



## FLASH NEWS

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# RULINGS ON QUESTIONS REFERRED

## OVERVIEW OF JANUARY AND FEBRUARY 2018



**Italy** – District Court, Trieste

[Lazar Judgement, [C-350/14](#)]

**Judicial cooperation in civil matters – Rome II Regulation – Law applicable to non-contractual obligations – Indirect consequences of the tort or delict**

Following the Court of Justice's preliminary ruling, the District Court, Trieste held that the damage arising from the death of a person in a road traffic accident, which occurred in Italy and was sustained by close relatives of the deceased who reside in another Member State, must be regarded as indirect consequences of that accident.

Therefore, the law applicable to the non-contractual obligation arising from such an accident is Italian law.

Tribunale di Trieste, judgement of 04.01.2018, no. 15/2018, unpublished, available on request



**France** – Council of State

[Solar Electric Martinique Judgement, [C-303/16](#)]

**Taxation – VAT – Exemption – Sale and installation of certain ecological materials**

The Council of State annulled the ruling of the Administrative Court of Appeal, which had dismissed the application of a company engaged in the sale and installation of photovoltaic panels and solar water heaters in the department of Martinique. The applicant sought cancellation of additional VAT assessments.

The Council of State first found that the Court of Justice had no jurisdiction to rule, the situation being outside the territorial scope of Directive 2006/112. It then ruled that the sale and installation of these materials could not be characterised as works of construction constituting a single transaction. Therefore, the installation should be subject to VAT separately to the sale and the latter should benefit from the exemption provided for by the code général des impôts (General Tax Code).

Conseil d'État, [decision of 12.01.2018 \(FR\)](#)



**Spain** – Administrative Court

[Congregación de Escuelas Pías Provincia Betania Judgement, [C-74/16](#)]

**State aid – Article 107 TFEU – Meaning of 'State aid'**

The referring court refused the action brought by the applicant against the Municipality of Getafe's decision to reject the exemption from and refund of the tax at issue in the main proceedings. It reiterated that, according to the Court of Justice, the tax exemption to which a congregation belonging to the Catholic Church is entitled in respect of works on a building intended to be used for activities that do not have a strictly religious purpose, may fall under the prohibition in Article 107(1) TFEU if, and to the extent to which, those activities are economic. The court found that the administrative decisions being challenged were consistent with that interpretation.

Juzgado de lo Contencioso-Administrativo no. 4 de Madrid, [judgement of 08.01.2018, no. SJCA 1/2018 \(ES\)](#)



**The Netherlands** – Administrative Court of Appeal for Trade and Industry

[Tele 2 BV e.a. Judgement, [C-536/15](#)]

**Telecommunications – Directory enquiry services – Subscriber's consent**

In accordance with the preliminary ruling, the Court of Appeal found that it is not necessary for an undertaking assigning telephone numbers to its subscribers to differentiate in the request for consent to the use of data relating to them according to the Member State in which the undertakings requesting the information provide directory enquiry services.

Consequently, the Court of Appeal annulled the rulings insofar as they required such a differentiation in expression of subscriber's consent.

College van Beroep voor het bedrijfsleven, [judgement of 17.01.2018 \(NL\)](#)



**The Netherlands – Supreme Court**

[X Judgement, [C-569/15](#)]

**Social security – Migrant workers – Applicable legislation**

The Supreme Court refused the action brought by a Dutch national residing and working in the Netherlands against the judgment of Arnhem-Leeuwarden Court of Appeal, which ruled that the employment relationship between X and his employer established in the Netherlands continued during the period of unpaid leave during which the worker was employed in Austria, and that Netherlands legislation continued to apply.

Following the preliminary ruling, the Supreme Court confirmed that X was to be considered as normally employed in the territory of two Member States during the aforementioned period, insofar as he was normally employed under the social security legislation of the first Member State and the activity carried out on the territory of the second Member State was habitual and significant in nature. Therefore, pursuant to Regulation No 1408/71, Dutch legislation applied.

Hoge Raad der Nederlanden, [judgement of 19.01.2018 \(NL\)](#)



**The Netherlands – Supreme Court**

[X Judgement, [C-570/15](#)]

**Social security – Migrant workers – Applicable legislation**

Following the Court of Justice’s reasoning, the Supreme Court refused the action brought by a Dutch national working for an employer established in the Netherlands and residing in Belgium, where he had carried out a part of his employment activity. The applicant challenged the Court of Appeal’s ruling that the work which he performed in another Member State for a certain period was merely occasional, and therefore should not be taken into consideration when determining what legislation is applicable.

The Supreme Court ruled that X should be considered as employed in the territory of a single Member State, meaning that only Dutch legislation is applicable.

