



EU News: Click & Read

167 – November 2022

European Documentation Centre

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This newsletter contains a selection of recent official documents of the European Union. It features information of particular interest to Swiss readers and aims to provide universities, cantonal and federal administrations, legal professionals, as well as corporations with information about the latest legal developments in the European Union. Written in English or French, the newsletter offers links to documents in one of those languages.

We hope you will find this issue both useful and a pleasure to read.

Table of contents

1. EU-Swiss Relations	2
2. External Relations / Foreign Policy	2
3. Agriculture and Fisheries / Maritime Affairs	2
4. Audiovisual and Media and Information Society	3
5. Competition and State Aid.....	4
6. Customs	5
7. Economic and Monetary Affairs, Taxation, Enterprise.....	5
8. Education, Training, Youth, Culture, Research and Innovation	6
9. Employment and Social Affairs	6
10. Energy and Environment.....	7
11. Food Safety, Public Health and Consumers..	8
12. Human Rights.....	8
13. Internal Market and Free Movement	10
14. Intellectual Property	13
15. Justice, Freedom and Security (incl. Judicial Cooperation)	14
16. Transport	15
17. Community Institutions, Principles and the Communities' own resources	15

Highlights

Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures

[EUR-Lex - 32022L2381](#)

Case C-646/20. Judgment of the Court (Grand Chamber) of 15 November 2022. *Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v TB*. Request for a preliminary ruling from the *Bundesgerichtshof*.

Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility – Divorce – Regulation (EC) No 2201/2003 – Article 2(4) and Article 21 – Concept of ‘judgment’ – **Recognition, in a Member State, of the dissolution of a marriage agreed in an agreement between spouses and pronounced by a civil registrar of another Member State** – Criterion for determining the existence of a ‘judgment’.

[EUR-Lex - 62020CJ0646](#)

Case C-873/19. Judgment of the Court (Grand Chamber) of 8 November 2022. *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland*. Request for a preliminary ruling from the *Schleswig-Holsteinisches Verwaltungsgericht*.

Reference for a preliminary ruling – Environment – **Aarhus Convention – Access to justice** – Article 9(3) – Charter of Fundamental Rights of the European Union – Article 47, first paragraph – Right to effective judicial protection – **Environmental association – Standing of such an association to bring an action before a national court against EC type-approval granted to certain vehicles** – Regulation (EC) No 715/2007 – Article 5(2)(a) – Motor vehicles – Diesel engine – Pollutant emissions – Valve for exhaust gas recirculation (EGR valve) – Reduction of nitrogen oxide (NOx) emissions limited by a ‘temperature window’ – Defeat device – Authorisation of such a device where the need is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle – State of the art.

[EUR-Lex - 62019CJ0873](#)

1. EU-Swiss Relations

Community Legislation

Decision No 2/2022 of the Joint Committee on Agriculture of 17 November 2022 concerning the **amendment of Annex 12 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products**

[EUR-Lex - 22022D2416](#)

Commission Decision (EU) 2022/2256 of 15 November 2022 on the **initiation of the detailed examination of certain performance targets contained in the revised draft performance plan for the third reference period submitted at functional airspace block level by Switzerland** pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council (notified under document C(2022) 8076)

[EUR-Lex - 32022D2256](#)

Case Law

Case C-358/21. Judgment of the Court (Seventh Chamber) of 24 November 2022. Tilman SA v Unilever Supply Chain Company AG. Request for a preliminary ruling from the Cour de cassation.

Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – **Lugano II Convention – Jurisdiction clause** – Formal requirements – Clause included in the general terms and conditions – **General terms and conditions which may be viewed and printed from a hypertext link mentioned in a contract concluded in writing** – Consent of the parties.

[EUR-Lex - 62021CJ0358](#)

2. External Relations / Foreign Policy

Community Legislation

Council Regulation (EU) 2022/2309 of 25 November 2022 concerning **restrictive measures in view of the situation in Haiti**

[EUR-Lex - 32022R2309](#)

Council Decision (CFSP) 2022/2245 of 14 November 2022 on an **assistance measure under the European Peace Facility to support the Ukrainian Armed Forces trained by the European Union Military Assistance Mission** in support of Ukraine with military equipment, and platforms, designed to deliver lethal force

[EUR-Lex - 32022D2245](#)

3. Agriculture and Fisheries / Maritime Affairs

Community Legislation

Decision No 2/2022 of the Joint Committee on Agriculture of 17 November 2022 concerning the **amendment of Annex 12 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products**

[EUR-Lex - 22022D2416](#)

Case Law

Case C-259/21. Judgment of the Court (Third Chamber) of 24 November 2022. European Parliament v Council of the European Union.

Action for annulment – Common fisheries policy – Regulation (EU) 2021/92 – **Fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters** – Conservation of fishery resources and protection of marine ecosystems through technical measures – Articles 15 to 17 and 20 and the second paragraph of Article 59 – Article 43(3) TFEU – **Misuse of powers – Principle of sincere cooperation.**

[EUR-Lex - 62021CJ0259](#)

4. Audiovisual and Media and Information Society

Case Law

Case C-658/21. Judgment of the Court (Eighth Chamber) of 24 November 2022. VZW Belgisch-Luxemburgse vereniging van de industrie van plantenbescherming (Belplant), anciennement VZW Belgische Vereniging van de Industrie van Plantenbeschermingsmiddelen (PHYTOFAR) v Vlaams Gewest. Request for a preliminary ruling from the Raad van State.

