



FLASH NEWS

3/19

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF MARCH, APRIL AND MAY 2019



Germany – Higher Regional Court of Oldenburg

[NK Ruling, [C-231/18](#)]

Road transport - Obligation to use a tachograph - Exemption for the vehicles used for the transport of live animals from farms to the local markets and vice versa or from the markets to the local slaughterhouses

The higher regional court of Oldenburg dismissed the appeal filed against the decision of the district court of Oldenburg upholding the fine imposed on a wholesale livestock dealer for having authorised one of its drivers to carry livestock from a farm directly to a slaughterhouse, without a driver card.

Supporting the reasoning of the Court of Justice, the higher regional court of Oldenburg concluded that the expression “local markets”, appearing in article 13, paragraph 1, under p), of regulation (EC) no. 561/2006, should be interpreted in the sense that it cannot refer to the transaction conducted between a wholesale livestock dealer and a farmer or the wholesale livestock dealer itself, such that the exemption stated in this provision cannot be extended to the vehicles transporting live animals directly from farms to the local slaughterhouses.

Oberlandesgericht Oldenburg, order of 04.03.2019, 2Ss (OWi) 64/18 (DE), available on request.



Spain – High Court of Justice of Castille-La Mancha

[Viejobueno Ibáñez and Vara González Ruling, [C-245/17](#)]

Social policy - Fixed-term work - Principle of non-discrimination - Lawfulness of the termination of an employment relationship

The High Court of Justice of Castille-La Mancha upheld the dismissal of the appeal, filed by professors employed for the academic year as non-regular staff members, against the decision to terminate the employment relationship concerning them.

Following the judgment delivered under the preliminary ruling procedure, it noted that, on the date on which the courses finish, the employer could put an end to the fixed-term employment relationship of the professors recruited for an academic year as non-regular staff members, on the grounds that the conditions of necessity and urgency to which their recruitment was subject were no longer satisfied on this date. In this instance, the High Court of Justice of Castille-La Mancha thus established the lawfulness of the termination of the employment relationship in question.

Tribunal Superior de Justicia de Castilla-La Mancha, Sala de lo contencioso-administrativo, ruling of 04.03.2019, 10050/2019 (F.S). available on request.

The Intranet site of the Direction Recherche et Documentation (Research and Documentation Department) 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”.

 **Netherlands** – Court of appeal of administrative litigation in economic matters

[Nooren Ruling, [C-667/16](#)]

Common agricultural policy – Regulation (EC) no. 1122/2009 - Reductions and exclusions in case of non-compliance with the rules of cross-compliance - Accumulation of reductions in case of multiple offences

The Court of appeal of administrative litigation in economic matters dismissed the appeal filed by two private individuals, successors of a farmer, against the decision of the State Secretary for Economic Affairs by which the latter had reduced the total amount of direct payments granted or to be granted to the farmer by 55%, following an accumulation of two separate reductions of 15% and 40%.

The Court of appeal ruled, by supporting the ruling C-667/16, that the rate of the reduction in question was justified insofar as, in a situation where several cases of non-compliance falling under the same domain have been observed, the different reductions should be added up.

College van Beroep voor het bedrijfsleven, [ruling of 05.03.2019, 13/80 and 13/416 \(NL\)](#)

 **Austria** – Labour and Social Affairs Court of Vienna

[Gradbeništvo Korana d.o.o. Ruling, [C-579/17](#)]

Regulation (EU) no. 1215/2012 - Scope - Action to obtain the payment of a sum outstanding by a social security body against an employer – Inclusion

The ruling of the Labour and Social Affairs Court of Vienna responds to the judgment delivered under the preliminary ruling procedure of the Court of Justice, stating the conditions under which the appeals filed by a public body come under the scope of the regulation (EU) no. 1215/2012. The said court held that this body, by fixing, without constitutive effect, the amounts of the extra charges for the compensation of annual holidays to be paid by an employer, does not have the rights under public law that would be opposed to the qualification of the dispute as falling under the concept of "civil and commercial matters".

Arbeits- und Sozialgericht Wien, order of 11.03.2019, 24 Cga 109/16y - 53 (DE), available on request.

 **Spain** – Supreme court

[Diego Porrás Ruling, [C-619/17](#)]

Social policy - Fixed-term work - Principle of non-discrimination - No compensation at the end of an *interinidad* (temping) contract

Hearing judicial review proceedings for the purpose of standardisation of the case-law, the Supreme court ruled, based on the ruling C-619/17, that the Supreme Court of Justice of Madrid (Tribunal Superior de Justicia de Madrid) had incorrectly granted to the party concerned a compensation at the end of the period of her “*interinidad*” (temporary) work contract, the said term being constituted by the return of the employee that she replaced.

