[69] Cf. *Vossestein*, Transfer of the registered office The European Commission's decision not to submit a proposal for a Directive, Utrecht L. Rev., Vol. 4 [2008] 53 *et seq*.
[70] *Ibid*. at p. 53.
[71] Consultation on the Action Plan (2003), in which connection reference can be made to: Synthesis of the responses to the Communication of the Commission to the Council and the European Parliament «Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward» – COM(2003) 284 final, 21.5.2003. A Working Document of DG Internal Market, 15 November 2003.
[72] SPEECH/07/441 of 28 June 2007 (Company law and corporate governance today. 5th European Corporate Governance and Company Law Conference, Berlin).
[73] Cf. *Mucciarelli*, Company 'Emigration' and EC Freedom of Establishment: Daily Mail Revisited, EBOR, Vol. 9 [2008] 275.
[74] Council Regulation (EC) No. 2137/1985 on the European Economic Interest Grouping.
[75] *Ibid*., at Article 2.
[76] *Ibid*., at Article 12.
[77] Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE), OJ [2001] L 294/1-21 (hereinafter, the SE Regulation).
[78] Directive 2005/56/CE of the Parliament and the Council of 26 October 2005 on crossborder mergers of limited liability companies OJ [2005] L 310/1 (hereinafter, the Directive on Cross-Border Mergers). Cf. *Siems*, The European directive on cross-border mergers: an international model?, Col. J. Eur. L., Vol. 11 [2005] 167 *et seq*.
[79] Article 2(4) and Article 37 SE Statute.
[80] Article 66 SE Statute.
[81] With regard to details of structuring such a transaction see: *Werlauff*, Relocating a Company within the EU, Eur. Comp. L., Vol. 5 [2008] 137 *et seq*.
[82] *Ringe*, No Freedom of Emigration for Companies?, EBLR, Vol. 16 [2005] 640.
[83] See previous judgments: *Überseering*, supra n 5, paras. 61-73; *Inspire Art*, supra n 13, para. 103.
[84] See the correspondent title of the article: *Rammeloo,* The Long and Winding Road towards Freedom of Establishment for Legal Persons in Europe, Maastricht J. Eur. & Comp. L., Vol. 10 [2003] 169 *et seq*.
[85] Cf. *Rammeloo*, The 14th EC Company Law Directive on the Cross-Border Transfer of the Registered Office of Limited Liability Companies – Now or Never?, Maastricht J. Eur. & Comp. L., Vol. 15 [2009] 394.
[86] LG Heidelberg, 3 March 2000, EuZW [2000] 414; and ECJ [2001] ECR I-5353 *HSB Wohnbau GmbH*. Cf. *Behrens*, Reactions of Member State Courts to the Centros ruling by the ECJ, EBOR, Vol. 2 [2001] 169 *et seq*.
[87] Cf. *Birkmose*, A Market for Company Incorporations in the European Union – Is Überseering the beginning of the End?, Tul. J. Int'l & Comp. L., Vol. 13 [2005] 55-108.
[88] Cf. *Becht/Mayer/Wagner*, Where Do Firms Incorporate? Deregulation and the Cost of Entry, Journal of Corporate Finance, Vol. 14, [2008] 241 *et seq*.
[89] Cf. *Angelette*, The Revolution that never came and the Revolution coming – De Lastery du Salliant, Marks & Spencer, SEVIC Systems and The Changing Corporate Law in Europe, Va. L. Rev., Vol. 92 [2006] 1189.
[90] Para. 124.
[91] See the correspondent title: *Ebke*, The European Conflict-of-Laws Revolution: Überseering, Inspire Art and Beyond, EBLR [2005] 9 *et seq*.
[92] *Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen* (MoMiG), Law of October 23, 2008 BGBl. I, p. 2026; in force since November 1, 2008.
[93] Cf. *Referentenentwurf eines Gesetzes zum Internationalen Privatrecht der Gesellschaften, Vereine und juristischen Personen* of 7 January 2008, available at http://www.bmj.de/files/-751/RefE%20Gesetz%20zum%20Internationalen%20Privatrecht%20der%20Gesellschaften,%20Vereine%20und%20juristischen%20Personen.pdf.
[94] Treaty of Friendship, Commerce and Navigation between the United States of America and the Federal Republic of Germany (29 October 1954), Bundesgesetzblatt II 1956, p. 487 *et seq*.
[95] European Parliament, Committee on Legal Affairs, Draft Report *Klaus-Heiner Lehne* (PE414.360v01-00) of December 15, 2008 with recommendations to the Commission on cross-borders transfers of company seats (2008/2196(INI)).

