



## FLASH NEWS

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# MONITORING OF PRELIMINARY RULINGS

## OVERVIEW OF THE MONTHS OF MAY TO SEPTEMBER 2023



### Estonia – Supreme Court

[*Veejaam and Espo*, [C-470/20](#)]

#### ***State aid - Renewable energy - Conditions for incentive effect***

The Supreme Court ordered the national electricity transmission system operator and, at the same time, the authority responsible for granting aid for renewable energy, to reconsider its refusal to grant the application for aid submitted by the first applicant for the replacement of production equipment. As regards the second applicant, the Supreme Court referred the case back to the same Court of Appeal for reconsideration.

The Supreme Court found that the Commission had taken two decisions in 2014 and 2017 approving the aid scheme notified by Estonia despite the fact that at that time there was only a notified draft law excluding aid for the replacement of production equipment where similar aid had already been paid previously over a certain period. The Supreme Court relied on the Court's ruling that the latest decision by the Commission had legalised state aid that would otherwise have been illegal.

*Riigikohus*, [judgment of 2/5/2023, No 3-16-1864 \(ET\)](#)



### Finland – Supreme Court

[*A (Franchissement de frontières en navire de plaisance)*, [C-35/20](#)]

#### ***Citizenship - System of penalties for travelling between Member States without an identity card or passport***

Having considered that A was guilty of a minor offence when he left Finland by boat to travel to Estonia without an identity card or passport, the Supreme Court addressed the issue of setting a penalty proportionate to the offence committed.

The high court ruled that compliance with EU law, including the principle of proportionality, could be guaranteed by applying the provisions of the Criminal Code in such a way that A was sentenced to a reduced penalty of five day-fines. However, by applying the provisions of the Criminal Code relating to the setting of the amount of the day-fine according to the income of the person concerned, it set the daily amount at EUR 11 662. The Supreme Court therefore imposed a fine of EUR 58 310 on A for the infringement in question.

It should be noted, however, that a minority of the judges, including the President, in concurring with the judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (Direct effect), took the view that the provisions of the Criminal Code relating to the fixing of the amount of the day-fine on the basis of the income of the person concerned should be disapplied and, for the sake of proportionality, that the minimum statutory amount, namely EUR 6 per day, should be taken into account. The fine imposed would therefore have been EUR 90.

*Korkein oikeus*, [decision of 25/5/2023 ECLI:FI:KKO:2023:35 \(FI\)](#) (SV).



### Netherlands – Central Netherlands Court

[*Autoriteit Persoonsgegevens*, [C-245/20](#)]

#### ***Protection of personal data - Jurisdiction of supervisory authorities - Judicial function***

In this case, the Central Netherlands Court ruled that the personal data protection authority was right to declare itself incompetent to hear the application relating to the implementing measure at issue, which concerned the Council of State's making available to a journalist documents from court proceedings containing personal data.

Relying on the judgment of 24 March 2022, *Autoriteit Persoonsgegevens*, C-245/20, the Central Netherlands Court held that this provision fell within the exercise of the judicial function of the Council of State within the meaning of Article 55(3) of Regulation 2016/679 (GDPR).

*Rechtbank Midden-Nederland*, [decision of 9/6/2023, UTR 19/1627 \(NL\)](#)



## Ireland – Court of Appeal

[LU & PH, [C-514/21 and C-515/21](#)]

### **European Arrest Warrant - Second-instance criminal proceedings in the issuing Member State - Refusal to surrender the accused**

The Court of Appeal endorsed the interpretation of the Court of Justice regarding the case of a decision handed down at the end of a trial at which the person concerned did not appear in person, where the suspension of the enforcement of a custodial sentence is revoked because of a new criminal conviction and a European Arrest Warrant for the enforcement of that sentence is issued. The Court of Appeal upheld the appeal lodged by the applicant, who was sought by the Hungarian authorities after such a trial, and annulled the order to surrender him to that Member State. The Court of Appeal relied on three grounds: the applicant's sentence was already time-barred; the applicant had actually served his sentence during the trial; and any statement that the applicant had waived his right to attend the trial was merely hypothetical.

Court of Appeal, [decision of 9/6/2023, No 2021/8 \(EN\)](#)



## Germany – Federal Court of Justice

[Mercedes-Benz Group (Responsabilité des constructeurs de véhicules munis de dispositifs d'invalidation), [C-100/21](#)]

### **Liability of car manufacturers - Immobilisers on diesel engines**

In a series of rulings, the Federal Court of Justice determined the conditions under which the purchaser of a vehicle fitted with an illegal immobiliser may assert a claim against the car manufacturer for compensation for loss of value.

Under German law, damages may be claimed for the loss of value caused by the loss of confidence in the certificate of conformity at the time the vehicle was purchased, even in the event of a breach of EU law through simple negligence.

In addition to the rules relating to the burden of proof, it was established that the buyer must be compensated for between 5 % and 15 % of the purchase price, with the exact amount to be set by the judge, taking into account any compensatory advantages the buyer may have.

*Bundesgerichtshof, judgments of 26/6/2023 and 20/7/2023, VIa ZR 335/21, VIa ZR 533/21, VIa ZR 1031/21 and III ZR 267/20, not yet published (DE)*

*Press releases (DE) [VIa ZR 335/21/III ZR 267/20](#)*



## Bulgaria – Supreme Administrative Court

[Ministerstvo na vatreshnite raboti (Enregistrement de données biométriques et génétiques par la police), [C-205/21](#)]

### **Protection of personal data - Criminal matters - Collection of biometric and genetic data for the purposes of police registration**

Relying on judgment C-205/21, the Supreme Administrative Court dismissed the action brought by the applicants, natural persons, against the national regulation governing the implementation of the provisions authorising the systematic collection of biometric and genetic data from any person under investigation for the purposes of police registration. The supreme court ruled that, in the event of a refusal to cooperate spontaneously with such collection on the part of a person prosecuted ex officio and indicted for an intentional offence, the competent criminal court is obliged to authorise a measure of compulsory execution of that collection, without assessing whether there are serious grounds for considering that that person has committed the offence for which he or she is indicted, provided that national law subsequently guarantees the effective judicial review of the conditions of that indictment.