The Supreme court also stressed that, in itself, the termination of the employment contract in question would not lead to discrimination and could not give rise to the granting of compensation, as there were other national measures enabling to prevent and penalise the abuse resulting from the use of successive fixed-term contracts.

Tribunal Supremo, [ruling of 13.03.2019, STS 945/2019 \(ES\)](#)

 **Poland** – Administrative supreme court

[Kozuba Premium Selection Ruling, [C-308/16](#)]

Taxation - VAT - Exemptions

The Supreme administrative court (NSA) was seized in the context of a dispute between a private limited company and the Director of the tax division of Warsaw concerning the exemption of the delivery of a building made in the context of the first occupation. The NSA dismissed the appeal in cassation against the decision of the regional administrative court annulling the decision of the tax authority.

The NSA endorsed the interpretation of the Court in the C-308/16 case and sent the case to the tax administration. It ruled that it is the responsibility of the latter to decide on knowing whether the expenses concerning the delivered building, incurred by the company, come under the concept of “improvement”.

Najwyższy Sąd Administracyjny (NSA), [ruling of 21. 03. 2019, I FSK 1573/14 \(PL\)](#)



Lithuania – Supreme Administrative Court

[**Paysera LT Ruling, [C-389/17](#)**]

Electronic money institutions - Directive 2009/110 - Concept of activity related to electronic money issuing

The Supreme Administrative Court was seized of an appeal filed by the applicant company against a ruling of the regional administrative court of Vilnius. It had upheld the decision of the supervisory board of the Bank of Lithuania refusing to recognise the activities carried out by this company as being payment services related to electronic money issuing.

Based on the C-389/17 ruling, it ruled that the national law should be interpreted as meaning that the services provided by the electronic money institutions in the context of payment operations, such as those at issue in the main proceedings, constitute activities related to electronic money issuing, within the meaning of this provision, if these services initiate the issuing or the reimbursement of electronic money in the context of one and the same payment operation.

Vyriausiasis administracinis teismas, [ruling of 27.03.2019, eA-1742-502/2019 \(LT\)](#)



United Kingdom – Supreme court

[**Newby Foods Ruling, [C-453/13](#)**]

Public health - Hygiene of foodstuff of animal origin - Concept of "mechanically separated meat"

On 3 April 2019, the Supreme Court dismissed the appeal filed by the applicant against the ruling of the Court of Appeal (Civil Division) delivered following the ruling of the Court in the C-453/13 case. The Supreme Court interpreted the concept of mechanically separated meat, within the meaning of point 1.14 of appendix I of regulation no. 853/2004, fixing the specific hygiene rules applicable to the foodstuff of animal origin. According to it, this concept should be interpreted as meaning that it does not cover the meat mechanically removed from the carcass during the first phase of separation of the meat from the carcass, but that it applies in case of mechanical removal of the meat during the subsequent phases. The supreme court also dismissed the appeal of the applicant to again seize the Court of Justice of the question of the interpretation of the said concept. In fact, as it clearly results from the ruling of the Court that the products of the applicant come under the concept of mechanically separated meat, the Supreme Court held that it was an *acte clair* and that no additional reference for a preliminary ruling was required.

Supreme Court of the United Kingdom, [ruling of 03.04.2019, \[2019\] UKSC 18 \(EN\)](#)



Netherlands – Council of State

[Ruling C and A, [C-257/17](#)]

Border control, asylum and immigration - Directive 2003/86 - Conditions of granting an autonomous residence permit - Passing an examination of community integration

By two decisions pronounced on the same day, the Council of State, in one case, accepted and, in the other case, dismissed the appeals filed by two nationals of third States against the decision of the State Secretary for Security and Justice by which the latter had dismissed their application to obtain an autonomous residence permit.

In the first case, supporting the C-257/17 ruling, the Council of State ruled that the decision of the State Secretary was disproportionate insofar as the applicant had made adequate efforts in view of his integration and satisfied the legal criteria to avail of the exemption from the examination of community integration.

In the second case, it ruled that the decision of the State Secretary was justified insofar as the applicant had not yet satisfied, at the time of his application, the legal criteria to avail of the exemption from the examination of community integration.

