

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Kúria — Hungary) — Weltimmo s.r.o. v Nemzeti Adatvédelmi és Információszabadság Hatóság

(Case C-230/14) ⁽¹⁾

(Reference for a preliminary ruling — Protection of individuals with regard to the processing of personal data — Directive 95/46/EC — Articles 4(1) and 28(1), (3) and (6) — Controller who is formally established in a Member State — Impairment of the right to the protection of personal data concerning natural persons in another Member State — Determination of the applicable law and the competent supervisory authority — Exercise of the powers of the supervisory authority — Power to impose penalties)

(2015/C 381/06)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Weltimmo s.r.o.

Defendant: Nemzeti Adatvédelmi és Információszabadság Hatóság

Operative part of the judgment

- 1) Article 4(1)(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as permitting the application of the law on the protection of personal data of a Member State other than the Member State in which the controller with respect to the processing of those data is registered, in so far as that controller exercises, through stable arrangements in the territory of that Member State, a real and effective activity — even a minimal one — in the context of which that processing is carried out.

In order to ascertain, in circumstances such as those at issue in the main proceedings, whether that is the case, the referring court may, in particular, take account of the fact (i) that the activity of the controller in respect of that processing, in the context of which that processing takes place, consists of the running of property dealing websites concerning properties situated in the territory of that Member State and written in that Member State's language and that it is, as a consequence, mainly or entirely directed at that Member State, and (ii) that that controller has a representative in that Member State, who is responsible for recovering the debts resulting from that activity and for representing the controller in the administrative and judicial proceedings relating to the processing of the data concerned.

By contrast, the issue of the nationality of the persons concerned by such data processing is irrelevant.

- 2) Where the supervisory authority of a Member State, to which complaints have been submitted in accordance with Article 28(4) of Directive 95/46, reaches the conclusion that the law applicable to the processing of the personal data concerned is not the law of that Member State, but the law of another Member State, Article 28(1), (3) and (6) of that directive must be interpreted as meaning that that supervisory authority will be able to exercise the effective powers of intervention conferred on it in accordance with Article 28(3) of that directive only within the territory of its own Member State. Accordingly, it cannot impose penalties on the basis of the law of that Member State on the controller with respect to the processing of those data who is not established in that territory, but should, in accordance with Article 28(6) of that directive, request the supervisory authority within the Member State whose law is applicable to act.

- 3) Directive 95/46 must be interpreted as meaning that the term 'adatfeldolgozás' (technical manipulation of data), used in the Hungarian version of that directive, in particular in Articles 4(1)(a) and 28(6) thereof, must be understood as having the same meaning as that of the term 'adatkezelés' (data processing).

⁽¹⁾ OJ C 245, 28.7.2014.

Judgment of the Court (Grand Chamber) of 29 September 2015 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Gmina Wrocław v Minister Finansów

(Case C-276/14) ⁽¹⁾

(Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Article 9(1) — Article 13(1) — Taxable persons — Interpretation of the word 'independently' — Municipal body — Economic activities carried out by an organisational entity of a municipality other than as a public authority — Whether such an entity may be regarded as a 'taxable person' within the meaning of the provisions of Directive 2006/112 — Articles 4(2) and 5(3) TEU)

(2015/C 381/07)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Gmina Wrocław

Defendant: Minister Finansów

Operative part of the judgment

Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that bodies governed by public law, such as the municipal budgetary entities at issue in the main proceedings, cannot be regarded as taxable persons for the purposes of value added tax in so far as they do not satisfy the criterion of independence set out in that provision.

⁽¹⁾ OJ C 303, 8.9.2014.