Reference for a preliminary ruling – **Procedure for the provision of information in the field of technical regulations and of rules on Information Society services** – Directive (EU) 2015/1535 – Concept of ‘technical regulation’ – Article 1(1) – National legislation prohibiting individuals from using pesticides containing glyphosate on land in private use – Article 5(1) – Obligation on Member States to communicate to the European Commission any draft technical regulation.

[EUR-Lex - 62021CJ0658](#)

Affaire C-350/21. Arrêt de la Cour (sixième chambre) du 17 novembre 2022. Procédure pénale engagée par Spetsializirana prokuratura. Demande de décision préjudicielle, introduite par le Spetsializiran nakazatelen sad.

Renvoi préjudiciel – **Traitement des données à caractère personnel dans le secteur des communications électroniques** – Confidentialité des communications – Fournisseurs de services de communications électroniques – **Conservation généralisée et indifférenciée des données relatives au trafic et des données de localisation pendant une période de six mois** – Lutte contre la criminalité grave – Accès aux données conservées – Information des personnes concernées – Droit de recours – Directive 2002/58/CE – Article 15, paragraphes 1 et 2 – Directive (UE) 2016/680 – Articles 13 et 54 – Charte des droits fondamentaux de l’Union européenne – Articles 7, 8, 11 et 47 ainsi que article 52, paragraphe 1.

[EUR-Lex - 62021CJ0350](#)

Case C-494/21. Judgment of the Court (Fifth Chamber) of 10 November 2022. Eircom Limited v Commission for Communications Regulation. Request for a preliminary ruling from the High Court (Irlande).

Reference for a preliminary ruling – **Electronic communications networks and services** – Universal service and users’ rights – Directive 2002/22/EC (Universal Service Directive) – Article 12 – **Costing and financing of universal service obligations** – Single universal service provider and multiple telecommunications services providers operating in the market – Determination as to whether an unfair burden exists.

[EUR-Lex - 62021CJ0494](#)

5. Competition and State Aid

Case Law

Case T-101/18. Judgment of the General Court (Third Chamber) of 30 November 2022 (Extracts). Republic of Austria v European Commission.

State aid – Nuclear industry – **Aid planned by Hungary for the development of two new nuclear reactors at the Paks site** – Decision declaring the aid compatible with the internal market subject to compliance with certain commitments – Article 107(3)(c) TFEU – Compliance of the aid with EU law other than State aid law – Inextricable link – Promotion of nuclear energy – First paragraph of Article 192 of the Euratom Treaty – Principle of protection of the environment, ‘polluter pays’ principle, precautionary principle and principle of sustainability – Determination of the economic activity concerned – Market failure – Distortion of competition – Proportionality of the aid – Need for State intervention – Determination of the aid elements – Public procurement procedure – Obligation to state reasons.

[EUR-Lex - 62018TJ0101](#)

Joined Cases C-331/20 P and C-343/20 P. Judgment of the Court (Second Chamber) of 17 November 2022. Volotea, SA and easyJet Airline Company Ltd. v European Commission.

Appeal – State aid – Article 107(1) TFEU – **European Commission decision on compensation to Sardinian airports for public service obligations** – Existence of unlawful State aid incompatible with the internal market, granted by the Italian Republic to airlines through airport operators – Concept of ‘State aid’ – Proof of the existence of an advantage – Determination of the amount – Market economy operator principle – Applicability and application – Test of the private acquirer of goods or services – Conditions – Burden of proof.

[EUR-Lex - 62020CJ0331](#)

Case C-211/20 P. Judgment of the Court (First Chamber) of 10 November 2022. European Commission v Valencia Club de Fútbol, SAD.

Appeal – **State aid** – Public guarantee granted by a public entity – **Loans to three football clubs from the Community of Valencia (Valencia CF, Hércules CF and Elche CF)** – Decision declaring the aid to be incompatible with the internal market – Annulment of the decision in so far as it concerns Valencia CF – Concept of ‘advantage’ – Assessment of the existence of an advantage – Guarantee Notice – Interpretation – Duty of care on the part of the European Commission – Burden of proof – Distortion.

[EUR-Lex - 62020CJ0211](#)

Case C-163/21. Judgment of the Court (Second Chamber) of 10 November 2022. AD v PACCAR Inc and Others. Request for a preliminary ruling from the Juzgado Mercantil de Barcelona.

Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – **Collusive arrangements on pricing and gross price increases for trucks in the European Economic Area (EEA)** – Directive 2014/104/EU – Rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Article 22(2) – Applicability *ratione temporis* – First subparagraph of Article 5(1) – Concept of relevant evidence which lies in the control of the defendant or a third party – Article 5(2) – Disclosure of specified items of evidence or relevant categories of evidence on the basis of reasonably available facts – Article 5(3) – Review of the proportionality of the request to disclose evidence – Balancing the legitimate interests of the parties and third parties – Scope of the obligations resulting from those provisions.

[EUR-Lex - 62021CJ0163](#)

Case C-385/21. Judgment of the Court (Fifth Chamber) of 10 November 2022. Zenith Media Communications SRL v Consiliul Concurenței. Request for a preliminary ruling from the Înalta Curte de Casație și Justiție.

Reference for a preliminary ruling – Competition – **Agreements, decisions and concerted practices** – Article 101 TFEU – Penalty imposed by the national competition authority – **Determination of the amount of the fine** – Consideration of turnover in the profit and loss account – **Request for the national competition authority to take into account a different turnover** – Refusal by the Competition Council – Real situation of the undertaking concerned – Principle of proportionality.

