



FLASH NEWS

4/20

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF MAY TO OCTOBER 2020



Cyprus – Larnaca District Court

[**Blue Air - Airline Management Solutions judgment, C-584/18**]

Common rules on compensation and assistance to air passengers - Denied boarding based on allegedly inadequate travel documents

Citing judgment C-584/18, the Larnaca District Court upheld the action for compensation brought by a passenger and holder of a temporary residence permit in Cyprus who had been denied boarding on a flight to Romania because of the alleged inadequacy of his travel documents. Since such a refusal constituted a breach of the contract of carriage, Regulation No 261/2004 therefore entitled him to compensation, without the air carrier being able to rely on the derogations contained in its general terms and conditions.

On the other hand, the court ruled that this passenger could not invoke Decision No 565/2014, based on the unilateral recognition by Cyprus and Romania, *inter alia*, of the equivalence of certain documents to their national visas for the purposes of transit or stay on their territory, against the air carrier on the grounds that this carrier was not acting as an emanation of the State of destination.

Ανώτατο Δικαστήριο Κύπρου, [judgment of 20/05/2020, No 189/2016 \(EL\)](#)



Belgium – Constitutional Court

[**Anton van Zantbeek judgment, C-725/18**]

Freedom to provide services - Tax on stock exchange transactions concluded or executed by a non-resident intermediary

The Constitutional Court dismissed the appeal for the annulment of a tax introduced on stock exchange transactions concluded or executed on the order of a Belgian resident by an intermediary established in another Member State. Unlike intermediaries established in Belgium, such a principal himself becomes liable for the tax and the ensuing reporting obligations. Agreeing with the judgment in Case C-725/18, the Belgian high court stressed that such a tax is in accordance with the Constitution and the law of the Union. The restriction in question on the freedom to provide services pursues legitimate tax objectives and is proportionate, insofar as such a principal and the said intermediaries have facilities that simplify the administration of proof that the tax has been paid.

Grondwettelijk Hof, [judgment of 04/06/2020, No 79/2020 \(NL\) / \(FR\)](#)



Spain – Supreme Court of Justice of Castilla-La Mancha

[**Subdelegación del Gobierno en Guadalajara judgment, C-448/19**]

Border controls, asylum and immigration - Status of third-country nationals who are long-term residents - Protection against expulsion

The Supreme Court of Justice of Castilla-La Mancha upheld the action brought by a Moroccan national, holder of a long-term residence permit, against a decision ordering his expulsion from Spanish territory. This decision was based exclusively on the fact that the person concerned had been sentenced to three terms of imprisonment of more than one year.

On the basis of the judgment in Case C-448/19, the national court annulled the expulsion decision, as the competent administrative authority had not taken into account the factors to which Article 12(3) of Directive 2003/109 on protection against expulsion subjects the adoption of an expulsion decision: namely, the length of residence of the person concerned in the territory of the Member State, his or her age, the consequences for him or her and for the members of his or her family, and the links with the country of residence or the absence of such links.

Tribunal Superior de Justicia de Castilla-La Mancha, [judgment of 08/07/2020, STSJ CLM 1243/2020 \(ES\)](#)



Portugal – Constitutional Court

[Cruz & Companhia judgments, [C-128/13](#) and [C-152/15](#)]

Union law and national law - Assessment of the validity of a rule of Union law in the light of the Constitution - Lack of competence of constitutional jurisdiction

The Constitutional Court has, in an unprecedented manner, given a ruling on the relationship between Union law and the Constitution in the context of an appeal lodged as a result of the preliminary rulings handed down by the Court in Cases C-128/13 and C-152/15. The Portuguese high court ruled that when, as was the case here, the validity of a rule of Union law must be assessed on the basis of a principle structuring the democratic rule of law having, in the legal order established by the treaties, a value functionally equivalent to that recognised in the Basic Law, it is not competent to judge the compatibility of the said rule of national law with Union law.

