



FLASH NEWS

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MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF APRIL AND JUNE 2024



Bulgaria - Supreme Administrative Court

[MOMTRADE RUSE, [C-620/21](#)]

Taxation - VAT - Exemptions - Supply of services closely linked to social assistance and social security

On the basis of the judgment in Case C-620/21, the Supreme Administrative Court held that, for the purposes of applying VAT, social services supplied to a natural person residing in a Member State other than that in which the supplier has established its business are deemed to be supplied within the territory of the Member State in which the supplier is established. The fact that such services are provided in a Member State other than that in which the supplier is established does not affect the exemption of such services from VAT within the meaning of Article 132(1)(g) of the VAT Directive.

In addition, the supreme court specified that Member States may lay down different rules for exempting social services from VAT. However, for the purposes of determining whether they constitute supplies of services closely linked to social assistance and social security, the nature of the said supplies must be assessed in the light of Bulgarian VAT legislation.

Varhoven administrativen sad, [judgment of 5/4/2024, No 4163 \(BG\)](#)



Greece – Council of State

[DIMCO Dimovasili M.I.K.E., [C-499/20](#)]

Approximation of laws - Placing on the market of pressure equipment - Restrictions intended to ensure the protection of persons

Pursuant to the Court's preliminary ruling, the Council of State dismissed the action for annulment brought against a ministerial decision imposing restrictions on the installation of gas piping due to the significant risk of earthquakes in Greece. As a reminder, the Court had found that the regulations at issue in the main proceedings complied with Directive 27/93/EC, provided that they did not entail any modification of the equipment in question and did not constitute a barrier prohibited under Articles 34 and 36 TFEU. In order to apply the two aforementioned conditions to the case in point, the Greek high court interpreted the concept of 'modification of equipment' and examined the scope of the exceptions to the prohibition in principle of quantitative restrictions on imports. In light of this analysis, the high court confirmed the compatibility of the contested decision with European Union law.

Symvoulío tis Epikrateias, judgment of 29/4/2024, No 608/2024 (available on request)



Czech Republic – Supreme Administrative Court

[Omya CZ, [C-133/23](#)]

Approximation of legislation - Taxation of energy products and electricity - Activities related to the extraction of limestone

On the basis of the Court's reasoning in its judgment in Case C-133/23, the Supreme Administrative Court set aside the judgment of the lower court insofar as the latter had wrongly held that electricity used for all the activities of Omya, a company active in the extraction and processing of limestone, could be excluded from the electricity tax.

The Czech high court drew a distinction according to whether the electricity was used for mineralogical processes or not. Thus, the use of electricity for crushing and grinding activities leading to a simple reduction in the size of limestone is subject to electricity tax. In contrast, the use of electricity to power electric heating machines used to obtain fine limestone fillers with a modified surface may be excluded from taxation.

Nejvyšší správní soud, [judgment of 28/5/2024, No 8 Afs 297/2021 \(CS\)](#)



Spain – Madrid Commercial Court

[*European Superleague Company*, [C-333/21](#)]

Competition - Organisation and marketing of football competitions - Abuse of dominant position - Decision adversely affecting competition [this judgment must be placed before the preceding one]

Following the launch of the Super League project, FIFA and UEFA took the position that all international football competitions should be organised or authorised by the competent bodies referred to in the FIFA and UEFA Statutes.

The Madrid Commercial Court, adopting the Court's reasoning in its judgment in Case C-333/21, held that the Statutes of FIFA and UEFA were contrary to Articles 101 and 102 TFEU. It constitutes an abuse of a dominant position and a decision to form an association of undertakings, the object of which is to prevent competition for FIFA and UEFA, to have adopted rules enabling them both to make the creation of a new competition by a third undertaking on EU territory subject to their prior authorisation and to control the participation of professional football clubs and players in such a competition, on pain of penalties. In support of its decision, the Commercial Court also pointed out that these various powers were not governed by material criteria and procedural arrangements to ensure that they were transparent, objective, non-discriminatory and proportionate.

Juzado de lo mercantil nº 17 de Madrid, [judgment of 24/5/2024](#), [ECLI:ES:JMM:2024:25 \(ES\)](#)



Finland – Supreme Administrative Court

[*EP (Éloignement d'un résident de longue durée)*, [C-752/22](#)]

Status of third-country nationals who are long-term residents - Directive 2003/109/EC - Reinforced protection against expulsion

In this case, a Russian national who held a long-term residence permit in Estonia had been deported several times from Finland to Estonia. By a decision of the Finnish Immigration Office, the said national was finally expelled from Finland to his country of origin on the grounds that he endangered public order and safety in Finland.