[EUR-Lex - 62021CJ0385](#)

Case C-442/21 P. Judgment of the Court (Tenth Chamber) of 10 November 2022. ITD, Brancheorganisation for den danske vejgodstransport A/S and Danske Fragtmand A/S v European Commission.

Appeal – State aid – **Postal sector** – **Compensation for the discharge of a universal service obligation** – Calculation – Net avoided cost methodology – Taking into account the intangible benefits of the universal service – Use of funds granted as compensation – Guarantee covering the redundancy costs of a certain category of employee in the event of insolvency of the universal service provider – Accounting allocation of common costs between universal service activities and non-universal service activities – Decision declaring the aid compatible with the internal market.

[EUR-Lex - 62021CJ0442](#)

Joined Cases C-885/19 P and C-898/19 P. Judgment of the Court (Grand Chamber) of 8 November 2022. Fiat Chrysler Finance Europe and Ireland v European Commission.

Appeal – State aid – **Aid implemented by the Grand Duchy of Luxembourg** – Decision declaring the aid incompatible with the internal market and unlawful and ordering its recovery – **Tax ruling** – Advantage – Selectivity – Arm's length principle – Reference framework – National law applicable – 'Normal' taxation.

[EUR-Lex - 62019CJ0885](#)

6. Customs

Community Legislation

Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the **European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013**

[EUR-Lex - 32022R2399](#)

7. Economic and Monetary Affairs, Taxation, Enterprise

Community Legislation

Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on **improving the gender balance among directors of listed companies and related measures**

[EUR-Lex - 32022L2381](#)

Case Law

Case C-458/21. Judgment of the Court (Eighth Chamber) of 24 November 2022. CIG Pannónia Életbiztosító Nyrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága. Request for a preliminary ruling from the Kúria.

Reference for a preliminary ruling – Taxation – **Value added tax (VAT)** – Directive 2006/112/EC – Article 132(1)(c) – Exemptions for certain activities in the public interest – **Provision of medical care in the exercise of the medical and paramedical professions** – Service used by an insurance company to review the accuracy of a diagnosis of serious illness and find and provide the best possible care and treatment abroad.

[EUR-Lex - 62021CJ0458](#)

Affaire C-166/21. Arrêt de la Cour (septième chambre) du 24 novembre 2022. Commission européenne contre République de Pologne.

Manquement d'État – **Droits d'accise sur l'alcool et les boissons alcooliques** – Directive 92/83/CEE – Exonération de l'accise harmonisée – Alcool éthylique utilisé pour la fabrication de médicaments – Article 27, paragraphe 1, sous d) – Exonération conditionnée au placement de l'alcool sous un régime de suspension de droits – Impossibilité d'obtenir le remboursement de l'accise acquittée – Principe de proportionnalité.

[EUR-Lex - 62021CJ0166](#)

Case C-596/21. Judgment of the Court (Fifth Chamber) of 24 November 2022. A v Finanzamt M. Request for a preliminary ruling from the Finanzgericht Nürnberg.

Reference for a preliminary ruling – Taxation – Value added tax (VAT) – Directive 2006/112/EC – Articles 167 and 168 – Right to deduct input VAT – Principle of prohibition of fraud – Chain of supply – **Refusal of the right to deduct in the case of fraud** – Taxable person – Second purchaser of goods – Fraud affecting part of the VAT due in respect of the first purchase – Scope of the refusal of the right to deduction.

[EUR-Lex - 62021CJ0596](#)

Case C-607/20. Judgment of the Court (First Chamber) of 17 November 2022. GE Aircraft Engine Services Ltd v The Commissioners for Her Majesty's Revenue & Customs. Request for a preliminary ruling from the First-tier Tribunal (Tax Chamber).

Reference for a preliminary ruling – **Common system of value added tax (VAT)** – Directive 2006/112/EC – Article 26(1)(b) – Supply of services free of charge – **Award of retail vouchers free of charge to staff of the taxable person's business as part of an employee recognition and reward scheme** – Transactions treated as supplies of services for consideration – Scope – Principle of fiscal neutrality.

[EUR-Lex - 62020CJ0607](#)

8. Education, Training, Youth, Culture, Research and Innovation

Nothing to report for the period under review.

9. Employment and Social Affairs

Community Legislation

Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures

[EUR-Lex - 32022L2381](#)

Case Law

Case C-638/20. Judgment of the Court (Second Chamber) of 24 November 2022. MCM v Centrala studiestödsnämnden. Request for a preliminary ruling from the Överklagandenämnden för studiestöd.

Reference for a preliminary ruling – Freedom of movement for persons – Article 45 TFEU – Equal treatment – Social advantages – Regulation (EU) No 492/2011 – Article 7(2) – **Financial aid for higher education studies in another Member State – Residence requirement** – Alternative requirement of social integration for non-resident students – Situation of a student who is a national of the State granting the aid, residing since birth in the State of studies.

[EUR-Lex - 62020CJ0638](#)

Case C-304/21. Judgment of the Court (Seventh Chamber) of 17 November 2022. VT v Ministero dell'Interno and Ministero dell'interno - Dipartimento della Pubblica Sicurezza - Direzione centrale per le risorse umane. Request for a preliminary ruling from the Consiglio di Stato.

Reference for a preliminary ruling – Social policy – **Equal treatment in employment and occupation** – Article 21 of the Charter of Fundamental Rights of the European Union – Directive 2000/78/EC – Article 2(2), Article 4(1) and Article 6(1) – **Prohibition of discrimination on grounds of age** – National legislation fixing a maximum age limit of 30 years for the recruitment of police commissioners – Justification.

