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FLASH NEWS

1/23

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS FROM SEPTEMBER TO DECEMBER 2022

Poland – Warsaw Court of Appeal

[Skarb Państwa (Couverture de l'assurance automobile), C-428/20]

Motor liability insurance - Minimum amounts covered by compulsory insurance - Incorrect transposition of directives

Drawing on the consequences of the judgment in Case C-428/20, the Warsaw Court of Appeal ruled that Poland had incorrectly transposed Directives 84/5/EEC and 2009/103/EC. This incorrect transposition had the effect of differentiating, during the transitional period provided for, the legal situation of victims of road accidents according to the date on which the civil liability insurance contract of the keeper of the vehicle was concluded and not according to the date on which the accident occurred. The Polish high court found, on the one hand, that the State was liable and, on the other hand, that the provisions of these directives were unconditional and sufficiently precise insofar as they expressly specified the minimum amounts of cover for civil liability that would be compulsory for Member States once the time limit for transposing the directive had passed. Accordingly, it applied these provisions directly and ordered the Treasury to pay compensation to the applicant.

Warsaw Court of Appeal, judgment of 15 July 2022, I ACa 672/19, (PL) [the link to the text of the decision is not available]

Netherlands – Council of State

[Federatie Nederlandse Vakbeweging, C-815/18]

Freedom to provide services - Posting of international road drivers

Basing itself on the judgment in Case C-815/18, the Council of State concluded, firstly, that in order to determine whether a worker, in this case a German or Hungarian worker, is posted to the territory of a Member State, namely the Netherlands, it is not essential to know whether the activity of that worker is carried out mainly in the territory of another Member State.
Secondly, the Council of State noted that a worker who carries out cabotage transport on the territory of a Member State, in this case the Netherlands, other than the Member State in which he habitually works, namely Germany or Hungary, is, in principle, likely to be considered as a posted worker on the territory of the Member State in which such transport is carried out.
Thirdly, this court also held that the collective labour agreement applicable to the freight transport sector ('Freight Transport CLA'), which had not been declared generally applicable by the Minister of Social Affairs and Employment, could nevertheless be regarded as having such a scope.

*Hoge Raad, decision of 14 October 2022 (**NL**)*

Netherlands – Court of Rotterdam

[Stichting Rookpreventie Jeugd and Others, C-160/20]

Manufacture, presentation and sale of tobacco products - Emission levels of cigarettes - ISO standards

Rotterdam Court had been asked to reject an application for an enforcement measure concerning the exceeding of maximum emission levels for filter cigarettes.
Basing itself on the judgment in Case C-160/20, that court held that the measurement method referred to in Directive 2014/40/EU, based on ISO standards, could not be relied on in relation to individuals, including the applicant. Consequently, the Court stated that it was for it to assess whether the methods actually used to measure the levels of tar, nicotine and carbon monoxide emissions from cigarettes complied with the aforementioned Directive. It held that, in the present case, these methods did not comply with the Directive.

*Rechtbank Rotterdam, decision of 4 November 2022, ROT 19/1249 (**NL**)*
*Press release (**NL**)*

Slovenia – Supreme Court

[RAIFFEISEN LEASING, C-235/21] [in capitals?]

Common system of value added tax (VAT) - Person liable for payment of VAT - Assimilation of a written sale and leaseback contract to an invoice

The Supreme Court emphasised, on the basis of the judgment in Case C-235/21, that a contract can be recognised as an invoice within the meaning of the Slovenian VAT Act and Directive 2006/112/EC only if it objectively shows the clearly expressed intention of the parties to treat it as an invoice for a specific transaction. Therefore, such a contract may reasonably lead the purchaser to believe that he can deduct input VAT on the basis of it.
However, the high court specified that the sale and leaseback contract in question did not mention the date of supply of the contractual object, so that it lacked an essential indication for the calculation of the right to deduct VAT. Therefore, the contract in question could not be recognised as an invoice within the meaning of the said legislation. In this respect, it is irrelevant that the said date can be determined on the basis of documents other than the contract in question.

*Vrhovno sodišče, judgment and order of 16 November 2022, X Ips 91/2020 (**SL**)*

Bulgaria – Sofia City Court

[Spetsializirana prokuratura (Conservation des données relatives au trafic et à la localisation), C-350/21]

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

Sofia City Court recalls that, in its judgment in Case C-350/21, the Court of Justice held that Bulgarian legislation is contrary to EU law as regards the general and non-selective retention of traffic data for a period of 6 months. The infringement of Union law also stems from the system of access to such data by the national authorities responsible for criminal investigations, which is not limited to what is strictly necessary, and from the absence of a remedy for the persons concerned by such retention.
Consequently, the said court declared Article 251b of the Bulgarian Electronic Communications Act contrary to Article 15(1) of Directive 2002/58/EC. It also rejected the Public Prosecutor's request to make available the trafficking data of five persons involved in a criminal activity of distributing cigarettes without tax stamps.

Sofiyski gradski sad, razporezhdane, decision of 17 November 2022, [the link to the text of the decision is not available]

Austria – Supreme Court

[Laudamotion, C-111/21]

Air transport - Air carrier liability for post-traumatic stress disorder suffered by a passenger

The decision was prompted by the take-off of a flight from London to Vienna, during which the aircraft's left engine exploded, leading to the passengers being evacuated. One passenger, exiting via the aircraft's wing, was thrown several metres into the air by the blast from the right engine, which had not yet been shut down. The passenger suffered post-traumatic stress disorder.
Basing itself on the judgment of the Court of Justice in Case C-111/21, the Supreme Court held, in substance, that an air carrier is also liable within the meaning of Article 17(1) of the Montreal Convention when a passenger has suffered a mental injury reaching a pathological level in the course of an aircraft accident.