Tribunal Constitucional, judgment of 15/07/2020, No 422/2020 (PT)



Austria – Supreme Court

[Verein für Konsumenteninformation judgment, [C-343/19](#)]

Jurisdiction in matters relating to tort, delict or quasi-delict - Place of materialisation of the damage concerning the ‘Dieselgate’ cases

The judgment in question originated in a dispute in the context of ‘Dieselgate’ and concerns the question of the jurisdiction of the court seized. Agreeing with the Court’s judgment, the Supreme Court ruled that the place where the damage to a vehicle illegally equipped with software that manipulates data relating to exhaust emissions materialised was located in the Member State in which the vehicle had been acquired. Therefore, according to the Supreme Court, the court seized has jurisdiction on the grounds that the place where the damage materialised was within its jurisdiction.

Oberster Gerichtshof, judgment of 12/08/2020, 4 Ob 133/20t (DE)



Czech Republic – Supreme Administrative Court

[AGROBET CZ judgment, [C-446/18](#)]

Taxation - VAT - Surplus

The Supreme Administrative Court, agreeing with the judgment in Case C-446/18, ruled that it was not a priori excluded to identify, for a taxable period, an undisputed part of the VAT surplus indicated on a VAT return that could give rise to a deferral or a partial refund of that surplus. By invoking the conditions under which it can be considered that the part of a VAT surplus is indeed not disputed, set out in judgment C-446/18, the Supreme Court annulled the decision of the lower court. It referred the case back to the latter so that it could examine the said conditions and rule on the regularity of the procedure applied by the tax authorities.

Nejvyšší správní soud, judgment of 13/08/2020, 1 Afs 271/2017 - 191 (CS)



Germany – Higher Administrative Court of the State of Bavaria

[Deutsche Umwelthilfe judgment, [C-752/18](#)]

Air pollution - Measures taken under an air quality plan - Traffic bans

The Higher Administrative Court of the State of Bavaria received an application for the enforcement of a court order to issue driving bans in order to comply with the obligations arising from Directive 2008/50/EC. It dismissed the case on the grounds that the competent authority had already complied with the injunction by giving sufficient reasons for its refusal to use such measures in the context of an update of the air quality plan in question on 31 October 2019. The injunction only concerned the obligation to draw up a reasoned concept as to whether or not to include such measures. This decision is without prejudice to the question, still pending before that court, of whether it was in fact necessary to adopt prohibitory measures.

*Bayerischer Verwaltungsgerichtshof, order of 27/08/2020, 22 C 20.44 (DE)
Press release (DE)*



Belgium – Court of Cassation

[Infohos judgment, [C-400/18](#)]

Taxation - VAT - Exemptions

The Court of Cassation overturned the judgment by which a court of appeal had ruled, on the basis of national VAT provisions, that an autonomous group of persons providing services both to its members and to non-members could not claim exemption from VAT for any of the said services.

It follows from Case C-400/18 that the exemption from VAT provided for the provision of services by autonomous groups of persons must be interpreted as precluding a national provision that makes the grant of that exemption subject to the condition that those groups provide services exclusively to their members.

Hof van Cassatie, [judgment of 25/09/2020, No F.17.0012.N \(NL\)](#)



Slovenia – National Commission for the Control of Public Procurement Procedures

[Tax-Fin-Lex judgment, [C-367/19](#)]

Public service contracts - Tenderer's offer at a price of zero euros

The National Commission for Supervision of Public Procurement Procedures annulled a decision of the Ministry of the Interior concerning the award of a public contract for legal informatics services. Endorsing the judgment in Case C-367/19, it stressed that the relevant national provisions transposing Directive 2014/24/EU merely define the concept of 'public contracts' for the purposes of determining the applicability of the relevant legislation. By virtue of these provisions, the legislation in question applies only to 'public contracts' whose estimated value meets or exceeds the established thresholds. Furthermore, a contract by which a contracting authority is not legally bound to provide any services in return for the services its contracting partner has undertaken to provide does not fall within the notion of 'contract for pecuniary interest'. Therefore, according to that committee, the relevant national provision does not allow the automatic rejection of a tender submitted in the context of a public contract, such as a tender at a price of zero euros, whereby an operator offers to provide the contracting authority with the works, supplies or services the latter wishes to acquire without asking for consideration.

Državna revizijska komisija za revizijo postopkov oddaje javnih naročil, [order of 9/10/2020, No 018-019/2019 \(SI\)](#)

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'.