[EUR-Lex - 62021CJ0304](#)

10. Energy and Environment

Case Law

Case C-658/21. Judgment of the Court (Eighth Chamber) of 24 November 2022. VZW Belgisch-Luxemburgse vereniging van de industrie van plantenbescherming (Belplant), anciennement VZW Belgische Vereniging van de Industrie van Plantenbeschermingsmiddelen (PHYTOFAR) v Vlaams Gewest. Request for a preliminary ruling from the Raad van State.

Reference for a preliminary ruling – **Procedure for the provision of information in the field of technical regulations and of rules on Information Society services** – Directive (EU) 2015/1535 – Concept of ‘technical regulation’ – Article 1(1) – **National legislation prohibiting individuals from using pesticides containing glyphosate on land in private use** – Article 5(1) – Obligation on Member States to communicate to the European Commission any draft technical regulation.

[EUR-Lex - 62021CJ0658](#)

Case C-238/21. Judgment of the Court (First Chamber) of 17 November 2022. Porr Bau GmbH v Bezirkshauptmannschaft Graz-Umgebung. Request for a preliminary ruling from the Landesverwaltungsgericht Steiermark.

Reference for a preliminary ruling – Environment – Waste – Directive 2008/98/EC – Point 1 of Article 3 – Article 5(1) – Article 6(1) – Excavated materials – **Concepts of ‘waste’ and of ‘by-product’** – Cessation of waste status.

[EUR-Lex - 62021CJ0238](#)

Case C-278/21. Judgment of the Court (Second Chamber) of 10 November 2022. Dansk Akvakultur agissant pour AquaPri A/S v Miljø- og Fødevareklagenævnet. Request for a preliminary ruling from the Østre Landsret.

Reference for a preliminary ruling – Environment – Directive 92/43/EEC – **Conservation of natural habitats and of wild fauna and flora** – Article 6(3) – Assessment of a project likely to affect a protected site – Obligation to conduct an assessment – **Continuation of the economic activity of an operation already authorised at the planning stage, under unchanged conditions, where authorisation has been granted following an incomplete assessment.**

[EUR-Lex - 62021CJ0278](#)

Case C-873/19. Judgment of the Court (Grand Chamber) of 8 November 2022. Deutsche Umwelthilfe eV v Bundesrepublik Deutschland. Request for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht.

Reference for a preliminary ruling – Environment – **Aarhus Convention – Access to justice** – Article 9(3) – Charter of Fundamental Rights of the European Union – Article 47, first paragraph – Right to effective judicial protection – **Environmental association – Standing of such an association to bring an action before a national court against EC type-approval granted to certain vehicles** – Regulation (EC) No 715/2007 – Article 5(2)(a) – Motor vehicles – Diesel engine – Pollutant emissions – Valve for exhaust gas recirculation (EGR valve) – Reduction of nitrogen oxide (NOx) emissions limited by a ‘temperature window’ – Defeat device – Authorisation of such a device where the need is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle – State of the art.

[EUR-Lex - 62019CJ0873](#)

11. Food Safety, Public Health and Consumers

Community Legislation

Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU

[EUR-Lex - 32022R2371](#)

Case Law

Affaire C-691/21. Arrêt de la Cour (dixième chambre) du 24 novembre 2022. Cafpi SA et Aviva assurances SA contre Enedis SA. Demande de décision préjudicielle, introduite par la Cour de cassation (France).

Renvoi préjudiciel – Directive 85/374/CEE – Article 3 – **Responsabilité du fait des produits défectueux** – Notion de “producteur” – Gestionnaire d’un réseau de distribution d’électricité modifiant le niveau de tension de l’électricité en vue de sa distribution.

[EUR-Lex - 62021CJ0691](#)

12. Human Rights

Case Law

Case C-289/21. Judgment of the Court (Fifth Chamber) of 24 November 2022. IG v Varhoven administrativen sad. Request for a preliminary ruling from the Administrativen sad Sofia-grad.

Reference for a preliminary ruling – Article 47 of the Charter of Fundamental Rights of the European Union **Effective judicial protection** – National procedural rule providing that an action seeking to dispute the compatibility of a national provision with EU law is devoid of purpose where the provision is repealed in the course of proceedings.

[EUR-Lex - 62021CJ0289](#)

Case C-69/21. Judgment of the Court (Grand Chamber) of 22 November 2022. X v Staatssecretaris van Justitie en Veiligheid. Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch.

Reference for a preliminary ruling – Area of freedom, security and justice – Articles 4, 7 and 19 of the Charter of Fundamental Rights of the European Union – **Prohibition of inhuman or degrading treatment** – Respect for private and family life – Protection in the event of removal, expulsion or extradition – Right of residence on medical grounds – **Common standards and procedures in Member States for returning illegally staying third-country nationals** – Directive 2008/115/EC – Third-country national who is suffering from a serious illness – Medical treatment for pain relief – Treatment is not available in the country of origin – Conditions under which removal must be postponed.

[EUR-Lex - 62021CJ0069](#)

Case C-37/20. Judgment of the Court (Grand Chamber) of 22 November 2022. WM v Luxembourg Business Registers.

