



FLASH NEWS

1/19

FOLLOW-UP OF PRELIMINARY RULINGS

OVERVIEW FROM MID-SEPTEMBER TO DECEMBER 2018



Germany – Federal Court of Justice

[Peugeot Deutschland ruling, [C-132/17](#)]

Freedom to provide services - Concept of "audiovisual media service"

Following the judgement of the Court of Justice in Case C-132/17, the Federal Court of Justice dismissed Peugeot Deutschland's appeal seeking the annulment of the decision of the Cologne Higher Regional Court, according to which Peugeot Deutschland had to include data on official fuel consumption and official CO2 emissions when publishing a short video about a new passenger car model on a video channel available on YouTube.

Agreeing with the reasoning of the Court of Justice, the Federal Court of Justice ruled that neither such a video channel nor any of these videos taken in isolation falls within the concept of an "audiovisual media service" within the meaning of Article 1(1)(a) of Directive 2010/13/EU ("Audiovisual Media Services" Directive), and that therefore, the absence of such information was contrary to the provisions of the Regulation on consumer information on fuel consumption, CO2 emissions and electricity consumption of new passenger cars (Pkw-ENVKV).

Bundesgerichtshof, [ruling of 13/09/2018, I ZR 117/15 \(DE\)](#)



United Kingdom – High Court of Justice,

Chancery Division

[Teva UK and Others ruling, [C-121/17](#)]

Patent law - Supplementary protection certificate for medicinal products (SPC) - Conditions for acquisition - Product covered by a basic patent in force - Criteria

Following the judgement in Teva UK and Others, C-121/17, specifying the criteria for assessing whether a product composed of several active ingredients with a combined effect is protected by a basic patent in force within the meaning of Regulation (EC) No 469/2009 concerning the SPC, the High Court allowed the action brought by the applicants and annulled the defendant's SPC. According to the High Court, the said SPC did not meet any of the criteria set out by the Court of Justice in its judgement.

High Court (England & Wales), Chancery Division, Patents Court, [ruling of 18/09/2018 \(EN\)](#)



Bulgaria – Specialised Criminal Court

[Milev ruling, [C-310/18](#)]

Judicial cooperation in criminal matters - Directive (EU) 2016/343 - Presumption of innocence - Procedure for reviewing the legality of a measure of pre-trial detention

The Specialised Criminal Court of Appeal dismissed the appeal brought by the detained person against the order of the referring court, the Specialised Criminal Court, by which it had rejected their request to amend the provisional detention measure.

Referring to the Milev judgement, C-310/18, the Specialised Criminal Court of Appeal held that the Specialised Criminal Court was right to rule in favour of maintaining said measure of pre-trial detention on the basis of plausible grounds for presuming the commission of a criminal offence by said person. However, this decision was taken on the sole basis of a "prima facie" assessment, while not presenting the person as guilty, since at this stage of the criminal proceedings at the time of the adoption of this preliminary decision, exhaustive incriminating evidence for the charge of the detained person is not required under Bulgarian law. *Специализиран наказателен съд/Апелативен специализиран наказателен съд, rulings of 20/09/2018 and of 02/10/2018, not published, available upon request (BG)*



Poland – Administrative Supreme Court

[Gmina Ryjewo ruling, [C-140/17](#)]

Taxation - VAT - Deduction - Real estate investment property - Change of use of an investment property

In a dispute between the municipality of Ryjewo and the tax authorities over a decision issued by the latter refusing to allow the municipality to regularise the deduction of the VAT paid on real estate investment property used, firstly, for an exempt activity and, secondly, also for a taxable activity, the Supreme Administrative Court rejected the tax authorities' appeal.

Noting that the municipality had the right to regularise the deduction of the VAT, the Supreme Administrative Court ruled that the municipality had acted as a taxpayer when acquiring the property, which could by its nature be used for both taxed and non-taxed activities.

Naczelny Sąd Administracyjny, [ruling of 17/10/2018 \(PL\)](#)



Italy – Court of cassation

[Garlsson Real Estate and Others ruling, [C-537/16](#)]

Fundamental rights - National legislation providing for an administrative penalty and a criminal sanction in the event of market manipulation - Principle ne bis in idem

Following the preliminary ruling of the Court of Justice, the Court of Cassation referred the case back to the Court of Appeal in order to enable the latter to verify whether the criminal (80 days' imprisonment) and administrative (€5 million) penalties imposed in the present case for market manipulation exceed what is strictly necessary to pursue objectives in the general interest, namely the integrity of the Union's financial markets and public confidence in financial instruments, while taking into account the principle that sanctions imposed as a whole must be such as to punish the offence committed in an effective, proportionate and dissuasive manner.