*Varhoven administrativen sad, [judgment of 30/6/2023, No 7242 \(BG\)](#)*



## Germany – Federal Court of Justice

[Mercedes-Benz Group (Responsabilité des constructeurs de véhicules munis de dispositifs d'invalidation), [C-100/21](#)] **Immobilisers on diesel engines - Liability of engine manufacturers**

The Federal Court of Justice ruled that an engine manufacturer that is not at the same time a car manufacturer is liable to the purchaser of a vehicle fitted with an illegal immobiliser only in the event of wilful misconduct.

Responsibility for the use of illegal immobilisers, linked to the obligation to issue a certificate of conformity, lies solely with the vehicle manufacturer and not the engine manufacturer.

The latter can therefore only be held liable if it has itself acted intentionally and contrary to public policy and morality, or if it has intentionally assisted the car manufacturer in putting a vehicle with an incorrect certificate on the road.

*Bundesgerichtshof, judgment of 10/7/2023, VIa ZR 1119/22, not yet published (DE)*

*[Press release \(DE\)](#)*



## Ireland – Court of Appeal

[LU & PH, [C-514/21 and C-515/21](#)]

### **European Arrest Warrant - Second-instance criminal proceedings in the issuing Member State - Refusal to surrender the accused**

The applicant was being prosecuted by the Polish authorities following a conviction in absentia. Relying on the interpretation of the Court of Justice that such a conviction constitutes a decision handed down following a trial at which the person concerned did not appear in person within the meaning of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant, the Court of Appeal annulled the order for surrender to the issuing Member State. Referring to the Court of Justice's indication that a national court may take into account other factors relevant to surrender to the Member State, such as the requested person's refusal to contact his or her lawyers, the Court of Appeal referred the case back to the High Court for further consideration.

Court of Appeal, [decision of 21/7/2023, No 2021/8 \(EN\)](#)



## Ireland – Court of Appeal

[K.M. (Sanctions infligées au capitaine de navire – II), [C-493/21](#) and K.M. (Sanctions infligées au capitaine de navire), [C-77/20](#)]

### **Common fisheries policy - Criminal penalties - Principle of proportionality**

Following a conviction for a fishing offence, the applicant's equipment had been seized, which he challenged on the grounds that the seizure was disproportionate. In the national decision terminating the proceedings, the Court of Appeal decided that, in the light of the Court of Justice's clarifications, there was a real risk that the sentence handed down at first instance was disproportionate. The court therefore annulled the contested decision and ordered that a new investigation be opened.

Court of Appeal, [decision of 25/7/23, No 214/2015 \(EN\)](#)



## Germany – Federal Administrative Court

[SpaceNet and Telekom Deutschland, [C-793/19 and C-794/19](#)]

### **Protection of personal data - Telecommunications - General and undifferentiated retention of traffic data**

The Federal Administrative Court ruled that the obligation imposed by the German Telecommunications Act on providers of such services to retain traffic and location data relating to electronic communications, without reason, in a generalised and undifferentiated manner, was incompatible with Article 15(1) of Directive 2002/58/EC and should therefore be left unapplied.

Taking into account the Court's interpretation, the high court concluded that the German legislation did not satisfy the requirement for clear and precise rules, as it did not define objective criteria establishing a relationship between the data to be retained and the objective pursued. It also found that there was no strict limitation on the general and undifferentiated retention of data for authorised purposes.

Bundesverwaltungsgericht, judgments of 14/8/2023, 6 C 6.22 and 6 C 7.22, not yet published (DE)

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



## Finland – Supreme Administrative Court

[A (Circulation d'armes à feu neutralisées), [C-296/21](#)]

### **Transfer of firearms to Finland - Neutralisation certificate - Mutual recognition**

In this case, the Supreme Administrative Court ruled that only a firearm deactivation certificate issued by the inspection unit mentioned in the Commission's list referred to in Implementing Regulation 2015/2403 could be considered as a certificate to be recognised by the authority of another Member State. As the Austrian neutralisation certificates presented in this case did not meet this requirement, the police did not have to recognise and accept them as proof of the neutralisation of the firearms in question.

Korkein hallinto-oikeus, [decision of 7/9/2023, ECLI:FI:KHO:2023:79 \(FI\) \(SV\)](#)

 **Netherlands** – Supreme Court

[Classic Coach Company, [C-112/21](#)]

**European Union trade mark - Limitation of the effects of the trade mark**

Following the judgment of 2 June 2022, Classic Coach Company, C-112/21, the Supreme Court dismissed the appeal in cassation brought before it, in which the applicant argued that a third party could not rely on a limitation of the effects of a trade mark provided for by a provision of Dutch law that had transposed Article 6(2) of Directive 2008/95/EC.

In this context, the Supreme Court ruled that the defendant could rely on this limitation despite the fact that its trade name was no older than that of the plaintiff. Thus, in this case, the plaintiff's even older trade name could not affect the defendant's prior right.

Hoge Raad der Nederlanden, [decision of 8/9/2023, 19/02348 \(NL\)](#)

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'.