



## FLASH NEWS

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# FOLLOW-UP OF PRELIMINARY RULING

## OVERVIEW FROM 1st TO 16 NOVEMBER 2017



### United Kingdom – Supreme Court

[Judgment of Littlewoods Retail, [C-591/10](#)]

#### **Tax system- Return of VAT collected in violation of EU law**

The Supreme Court rejected the appeal filed by the applicants for the payment of compound interest on the amounts of value added tax (VAT) paid in excess, owing to a violation of EU law.

According to the Supreme Court, the judgment C-591/10 does not demand the compensation for the loss suffered owing to the unavailability of money in question following the early due date of the tax. In this regard, the applicants could validly claim the payment of compound interest only if the payment of simple interest would have been equivalent to depriving the taxable person of an appropriate compensation for the loss caused by the undue payment of VAT.

*Supreme Court, [ruling 01.11.2017 \(EN\)](#)*



### Germany – Finance court of Hessen

[Judgment Wallenborn Transports, [C-571/15](#)]

#### **Tax system - VAT - Import of goods**

Following the judgment of the Court of Justice in the C-571/15 case, the finance court of Hessen annulled the administrative decision requiring the applicant to pay VAT on the incurrence of a customs debt

The Finance Court referred to the aforementioned judgement, in which the court recalled that a VAT debt may be added to a customs debt provided that the unlawful conduct that generated this debt allows presuming that the goods concerned have entered the economic circuit of the Union and could therefore have been a consumer item.

*Hessisches Finanzgericht, ruling of 02.11.2017, not published, available upon request*



### Germany – Higher Regional Court of Berlin

[Judgment of Erzberger, [C-566/15](#)]

#### **Free movement of workers- Principal of non-discrimination- Limitation of voting rights and eligibility for the supervisory board of a company**

Following the judgment of the Court of justice in the C-566/15 case, the Higher Regional Court of Berlin rejected the appeal of a shareholder, concerning the composition of the supervisory board of the TUI company, challenging a national regulation limiting the voting rights and eligibility for the supervisory board only to the workers of the establishments situated on the national territory.

The Higher Regional Court held that the German Law on the right of employees to participate in company decision-making was applicable to the said company, that the supervisory board was formed in accordance with the provisions of this law and that, in view of the Erzberger judgment, it did not violate the EU law.

*Kammergericht Berlin, ruling of 02.11.2017, not published, available upon request*



### Spain – High Court of Justice of Galicia

[Judgment of Otero Ramos, [C-531/15](#)]

#### **Protection of the safety and health of workers- Equal treatment for men and women**

The Superior Court of Justice of Galicia allowed the appeal filed by a nurse against the refusal to issue a certificate stating that the performance of her work posed a risk for the breastfeeding of her child, with a view to granting an economic benefit for risk during breastfeeding. Based on the criteria fixed by the Court of Justice in judgment C-531/15, the Superior Court of Justice of Galicia ruled that the worker had established facts likely to suggest that the risk assessment related to her work had not been carried out in accordance with the requirements of directive 92/85, which allows assuming the existence of a direct discrimination based on sex, under directive 2006/54.

*Tribunal Superior de Justicia de Galicia, Sala de lo Social, ruling of 08.11.2017, not published, available upon request*



### Poland – Supreme Court

[Judgment of Stowarzyszenie Oławska Telewizja Kablowa, [C-367/15](#)]

**Copyright- National Regulation providing for the simplified calculation of damages without proof of the actual damage suffered.**

Supporting the reasoning of the Court of justice in judgment C-367/15, the Supreme Court held that the Polish Court was not bound by the appeal of a copyright owner whose copyrights had been breached when the later claims, as compensation for his loss, the payment of an amount corresponding to double the appropriate remuneration, insofar as the quantified damage considerably exceeds the loss that is actually suffered. Having considered that this was the case in this instance, it allowed the appeal in cassation, annulled the contested judgment and referred the case to the Court of Appeal.

