



FLASH NEWS

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MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS FROM NOVEMBER 2019 TO JANUARY 2020



Belgium – Constitutional Court

[P.M. et al. judgment, [C-264/18](#)]

Public service contracts - Exclusion of arbitration and conciliation services and certain legal services

The Constitutional Court dismissed the action for annulment brought against the provisions of the law on public procurement, which transposes Directive 2014/24 on public procurement into Belgian law. Under these provisions, certain legal services (including arbitration, conciliation and certain lawyers' services) are excluded from public procurement procedures.

In its judgment in Case C-264/18, the Court of Justice held that these legal services are not comparable with the other services that fall within the scope of Directive 2014/24, so that the EU legislature could reasonably have decided to exclude them from that scope. Consequently, the Constitutional Court concluded that the Belgian legislature was not obliged to subject them to the general rules on the award of service contracts.

Grondwettelijk Hof, [judgment of 07/11/2019, no. 162/2019 \(NL\) / \(FR\)](#)



Belgium – Council of State

[Wallonia Region judgment, [C-321/18](#)]

Environment - Assessment of the effects of certain plans and programmes on the environment - Setting conservation objectives for the Natura 2000 network

The Council of State dismissed the action for annulment brought against a decree of the Walloon Government which sets the conservation objectives for the Natura 2000 network. According to the applicant, that decree should have been subject to an environmental impact assessment.

The Belgian high court endorsed the Court's interpretation in the judgment in Case C-321/18. It considered that the contested decree, by which the Walloon Government set indicative conservation objectives at regional level for its Natura 2000 network, whereas the conservation objectives at site level are regulatory, is not one of the "plans and programmes", within the meaning of Directive 2001/42, for which an environmental impact assessment is mandatory.

Council of State, [judgment of 12/11/2019, no. 246.053 \(FR\)](#)



Czech Republic – Supreme Court

[Petruchová judgment, [C-208/18](#)]

Judicial cooperation in civil matters - Regulation No 1215/2012 - Concept of "consumer"

The Supreme Court, relying on judgment C-208/18, held that, within the meaning of Article 17 of Regulation No 1215/2012, the person concerned carrying out transactions on the FOREX international exchange market through a brokerage firm must be classified as a consumer if the conclusion of that contract does not fall within the scope of that person's professional activity. Taking the view that the lower courts misinterpreted the concept of consumer, the Supreme Court annulled their decisions and referred the case back to the Court of First Instance to examine the application of the conditions laid down in Article 17(1) of Regulation No 1215/2012 and to rule on the jurisdiction of the Czech courts.

Nejvyšší soud, [order of 26/11/2019, 30 Cdo 3918/2017 \(CS\)](#)



France – Council of State

[GC et al. judgment (Dereferencing of sensitive data), [C-136/17](#)]

Regulation (EU) No 2016/679 - Personal data - Right to dereferencing on the Internet

In 13 decisions, the Council of State, on the basis of the judgment in Case C-136/17, defined the principles that the Commission nationale de l'informatique et des libertés (CNIL) must respect when it intends to refuse a request for dereferencing on the Internet. The Council of State has identified three distinct configurations. First, if the request for dereferencing concerns data that are not sensitive, the CNIL may refuse to grant it when there is an overriding public interest in accessing the information in question by conducting a search based on the name of the person concerned. Second, if the request concerns sensitive data, access to the disputed information must be strictly necessary to inform the public. Third, if the request concerns data relating to criminal proceedings, the sensitive data framework applies. Nevertheless, the operator of a search engine is obliged, in addition, to arrange the list of results. It must first show at least one link to a web page with up-to-date information, so that the resulting picture is faithful to the current judicial situation of the person concerned and so that the disputed data reflect the stages of the criminal proceedings after the referencing of the disputed data.

Council of State, judgments – 6 December 2019, no. [391000](#), no. [393769](#), no. [395335](#), no. [397755](#), no. [399999](#), no. [401258](#), no. [403868](#), no. [405464](#), no. [405910](#), no. [407776](#), no. [409212](#), no. [423326](#), no. [429154](#)

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

See judgment of the Court of Cassation, 27 November 2019, [18-14.675](#), delivered on the basis of the judgment in Case C-136/17, concerning an application for the dereferencing of sensitive data relating to an offence and conviction.



Poland – Supreme Court

[PSM “K” judgment, [C-214/18](#) and Skarb Państwa order, [C-745/18](#)]

Taxation - VAT - Responsibility of the State

In the context of Case C-745/18, the Supreme Court dismissed the liquidator's appeal concerning the arrangements for the liability of the Treasury for non-adoption of a legislative act in the field of VAT, in particular the remuneration of the liquidators. It held that a legal vacuum causing material damage exists when the obligation to adopt an act is not fulfilled by a competent national authority.