Corte suprema di Cassazione, Sezione V civile, [ruling of 30/10/2018, no. 27564 \(IT\)](#)



Finland – Supreme Administrative Court [Ruling, A., [C-679/16](#)]

Citizenship of the Union - Right of free movement and residence in the territory of the Member States - Social benefits

Following the judgement of the Court of Justice in Case C-679/16, the Supreme Administrative Court ruled that Articles 20 TFEU and 21 TFEU preclude a seriously disabled Finnish resident from being denied by their municipality of residence a benefit such as assistance to the person provided for by national legislation consisting in the payment of the costs incurred by the person's daily activities on the grounds that they are staying in another Member State to pursue higher education.

As a result, the Supreme Administrative Court allowed the appeal of a severely disabled person studying in Estonia and referred the case back to the municipal authorities for a new decision on the coverage of the costs of their daily activities.

Korkein hallinto-oikeus, [ruling of 30/10/2018, KHO:2018:145 \(FI\)](#)



Portugal – Supreme Court

[Juliana ruling, [C-80/17](#)]

Motor vehicle third party liability insurance - Obligation to be covered by insurance - Right of recourse of the compensation body against the owner of the uninsured vehicle

Following the preliminary ruling of the Court of Justice in Case C-80/17, the Supreme Court ruled that the conclusion of a civil liability insurance contract relating to the use of a motor vehicle is compulsory when the vehicle concerned is still registered in a Member State and is fit to drive, but is parked on private land at the sole discretion of its owner, who no longer intends to drive it.

However, although the owner of the vehicle involved in the accident failed to insure the vehicle, the Motor Vehicle Guarantee Fund cannot bring an action against them, since no claim for compensation against the owner from third parties who were victims of the traffic accident had been transmitted to the Fund.

Supremo Tribunal de Justiça, [ruling of 08/11/2018 \(PT\)](#)



Ireland – High Court

[LM ruling, [C-216/18 PPU](#)]

European arrest warrant - Right to a fair trial

In the sixth decision on this case, the High Court granted permission to appeal against its decision of 19 November 2018 ordering the surrender of LM to the Republic of Poland. In the context of this appeal, the question arises as to whether the judgement of the Court of Justice in case C-216/18 PPU must be interpreted as meaning that, where there are systemic or generalised failures as regards the independence of the judicial authority of the Member State before which the sought person will be tried, such failures must be sufficient in themselves - in the absence of additional evidence of failures concerning other essential guarantees - to establish that there are substantial and proven grounds to believe that the person concerned will be exposed to a real risk of a breach of the essential content of the right to a fair trial.

High Court, [ruling of 28/11.2018 \(EN\)](#)



Spain – Supreme Court

[Banco Santander ruling, [C-96/16 and C-94/17](#)]

Consumer protection - Finding that a clause fixing default interest is abusive - Effects

Following the Banco Santander judgement in the joined cases C-96/16 and C-94/17, the Supreme Court ruled on the effects of finding that a non-negotiated term in a loan contract concluded with a consumer fixing the rate of default interest was abusive.

It held that in such a case, when the debtor is in arrears, only the ordinary interest provided for in the contract continues to accrue, excluding default interest. In particular, it stated as a matter of law that the latter cannot be replaced by a rate taken from national mortgage legislation corresponding to three times the legal interest rate.

Tribunal Supremo, Sala primera de lo Civil, [ruling of 28/11/2018 no. STS 671/2018 \(ES\)](#)



Irelande – Court of Appeal

[C.E. and N.E. ruling, [C-325/18 PPU and C-375/18 PPU](#)]

Service of an exequatur order

Following the judgement of the Court of Justice, the applicants claimed before the Court of Appeal that their appeal was lodged within the prescribed period. The Court of Appeal observed that the time limit for appeal can only run from the moment when the interested party has a precise knowledge of the content and reasons of the act in question in order to be able to exercise their right of appeal. In this context, the Court of Appeal concluded that the exequatur order was not actually served on the applicants on the date initially invoked either under Irish law or pursuant to Article 33(5) of Regulation (EC) No 2201/2003 and that, as a result, the appeal was lodged within the time limit. As a result, the Court of Appeal referred the case back to the High Court for a decision on the merits with priority consideration.

