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Request for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 15 May 2024 – Elisa Eesti AS v Vabariigi Valitsuse julgeolekukomisjoni küberjulgeoleku nõukogu, Tarbijakaitse ja Tehnilise Järelevalve Amet

(Case C-354/24, Elisa Eesti)

(C/2024/4313)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Elisa Eesti AS

Respondents: Vabariigi Valitsuse julgeolekukomisjoni küberjulgeoleku nõukogu and Tarbijakaitse ja Tehnilise Järelevalve Amet

Questions referred

1. Does a national legislative package (Paragraph 87^3(2), (3), (6), (7) and (8), Paragraph 87^4(1) to (4) and Paragraph 196^5(1) to (4) of the Elektroonilise side seadus (Electronic Communications Act; 'the ESS')), which, in order to ensure national security, requires a communications company to obtain authorisation for the use of hardware and software in its communications network, fall within the scope of Directive 2018/1972 ([1]) of the European Parliament and of the Council of 20 December 2018 establishing a European Electronic Communications Code?

2. If the previous question is answered in the affirmative: Is Article 1(3)(c) [of Directive 2018/1972] in conjunction with Article 4(2) [TEU] to be interpreted as meaning that the introduction of such restrictions falls within the exclusive competence of the Member State and constitutes a purely national measure to which the provisions of Directive 2018/1972 do not apply?

3. If Question 2 is answered in the negative: Does a national legislative package (Paragraph 87^3(2), (3), (6), (7) and (8), Paragraph 87^4(1) to (4) and Paragraph 196^5(1) to (4) of the ESS) that does not allow a communications company to use hardware and software in its communications network without obtaining authorisation from an administrative authority for the use of that hardware and software constitute a restriction on the freedom to provide electronic communications networks and services within the meaning of Article 12(1) [of Directive 2018/1972]?

4. If Question 3 is answered in the affirmative: Is such national legislation to be disapplied if it has not been notified to the European Commission in advance in accordance with Article 12(1) of [Directive 2018/1972]?

5. If Question 2 is answered in the affirmative: Is it compatible with Article 36 TFEU and the principle of proportionality for national legislation to require a communications company to obtain authorisation for the use of hardware and software in its communications network in order to ensure national security, and not to require the administrative authority, when assessing the threat posed by high-risk hardware and software: (a) to examine whether the risks associated with the manufacturer are projected onto the specific hardware and software; (b) to assess the functionality, location and importance of the specific hardware and software in the context of the provision of a communications service; and (c) to examine whether the problems associated with the State in which the manufacturer is established are projected onto the manufacturer?

([1]) OJ 2018 L 321, p. 36.

6. Where the use of hardware or software that was already present and actively used in the communications network prior to the introduction of the authorisation requirement is authorised for a period shorter than the useful life of that hardware or software and the hardware or software in question was lawfully acquired, does that constitute a deprivation of property for the purposes of the second sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union?