Hoge Raad der Nederlanden, [judgement of 19.01.2018 \(NL\)](#)



**Croatia – Municipal Court of Pula**

[Pula Parking Judgement, [C-551/15](#)]

**Judicial cooperation in civil matters – Recast Brussels I Regulation – Notary who has issued a writ of execution based on an ‘authentic document’**

Following the Court of Justice’s reasoning, the Municipal Court of Pula reiterated that in Croatia, notaries acting in enforcement proceedings based on an ‘authentic document’, do not fall within the concept of ‘court’ within the meaning of Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Municipal Court of Pula then annulled the disputed writ of execution based on an authentic document by a notary and the order to pay contained in that writ.

Općinski sud u Puli-Pola, order of 23.01.2018, unpublished, available on request



**Finland – Administrative Court, Helsinki**

[A Oy Judgement, [C-292/16](#)]

**Taxation – Corporation tax – Directive 90/434**

Following the preliminary ruling, the Administrative Court, Helsinki found that Article 49 TFEU precluded national legislation in the main proceedings. Where a resident company transfers a non-resident permanent establishment to a company that is also non-resident, first, it provides for the immediate taxation of the capital gains resulting from the transfer of assets and, second, the collection of the tax due for the tax year in which such an operation takes place. In an equivalent national situation, however, such capital gains are not taxed until the disposal of the transferred assets as that legislation does not allow the deferred collection of the tax.

Consequently, the court upheld the action brought against the decision to tax the capital gains.

Helsingin hallinto-oikeus, judgement of 23.01.2018, unpublished, available on request



**Austria – Supreme Court**

[*Valach Judgement* [C-649/16](#)]

**Judicial cooperation in civil matters – Recast Brussels I Regulation – Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings – Applicability of Regulation No 1346/2000**

The Supreme Court upheld the rulings of the lower courts that had rejected, on the grounds of lack of international jurisdiction, the action for liability in tort against the members of a committee of creditors of a company incorporated under Slovak law on the basis of their conduct when voting on a restructuring plan in insolvency proceedings.

Relying on the Court of Justice’s judgement, the Supreme Court found that the action was excluded from the scope of the Recast Brussels I Regulation but fell within the scope of Article 3(1) of Regulation No 1346/2000. Therefore, the Slovenian courts had the jurisdiction to hear proceedings.

Oberster Gerichtshof, [judgement of 24.01.2018 \(DE\)](#)



**Czech Republic – Supreme Administrative Court**

[*Corporate Companies Judgement*, [C-676/16](#)]

**Prevention of money laundering – Directive 2005/60 – Scope**

The Supreme Administrative Court rejected the appeal on a point of law brought by a company that had formed other companies in view of their subsequent sale to a potential client, which was seeking a declaration that the investigation carried out by the Ministry of Finance was unlawful.

Relying on the preliminary ruling, the national courts found that the company was subject to obligations on the prevention of money laundering provided for by Directive 2005/60 and therefore the investigation was legal.

Nejvyšší správní soud, [judgement of 25.01.2018 \(CZ\)](#)



**Portugal – Court of Appeal, Oporto**

[*Maio Marques da Rosa Judgement*, [C-306/16](#)]

**Social policy – Protection of the safety and health of workers – Organisation of working time**

The Court of Appeal reiterated that Directives 93/104 and 2003/88 do not require the minimum uninterrupted rest period of 24 hours to which a worker is entitled to be provided no later than the day following a period of six consecutive working days, but specify that it must be granted per each seven-day period.

Therefore, the Court of Appeal upheld the lower court’s judgement and rejected the applicant’s appeal.

Tribunal da Relação do Porto, [judgement of 24.01.2018 \(PT\)](#)



**Latvia – Supreme Court**

[*Latvijas dzelzceļš Judgement*, [C-154/16](#)]

**Community Customs Code – External Community transit procedure – Liability of the principal**

Following the preliminary ruling, the Supreme Court upheld the Regional Administrative Court judgement dismissing the action in the main proceedings. It found that the principal is liable for payment of the customs debt arising in relation to goods placed under the external Community transit procedure, even if the carrier did not fulfil the obligations to which he was subject, in particular the requirement to produce those goods intact at the customs office of destination within the prescribed period.

It ruled that the Regional Administrative Court had rightly found that the defect of the tank was responsible for the loss of the goods in question, whilst noting that this fact is not of such a nature as to prevent free circulation of the goods.