Court of Appeal, [ruling of 28.11/2018 \(EN\)](#)



Italy – Court of cassation

[Di Puma ruling, [C-596/16 and 597/16](#)]

Fundamental rights - Principle ne bis in idem - Final criminal judgement dismissing insider trading proceedings - Impossibility of pursuing administrative sanction proceedings concerning the same facts

Following the judgement of the Di Puma and Zecca Court in joined cases C-596/16 and C-597/16, the Italian Court of Cassation ruled, directly applying Article 50 of the European Charter of Fundamental Rights, that administrative pecuniary penalty proceedings of a criminal nature cannot be pursued following a final criminal judgement terminating proceedings. The Court of Cassation also annulled the administrative pecuniary penalty of a criminal nature which had been adopted by the National Commission of Companies and the Stock Exchange for the violation of the prohibition on insider trading, on the grounds that it had already been the subject of the final criminal decision to dismiss the proceedings.

Corte suprema di Cassazione, [ruling of 06/12/2018, no. 31632 \(IT\)](#)



Netherlands – Council of State

[K. and B. ruling [C-380/17](#)]

Immigration policy - Right to family reunification - Failure to comply with the three-month period following the granting of international protection

Following the judgement of the Court K. and B., C-380/17, concerning the interpretation of Article 12 of Directive 2003/86/EC on the right to family reunification, the Council of State noted that the Secretary of State for Security and Justice had rightly rejected an application for family reunification on the ground that it had been submitted more than three months after the granting of refugee status to the applicant, without this delay being excusable.

Raad van State, [ruling of 27/12/2018 \(NL\)](#)



Slovakia – Supreme Court

[Lesoochranárske zoskupenie VLK ruling, [C-243/15](#)]

Environment - Aarhus Convention - Request by an environmental organisation for party status

The Supreme Court ruled that the administrative procedure relating to a project to install a fence for the expansion of a game park on a protected site should not have been finalised without resolving the question of the status of party to the proceedings of the environmental protection organisation.

It concluded, on the basis of Court of Justice ruling C-243/15, that despite the fact that the administrative procedure has already been definitively closed on the merits, the administrative authority must re-examine the case so that the environmental organisation could exercise its procedural rights.

Najvyšší súd Slovenskej republiky, [ruling of 30/01/2018 no. 1Sžk/17/2017 \(SK\)](#).



Italy – Court of Bergamo

[Menci ruling, [C-524/15](#)]

Fundamental rights - Principle *ne bis in idem* - Criminal conviction following the imposition of a definitive administrative penalty of a criminal nature

Following the preliminary ruling of the Court of Justice in Case C-524/15, the Court of Bergamo ruled that the application of a criminal sanction following the imposition of an administrative penalty of a criminal nature is excessive in relation to the gravity of the offence concerned. The excessive nature of such a sanction led the judge to stay the proceedings and refer a question to the Constitutional Court on the compatibility of Article 649 of the Code of Criminal Procedure with Articles 3 and 117(1) of the Constitution, the latter read in conjunction with Article 4 of Protocol No. 7 to the ECHR, insofar as that provision provides that the principle of *ne bis in idem* applies to an accused person only if, for the same acts, he has already been sanctioned following criminal proceedings, but does not apply if the accused person has been definitively sanctioned with an administrative penalty of a criminal nature.

Court of Bergamo, [ruling of 27/06/2018 \(IT\)](#)



Finland – Supreme Court

[Visnapuu ruling, [C-198/14](#)]

Free movement of goods - Measures having equivalent effect

Following the interpretation of the Court of Justice in Case C-198/14, the Supreme Court held that Articles 34 TFEU and 36 TFEU do not preclude a regulation under which a seller established in Estonia is subject to a retail sale authorisation requirement for the importation of alcoholic beverages for retail sale to consumers resident in Finland, where that seller transports these drinks or entrusts their transport to a third party, provided that this regulation is, inter alia, appropriate to ensure the protection of public health and public order.

The Supreme Court confirmed that this objective cannot be achieved by less restrictive measures and that this regulation does not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Korkein oikeus, [ruling of 28/06/2018, KHO:2018:49 \(FI\)](#)

The intranet site of the Research and Documentation Directorate lists all 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 established in the context of the follow-up of preliminary rulings are also available via the internal portal, under each preliminary ruling, under the heading 'disputes at national level'.