Wettbewerbsrecht

II

II.

Alexandr Svetlicinii, Florence*

«Piercing the Corporate Veil»: Imposition of Fines on Associations of Undertakings for Violation of EC Competition Law

(Coop de France bétail et viande and Fédération nationale des syndicats d'exploitants agricoles (FNSEA) and Others ⁄. Commission, ECJ (Third Chamber), judgment of 18 December 2008, C-101/07 P and C-110/07 P)

(1) **Facts and Procedure**

The discovery of the bovine spongiform encephalopathy («mad cow disease») in several Member States in 2000 prompted the Commission to authorize a range of measures aimed at preserving consumer confidence in the meat products produced within the Community and to increase falling consumption. The specific measures included mechanisms for withdrawing certain quantities of cattle from the market in order to stabilize supply in relation to demand and authorizations for state aid in the beef sector. These measures were deemed insufficient by farmer communities which caused uncontrolled

and sometimes ***violent protests in France*** involving blockage of abattoirs and illegal actions preventing imported meat from being delivered into the country. Concerned with the growing instability in the sector, the French Minister of Agriculture moderated an ***agreement*** (the Agreement) ***between the federations of stock farmers and slaughterers*** on the minimum slaughterhouse entry ***price scale for culled cows*** (cows which had been used either for reproduction or milk production) and a temporary ***commitment to suspend imports***, which made no distinction between types of beef. The participating associations included FNCBV (a federation of over 300 cooperative groups of producers in the cattle, pig and sheep-farming sectors and some 30 slaughter and meat-processing groups or undertakings in France), FNSEA (the main French farmers' union comprising 33 specialized associations representing the interests of each type of producer, including FNB, the national cattle association, and FNPL, the national milk producer's assoctiation) and JA (the young farmers' association representing FNSEA members under 35 years of age).

In November 2001, the Commission sent a ***letter of formal notice*** to the six federations which had signed the Agreement in 2001 stating that the facts which had come to its knowledge indicated that the Community competition rules had been infringed and requesting the federations to submit their observations and proposals. In June 2002, after a series of investigations, the Commission adopted a statement of objections addressed to the six federations which were signatories to the Agreement and requested them to submit the accounting balance sheets for years 2001 and 2002 respectively in order to make the turnover calculations. In April 2003 the Commission adopted its ***decision*** (the Decision),[1] finding that signatories of the ***Agreement infringed Article 81(1) EC*** by fixing a minimum purchase price for certain categories of cattle and suspending imports of beef into France. The Commission found among others that the Agreement was not necessary for attaining the objectives of the Common Agricultural Policy set out in Article 33 EC and refused the exemption provided for by Regulation No 26[2] in favor of certain activities connected with the production of and trade in agricultural products. In determining the ***amount of fines*** imposed on the participating federations the Commission took into account a number of aggravating circumstances. For instance, it increased the fines on FNSEA, FNB and JA by 30% because their members had used violence to compel the slaughterers' federations to adopt the Agreement; it increased the fines of all the associations by 20% as they continued the agreement in secret after the letter of formal notice issued by the Commission; it took into account the preponderant role allegedly played by FNB in the preparation and implementation of the infringement by increasing its fine by 30%. At the same time, pursuant to Section 5(b) of the Guidelines,[3] the Commission took account of the specific circumstances of the present case – particularly the economic context marked by the crisis in the industry – and reduced the resulting fines by 60%.