Moreover, it is not sufficient for that obligation to be imposed by a directive, since that type of instrument is not directly applicable in national law but depends on its correct transposition.

The Supreme Court, having been informed in that regard by the Court of its earlier case law, decided the main proceedings, endorsing the Court's interpretation in the judgment in Case C-214/18 that such a legal vacuum does not constitute negligence on the part of the public authority.

Sąd Najwyższy, [judgment of 29 November 2019, I CSK 543/17 \(PL\)](#)



Belgium – Constitutional Court

[Belgisch Syndicaat van Chiropraxie et al. judgment, [C-597/17](#)]

Taxation - VAT - Chiropractics and osteopathy

Relying on the judgment in Case C-597/17, the Constitutional Court annulled the provision of the Belgian VAT Code that does not provide for exemption from VAT for chiropractic or osteopathic services provided by practitioners who are not members of a regulated medical or paramedical profession, even though they have the necessary qualifications to provide services of the same quality as those offered by members of a regulated profession. Furthermore, it followed the Court's position that the VAT Directive does not preclude the exclusion of VAT exemption for cosmetic procedures and treatments. Finally, in accordance with the Court's reply, it did not maintain the effect of the annulled provisions for the future.

Grondwettelijk Hof, [judgment of 05/12/2019, no. 194/2019 \(NL\) / \(FR\)](#)



Spain – Supreme Court

[Oro Efectivo judgment, [C-185/18](#)]

Taxation - VAT - Acquisition of precious metals subject to the tax on onerous asset transfers

The Supreme Court ruled on the principle of tax neutrality in relation to a national regulation on property acquired by an entrepreneur in the course of his business activity.

Agreeing with the Court's reasoning, it dismissed the action in cassation brought by a commercial company purchasing precious metals from natural persons, since the transaction for the acquisition of precious metals must be subject to the tax on onerous asset transfers. This is so because there is no legal principle determining tax exemption because the acquirer is a trader acting in the course of its commercial activity.

Tribunal Supremo, [judgment of 11/12/2019, 1.694/2019 \(ES\)](#)



Italy – Council of State

[Mobit judgment, [C-350/17](#)]

Transport - Public passenger transport services by rail and road - Direct award of public service contracts

The Council of State dismissed the appeal concerning the alleged infringement of the provision of national law excluding the direct award of services. It also dismissed the cross-appeal lodged by the Régie Autonome des Transports Parisiens (RATP) seeking to exclude its status as an internal operator in this case.

The Italian high court agreed with the Court's interpretation of Articles 5 and 8(2) of Regulation No 1370/2007, according to which Article 5 is not applicable to an award procedure that took place before 3 December 2019. The Council of State held that the provision of domestic law allegedly infringed applies only to awards that do not comply with Articles 5 and 8 of said Regulation and that took place after 3 December 2019. In addition, the Council of State held that it could not rule on whether the RATP was an internal RATP operator controlling the Italian company that participated in the procedure for the award of local public transport services.

Consiglio di Stato, [judgment of 11/12/2019, no. 8411 \(IT\)](#)



Italy – Council of State

[Autorità Garante della Concorrenza e del Mercato - Antitrust and Coopservice judgment, [C-216/17](#)]

Public service contracts - Conclusion by the contracting authority of a framework agreement with several contract awarders - Extension of the framework agreement to other contracting authorities

The Council of State annulled the disputed framework agreement (Decree No 828/2011), which, while mentioning "ASST Valcamonica" as a "secondary" contracting authority, did not, however, specify the overall volume in which subsequent contracts could be awarded.

The Italian high court agreed with the reasoning of the Court of Justice. It thus ruled out the possibility that contracting authorities that are not signatories to that framework agreement may not determine the volume of services that may be required when they conclude contracts in performance of that agreement or determine it by reference to their normal requirements, on pain of infringing the principles of transparency and equal treatment of the economic operators concerned.



France – Council of State

[Organisation juive européenne and Vignoble Psagot judgment, [C-363/18](#)]

Consumer information on foodstuffs - Labelling - Compulsory indication of the country of origin or place of provenance - Territories occupied by Israel

The Council of State dismissed the action for annulment on the grounds of misuse of powers brought against an opinion of the Minister for Economic Affairs and Finance. This notice, following the publication by the European Commission of an interpretative communication, specifies that foodstuffs originating in a territory occupied by the State of Israel must bear not only the name of the territory but also, where such foodstuffs originate in a locality or group of localities constituting an Israeli settlement within that territory, a reference to that origin.

The Council of State indicated that it follows from the judgment in Case C-363/18 that that opinion gives an accurate interpretation of the labelling obligation arising from Regulation No 1169/2011 and that the plea alleging failure to comply with that regulation must therefore be dismissed.

Council of State, [judgment of 31/12/2019, no. 407147 \(FR\)](#)