Raad van State, rulings of [26.04.2019, 201600860/2/V2 \(NL\)](#) and [of 26.04.2019, 201703695/3/V2 \(NL\)](#)



Lithuania – Supreme Administrative Court

[Bene Factum Ruling, [C-567/17](#)]

Taxation - Excise duties - Alcohol and alcoholic beverages - Exemptions from harmonised excise duty - Products not meant for human consumption

The Supreme Administrative Court accepted the appeal filed by the applicant company against the ruling of the regional administrative court of Vilnius that had upheld the decision of the tax authorities to subject, to excise duty, the cosmetics and oral hygiene products introduced in Lithuania by this company.

Supporting the judgment delivered under the preliminary ruling procedure, it ruled that the products presented as being cosmetics or oral hygiene products, which contain denatured ethyl alcohol in accordance with the requirements of a Member State, as products not intended for human consumption, cannot be deprived of the exemption from excise duty provided for in article 27, paragraph 1, under b), of directive 92/83, on the grounds that certain persons consume these products as alcoholic beverages.

Vyriausiasis administracinis teismas, [ruling of 8.05.2019, eA-1744-556/2019 \(LT\)](#)

Decisions prior to March 2019

Finland – Supreme Administrative Court [Jehovan todistajat Ruling, [C-25/17](#)]

Approximation of laws - Protection of natural persons with regard to the processing of personal data - Directive 95/46

The Supreme Administrative Court endorsed the interpretation of the Court in the case C-25/17 according to which the collection of personal data made by the members of a religious community in the context of a door-to-door preaching activity as well as the subsequent processing of this data do not come under the exceptions to the scope of directive 95/46. The same applies for the interpretation according to which the concept of “file”, stated in article 2, under c), of this directive, covers a set of personal data collected in the context of such an activity.

Therefore, the Supreme Administrative Court accepted the appeal of the data protection authority and annulled the decision of the administrative court of Helsinki.

Korkein hallinto-oikeus, [ruling of 17.12.2018, KHO:2018:171 \(FI\)](#)

Finland – Supreme court [Ruling, A., [C-247/17](#)]

Citizenship of the Union – Right to reside and move freely on the territories of the Member states – Request for extradition to a third country

The Supreme court followed the ruling of the Court concerning the interpretation of articles 18 and 21 TFEU. It ruled that the latter should be interpreted as meaning that, in the presence of a request for extradition, filed by a third country, of a citizen of the European Union having exercised his right to move freely, for the purpose of the execution of a custodial sentence, the requested Member state, of which the national law prohibits the extradition of its own nationals outside the Union for the purpose of the execution of a sentence and provides for the possibility for such a sentence pronounced abroad be served on its territory, is required to provide to this citizen of the Union, as soon as he permanently resides on its territory, a treatment that is identical to that which it reserves for its own nationals.

Therefore, the Supreme court prohibited the extradition of the person concerned, residing in Finland for a long time and being the father of two Finnish children residing in Finland, to a third country.

Korkein oikeus, [ruling of 12.2.2019, KKO:2019:12 \(FI\)](#)

Poland – Administrative supreme court [Polfarmex Ruling, [C-421/17](#)]

Taxation - VAT - Exemptions

The Administrative supreme court (NSA) was seized in the context of a dispute between a public limited company and the Minister of Finance concerning an individual opinion bearing on the interpretation of the national law transposing the VAT directive. It accepted the appeal in cassation against the decision of the regional administrative court annulling the said opinion.

The NSA endorsed the interpretation of the Court in the C-421/17 case. It ruled that the transfer, by the public limited company, to one of its shareholders, of the ownership of immovable property, allocated to the economical activity of this company, and which acted as the consideration for the purchase, by the latter, of the shares held in its registered capital by this shareholder, constituted a supply of goods against payment subject to the value added tax.

Najwyższy Sąd Administracyjny (NSA), [ruling of 20.02.2019, I FSK 1048/15 \(PL\)](#)

Austria – Supreme court

[Cresco Investigation Ruling, [C-193/17](#)]

Fundamental rights - Freedom of religion - National regulation granting a holiday on Good Friday only to the employees belonging to certain churches - Direct discrimination based on religion

The Supreme court endorsed the interpretation of the Court of Justice and disapplied the national legislation, according to which only the employees belonging to certain churches are entitled to a holiday on Good Friday. It ruled that a private employer subject to this legislation is required to recognise the right of all its employees to an allowance in addition to the remuneration received for the services provided during this day, as far as the latter have submitted a request to this employer, at least a week before, to not have to work on this day and when the said employer has refused to accept this request. As the question of knowing whether the applicant had made such a request was not clarified in the main proceedings, the Supreme court sent the case to the trial court.

Oberster Gerichtshof, [order of 27.02.2019, 9 ObA 11/19m \(DE\)](#)