



MONITORING OF PRELIMINARY RULINGS

FLASH NEWS

3/18

OVERVIEW FROM JUNE TO SEPTEMBER 2018



Spain – Barcelona Commercial Court

[Asociación Profesional Elite Taxi judgment, [C-434/15](#)]

Competition - Passenger transport - Use of computer tools and a smartphone application - Unfair competition

Barcelona's Commercial Court No. 3 rejected the request for injunction, filed by a professional association of taxi drivers in the city of Barcelona, concerning the activities of Uber Systems Spain SL. It ruled, based on C-434/15, that the services provided by Uber are transportation services. The Court found that the law on unfair competition was not violated, since the provisions of the local regulations pertaining to taxi transport in question concerned administrative formalities and could not be regarded as competition rules.

Juzgado de lo mercantil no. 3 of Barcelona, [judgment of 10.04.2018 no. SJM B 38/2018 \(ES\)](#)



Germany – Federal Finance Court

[Geissel et Butin judgment, [C-374/16](#) and [C-375/16](#)]

Taxation - Common system of value added tax - Deduction of input tax - Information required on invoices - Address of issuer

The Federal Court of Finance followed the Court's preliminary ruling that Directive 2006/112/EC, on the common system of value added tax, precludes national legislation which makes the exercise of the right to deduct input VAT subject to the indication on the invoice of the address of the place where the issuer of the latter carries out its economic activity, by holding that any form of address may be used for that purpose, in particular an address corresponding to a simple mailbox, as long as the contractor can be reached at this address. This constitutes a reversal of the case law of any of the two chambers which referred the joint questions to the Court of Justice for a preliminary ruling.

Bundesfinanzhof, judgments of [13.06.2018](#) and [21.06.2018](#) (DE)



Romania - Suceava Court of Appeal

[Zabrus Siret judgment, [C-81/17](#)]

Taxation - Common system of value added tax - Transactions within a tax period already subject to a closed tax audit

The Suceava Court of Appeal allowed the appeal filed by Zabrus Siret, ruling that the rectification of VAT returns, requested by the applicant, could not be refused because it concerned a tax period already subject to a closed tax audit. An assessment of the merits of the right to reimbursement was necessary in the light of new evidence submitted by the applicant.

The Court of Appeal considered, with reference to judgment C-81/17, that the national provisions excluding rectification for a period which had already been the subject of a closed tax audit were incompatible with EU law. It thus annulled the judgment of first instance and sent back the parties before it.

Curtea de apel Suceava, [decision of 18.06.2018 \(RO\)](#)



Belgium – Court of cassation

[Altun e.a. judgment, [C-359/16](#)]

Social security - Migrant Workers - Certificate E 101 - Probative value - Limit

The Court of Cassation upheld the judgment in which the Antwerp Court of Appeal had convicted employers for breaches of employment law in connection with the employment of Bulgarian seconded workers holding E 101 certificates issued by the competent Bulgarian establishment. Believing that the said certificates had been obtained fraudulently, the Court of Appeal had rejected them, despite the fact that the Belgian authorities had not fully followed the procedure prescribed in the event of a dispute over the validity of E 101 certificates.

On the basis of the preliminary ruling, the Court of Cassation found that the certificates had been rejected after satisfactory examination in the light of the criteria set out in said judgment.

Hof van Cassatie, [judgment of 19.06.2018 \(NL\)](#)



Poland – Administrative supreme court

[AZ judgement, [C-499/16](#)]

Taxation - Common system of value added tax - Observance of the principle of neutrality - Checks incumbent on the national court - Refusal to carry out such checks

While following the interpretation given in the preliminary ruling, the Supreme Administrative Court found that it was not bound by the indications of the Court of Justice to check whether the principle of fiscal neutrality was respected, by carrying out a concrete examination to assess the similarity of the goods concerned. In that regard, it pointed out that, in view of the procedural autonomy of the Member States, such indications bind a national court provided that they are compatible with the national rules determining the scope of its powers. Given that, according to the rules applicable to the main proceedings, it is not intended that the administrative court should conduct an examination such as that recommended by the Court of Justice, the Supreme Administrative Court dismissed the applicant's request for it. Subsequently, it also dismissed the appeal on points of law.

Naczelny Sąd Administracyjny, [judgment of 19.06.2018, I FSK 2078/14 \(PL\)](#)



Spain – High Court of Justice of Galicia

[Grupo Norte Facility judgment, [C-574/16](#)]

ETUC, UNICE and CEEP framework agreement on fixed-term work - Principle of non-discrimination - Termination benefits for an employment contract

Following the preliminary ruling in Case C-574/16, the High Court of Justice of Galicia ruled that the compensation paid to workers employed under fixed-term employment contracts to cover working hours left vacant by a partially retiring worker (succession contract), could be lower than the compensation awarded to workers with a permanent employment contract at the time of the termination of their employment contract for an objective reason.

In the case at hand, the difference in treatment was justified by the existence of precise and concrete elements.

Tribunal Superior de Justicia de Galicia, Sala de lo social, [judgment of 20.06.2018 no. STSJ GAL 3508/2018 \(ES\)](#)



Lithuania – Supreme Court

[Specializuotas transportas judgement, [C-531/16](#)]

Procurement - Submission of separate bids by related companies

The Supreme Court upheld the appeal brought by the contracting authority against the decision of the Court of Appeal obliging related companies to declare these relations while submitting separate bids.