Reference for a preliminary ruling – Prevention of the use of the financial system for the purposes of money laundering or terrorist financing – Directive (EU) 2018/843 amending Directive (EU) 2015/849 – Amendment to Article 30(5), first subparagraph, point (c), of Directive 2015/849 – **Access for any member of the general public to the information on beneficial ownership** – Validity – Articles 7 and 8 of the Charter of Fundamental Rights of the European Union – Respect for private and family life – **Protection of personal data.**

[EUR-Lex - 62020CJ0037](#)

Case C-175/21. Judgment of the Court (Fifth Chamber) of 17 November 2022. Harman International Industries, Inc. v AB SA. Request for a preliminary ruling from the Sąd Okręgowy w Warszawie.

Reference for a preliminary ruling – Articles 34 and 36 TFEU – Free movement of goods – Intellectual property – EU trade mark – Regulation (EU) 2017/1001 – Article 15 – **Exhaustion of the rights conferred by a trade mark** – Placing on the market within the European Economic Area (EEA) – Consent of the proprietor of the trade mark – Place of first marketing of products by the proprietor of the trade mark or with its consent – Proof – Directive 2004/48/EC – Article 47 of the Charter of Fundamental Rights of the European Union – **Effective judicial protection** – Operative part of judicial decisions not identifying the products covered – Difficulties in implementation – Restricted scope of action before the competent court for enforcement – Fair trial – Rights of the defence – Principle of the equality of arms.

[EUR-Lex - 62021CJ0175](#)

Case C-304/21. Judgment of the Court (Seventh Chamber) of 17 November 2022. VT v Ministero dell'Interno and Ministero dell'interno - Dipartimento della Pubblica Sicurezza - Direzione centrale per le risorse umane. Request for a preliminary ruling from the Consiglio di Stato.

Reference for a preliminary ruling – Social policy – **Equal treatment in employment and occupation** – Article 21 of the Charter of Fundamental Rights of the European Union – Directive 2000/78/EC – Article 2(2), Article 4(1) and Article 6(1) – **Prohibition of discrimination on grounds of age** – National legislation fixing a maximum age limit of 30 years for the recruitment of police commissioners – Justification.

[EUR-Lex - 62021CJ0304](#)

Affaire C-350/21. Arrêt de la Cour (sixième chambre) du 17 novembre 2022. Procédure pénale engagée par Spetsializirana prokuratura. Demande de décision préjudicielle, introduite par le Spetsializiran nakazatelen sad.

Renvoi préjudiciel – **Traitement des données à caractère personnel dans le secteur des communications électroniques** – Confidentialité des communications – Fournisseurs de services de communications électroniques – **Conservation généralisée et indifférenciée des données relatives au trafic et des données de localisation pendant une période de six mois** – Lutte contre la criminalité grave – Accès aux données conservées – Information des personnes concernées – Droit de recours – Directive 2002/58/CE – Article 15, paragraphes 1 et 2 – Directive (UE) 2016/680 – Articles 13 et 54 – Charte des droits fondamentaux de l'Union européenne – Articles 7, 8, 11 et 47 ainsi que article 52, paragraphe 1.

[EUR-Lex - 62021CJ0350](#)

Case C-203/21. Judgment of the Court (Fourth Chamber) of 10 November 2022. Criminal proceedings against DELTA STROY 2003. Request for a preliminary ruling from the Okrazhen sad - Burgas.

Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2005/212/JHA – Applicability – **Imposition of a financial penalty on a legal person for non-payment of tax debts – Concept of ‘confiscation’** – Articles 48, 49 and 52 of the Charter of Fundamental Rights of the European Union – Penalties of a criminal nature – Principles of the presumption of innocence and the legality and proportionality of criminal offences and penalties – Rights of the defence – Imposition of a criminal penalty on a legal person for an offence committed by the representative of that legal person – Parallel criminal proceedings against that representative that have not been concluded – Proportionality.

[EUR-Lex - 62021CJ0203](#)

Joined Cases C-704/20 and C-39/21. Judgment of the Court (Grand Chamber) of 8 November 2022. Staatssecretaris van Justitie en Veiligheid and X v C and Others. Requests for a preliminary ruling from the Raad van State and Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch.

References for a preliminary ruling – Area of freedom, security and justice – **Detention of third-country nationals** – Fundamental right to liberty – Article 6 of the Charter of Fundamental Rights of the European Union – Conditions governing the lawfulness of detention – Directive 2008/115/EC – Article 15 – Directive 2013/33/EU – Article 9 – Regulation (EU) No 604/2013 – Article 28 – **Review of the lawfulness of detention and of the continuation of a detention measure** – Ex officio review – Fundamental right to an effective judicial remedy – Article 47 of the Charter of Fundamental Rights.

[EUR-Lex - 62020CJ0704](#)

Case C-873/19. Judgment of the Court (Grand Chamber) of 8 November 2022. Deutsche Umwelthilfe eV v Bundesrepublik Deutschland. Request for a preliminary ruling from the Schleswig-Holsteinisches Verwaltungsgericht.

Reference for a preliminary ruling – Environment – **Aarhus Convention – Access to justice** – Article 9(3) – Charter of Fundamental Rights of the European Union – Article 47, first paragraph – Right to effective judicial protection – **Environmental association – Standing of such an association to bring an action before a national court against EC type-approval granted to certain vehicles** – Regulation (EC) No 715/2007 – Article 5(2)(a) – Motor vehicles – Diesel engine – Pollutant emissions – Valve for exhaust gas recirculation (EGR valve) – Reduction of nitrogen oxide (NOx) emissions limited by a ‘temperature window’ – Defeat device – Authorisation of such a device where the need is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle – State of the art.