The Supreme Administrative Court, adopting the Court's interpretation in Case C-752/22, held that the national in question was entitled to enhanced protection against expulsion under Directive 2003/109/EC. Furthermore, it considered that, since the various conditions and guarantees provided for by the provisions of the directive were unconditional and sufficiently precise, he could invoke them against the Finnish authorities, even if the transposition of the directive was incomplete. As the competent authorities had not assessed his situation in the light of the provisions of the directive, the decision was contrary to the law.

Korkein hallinto-oikeus, [judgment of 5/6/2024](#), [ECLI:FI:KHO:2024:82 \(FI\) \(SV\)](#)



Bulgaria - Supreme Administrative Court

[*Director na Glavna direktsia 'Natsionalna politسيا' pri MVR – Sofia*, [C-118/22](#)]

Protection of individuals with regard to the processing of personal data in criminal matters - Retention of data in the police register - Obligation to check regularly whether such retention is necessary

On the basis of the judgment in Case C-118/22, the Supreme Administrative Court held that personal data contained in the police register, in which persons prosecuted for an intentional criminal offence are entered, cannot be kept indefinitely. The Bulgarian court emphasised that the competent authority responsible for such retention is required to verify regularly the need to retain such data. In the light of criteria such as the nature and seriousness of the offence, the context in which it was committed, and the background or profile of the convicted person, such verification is an essential element in the procedure for removal from the police register. Finally, the Bulgarian court stressed that the purpose of such verification was to balance the particular importance of the objective of combating crime against the legitimate rights of the data subject.

Върховен административен съд (Varhoven administrativen sad) [judgment of 4/6/2024, No 6578 \(BG\)](#)



Germany – Federal Labour Court

[*Krankenversicherung Nordrhein*, [C-667/21](#)]

Protection of personal data - Processing of data concerning health - Employment relationship - Medical service - Right to compensation

In this case, the compulsory health insurance fund to which the applicant was affiliated had requested an expert opinion on his incapacity for work.

On the basis of the judgment in Case C-667/21 and on the premise that the expert opinion in question constituted the processing of data concerning health, the Federal Labour Court ruled that such data processing by a medical service in the field of health insurance were admissible by virtue of the exception provided for in Article 9(2)(h) of the General Data Protection Regulation ('GDPR'), even though the insured person was an employee of that medical service.

Thus, a medical control body that processes data relating to the health of one of its employees in its capacity as a medical service rather than as an employer is not obliged to guarantee that no other employee can have access to these data.

The German high court therefore considered, in the light of the judgment in Case C-667/21, that the processing of the data in this case did not constitute a breach of the provisions of the GDPR that may give rise to damages under Article 82(1) GDPR.

Bundesgerichtshof, [judgment of 20/6/2024, 8 AZR 253/20 \(DE\)](#), (unpublished)
[Press release \(DE\)](#)

Previous decision



Spain – Madrid High Court of Justice

[Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid and Others, [C-59/22](#), [C-110/22](#) and [C-159/22](#)]

Social policy - Measures to prevent abuse of successive fixed-term contracts in the public sector

On the basis of the Court's judgment in Case C-59/22, in which that court had held that reclassification of the contracts at issue in the present case could be an appropriate measure, the High Court of Justice, while emphasising that the Court had not imposed such reclassification, refused to allow the applicants to reclassify their non-permanent open-ended employment contracts as permanent employment contracts. The high court recalled that stability for a public administration worker can only be achieved in compliance with the principles of equality, merit and ability, which can only be ensured through an appropriate selection process.

As a reminder, in its judgment in Case C-59/22, the Court stated that a non-permanent worker of indefinite duration must be regarded as a fixed-term worker within the meaning of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. In addition, the Court had also held that the said framework agreement precluded Spanish legislation that provided for the organisation of procedures to make temporary jobs permanent by means of calls for applications to fill posts occupied by temporary workers, including non-permanent open-ended workers. Finally, the Court noted that the conversion of these successive fixed-term contracts into open-ended contracts was likely to constitute an 'adequate' measure to prevent and, where appropriate, punish abuses resulting from the use of these successive fixed-term contracts.

Faced with doubts as to the scope of the judgment in Case C-59/22, the Supreme Court decided to stay proceedings and put a new question to the Court for clarification (C-418/24).

Tribunal Superior de Justicia de Madrid, España, judgments of 10/4/2023, [ECLI:ES:TSJM:2024:2794](#), [ECLI:ES:TSJM:2024:2795](#) and [ECLI:ES:TSJM:2024:2796 \(ES\)](#)

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'.