FNCBV, on the one hand, and FNSEA, FNB, FNPL and JA, on the other, ***challenged the Decision before the CFI*** seeking its annulment or, in alternative, the cancellation of the fines imposed on them or the reduction of their amounts.[4] After the review of the legitimacy of the Commission's decision and method used for calculation of fines (based on the turnover of the federations' members) the CFI reduced the amounts of fines imposed on the participating federations and dismissed the rest of the claims. The parties further ***appealed to the ECJ*** asserting *inter alia* that the CFI has distorted some of the evidence and that the Agreement was not anticompetitive. As the ECJ has dismissed these grounds of appeal because it had no jurisdiction to establish the facts or to examine the evidence which the CFI accepted in support of those facts,[5] present case note will focus on the issue that has been elaborated by the ECJ – that of the methodology for the calculation of fines for infringement of EC competition law. On that issue, the appellants asserted an error of law in that the CFI had refused to accept that the Commission infringed their ***rights of defense*** by failing to mention in its statement of objections that any fine would be calculated taking into account the turnover of the appellant federations' members. As those federations could not have foreseen such a ***change in calculation method*** and therefore had no opportunity to defend themselves on that point, the CFI should have recognized the infringement of their rights of defense committed by the Commission in the statement of objections it adopted.

FNSEA, FNB, FNPL and JA, supported by the French Republic, claimed that the CFI had erred in law when it held that the upper limit on fines fixed in Article 15(2) of Regulation No 17[6] could be calculated ***taking into account the turnover of their members*** and not that of each federation. The appellants characterized the CFI's approach as radical departure from the well estab-

lished standard, namely the taking into account of the turnover of the members of an association of undertakings in the calculation of that limit is subject to the condition that such association may, under its internal rules, commit its members. The French Republic argued in the alternative that since the appellant federations had ***no power to commit their members***, the CFI should not have accepted the taking into account of their members turnover in calculating the limit on the fine fixed in that provision without enquiring whether the Agreement had actually had an effect on the market in beef and veal. FNCBV added that such a departure from the case-law, unaccompanied by an adequate statement of reasons, was contrary to the principle of legal certainty since the undertakings concerned could not distinguish the circumstances in which the ceiling of 10% fixed in Article 15(2) of Regulation No 17 would be determined by reference to the turnover of an association of undertakings from those in which it would be determined vis-à-vis the total turnover of the members of that association.

Similarly, FNCBV alleged a contradiction in the CFI's reasoning regarding the ***principle of non-aggregation of sanctions***. Accordingly, the CFI on one hand had emphasized the signature, participation, responsibility, individual role and the implementation of the Agreement by the appellant federations to justify the fact that the sanction was imposed on them and not on their members. On the other hand, the CFI had noted that the Agreement did not concern the appellant federations' activities, that the measures adopted did not affect them, that the agreement was concluded directly for the benefit of those federations' members and finally that the agreement was put into effect by those federations' members. The French Republic equally took an issue with the fact that the Commission imposed no sanction on the basic members of the appellant federations and at the same time took into account the turnover of their members in the calculation of the 10% limit based on the fact that the Agreement was concluded directly for their members' benefit and in cooperation with them.

The last challenge of the Commission's fining methodology in the present case also concerned the issue of non-aggregation, albeit in a different context. The appellant federations argued that by calculating the fines based on the turnover of the individual members of each federation the Commission had infringed the principle of non-aggregation, because some of the federations have ***common members*** and as a result the turnover of such members had been taken into calculation for several times. According to the appellants, the CFI should have held that none of the four federations had interests independent of their common members and those of the three other federations and should not have upheld the Commission's method of calculating the fines on each of the federations, which was based on the aggregate turnover of their members. The appellant federations suggested that a single federation, be it FNSEA or be it FNB, each bringing together the entirety of its common members, could be subjected to a common sanction taking into account the financial capacity of their members, and that the sanction imposed on the other three federations should take into account only the amount of their own income. The French Republic, concurring with appellants, submitted that by taking into account the turnover of common members while calculating the fines for each participating federation the Commission had in fact overestimated their economic power and imposed a disproportionate fine.

(2) **Judgment**

Analyzing the applicants' claim that their procedural rights had been infringed by the Commission, the ECJ held that the Commission fulfils its obligation to respect the undertakings' right to be heard if it indicates expressly in the statement of objections that it will consider whether it is appropriate to impose fines on the undertakings concerned and if it sets out the principal elements of fact and of law that may give rise to a fine, such as the gravity and the duration of the alleged infringement and the fact that it has been committed «intentionally or negligently».[7] Regarding the parties' arguments alleging the novelty of the Commission's methods of calculating the fines, the ECJ noted that such ***methods are not new*** and that the practice of taking into account the appellant federations' members' turnover in the calculation of the fines has been upheld by the Community courts.[8]