[EUR-Lex - 62019CJ0873](#)

13. Internal Market and Free Movement

Community Legislation

Directive (EU) 2022/2380 of the European Parliament and of the Council of 23 November 2022 amending Directive 2014/53/EU on the **harmonisation of the laws of the Member States relating to the making available on the market of radio equipment (introduction of a USB Type-C standard)**

[EUR-Lex - 32022L2380](#)

Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the **European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013**

[EUR-Lex - 32022R2399](#)

Case Law

Case C-638/20. Judgment of the Court (Second Chamber) of 24 November 2022. MCM v Centrala studiestödsnämnden. Request for a preliminary ruling from the Överklagandenämnden för studiestöd.

Reference for a preliminary ruling – Freedom of movement for persons – Article 45 TFEU – Equal treatment – Social advantages – Regulation (EU) No 492/2011 – Article 7(2) – **Financial aid for higher education studies in another Member State – Residence requirement** – Alternative requirement of social integration for non-resident students – Situation of a student who is a national of the State granting the aid, residing since birth in the State of studies.

[EUR-Lex - 62020CJ0638](#)

Case C-296/21. Judgment of the Court (Third Chamber) of 24 November 2022. Proceedings brought by A.

Reference for a preliminary ruling – Control of the acquisition and possession of weapons – Directive 91/477/EEC – Annex I, Part III – Deactivation standards and techniques – Implementing Regulation (EU) 2015/2403 – **Verification and certification of deactivation of firearms** – Article 3 – Verifying entity approved by a national authority – Issuance of a deactivation certificate – Entity not included on the list published by the European Commission – Transfer of deactivated firearms within the European Union – Article 7 – Mutual recognition.

[EUR-Lex - 62021CJ0296](#)

Affaire C-691/21. Arrêt de la Cour (dixième chambre) du 24 novembre 2022. Cafpi SA et Aviva assurances SA contre Enedis SA. Demande de décision préjudicielle, introduite par la Cour de cassation (France).

Renvoi préjudiciel – Directive 85/374/CEE – Article 3 – **Responsabilité du fait des produits défectueux** – Notion de “producteur” – Gestionnaire d’un réseau de distribution d’électricité modifiant le niveau de tension de l’électricité en vue de sa distribution.

[EUR-Lex - 62021CJ0691](#)

Case C-224/20. Judgment of the Court (Fifth Chamber) of 17 November 2022. Merck Sharp & Dohme BV and Others v Abacus Medicine A/S and Others. Request for a preliminary ruling from the Søg og Handelsretten.

Reference for a preliminary ruling – Articles 34 and 36 TFEU – Free movement of goods – Intellectual property – Trade marks – Regulation (EU) 2017/1001 – EU trade mark – Article 9(2) – Article 15 – Directive (EU) 2015/2436 – Approximation of the laws of the Member States relating to trade marks – Article 10(2) – Article 15 – Rights conferred by a trade mark – Exhaustion of the rights conferred by a trade mark – **Parallel import of medicinal products** – Repackaging of the product bearing the mark – New outer packaging – Replacement of the trade mark appearing on the original outer packaging by another product name – Reaffixing of the trade mark of the proprietor specific to the product, to the exclusion of the other distinctive marks or signs appearing on that original outer packaging – Opposition by the proprietor of the mark – Artificial partitioning of the markets between Member States – Medicinal products for human use – Directive 2001/83/EC – Article 47a – Safety features – Replacement – Equivalent features – Delegated Regulation (EU) 2016/161 – Article 3(2) – Anti-tampering device.

[EUR-Lex - 62020CJ0224](#)

Case C-54/21. Judgment of the Court (Fourth Chamber) of 17 November 2022. Konsorcjum: ANTEA POLSKA S.A., „Pectore-Eco” sp. z o.o., Instytut Ochrony Środowiska - Państwowy Instytut Badawczy v Państwowe Gospodarstwo Wodne Wody Polskie. Request for a preliminary ruling from the Krajowa Izba Odwoławcza.

Reference for a preliminary ruling – **Public procurement** – Directive 2014/24/EU – Principles of awarding contracts – Article 18 – Transparency – Article 21 – Confidentiality – Insertion of those principles in the national legislation – **Right of access to the essential content of the information provided by tenderers concerning their experience and references, concerning the persons proposed to carry out the contract and concerning the design of the proposed projects and the manner of performance** – Article 67 – Contract award criteria – Criteria relating to the quality of the proposed work or services – Requirement of precision – Directive 89/665/EEC – Article 1(1) and (3) – Right to an effective remedy – Remedy in the event of infringement of that right on account of the refusal to grant access to non-confidential information.

[EUR-Lex - 62021CJ0054](#)

Case C-486/21. Judgment of the Court (Eighth Chamber) of 10 November 2022. SHARENGO najem in zakup vozil d.o.o. v Mestna občina Ljubljana. Request for a preliminary ruling from the Državna revizijska komisija za revizijo postopkov oddaje javnih naročil.

Reference for a preliminary ruling – **Public system for the rental and shared use of electric cars – Distinction between the concepts of ‘services concessions’ and ‘public supply contracts’** – Directive 2014/23/EU – Article 5(1)(b) – Article 20(4) – Concept of ‘mixed contracts’ – Article 8 – Determining the value of a services concession – Criteria – Article 27 – Article 38 – Directive 2014/24/EU – Article 2(1), points 5 and 8 – Implementing Regulation (EU) 2015/1986 – Annex XXI – Possibility of imposing a condition concerning the registration of a specific professional activity under national law – Impossibility of imposing that condition on all members of a temporary business association – Regulation (EC) No 2195/2002 – Article 1(1) – Obligation to refer exclusively to the ‘Common Procurement Vocabulary’ in concession documents – Regulation (EC) No 1893/2006 – Article 1(2) – Impossibility of referring to the ‘NACE Rev. 2’ nomenclature in the concession documents.

