedys NV, DB Schenker Rail Nederland NV, Nationale Maatschappij der Belgische Spoorwegen NV, FAG Kugelfischer GmbH

**Re:**

Request for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 1 and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1) and of Article 33(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') (OJ 2001, L 12, p. 1) — Direct taking of evidence by the requesting court — Designation of an expert and the assignment to that expert, by the courts of a Member State, of a task which must be carried out partly in the Member State of the courts in question and partly in another Member State — Whether or not the application of the mechanism provided for in Article 17 of Regulation No 1206/2001 is obligatory

**Operative part of the judgment**

Articles 1(1)(b) and 17 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that the court of one Member State, which wishes the task of taking of evidence entrusted to an expert to be carried out in another Member State, is not necessarily required to use the method of taking evidence laid down by those provisions to be able to order the taking of that evidence.

<sup>(1)</sup> OJ C 269, 10.9.2011.

**Judgment of the Court (Grand Chamber) of 26 February 2013 (request for a preliminary ruling from the Tribunal Constitucional Madrid — Spain) — Criminal proceedings against Stefano Melloni**

(Case C-399/11) <sup>(1)</sup>

**(Police and judicial cooperation in criminal matters — European arrest warrant — Surrender procedures between Member States — Decisions rendered at the end of proceedings in which the person concerned has not appeared in person — Execution of a sentence pronounced in absentia — Possibility of review of the judgment)**

(2013/C 114/16)

Language of the case: Spanish

**Referring court**

Tribunal Constitucional Madrid

**Parties to the main proceedings**

*Criminal proceedings against:* Stefano Melloni

*Other party:* Ministerio Fiscal

**Re:**

Request for a preliminary ruling — Tribunal Constitucional Madrid (Spain) — Interpretation of Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24) and of Articles 47, 48 and 53 of the Charter of Fundamental Rights of the European Union — Decisions handed down at the end of proceedings during which the person concerned was not present in person — Execution of a sentence handed down in absentia — Possibility for the judgment to be reviewed

**Operative part of the judgment**

- Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant issued for the purposes of executing a sentence conditional upon the conviction rendered in absentia being open to review in the issuing Member State.
- Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is compatible with the requirements under Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union.
- Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted in absentia conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.

<sup>(1)</sup> OJ C 290, 1.10.2011.