



FLASH NEWS

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MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF MARCH TO JUNE 2018



Belgium – Constitutional Court

[Judgement X, [C-68/15](#)]

Taxation - Parent companies and subsidiaries of different Member States - Fairness tax

The Constitutional Court annulled a tax, called the “fairness tax” which resident and non-resident companies were required to pay in certain circumstances in connection with the distribution of dividends.

On the one hand, the Constitutional Court held that this tax infringed the principle of legality in tax matters, as guaranteed by the Belgian Constitution. On the other hand, it followed the position of the Court of Justice in its judgement C-68/15 that said “fairness tax” led to double taxation of profits, prohibited by Article 4 (3) of Directive 2011/96, on the common system of taxation applicable to parent companies and subsidiaries of different Member States.

Constitutional Court, [judgment of 01.03.2017 \(FR\) / \(NL\)](#)



France – Council of State

[Jahin judgment, [C-45/17](#)]

Free movement of capital - Social security deduction from personal income received in the national territory - Coverage of a person affiliated with social security in a non-EEA State

Following the preliminary ruling, which declared the French legislation at issue to be in accordance with Articles 63 and 65 TFEU, the Council of State concluded that the applicant's appeal should be dismissed. By the latter, the applicant had challenged two press releases as they excluded from the scope of the reimbursement of the levies on income from property that they mentioned the persons affiliated to the social security in a State other than Switzerland or those who are part of the European Union or the European Economic Area.

Council of State, [decision of 05.03.2018 \(FR\)](#)



Bulgaria – Sofia City Court

[Beshkov judgment, [C-171/16](#)]

Judicial cooperation in criminal matters - Framework Decision 2008/675/JHA - Taking into account sentencing decisions between Member States in the context of new criminal proceedings

The Sofia City Court upheld the judgment of the Sofia District Court dismissing the petition submitted by a person for the purpose of taking into account the sentence previously delivered against him by an Austrian court.

The Sofia City Court ruled, based on the judgment of the Court of Justice C-171/16, that despite the fact that the custodial sentence of deprivation of liberty pronounced by the Austrian court should not be subject to the prior recognition procedure under Bulgarian law, this sentence cannot be taken into account for the purpose of determining a custodial sentence, otherwise it will result in a change in the execution of the sentence.

Sofyiski gradski sad, Judgment of 06.03.2018, unpublished, available on request



Austria – Administrative Court

[Judgment Protect Natur-, Arten- und Landschaftschutz Umweltorganisation, [C-664/15](#)]

Environment - Aarhus Convention - Access to justice - Legal remedies

The Administrative Court quashed the judgment of the Regional Administrative Court of Lower Austria dismissing the appeal of an environmental protection organisation on the ground that it had been deprived of its status as a party to the proceedings for having failed to put forward its objections in good time.

By its judgment, the Administrative Court recognised granted such an organisation the status of party to the proceedings and the right of appeal. It considered that, in view of the national legal framework, the organisation in question could not anticipate that it would be a party to the proceedings and that, consequently, the national procedural law of foreclosure could not be imposed on it.

Verwaltungsgerichtshof, [judgment of 28.03.2018 \(DE\)](#)



Austria – Administrative Court

[Folk judgement, [C-529/15](#)]

Environment - Prevention and repair of environmental damage - Environmental liability - Concept of "environmental damage"

By its judgment, the Administrative Court annulled the decision of the independent administrative chamber of Styria by which the latter had rejected a request in environmental matters.

It recalled that, according to the Court of Justice, Directive 2004/35 precludes a provision of national law which generally and automatically excludes damage that seriously and negatively affects the ecological, chemical, quantitative state or the ecological potential of the waters concerned from being qualified as “environmental damage”, because of the mere fact that it is covered by an authorisation issued under national law.

Verwaltungsgerichtshof, [judgment of 28.03. 2018 \(DE\)](#)



Poland – Administrative supreme court

[Pieńkowski judgement, [C-307/16](#)]

Taxation - VAT - Exemption from exports - Deliveries of goods shipped or transported outside the Union

The Supreme Administrative Court ruled as contrary to Directive 2006/112 the Polish regulation making the benefit of the exemption, in the context of an export delivery goods to be carried out in the personal luggage of passengers, subject either to generation by the taxable person of a turnover of a minimum amount, or to the conclusion of a contract with an operator authorised to refund the VAT to passengers.

It thus annulled the judgment of the Administrative Court and the decision of the tax authority, according to which the applicant was not authorised to refund the VAT to passengers or to apply a zero VAT rate to them on the grounds that he had not fulfilled the above conditions.

Naczelny Sąd Administracyjny, [judgment of 10.05.2018, I FSK 1398/14 \(PL\)](#)

The Intranet site of the Direction Recherche et Documentation lists all analyses of the monitoring decisions received and processed by the Direction since 1 January 2000, classified by year according to the date of submission of the case to the Court. All the analyses established in the context of the monitoring of preliminary rulings are also available via the internal portal, under each preliminary ruling, under the heading “national dispute”.