[EUR-Lex - 62021CJ0486](#)

Case C-414/21. Judgment of the Court (Ninth Chamber) of 10 November 2022. VP CAPITAL NV v Belgische Staat. Request for a preliminary ruling from the Hof van Cassatie.

Reference for a preliminary ruling – Freedom of establishment – Article 49 and 54 TFEU – **Transfer of a company’s registered office to a Member State other than that in which it was incorporated – Recovery of write-downs recorded prior to the transfer** – Exemption – Comparability of situations.

[EUR-Lex - 62021CJ0414](#)

Case C-631/21. Judgment of the Court (Eighth Chamber) of 10 November 2022. Taxi Horn Tours BV v gemeente Weert and Others. Request for a preliminary ruling from the Gerechtshof 's-Hertogenbosch.

Reference for a preliminary ruling – **Procedures for the award of public works contracts, public supply contracts and public service contracts** – Directive 2014/24/EU – Award of contracts – Article 2(1)(10) – **Concept of an ‘economic operator’** – Inclusion of a general partnership without legal personality – Article 19(2) and Article 63 – Joint undertaking or reliance on the capacities of other entities of persons linked with that undertaking – Article 59(1) – Obligation to submit one or several European Single Procurement Documents (ESPD) – Purpose of the ESPD.

[EUR-Lex - 62021CJ0631](#)

14. Intellectual Property

Case Law

Case C-175/21. Judgment of the Court (Fifth Chamber) of 17 November 2022. Harman International Industries, Inc. v AB SA. Request for a preliminary ruling from the Sąd Okręgowy w Warszawie.

Reference for a preliminary ruling – Articles 34 and 36 TFEU – Free movement of goods – Intellectual property – EU trade mark – Regulation (EU) 2017/1001 – Article 15 – **Exhaustion of the rights conferred by a trade mark** – Placing on the market within the European Economic Area (EEA) – Consent of the proprietor of the trade mark – Place of first marketing of products by the proprietor of the trade mark or with its consent – Proof – Directive 2004/48/EC – Article 47 of the Charter of Fundamental Rights of the European Union – **Effective judicial protection** – Operative part of judicial decisions not identifying the products covered – Difficulties in implementation – Restricted scope of action before the competent court for enforcement – Fair trial – Rights of the defence – Principle of the equality of arms.

[EUR-Lex - 62021CJ0175](#)

Case C-204/20. Judgment of the Court (Fifth Chamber) of 17 November 2022. Bayer Intellectual Property GmbH v Kohlpharma GmbH. Request for a preliminary ruling from the Landgericht Hamburg.

Reference for a preliminary ruling – Intellectual property – Trade marks – Directive (EU) 2015/2436 – Approximation of the laws of the Member States relating to trade marks – Article 10(2) – Rights conferred by a trade mark – Article 15 – Exhaustion of the rights conferred by a trade mark – **Parallel import of medicinal products** – Repackaging of the product bearing the mark – New outer packaging – Opposition by the proprietor of the mark – Artificial partitioning of the markets between Member States – Medicinal products for human use – Directive 2001/83/EC – Article 47a – Safety features – Replacement – Equivalent features – Delegated Regulation (EU) 2016/161 – Article 3(2) – Anti-tampering device – Unique identifier.

[EUR-Lex - 62020CJ0204](#)

Case C-224/20. Judgment of the Court (Fifth Chamber) of 17 November 2022. Merck Sharp & Dohme BV and Others v Abacus Medicine A/S and Others. Request for a preliminary ruling from the Søg og Handelsretten.

Reference for a preliminary ruling – Articles 34 and 36 TFEU – Free movement of goods – Intellectual property – Trade marks – Regulation (EU) 2017/1001 – EU trade mark – Article 9(2) – Article 15 – Directive (EU) 2015/2436 – Approximation of the laws of the Member States relating to trade marks – Article 10(2) – Article 15 – Rights conferred by a trade mark – Exhaustion of the rights conferred by a trade mark – **Parallel import of medicinal products** – Repackaging of the product bearing the mark – New outer packaging – Replacement of the trade mark appearing on the original outer packaging by another product name – Reaffixing of the trade mark of the proprietor specific to the product, to the exclusion of the other distinctive marks or signs appearing on that original outer packaging – Opposition by the proprietor of the mark – Artificial partitioning of the markets between Member States – Medicinal products for human use – Directive 2001/83/EC – Article 47a – Safety features – Replacement – Equivalent features – Delegated Regulation (EU) 2016/161 – Article 3(2) – Anti-tampering device.

[EUR-Lex - 62020CJ0224](#)

15. Justice, Freedom and Security (incl. Judicial Cooperation)

Case Law

Case C-358/21. Judgment of the Court (Seventh Chamber) of 24 November 2022. Tilman SA v Unilever Supply Chain Company AG. Request for a preliminary ruling from the Cour de cassation.

Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – **Lugano II Convention – Jurisdiction clause** – Formal requirements – Clause included in the general terms and conditions – **General terms and conditions which may be viewed and printed from a hypertext link mentioned in a contract concluded in writing** – Consent of the parties.