*Sąd Najwyższy, [ruling of 10.11.2017, V CSK 41/14 \(PL\)](#)*



### Hungary – Administrative and Labour Court of Szeged

[Judgment of Istanbul Lojistik, [C-65/16](#)]

**Decision no. 1/95 of the EC-Turkey Association Council- Levying of an automobile tax on carriers crossing Hungary in transit**

The Administrative and Labour Court of Szeged established that article 4 of the ruling no. 1/95 of the EC-Turkey Association of Council should be interpreted in the sense that, under this article, , a tax on motor vehicles, such as that at issue in the main proceedings, which is to be paid by the owners of heavy goods vehicles registered in Turkey passing through the territory of Hungary, constitutes a tax having an effect equivalent to a customs duty

Thus, as the tax and customs administration had applied sanctions in violation of the EU law, its decision was annulled by the Administrative and Labour Court of Szeged.

*Szeged Közigazgatási és Munkügyi Bíróság, ruling of 10.11.2017, not published, available upon request*



### Germany – Regional Court of Aachen

[Judgment of Frank Sleutjes, [C-278/16](#)]

**Judicial cooperation in criminal matters- Right to the translation of essential documents- Concept of “essential documents”**

Following the judgment of the Court of justice in the C-278/16 case, the Aachen regional court annulled the order of the district court of Düren which dismissed the applicant’s opposition to a penalty order.

The court referred to the above-mentioned judgment of the Court, according to which a document such as a penal order condemning its recipient for petty crimes and issued by a judge at the end of a simplified unilateral proceedings, constitutes an “essential document” under article 3, paragraph 1 of directive 2010/64.

*Landgericht Aachen, ruling of 13.11.2017, not published, available upon request*



### United Kingdom – Supreme Court

[Judgment of Scotch Whisky Association, [C-333/14](#)]

**Free movement of goods- Minimum price for alcoholic beverages**

Following the judgment of the Court of justice in the C-333/14 case, the Supreme Court found that a law on the minimum price of alcoholic beverages in Scotland was compatible with the EU law.

In fact, after a detailed examination of the evidence provided by the parties in order to demonstrate the justification of the law in view of public health, the Supreme Court concluded that the law satisfied the principle of proportionality. In this context, it especially noted that the objectives of the said law could not be achieved in the same way through an increase in taxes on alcohol.

*Supreme Court, [ruling of 15.11.2017 \(EN\)](#)*



### Sweden – Supreme Court

[Judgment of E.ON Biofor Sverige, [C-549/15](#)]

#### **Environment- Promotion of renewable energy**

Following judgment C-549/15, the National Energy Agency had revoked a part of its decision of ordering the applicant to modify its verification system concerning the sustainability of biogas in order to ensure mass balance as this injunction had been deemed incompatible with Article 34 of the TFEU by the Court.

Therefore, the Supreme Court considered that there was no need to give a ruling and struck off the case.

*Förvaltningsrätten i Linköping, beslut av den 15.11.2017, not published, available upon request*



### Belgium – Council of State

[Judgment of D'Oultremont and others, [C-290/15](#)]

#### **Environment- Directive 2001/42- Regulatory order including various provisions for the installation of wind turbines**

In accordance with judgment C- 290/15, the Council of State established the classification as “plan or program” under directive 2001/42, of a regulatory order concerning the conditions relating to the installation of wind turbines. Therefore, the order in question should have been appropriately assessed in view of its impact on the environment.

The Council of State, after finding that the assessment carried out did not comply with the requirements of Directive 2001/42, annulled the order. Based on two other orders of the Court of justice, C-41/11 and C-379/15, it has however upheld the effects of the order for a period of 3 years.

Council of State, [ruling of 16.11.2017 \(FR\)](#)

The Intranet site of the Search and Documentation Directorate lists all the analyses of the follow-up decisions received and processed by the Directorate since 1st January 2000, classified by year according to the date of filing of the case in 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 ‘litigation at national level’ section.