Addressing the appellants' submission regarding the calculation of ***fines based on the turnover of the individual members*** of a federation, the ECJ aligned itself with the CFI and noted that as a general rule the upper limit of 10% fixed in Article 15(2) of Regulation No 17 may, according to settled case-law, be calculated taking into account the turnover of all the undertakings which are members of an association of undertakings, at least if that association has power to bind its members. However, in the same way that case-law does not rule out the possibility

that, in certain cases, the turnover of the members of an association could also be taken into account even if the association does not possess formal power to bind its members. The ECJ found that the appellants' objections to such a method of calculation was based on the incorrect reading of *Finnboard* where the ECJ had, in the view of the appellants, ruled out the taking into account of the turnover of the members of an association of undertakings if the association does not have the power to bind its members. The Court referred the parties to the Opinion of AG *Mazak*,[9] who noted that it is clear from the context of the ECJ's judgment in *Finnboard* that the undertakings which were members of the association on which the Commission had imposed a fine had not been implicated in the commission of the infringement. It was in those circumstances that the Court held, as regards the imposition of a fine on an association of undertakings whose own turnover most often does not reflect its size or power on the market, that the Commission may take into account the turnover of the undertakings which are members of that association in order to determine a sanction which is deterrent but, for that to be the case, it is necessary that the association has, by virtue of its internal rules, power to bind its members.

ECJ highlighted the difference between the two factual settings stating that as in the present case the ***members*** of an association of undertakings have ***participated actively in implementing an anti-competitive agreement***, those members' turnover could be taken into account for the purposes of determining the sanction, even if the association in question, in contrast to the situation referred to in *Finnboard*, has no power to bind its members. It has therefore upheld the CFI's position that such a method of imposing fines is justified in cases where an infringement on the part of an association involves its members' activities and where the anti-competitive practices at issue are engaged in by the association directly for the benefit of its members and in cooperation with them, the association having no objective interests independent of those of its members. Otherwise the Commission would be unable to implement a meaningful fining policy appropriate to the committed infringements because associations uniting large and powerful undertakings with high turnover might by themselves have a very low turnover, which if taken as a basis would mean unjustifiably low fines that would not reflect the gravity of the infringement.

Addressing the appellants' plea regarding the alleged violation of the ***principle of non-aggregation of sanctions***, the ECJ did not find any error in the approach taken by the CFI. The CFI had established that the sanction imposed on each appellant federation had been pronounced because of its own participation in and responsibility for the infringement where all the appellant federations participated in the implementation of the Agreement, although with different intensity and degrees of involvement. Consequently, the CFI had found that the Commission had not fined the same entities or the same persons several times for the same acts, because it did not impose sanctions on the individual members of the appellant federations. Regarding the consideration of the turnover of individual ***members common to several federations***, the ECJ reminded the parties of the three-fold criterion developed in the case-law for the application of the principle of *non bis in idem*: 1) identity of the facts, 2) unity of offender and 3) unity of the legal interest protected. In applying these criteria, CFI had held that the fact that FNB, FNPL and JA were members of FNSEA did not mean that those federations were sanctioned several times for the same infringement, since those ***federations had separate legal personality*** with separate budgets and objectives which did not always coincide, and carried out their respective union activity in defense of their own specific interests. The CFI had added that since the individual farmers who were indirect members of the appellant federations were not penalized in the contested decision, the fact that the basic members of FNB, FNPL and JA were also members of FNSEA did not prevent the Commission from penalizing each of those federations individually. This allowed the ECJ to conclude that the CFI had not infringed the *non bis in idem* principle because the infringers were not identical, nor did it violate the principle of proportionality, since the appellant federations' members, whether direct or indirect, were not fined twice for one and the same infringement.

