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MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF OCTOBER AND NOVEMBER

Belgium – Constitutional Court

[Ligue des droits humains, C-817/19]

Processing of personal data - Passenger Name Record (PNR) data - Combating terrorism and serious crime

Relying on the judgment in Case C-817/19, the Constitutional Court annulled several provisions of the law on the processing of passenger data aimed at transposing Directive (EU) 2016/681 on the use of PNR data of air passengers and Directive 2004/82/EC on the transmission of passenger information by air carriers. However, it upheld certain provisions, in particular subject to their interpretation in accordance with EU law.
Firstly, this high court validated the collection of all data covered by the law, including those relating to seat numbers and luggage. Secondly, it ruled that the reality of the terrorist threat in Belgium justified extending the PNR system to all intra-EU flights and to various means of transport. Thirdly, it allowed the data collected to be kept for 5 years, on the understanding that after 6 months only the data of persons presenting a risk would be kept, while the other data would have to be destroyed.
However, it ruled that the purpose of the processing, which was to monitor the activities targeted by the intelligence and security services, exceeded the limits of what was strictly necessary. Similarly, it annulled the ability of these services to carry out ad hoc searches of the passenger database and the processing of API (advanced passenger information) data as part of the PNR system for intra-EU flights.
Lastly, the Constitutional Court had to note that it had already definitively ruled that the purpose of the processing operation linked to the improvement of border controls and the fight against illegal immigration could be pursued by means of the processing of PNR data, contrary to the conclusions drawn from the judgment in Case C-817/19. Accordingly, it confined itself in the present case to pointing out that it was for the legislator to bring the contested law into line with the judgment of the Court on this point.

Cour constitutionnelle, judgment of 12/10/2023, No 131/2023 ***(FR)/(NL)***
Press release (FR)/(NL)

Germany – Federal Court of Justice

[Verband Sozialer Wettbewerb (Contenants consignés), C-543/21]

Consumer protection - Indication of prices of products offered to consumers

Relying on the judgment in Case C-543/21, the Federal Court of Justice interpreted the concept of 'selling price' within the meaning of Article 2(a) of Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, stating that the amount of the deposit must be mentioned separately in advertising for products sold in returnable containers.
Under Article 3(1) and (4) of Directive 98/6/EC, read in conjunction with Article 1 thereof, the selling price must be indicated in the advertising of products offered by traders to consumers. In accordance with Article 2(a) of this Directive, 'selling price' means the final price for a unit of the product, or a given quantity of the product, including VAT and all other taxes.
According to the judgment in Case C-543/21, the concept of 'selling price' in Article 2(a) of Directive 98/6/EC does not include the amount of the deposit that the consumer is required to pay when purchasing products in returnable containers. In accordance with German regulations, this must be indicated separately from the selling price, making it easier for consumers to assess and compare product prices.
Consequently, the high court confirmed that the action for an injunction brought against an advertisement for drinks in returnable bottles and for yoghurts in returnable pots, in which the amount of the deposit was not included in the prices indicated, but was mentioned separately, was unfounded.

Bundesgerichtshof, judgment of 26/10/2023, I ZR 135/20, Flaschenpfand IV (Bottle deposit IV) ***(DE)***
Press release (DE)

Germany – Federal Court of Justice

[Pro Rauchfrei, C-370/20, and Pro Rauchfrei II, C-356/22]

Public health - Labelling and packaging of cigarette packets

Following the interpretation of Article 8 of Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products and related products adopted by the Court of Justice in Case C-356/22, the Federal Court of Justice ruled that the images of cigarette packets on the selection buttons of vending machines at supermarket checkouts must reproduce the statutory health warnings.
Firstly, on the basis of the answers given by the Court in Case C-356/22, the high court confirmed that the request to prohibit the sale of cigarette packets by means of vending machines in which the health warnings affixed to the packets are not visible from the outside was unfounded. It held that, in such cases, the health warnings are not concealed within the meaning of the first sentence of Article 8(3) of Directive 2014/40/EU, insofar as the consumer cannot see the packet of cigarettes and will therefore have no desire to purchase them.
Secondly, based on the answers provided by the Court in Case C-370/20, the high court did, however, order a halt to the use of images of cigarette packets without health warnings on the selection buttons of vending machines. Such an image, which is not a faithful reproduction of a packet of cigarettes, but which is reminiscent of such a packet, may also trigger a desire to purchase and must therefore include a health warning, in accordance with Article 8(8) of Directive 2014/40/EU.