Latvijas Republikas Augstākā tiesa, [judgement of 30.01.2018, SKC-30/2018 \(LV\)](#)

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



### **United Kingdom – Court of Appeal**

*[Tele2 Sverige and Watson e.a. Judgement, [C-203/15](#) and [C-698/15](#)]*

#### **Protection of personal data – Electronic communications**

*The Court of Appeal dismissed the action brought by the Secretary of State for the Home Department against the High Court's ruling that the domestic regime on the retention of electronic communications data was incompatible with EU law.*

*Relying on the preliminary ruling, the Court of Appeal held that the applicable national legislation is incompatible with EU law, insofar as it enabled access to electronic communications data not limited to the purpose of combating serious crime and this access was not subject to a prior review carried out either by a court or by an independent administrative body.*

Court of Appeal, [judgement of 30.01.2018 \(EN\)](#)



### **Spain – Supreme Court**

*[Gasorba e.a. Judgement, [C-547/16](#)]*

#### **Competition – Business relationships between service station operators and oil companies**

*Following the preliminary ruling, the Supreme Court partially upheld the appeal on a point of law brought by the company Gasorba e.a. against the Madrid Commercial Court decision dismissing its request to declare its operating agreement with the company Repsol void for violation of Article 101 TFEU.*

*Relying on the Court of Justice's reasoning, the Supreme Court held that a commitment decision concerning certain agreements between undertakings, adopted by the European Commission under Regulation no. 1/2003, does not preclude national courts from examining whether those agreements comply with the competition rules and, if necessary, declaring those agreements void pursuant to Article 101(2) TFEU. Therefore, said Court annulled the contracts between Gasorba e.a. and Repsol.*

Tribunal Supremo, Sala de lo Civil, [judgement of 07.02.2018, no. STS 67/2018 \(ES\)](#)



### **Latvia – Supreme Court**

*[Autortiesību a komunicēšanās konsultāciju aģentūra - Latvijas Autoru apvienība Judgement, [C-177/16](#)]*

#### **Competition – Abuse of a dominant position – Fees collected by a copyright management organisation**

*The Supreme Court held that it is appropriate, for the purposes of examining whether a copyright management organisation applies unfair prices within the meaning of point (a) of the second paragraph of Article 102 TFEU, to compare its rates with those applicable in the neighbouring States as well as with those applicable in other Member States, adjusted in accordance with the purchasing power parity index, provided that the reference Member States have been selected in accordance with objective, appropriate and verifiable criteria and that the comparisons are made on a consistent basis.*

*Consequently, the Supreme Court annulled the challenged Regional Administrative Court ruling and referred the case to this court, holding that its conclusions on determining an excessive price were too general.*

Latvijas Republikas Augstākā tiesa, [judgement of 06.02.2018, SKC-7/2018 \(LV\)](#)  
[Press release \(LV\)](#)



### **Finland – Supreme Court**

*[Hälvä e.a. Judgement, [C-175/16](#)]*

#### **Social policy – Protection of the safety and health of workers – Working time**

*The Supreme Court upheld the appeal of four employees of the child protection association SOS-Lapsikylä ry, finding that their work was subject to the Law on working time and ordering their employer to pay them compensation.*

*The Supreme Court found that the situation in the present case was not covered by the derogation in Article 17(1) of Directive 2003/88 concerning certain aspects of the organisation of working time. The working time relating to paid work which consists in caring for children in a family-like environment, relieving the person principally responsible for that task, can as a whole be measured or predetermined.*

Korkein oikeus, [judgement of 12.02.2018 \(FI\)](#)



**Poland – Supreme Administrative Court**

[*El Hassani Judgement*, [C-403/16](#)]

**Border controls, asylum and immigration – Visas – Reference for a preliminary ruling**

Relying on the Court of Justice's reasoning, the Administrative Supreme Court found the law denying administrative courts jurisdiction to hear appeals against decisions to refuse a visa to applicants who are members of the family of a national of a Member State was incompatible with Article 32(3) of Regulation No 810/2009, read together with the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, it annulled the Administrative Court order deeming such an appeal inadmissible.

Naczelny Sąd Administracyjny, [order of 19.02.2018, II OSK 1346/16 \(PL\)](#)



**Italy – Supreme Court of Cassation**

[*Abercrombie & Fitch Italia Judgement*, [C-143/16](#)]

**Social policy – Equal treatment – On-call employment contracts concluded with persons under 25 years of age**

The Supreme Court of Cassation annulled the judgement of the Court of Appeal, Milan, which found an unjustified difference of treatment on grounds of workers' age resulting from Directive 2000/78 and ordered the company Abercrombie to reinstate one of its employees in his post and to compensate him for the loss suffered.

Relying on the preliminary ruling's reasoning, the Supreme Court of Cassation found that an employer could legitimately conclude an on-call employment contract with persons under 25 years of age, whatever the nature of the services to be provided, and dismiss that worker as soon as he reaches the age of 25 years.