(3) **Commentary**

Although the ECJ's judgment in *Coop de France* did not receive much publicity in the legal commentaries[10] as of today, it represents an important clarification and affirmation of the basic principles and objectives of the EC fining policy for violations of competition law. It has to be noted that although the case was decided in accordance with the rules contained in the 1998 fining guidelines, the clarification of methodology for the calculation of fines to be imposed on associations of undertakings provides useful guidance for the current regulations. For instance, the ***2006 Com-***

mission's guidelines[11] for setting fines pursuant to the enforcement of Regulation 1/2003[12] contains a very concise rule related to associations of undertakings: «*Where the infringement by an association of undertakings relates to the activities of its members, the value of sales will generally correspond to the sum of the value of sales by its members*».[13] The 1998 fining guidelines have been criticized for the lack of clarity of the methods used by the Commission to calculate the fines and the CFI was often willing to accept a reduction of fines proposed by the Commission, which generated a massive amount of litigation before the Community courts.[14] As the specified rule in the 2006 guidelines similarly provides little guidance on how the infringement by an association should be «related» to the activity of its members, the ECJ's clarification of the relevant case-law should be welcomed.[15]

In the present case the Community courts encountered a situation where the appellants were in effect attempting to escape the prosecution for the established violation of competition law by concluding and implementing an anticompetitive agreement for the benefit of their members. By challenging the Commission's calculation of the fines based on the turnover of the federations' members, the appellants obviously attempted to inhibit the Commission to «pierce the corporate veil» of the federations' legal personality and in fact to impose the ***fine*** that would be ***proportionate to the real economic power*** of their members. Thus, the appellant federations used their legal personality as a shield covering their corporate and individual members. There is no need to emphasize that this approach would lead to a handicapped fining policy, where the basis of fines imposed on associations of undertakings would be their own turnover, which very often represents a very negligible amount consisting of the membership fees. While the preceding case-law, namely *Finnboard*, already admitted the possibility of calculating the fines imposed on an association of undertakings based on the aggregate turnover of its members, it appeared to have conditioned this method of calculation to the fact that the association should have power to legally bind its members. In the present case the ECJ introduced an important clarification to the existing rules by emphasizing the following factual situations to be considered: 1) it distinguished *Finnboard* where the members of associations were not participating in the infringement with the present case and 2) it held that in situations where members of an association actively participate in the infringement and the association itself does not have objective interests separate from those of its members, the imposition of the fined based on the members' turnover is certainly justified.

The judgment also demonstrates that the issue of ***«objective interests»*** can make a difference for the calculation of fines. The Court exemplified the importance of this concept when addressing the principle of *non bis in idem* and the problem of common members taking part in various associations at the same time. The ruling provides that in situation where the interests of an association are identical to those of its members' the fining based on the latter's turnover is justified. At the same time, while the interests of associations with common members might differ. In the present case a young farmer could be a member of JA, which focused specifically on the interests of this category of farmers and at the same time carry a membership in the national farmer's union (FNSEA), which was promoting the interests of all categories of farmers that might not always coincide. The ECJ affirmed that under such factual circumstances the calculation of the fines based on the members' turnover can be done for each association disregarding the fact that they might have common members.

The ECJ's ruling once again indicated the adherence to the main objective of the fining policy articulated in the preceding case law[16] and 2006 fining guidelines: «*Fines should have a sufficiently* ***deterrent effect****, not only in order to sanction the undertakings concerned (specific deterrence) but also in order to deter other undertakings from engaging in, or continuing, behaviour that is contrary to Articles 81 and 82 of the EC Treaty (general deterrence)*».[17] It may be expected that the clarification of the legal standards made by the Community courts will contribute to the prevention of infringements where associations are used as convenient legal vehicles for fostering anticompetitive objectives.

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1 Commission Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C.38.279/F3 – *French beef*) (OJ 2003 L 209, p. 12).

2 Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ, English Special Edition 1959-1962, p. 129).

3 Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty, (OJ 1998 C 009, pp. 3-5).

4 CFI [2006] ECR II-4987 *FNCBV and Others ⁄ Commission*.

5 The ECJ has jurisdiction under Article 225 EC to review the legal characterization of the facts by the CFI and the legal conclusions it has drawn from them (see ECJ [2006] ECR

I-3173 *General Motors ⁄. Commission*, para 51; and ECJ of 22 May 2008, C-266/06 P *Evonik Degussa ⁄. Commission*, para 72). At the same time, the CFI alone has jurisdiction to assess the value which should be attached to the evidence produced to it; except for the cases of clear distortion of evidence that appraisal does not constitute a point of law which is subject to review by the ECJ (see *General Motors ⁄. Commission*, paragraph 52 and *Evonik Degussa ⁄. Commission*, para 73).

[6] Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (Articles 81 and 82 after the Treaty of Amsterdam).