Bundesgerichtshof, judgment of *26/10/2023, I ZR 176/19, Zigarettenausgabeautomat III (Cigarette vending machine III) (DE)*
Press release (DE)

Germany – Federal Court of Justice

[Mercedes-Benz Group (Responsabilité des constructeurs de véhicules munis de dispositifs d'invalidation), C-100/21]

Disabling devices on diesel engines - Liability of the manufacturer of the base vehicle of a motorhome

The Federal Court of Justice clarified the conditions under which an Italian manufacturer that produced the base vehicle for a motorhome sold in Germany is liable for damages due to the use of an unlawful disabling device in that vehicle.
First, it confirmed that, pursuant to Article 4(1) of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II), German law was applicable in this case, since both the place where the damage occurred and the location of the event giving rise to the damage were in Germany.
In addition, the high court specified that the right to compensation cannot be excluded in the case of a motorhome. With regard to the loss linked to the depreciation of assets, the purpose for which the motor vehicle will be used is immaterial.
Finally, it found that the car manufacturer in question could not exonerate itself on the grounds that it was not the manufacturer of the engine installed in the base vehicle. Under German law, duties of care in that respect also apply to a car manufacturer that uses engines from another manufacturer in the construction of its own vehicle.
The high court referred the case back to the appeal court for reconsideration and a new decision. That court will have to carry out a new examination of the loss linked to depreciation on the basis of the leading judgment of the Bundesgerichtshof of 26 June 2023 (VIa ZR 335/21, *see Flash News Suivi 3/23*).

Bundesgerichtshof, judgment of 27/11/2023, VIa ZR 1425/22, not yet published (DE)
Press release (DE)

PREVIOUS DECISIONS

Greece – Court of Cassation

[Olympiako Athlitiko Kentro Athinon, C-511/19]

Social policy - Workforce reserve scheme - No discrimination on grounds of age

Following the judgment of the Court of Justice of 15 April 2021, (C-511/19), the Court of Cassation dismissed the appeal brought before it. In the latter, the applicant argued that the law providing for the placement of public sector workers with private law contracts under a workforce reserve scheme introduced a difference in treatment on grounds of age contrary to Directive 2000/78/EC.
Fully endorsing the Court's interpretation of the directive, the Greek high court held that placing the applicant under the workforce reserve scheme, which had led, inter alia, to a reduction in his pay, was compatible with the directive, since the measure, adopted during the economic crisis, pursued a legitimate employment policy objective and the means of achieving that objective were appropriate and necessary.

*Areios Pagos, judgment of 13/2/2023, No 255/2023 (**EL**)*

Italy – Constitutional Court

[O. G. (Mandat d'arrêt européen à l'encontre d'un ressortissant d'un État tiers), C-700/21]

European arrest warrant - Grounds for optional non-execution - Third-country nationals living or residing on the territory of the executing Member State - Equal treatment

Relying on the judgment of the Court of Justice in Case C-700/21, the Constitutional Court declared the national regulations on grounds for optional non-execution of a European Arrest Warrant to be incompatible with EU law and the Italian Constitution.
In accordance with the interpretation given by the Court of Justice, based on the requirement of equal treatment between a national of another Member State and a national of a non-Member State, the high court declared the national regulations in question unconstitutional. It did so insofar as those regulations did not provide for the case of refusal to surrender a wanted person who is a national of a third State, who has been residing or staying legally and effectively in Italy for at least 5 years and who is sufficiently integrated into that country, provided that the national court orders that the sentence or security measure be carried out in Italy.

*Corte Costituzionale, judgment of 6/7/2023, No 178 (**IT**)*

Italy – Constitutional Court

[E. D. L. (Motif de refus fondé sur la maladie), C-699/21]

European Arrest Warrant - Grounds for non-execution - Prohibition of inhuman or degrading treatment - Serious, chronic and potentially irreversible illness

The Constitutional Court declared that, where there is a risk of inhuman or degrading treatment due to prison overcrowding, and where it has been established that it is impossible to find an appropriate solution to protect the health of the wanted person in the issuing State, surrender must be refused, in the light of the precise indications contained in the judgment of the Court of Justice.
Consequently, it found that the questions of constitutionality raised with regard to the national regulations in question were unfounded. In its view, the absence of grounds for refusal based on a serious risk to health can be remedied by means of a systematic interpretation in the light of the judgment in Case C-699/21, which ensures that the regulations at issue comply with the constitutional parameters relied on.

*Corte Costituzionale, judgment of 17/7/2023, No 177 (**IT**)*

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'.