It ruled, based on the judgment of the Court in Case C-531/16, that the Court of Appeal was wrong to consider that Directive 2004/18/EC requires that, in the absence of express normative provision or specific condition in the call for tenders or in the specifications governing the conditions for awarding a public contract, related tenderers submitting separate tenders in the same procedure, must be required to declare, on their own initiative, their relations to the contracting authority.

Lietuvos Aukščiausiasis Teismas, [judgment of 27.06.2018 \(LT\)](#)



Spain – Madrid Labour Court No. 33

[Montero Mateos judgment, [C-677/16](#)]

ETUC, UNICE and CEEP framework agreement on fixed-term work - Principle of non-discrimination - Unscheduled termination compensation

The Court agreed with the interpretation of the Court in judgments C-596/14 and C-677/16 which found that the end of the disputed “interinidad” employment contract was unpredictable and lasted an unusually long time beyond specific regulatory projections. It accordingly partially upheld the worker's action against the public welfare agency.

It ordered this agency, exceptionally, to offer a severance pay for permanent workers upon the termination of their employment contract for an objective reason.

Juzgado de lo social de Madrid, [judgment of 28.06.2018 no. SJSO 2395/2018 \(ES\)](#)



Germany – Oberlandesgericht Frankfurt a. M. (Higher Regional Court of Frankfurt am Main)

[Coty judgment, [C-230/16](#)]

Competition - Cartels - Contractual clause prohibiting distributors from using an unauthorised third party in connection with online sales - Admissibility

Following the Coty judgment, C-230/16, the Higher Regional Court of Frankfurt am Main ruled that a supplier of luxury cosmetics is entitled to ask its authorised distributors not to market its products on the online platform “amazon.de”. In this context, the Higher Regional Court did not decide whether the clause in question, prohibiting distributors from using an unauthorised third party in connection with online sales, complies with Article 101 (1) TFEU. It considered that, in any case, the clause in question was exempt from the prohibition of cartels within the meaning of Regulation (EU) No. 330/2010.

Oberlandesgericht Frankfurt a. M., Urteil vom 12.07.2018 no. 11 U 96/14 (DE)

[Press release \(DE\)](#)



Latvia – Supreme Court of the Republic of Latvia

[Surmačs judgement, [C-127/14](#)]

Freedom of establishment - Freedom to provide services - Deposit guarantee schemes - Exclusion of certain depositors from the deposit guarantee

The Supreme Court dismissed the appeal on points of law against a judgment of the Administratīvā apgabaltiesa (Regional Administrative Court). By the latter, this court had rejected an appeal against the decision of the Finance and Capital Markets Committee refusing to consider the applicant – a former vice-president of a Latvian bank – as an applicant covered by the guarantee provided for by the law on deposit guarantees.

In this case, the Supreme Court held that the judgment under appeal was based on a reading of that law in accordance with the interpretation of Directive 94/19 provided by the Court in Case C-127/14. Thus, it considered that the Regional Administrative Court had taken into account the functions and activities effectively performed by the applicant within the bank concerned.

Latvijas Republikas Augstākā tiesa, judgment of 18.07.2018 (LV)



Ireland – High Court

[LM judgment, [C-216/18 PPU](#)]

European arrest warrant - Surrender procedures between Member States - Conditions of execution - Right of access to an independent and impartial court

In its judgment, the High Court concluded that there was a real risk that the person concerned would be subject to arbitrariness during his trial because of systemic or widespread failures in the issuing Member State. With regard to the duty of the country of execution consisting of the obligation to assess, in the light of the specific concerns expressed by the person concerned, whether there are substantial grounds for believing that the person would be at a real risk of violation of its fundamental right to an independent court, the High Court concluded that it was necessary to request additional information from the issuing country. The High Court therefore invited the parties to formulate questions in this regard, stating that the final wording would be that decided by it.

High Court, judgment of 01.08.2018 (EN)



Lithuania – Supreme Administrative Court

[Nidera judgment, [C-387/16](#)]

Taxation - Common system of value added tax - Deduction of input VAT paid - Late repayment - Amount of default interest due under national law

The Supreme Administrative Court dismissed the appeal lodged by the National Tax Inspectorate against the contested decision of the court of first instance. The latter had upheld the appeal of a Dutch company against the decision of the said Inspectorate refusing it the payment of late interest on an excess of VAT not refunded on time.

It ruled, based on the judgment of the Court of Justice C-387/16, that Article 183 of Directive 2006/112/EC, read in the light of the principle of fiscal neutrality, precludes the reduction of the interest amount normally due under national law on a VAT surplus not repaid in due time for reasons relating to circumstances not attributable to the taxable person.

Vyriausiasis administracinis teismas, judgment of 29.08.2018 (LT)

The Intranet site of the Direction Recherche et Documentation lists all analyses of the monitoring decisions received and processed by the Direction since 1 January 2000, classified by year according to the date of submission of the case to the Court. All the analyses established in the context of the monitoring of preliminary rulings are also available via the internal portal, under each preliminary ruling, under the heading “national dispute”.