*Oberster Gerichtshof, judgment of 22 November 2022, 2 Ob 210/22d (**DE**)*

Estonia – Supreme Court

[Politsei- ja Piirivalveamet (Placement en rétention – Risque de commettre une infraction pénale), C-241/21]

Border controls, asylum and immigration - Return of illegally staying third-country nationals - Detention

The Supreme Court rejected the appeal against the refusal of the application for interim measures, holding that the detention of the applicant, an illegally staying third-country national, was permissible.
Stating that it was following the interpretation of the Court, the said court found that there was a risk of the applicant absconding. This court interpreted the risk of absconding in a broader sense than the ordinary one, including, inter alia, the case where the third-country national declares his intention not to comply with the order to leave the territory, or the administrative authority comes to this conclusion in view of the attitude and behaviour of that person. On this basis, the high court found that there was a legal basis for the applicant's detention. A dissenting opinion was attached to the Supreme Court's order, in which it was stated that the risk of absconding should be interpreted more narrowly and therefore that there was no risk of absconding in this case.

*Riigikohus, order of 5 December 2022, No 3-20-2004 (**ET**)*

Finland – Supreme Administrative Court

[Sosiaali- ja terveysalan lupa- ja valvontavirasto, C-577/20]

Recognition of professional qualifications - Access to the title of psychotherapist

In this case, A. had applied to the Finnish Social and Health Licensing and Supervision Board (hereinafter 'Valvira') for the right to use the title of psychotherapist, which is protected by Finnish law, on the basis of a degree awarded by a British university.
The Supreme Administrative Court agreed with the Court's analysis and held that, on the one hand, Valvira was obliged to consider the diploma as valid a priori, so that the holder of the diploma should, in principle, be considered as having the knowledge and qualifications resulting from the diploma. Nevertheless, the high court affirmed that, on the other hand, Valvira could have investigated possible shortcomings in A.'s British training, after having been informed of elements that cast doubt on its regularity.
However, before rejecting A.'s application for recognition as a psychotherapist, Valvira did not clarify its serious doubts about the equivalence of the British training with the requirements of the Finnish regulations. The said court therefore held that a rejection merely on the basis of such doubts was unlawful. The decision was annulled and the case was referred back to Valvira for reconsideration.

*Korkein hallinto-oikeus, decision of 19 December 2022, ECLI:FI:KHO:2022:144 (**FI**) (**SV**)*

Netherlands – Court of The Hague

[Staatssecretaris van Justitie en Veiligheid, C-69/21]

Border control, asylum and immigration - Right of residence on medical grounds - Therapeutic cannabis

In this case, the Secretary of State for Justice and Security refused to grant a Russian national suffering from a serious illness a right of residence for a limited period of time and a deferral of his removal. In addition, it adopted a return order requiring the person to leave the Netherlands within 4 weeks. However, this person was receiving therapeutic cannabis treatment prescribed in the Netherlands and not legally available in Russia. The medical treatment he had previously received in Russia was not suitable for him.
Following the judgment in Case C-69/21, the Secretary of State revoked the return order against this Russian national. Secondly, the Court of The Hague considered that the Secretary of State should take a new decision on the right of residence of this person and assess the risk of violation of Article 4 of the Charter of Fundamental Rights of the European Union, which prohibits torture and inhuman treatment, given that this treatment with therapeutic cannabis is prohibited in Russia.

*Rechtbank Den Haag, decision of 27 December 2022, NL20.6998 (**NL**)*

PREVIOUS DECISIONS

Romania – High Court of Cassation and Justice

[Euro Box Promotion and Others, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19]

Reform of the judiciary and the fight against corruption - Primacy of EU law

The High Court of Cassation and Justice rejected the extraordinary appeal for annulment lodged by the defendants in which they requested the application of a ruling of the Constitutional Court concerning the composition of the High Court in a panel of five judges, in order to obtain the opening of a new trial in appeal. The High Court of Cassation and Justice concluded, in this respect and in the light of the judgment in Euro Box Promotion and Others, that it should leave the judgment of the Constitutional Court in question unapplied, since the application of the rule established by that judgment was likely to give rise to an infringement of Article 325(1) TFEU and of the reference objectives set out in the Annex to Decision 2006/928. Furthermore, the said court found that the defect in the contested judgment, namely the composition of the panel of five judges, was not such as to affect the right to a fair trial.

*Înalta Curte de Casație și Justiție, decision of 7 April 2022, No 41 (**RO**)*

France – Court of Cassation

[Bank Sepah, C-340/20]

Common Foreign and Security Policy - Restrictive measures against Iran - Implementation of precautionary measures in respect of frozen funds

Basing itself on the judgment in Case C-340/20, the Court of Cassation ruled in its judgment of 29 April 2022 that, where a debtor's assets are frozen and the conditions under which the competent French authority may authorise the release of some of them have not been met or the authority has refused to release them, the extinctive prescription period is suspended with regard to the creditors for the duration of the freezing measure.

*Cour de cassation, judgment of 29 April 2022, No 18-18.542, 18-21.814 (**FR**)*

The Research and Documentation Directorate's intranet site lists all the analyses of follow-up decisions received and processed by the Directorate since 1 January 2000, classified by year according to the date on which the case was brought before the Court. All the analyses drawn up in the context of the follow-up to preliminary rulings are also available, in particular via the internal portal, under each preliminary ruling, under the heading 'Litigation at national level', and on Eureka, under the source 'Analyses', under the heading 'National decision'.