[EUR-Lex - 62021CJ0358](#)

Case C-69/21. Judgment of the Court (Grand Chamber) of 22 November 2022. X v Staatssecretaris van Justitie en Veiligheid. Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch.

Reference for a preliminary ruling – Area of freedom, security and justice – Articles 4, 7 and 19 of the Charter of Fundamental Rights of the European Union – **Prohibition of inhuman or degrading treatment** – Respect for private and family life – Protection in the event of removal, expulsion or extradition – Right of residence on medical grounds – **Common standards and procedures in Member States for returning illegally staying third-country nationals** – Directive 2008/115/EC – Third-country national who is suffering from a serious illness – Medical treatment for pain relief – Treatment is not available in the country of origin – Conditions under which removal must be postponed.

[EUR-Lex - 62021CJ0069](#)

Case C-230/21. Judgment of the Court (Third Chamber) of 17 November 2022. X agissant en son nom propre et en sa capacité juridique représentante de ses enfants mineurs Y et Z v Belgische Staat. Request for a preliminary ruling from the Raad voor Vreemdelingenbetwistingen.

Reference for a preliminary ruling – Area of freedom, security and justice – Immigration policy – Directive 2003/86/EC – Article 2(f) – Article 10(3)(a) – **Concept of ‘unaccompanied minor’ – Right to family reunification – Refugee minor who is married at the time of her entry into the territory of a Member State** – Child marriage not recognised in that Member State – Cohabitation with the spouse lawfully residing in that Member State.

[EUR-Lex - 62021CJ0230](#)

Affaire C-562/20. Arrêt de la Cour (première chambre) du 17 novembre 2022. SIA « Rodl & Partner » contre Valsts ieņēmumu dienests. Demande de décision préjudicielle, introduite par l'Administratīvā rajona tiesa.

Renvoi préjudiciel – **Prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme** – Directive (UE) 2015/849 – Article 18, paragraphes 1 et 3 – Annexe III, point 3, sous b) – Approche fondée sur le risque – Évaluation des risques réalisée par les entités assujetties – Identification des risques par les États membres et les entités assujetties – Mesures de vigilance à l'égard de la clientèle – Mesures de vigilance renforcées – Pays tiers présentant un risque élevé de corruption – Article 13, paragraphe 1, sous c) et d) – Exigences de preuve et de documentation incombant aux entités assujetties – Article 14, paragraphe 5 – Contrôle continu à l'égard de la clientèle incombant aux entités assujetties – Publication des décisions instituant une sanction.

[EUR-Lex - 62020CJ0562](#)

Case C-646/20. Judgment of the Court (Grand Chamber) of 15 November 2022. Senatsverwaltung für Inneres und Sport, Standesamtsaufsicht v TB. Request for a preliminary ruling from the Bundesgerichtshof.

Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility – Divorce – Regulation (EC) No 2201/2003 – Article 2(4) and Article 21 – Concept of ‘judgment’ – **Recognition, in a Member State, of the dissolution of a marriage agreed in an agreement between spouses and pronounced by a civil registrar of another Member State** – Criterion for determining the existence of a ‘judgment’.

[EUR-Lex - 62020CJ0646](#)

Case C-203/21. Judgment of the Court (Fourth Chamber) of 10 November 2022. Criminal proceedings against DELTA STROY 2003. Request for a preliminary ruling from the Okrazhen sad - Burgas.

Reference for a preliminary ruling – Judicial cooperation in criminal matters – Framework Decision 2005/212/JHA – Applicability – **Imposition of a financial penalty on a legal person for non-payment of tax debts – Concept of ‘confiscation’** – Articles 48, 49 and 52 of the Charter of Fundamental Rights of the European Union – Penalties of a criminal nature – Principles of the presumption of innocence and the legality and proportionality of criminal offences and penalties – Rights of the defence – Imposition of a criminal penalty on a legal person for an offence committed by the representative of that legal person – Parallel criminal proceedings against that representative that have not been concluded – Proportionality.

[EUR-Lex - 62021CJ0203](#)

16. Transport

Nothing to report for the period under review.

17. Community Institutions, Principles and the Communities’ own Resources

Case Law

Affaire C-166/21. Arrêt de la Cour (septième chambre) du 24 novembre 2022. Commission européenne contre République de Pologne.

Manquement d’État – Droits d’accise sur l’alcool et les boissons alcooliques – Directive 92/83/CEE – Exonération de l’accise harmonisée – Alcool éthylique utilisé pour la fabrication de médicaments – Article 27, paragraphe 1, sous d) – Exonération conditionnée au placement de l’alcool sous un régime de suspension de droits – Impossibilité d’obtenir le remboursement de l’accise acquittée – Principe de proportionnalité.

[EUR-Lex - 62021CJ0166](#)

Case C-24/20. Judgment of the Court (Grand Chamber) of 22 November 2022. European Commission v Council of the European Union.

Action for annulment – Council Decision (EU) 2019/1754 – **Accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications** – Article 3(1) TFEU – Exclusive competence of the European Union – Article 207 TFEU – Common commercial policy – Commercial aspects of intellectual property – Article 218(6) TFEU – Right of initiative of the European Commission – **Modification by the Council of the European Union of the proposal from the Commission** – Article 293(1) TFEU – Applicability – Article 4(3), Article 13(2) and Article 17(2) TEU – Article 2(1) TFEU – **Principles of conferral of powers, of institutional balance and of sincere cooperation.**

[EUR-Lex - 62020CJ0024](#)