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FLASH NEWS 3/22

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF MARCH TO JULY 2022

Spain – Barcelona Provincial Court

[Comité Interprofessionnel du Vin de Champagne, C-783/19]

Agriculture - Protected Designation of Origin (PDO) 'Champagne' - Denomination 'Champanillo'

On the basis of the judgment in Case C-783/19, Barcelona Provincial Court considered that the designation 'Champanillo' evoked the protected designation of origin (PDO) 'Champagne' and concluded that the PDO had been infringed. In particular, it found, on the one hand, that the two names were phonetically and conceptually similar, and that the addition of a suffix did not prevent the average consumer from detecting this similarity. On the other hand, it observed that the contested name was used for services closely related to the products protected by this PDO. Consequently, the average Spanish consumer, being reasonably well informed and reasonably observant and circumspect, would establish a direct and unequivocal link between the contested name and said PDO, which, in the present case, would lead the defendant to take undue advantage of the reputation of the latter.

Audiencia Provincial de Barcelona, judgment of 18/3/2022, No 512/2022 (ES)

Netherlands – Amsterdam Court

[Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission), C-562/21 PPU and C-563/21 PPU]

European arrest warrant - Real risk of infringement of the fundamental right to a fair trial

Amsterdam Court had received two requests for the execution of a European arrest warrant issued by a Polish court. Taking into account the judgment of the Court in joined Cases C-562/21 PPU and C-563/21 PPU, this Court noted that there was a real risk of infringement of the fundamental right to a fair trial due to systemic or generalised failures. However, it considered that the evidence put forward by the wanted persons did not suggest that these failures had had or were likely to have a material impact on the cases in question. The Court therefore considered that it was not necessary to ask the issuing judicial authority to provide additional information. Consequently, the surrender of the wanted persons was authorised.

*Rechtbank Amsterdam, decision of 6/4/2022, 13/752022-20 (EAB III) (**NL**) and decision of 6/4/2022, 13/751539/21 (**NL**)*

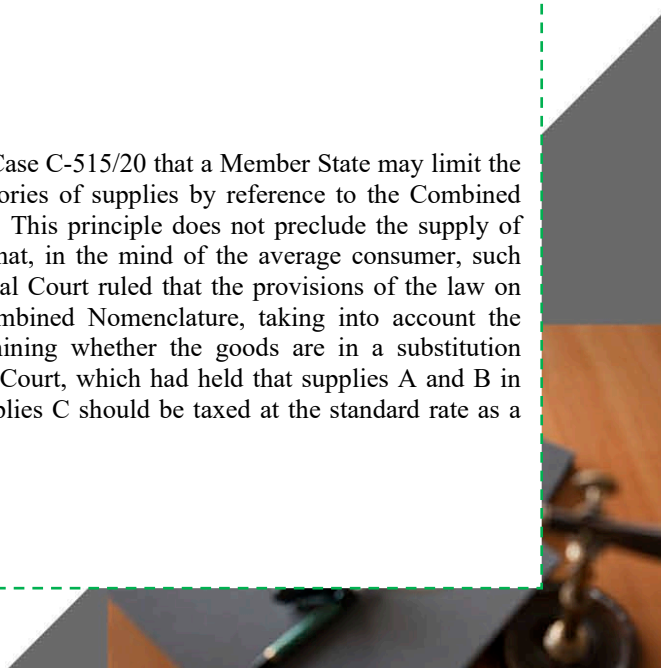
Germany – Federal Fiscal Court

[Finanzamt A, C-515/20]

Taxation - VAT - Principle of tax neutrality

The Federal Fiscal Court agreed with the position taken by the Court in Case C-515/20 that a Member State may limit the scope of a reduced VAT rate for supplies of firewood to certain categories of supplies by reference to the Combined Nomenclature, provided that the principle of tax neutrality is respected. This principle does not preclude the supply of shredded wood from being excluded from the reduced rate, provided that, in the mind of the average consumer, such wood is not substitutable for other forms of firewood. The Federal Fiscal Court ruled that the provisions of the law on turnover tax may be interpreted in a manner consistent with the Combined Nomenclature, taking into account the principle of tax neutrality and, in particular, the importance of examining whether the goods are in a substitution relationship. Consequently, this Court upheld the decision of the Fiscal Court, which had held that supplies A and B in this case should be subject to the reduced rate, while the bundle of supplies C should be taxed at the standard rate as a single supply under the case-law of the Court.