Corte suprema di cassazione, [judgement of 21.02.2018, no. 44223 \(IT\)](#)



**Germany – Administrative Court, Düsseldorf**

[*Pöpperl Judgement*, [C-187/15](#)]

**Freedom of movement for workers – Pension rights in the civil service – Retrospective insurance under the general old-age insurance scheme**

The Administrative Court upheld the action brought by a former civil servant concerning the loss of retirement pension rights following resignation from a post with the Land of North Rhine-Westphalia in order to be employed in another Member State.

Relying on the Court of Justice, said court ruled that German legislation providing in that case for loss of the retirement pension rights acquired in the civil service and for retrospective insurance under the general old-age insurance scheme was incompatible with freedom of movement for workers.

Verwaltungsgericht Düsseldorf, [judgement of 26.02.2018 \(DE\)](#)

## RULINGS PRIOR TO 1 JANUARY 2018



### *Romania – Court of Appeal, Oradea*

[*Andriciuc Judgement, [C-186/16](#)*]

*Consumer protection — Unfair terms – Loan agreement concluded in a foreign currency*

Following the preliminary ruling, the Court of Appeal, Oradea dismissed the action seeking a declaration that certain alleged unfair terms incorporated in loan agreements denominated in Swiss francs (CHF) were completely invalid. In particular, it ruled that a loan agreement term requiring it to be repaid solely in CHF was outside the scope of Directive 93/13.

The Court of Appeal also found that the bank's failure to provide information on the possible consequences of the term do not render it void, except to establish its bad faith, which was not proven in the present case as it was not in a position to anticipate the impact of variations in the exchange rate.

The Court of Appeal also found that another term authorising the bank to convert the balance available in another currency into CHF, in the absence of balances in CHF, was not unfair as it aimed to repay the loan in CHF.

Curtea de apel Oradea, [decision of 28.11.2017 \(RO\)](#)



### *Estonia – Supreme Court*

[*Bolagsupplysningen and Ilsjan Judgement, [C-194/16](#)*]

*Judicial cooperation in civil matters – Recast Brussels I Regulation – Place where the damage occurred*

Following the Court of Justice's preliminary ruling, the Supreme Court dismissed the action brought by a company incorporated under Estonian law claiming that its personality rights have been infringed by the publication of incorrect information concerning it on the internet.

After finding that the place where this company carries out the main part of its economic activities and the damage occurred was Sweden, the Supreme Court held that, pursuant to Article 7(2) of Regulation No 1215/2012, the Estonian courts do not have the jurisdiction.

Riigikohus, [order of 21.12.2017, no. 2-16-4631 \(ET\)](#)



### *Spain – Administrative Court*

[*López Pastuzano Judgement, [C-636/16](#)*]

*Status of third-country nationals who are long-term residents – Reinforced protection against expulsion*

The Administrative Court annulled the decision of the Government Delegation in Navarra, ordering the expulsion of M. L.P. from Spanish territory and banning his entry into Spain for a period of five years.

Relying on the preliminary ruling, it held that M. L.P. had not enjoyed the reinforced protection against expulsion to which he was entitled as a long-term resident. In particular, it found that said ruling had not assessed whether M. L.P. constituted an actual and sufficiently serious threat to public policy or public security or examined the duration of his residence in their territory, his age, the consequences for him and his family members and his links with the country of residence or absence of links with the country of origin. Therefore, and as it is irrelevant whether such a measure has been delivered in the form of an administrative penalty or whether it is the result of a criminal conviction, the challenged decision was annulled.

Juzgado de lo Contencioso-administrativo n.1, Pamplona, [judgement of 19.12.2017 \(ES\)](#)



### *Austria – Regional Civil Court, Vienna*

[*Schmidt Judgement, [C-417/15](#)*]

*Legal cooperation in civil matters – Regulation No 1215/2012 – Matters relating to a contract – Rights in rem in immovable property*

The Regional Civil Court, Vienna found that an action seeking the avoidance of a gift of immovable property on the ground of the donor's incapacity to contract falls within the special jurisdiction provided for under Article 7(1)(a) of Regulation No 1215/2012. An action seeking the removal from the land register of notices evidencing the donee's right of ownership falls within the exclusive jurisdiction provided for under Article 24(1) of the same regulation.

Therefore, said court, upholding the request made by M. S., domiciled in Austria, annulled his gift of immovable property located in Austria to his daughter residing in Germany, and removed her right of ownership from the land register.

Landesgericht für Zivilrechtssachen Wien, judgement of 27.12.2017, unpublished, available on request