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FLASH NEWS

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MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF FEBRUARY AND MARCH

Belgium – Aliens Litigation Council

[X judgment, C-302/18]

Immigration policy - Status of third-country nationals who are long-term residents - Condition of stable, regular and sufficient resources

The Aliens Litigation Council annulled the decision by which the Belgian authorities had refused to grant long-term resident status to the applicant on the grounds that he did not have 'own resources' to meet his needs, but only resources made available to him by his brother.

Following the interpretation adopted by the Court in judgment C-302/18 of the concept of 'resources' in Article 5(1) of Directive 2003/109, the Aliens Litigation Council held that that concept concerns not only the own resources of the applicant for long-term resident status, but also the resources placed at his disposal by a third party insofar as those resources can be regarded as stable, regular and sufficient.

Raad voor Vreemdelingenbetwistingen, judgment of 6/02/2020, no. 232.318 (NL)

France – Council of State

[Confédération paysanne et al. judgment C-528/16]

Environment - Deliberate release of genetically modified organisms (GMOs) - Organisms obtained by mutagenesis

On the basis of judgment C-528/16, the Council of State ruled that organisms obtained by means of mutagenesis techniques, which have appeared or developed mainly since the adoption of Directive 2001/18/EC, are subject to the regulations on GMOs. Accordingly, it ordered the Prime Minister, first, to amend the national legislation transposing Directive 2001/18 to that effect and, second, to seek authorisation from the European Commission to prescribe appropriate growing conditions for herbicide-tolerant plant varieties (HTPVs), derived from mutagenesis and used in France. To this end, the Council of State also asked the competent authorities to identify plant varieties obtained by mutagenesis that would have been included in the Common Catalogue of Varieties of Agricultural Plant Species, in particular among the HTPVs, without having been subject to the assessment procedure applicable to GMOs.

Council of State, decision of 07/02/2020, no. 388649 (FR)

Austria – Supreme Court

[Rust-Hackner et al. judgment, C-355/18 to C-357/18 and C-479/18]

Freedom to provide services - Direct life insurance - Waiver by the policyholder of the insurance contract concluded

The Supreme Court dismissed an action brought by a life insurance policyholder against an insurance company regarding an application made following the policyholder's waiver of the life insurance contract concluded. This request was for payment of the difference between the premiums paid by the policyholder and the surrender value paid to him by the said insurance company. Relying on the judgment in Joined Cases C-355/18 to C-357/18 and C-479/18, the Supreme Court held that the policyholder's right to waive the contract exists even though the term of the contract has expired and the insurance company has already paid the cash surrender value of the life insurance. However, in this case, the request for waiver was made late, leading to the rejection of the application.

Oberster Gerichtshof, judgment of 10/02/2020, 7 Ob 4/20v (DE)

Belgium – Constitutional Court

[Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen judgment, C-411/17]

Environment - Assessment of the impact of certain projects on the environment - Phasing out of nuclear energy

The Constitutional Court annulled the law providing for the extension of the industrial production of electricity by two nuclear power plants (Doel 1 and 2) for a period of ten years. Relying on judgment C-411/17, it considered that this extension, combined with modernisation and safety works, constituted a 'project' within the meaning of Directives 2011/92 and 92/43 and must therefore be preceded by an appropriate environmental impact assessment, public consultation and a cross-border assessment. Furthermore, it decided to maintain the effects of the contested law until 31 December 2022 at the latest insofar as there was a real and serious threat that its pure and simple annulment could lead to a disruption in Belgium's electricity supply.

Cour constitutionnelle, judgment of 5/03/2020, no. 34/2020 (FR) / (NL)

Press release (FR) / (NL)

France – Council of State

[Google judgment (Territorial scope of delisting) C-507/17]

Protection of personal data - Right to delisting on the internet - Territorial scope of this right - European delisting

On grounds of error of law, the Council of State annulled the decision of the Commission nationale de l'informatique et des libertés (CNIL) imposing a penalty on Google Inc., as the operator of a search engine. That penalty was based on that company's refusal, when it grants a delisting request, to delist all the domain names in its search engine (worldwide delisting), that company merely delisting the domain names corresponding to the versions of the search engine in the Member States (European delisting). On the basis of judgment C-507/17, the Council of State held, after finding that there was no legislative provision allowing the scope of such delisting to be extended beyond the territory of the Union, that the CNIL could only order European delisting.

Council of State, judgment of 27/03/2020, no. 399922 (FR)