*Bundesfinanzhof, judgment of 21/4/2022, V R 2/22 (V R 6/18) (**DE**)*



Austria – Administrative Court

[Bundesamt für Fremdenwesen und Asyl (Placement d'un demandeur d'asile dans un hôpital psychiatrique), C-231/21]

Area of freedom, security and justice - Transfer of an asylum seeker placed in a hospital psychiatric ward - Concept of 'imprisonment'

The Administrative Court ruled that the Austrian authorities were competent to examine an asylum seeker's application for international protection in Austria, where he had been placed under restraint in a hospital psychiatric ward, after having entered Europe via Italy.
On the basis of the judgment in Case C-231/21, the Administrative Court found that such placement did not constitute 'imprisonment' within the meaning of Article 29(2) of Regulation (EU) No 604/2013.

*Verwaltungsgerichtshof, judgment of 25/4/2022, Ro 2020/21/0008 (**DE**)*

Greece – Council of State

Flausch and others (C-280/18)

Environment - Assessment of the effects of certain projects on the environment - Directive 2011/92/EU - Procedures for informing and consulting the public concerned

The Council of State was called upon to rule on a presumption of full knowledge of the decision to approve the environmental requirements applicable to works with significant environmental impacts. According to the judgment in Case C-673/19, it ruled that such a presumption cannot be relied on against any interested party, for the purposes of assessing the starting point of the time limit for bringing an action against that decision, where the public concerned has not previously had adequate opportunity to obtain information on the authorisation procedure.
In this case, the high court considered that the appeal was admissible given that the posting of information about the project in the buildings of the regional administration and in the local press did not guarantee adequate information and effective participation of the public concerned in the consultation process.

*Symvoulio tis Epikrateias, judgment of 11/5/2022, No 1037/2022 (**EL**)*

Spain – Supreme Court of Justice of Castilla-La Mancha

[Subdelegación del Gobierno en Toledo (Séjour d'un membre de la famille - Ressources insuffisantes), C-451/19]

Citizenship of the Union - Application for family reunification - Minor third-country national - Family member of a Union citizen - Insufficient resources

On the basis of the judgment in Case C-451/19, the Supreme Court of Justice of Castilla-La Mancha ruled that Union law precludes a Member State from rejecting an application for family reunification submitted in favour of a minor who is a third-country national and a member of the family of a citizen of the Union who is a national of that Member State and who has never exercised his freedom of movement, on the sole basis that the citizen of the Union does not have sufficient resources for himself and for the minor, without any examination of whether there is a relationship of dependence between the two persons.

Tribunal Superior de Justicia de Castilla-La Mancha, judgment

Ireland – Supreme Court

[Commissioner of An Garda Síochána and others, C-140/20]

Processing of personal data - Electronic communications - General and indiscriminate retention of data - Access

The Supreme Court recalls that, in Case C-140/20, the Court of Justice confirmed its earlier case-law that the general and indiscriminate retention of traffic and location data relating to electronic communications is not permitted for the purpose of combating serious crime and preventing serious threats to public security. The Supreme Court also notes that the European Court of Justice confirmed that access to such data by the competent national authorities must be authorised either by a court or by an independent administrative body. It therefore dismissed the appeal against the High Court's decision that the general and indiscriminate retention of telephone data was incompatible with Article 15(1) of Directive 2002/58/EC.

The Supreme Court, decision of 13/7/2022 (EN) [the link to the text of the decision is not available]

PREVIOUS DECISION

Netherlands – Council of State

[Staatssecretaris van Justitie en Veiligheid (Effets d'une décision d'éloignement), C-719/19]

Free movement of persons - Expulsion decision - Genuine and effective nature of the end of the stay

The Council of State ruled, following the judgment in Case C-719/19, that a Polish citizen who was the subject of a removal order had not genuinely and effectively ended his stay in the Netherlands. Despite the fact that the Polish citizen had left the Netherlands within the required period, the Council of State considered that the periods during which he had stayed outside the territory were very short. Furthermore, the Council of State ruled that the citizen had not shown that he had entered the Netherlands solely to appear before a court, as he had claimed. In addition, according to the Council of State, he had not justified moving the centre of his personal, professional or family interests to another Member State.

*Raad van State, decision of 23/2/2022, 201809965/3/V3 and 201904550/1/V3 (**NL**)*
*Press release (**NL**)*