[7] The Court referred the parties to settled case-law, ECJ [2005] ECR I-5425 *Dansk Rørindustri and Others ⁄. Commission*, para 428.

[8] ECJ [2000] ECR I-10157 *Finnboard ⁄. Commission*, para 66; and CFI [1994] ECR II-49 *CB and Europay ⁄. Commission*, para 139.

[9] Opinion of Advocate General *Mazak* of 16 October 2008, C-101/07 P and C-110/07 P *Coop de France bétail et viande and Fédération nationale des syndicats d'exploitants agricoles (FNSEA) and Others ⁄. Commission of the European Communities*, para 53

[10] See *Debroux*, Agriculture and Competition Law: A Stormy Relationship (Hogan & Hartson MNP, Paris); *Debroux*, Fine – Professional association: The ECJ rules that the fine imposed on a professional association can be levied on its members' turnover, even if the association's decisions are not binding on the members, if the latter played an active role in the infringement, Concurrences No 1-2009.

[11] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, pp. 2-5).

[12] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

[13] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, pp. 2-5), Article 14.

[14] See *Geradin/Henry*, The EC fining policy for violations of EC competition law: An empirical review of the Commission decisional practice and the Community courts' judgments, GCLC Working Paper [2005] 03/05.

[15] See generally *Wils*, The European Commission's 2006 Guidelines on Antitrust Fines: A Legal and Economic Analysis, World Competition Vol. 30 No. 2, 2007.

[16] «*Fines have as their objective to suppress illegal conduct as well as to prevent it being repeated*». ECJ [1970] ECR 661 *Chemiefarma ⁄. Commission*, para 62.

[17] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, pp. 2-5), Article 4.

III.

Claudia Seitz, Basel*

Die Auslegung des Gleichbehandlungsgrundsatzes im Freizügigkeitsabkommen zwischen der Europäischen Gemeinschaft und der Schweiz durch den Gerichtshof der Europäischen Gemeinschaften

(Stamm u. Hauser ⁄. Regierungspräsidium Freiburg, EuGH, Urteil vom 22. Dezember 2008, C-13/08)

Das Freizügigkeitsabkommen zwischen der Europäischen Gemeinschaft und der Schweiz (im Folgenden Freizügigkeitsabkommen)[1] *regelt in Anhang I die Freizügigkeit der Arbeitnehmer und der Selbstständigen in den Hoheitsgebieten der Vertragsparteien. Abschnitt III dieses Anhangs enthält Regelungen über die Freizügigkeit von Selbstständigen. Das in diesem Abschnitt in Art. 15 Abs. 1 enthaltene Gleichbehandlungsgebot sieht vor, dass dem Selbstständigen im Aufnahmestaat hinsichtlich des Zugangs zu einer selbstständigen Erwerbstätigkeit und deren Ausübung eine Behandlung gewährt werden soll, die nicht weniger günstig ist als die den eigenen Staatsangehörigen gewährte Behandlung. In der Rechtssache C-13/08 war der Gerichtshof aufgerufen, die Vorlagefrage zu beantworten, ob und inwieweit das in Art. 15 Abs. 1 des Anhang I enthaltene Gleichbehandlungsgebot auch für selbstständige Grenzgänger gilt.*

(1) **Sachverhalt**

Nach dem deutschen ***Gesetz über die Anzeige und Beanstandung von Landpachtverträgen*** (im Folgenden LPachtVG)[2] müssen Landpachtverträge vom Verpächter der zuständigen Behörde angezeigt werden. Die Behörde kann nach § 4 Abs. 1 LPachtVG den Vertragsschluss u.a. dann beanstanden, wenn die Verpachtung des Landes eine «ungesunde» Verteilung der Bodennutzung bedeutet. Nach § 4 Abs. 2 LPachtVG liegt eine solche «ungesunde» Verteilung der Bodennutzung in der Regel vor, wenn die Verpachtung ***Massnahmen zur Verbesserung der Agrarstruktur*** widerspricht. Dies ist u.a. dann der Fall, wenn landwirtschaftliche Grundstücke durch die Verpachtung an Nichtlandwirte der Nutzung durch Landwirte entzogen werden, die diese Flächen dringend zur Schaffung und Erhaltung leistungs- und wettbewerbsfähiger Betriebe benötigen und die zur Anpachtung in der Lage sind.