



## Newsletter

Weeks III-IV : 16<sup>th</sup> to 27<sup>th</sup> January 2023

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All times are 9:30  
unless otherwise  
stated.

Don't forget to  
check the diary  
on our website  
for details of  
other cases.

**Anna Rizzardi**  
contributed to  
this edition of the  
Newsletter.

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## Week III – 16<sup>th</sup> to 20<sup>th</sup> January

### Tuesday 17<sup>th</sup> January

#### [Judgment in Case C-632/20 P Spain v Commission](#)

(External Relations)

The BEREC Regulation is the legal basis for the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC ('the BEREC Office').

Article 35 of the regulation governs, in particular, cooperation between those bodies and national regulatory authorities (NRAs) of third countries. Pursuant to that provision, the Commission decided, by the contested decision of 18 March 2019, (3) that the NRA of Kosovo was permitted to participate in the Board of Regulators and working groups of BEREC and the Management Board of the BEREC Office.

Spain challenges that decision and, specifically, takes the view that the participation of the NRA of Kosovo is precluded because some Member States, including Spain, have not recognised Kosovo as a sovereign State and, in addition, the European Union has not adopted a position on the matter. Furthermore, Spain questions the Commission's competence to make a unilateral decision on such participation.

#### [Background Documents C-632/20](#)

**There will be a press release in this case.**

### Thursday 19<sup>th</sup> January

#### [Judgment in Case C-680/20 Unilever Italia Mkt. Operations](#)

(Competition)

The present request for a preliminary ruling from the Consiglio di Stato (Italy) has been

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made in the context of a dispute between Unilever Italia Mkt. Operations Srl (Unilever) and the Italian Competition Authority (AGCM) in relation to a fine imposed by the authority in question on said company for abuse of dominant position on the Italian market for the distribution of packaged ice creams to certain types of businesses, such as bathing establishments and bars which, in turn, resell such ice creams to final consumers.

The present case raises two questions asking the Court to clarify certain aspects relating to the interpretation and application of Article 102 TFEU.

The first question referred concerns the application of the concept of 'single economic unit' (hereinafter 'economic unit') to companies linked exclusively by contractual ties. More specifically, the referring court asks the Court to clarify the scope of that concept for the purposes of applying Article 102 TFEU and, in particular, its implementation within the framework of a distribution network organized exclusively on a contractual basis.

The second question concerns the possibility for a competition authority to consider that a practice consisting in inserting exclusivity clauses in distribution agreements has, by its nature, the capacity to restrict competition, within the meaning of Article 102 TFEU, without having to concretely demonstrate that this is the case for the contracts in question on the basis of the criterion of the "as efficient competitor".

[Background Documents C-680/20](#)

**There will be a press release in this case.**

## Week IV– 23<sup>rd</sup> to 27<sup>th</sup> January

### Wednesday 25<sup>th</sup> January

#### **General Court**

#### [Judgment in Case T-163/21 De Capitani v Council](#)

(Access to Documents)

Mr De Capitani had applied for access to certain documents relating to a legislative procedure on annual financial statements. However, the Council had refused access to certain documents on the grounds that their disclosure would seriously undermine the Council's decision-making process. Following this, the Council confirmed its refusal to grant access with a decision of 14 January 2021.

The applicant then filed an action for annulment of this decision before the General Court. The legal issue at stake concerns the relationship between on the one hand, the

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need to protect the decision-making process of an institution and, on the other hand, the right of access to documents enshrined in the TFEU and the Charter of Fundamental Rights of the European Union.

### [Background Documents T-163/21](#)

**There will be a press release in this case.**

## Thursday 26<sup>th</sup> January

### [Judgment in Case C-205/21 Ministerstvo na vatreshnite raboti \(\(Registration of biometric and genetic data by the police\)](#)

(Area of Freedom, Security and Justice)

In the context of criminal proceedings for tax evasion initiated by the Bulgarian authorities, V.S. was indicted for her alleged participation in an organised criminal group, formed for the purpose of enrichment, with a view to committing crimes on Bulgarian territory in a concerted manner. Following the indictment, the Bulgarian police invited V.S. to submit to police registration. However, V.S. objected to the collection of her fingerprint and photographic data for registration and to the taking of her DNA profile.

On the basis of national legislation providing for police registration of persons indicted for an intentional criminal offence prosecuted ex officio, the police authorities applied to the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) for authorisation to enforce the collection of V.S.'s DNA and biometric data. Only copies of his indictment and the statement of his refusal to collect his data accompanied the police authorities' request.

The court had doubts about the compatibility of the Bulgarian legislation on police registration with Directive 2016/680 , read in the light of the Charter of Fundamental Rights of the European Union, and therefore referred the matter to the Court for a preliminary ruling.

### [Background Documents C-205/21](#)

**There will be a press release in this case.**

## Thursday 26<sup>th</sup> January

### [Opinion in Case C-817/21 Inspekția Judiciară](#)

The Inspekția Judiciară (Judicial Inspection, Romania) is the judicial body responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors in Romania. Under the rules governing the Judicial Inspection, the Chief Inspector appoints the Deputy Chief Inspector at his or her sole discretion; the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector; and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

R.I. made several complaints against judges and prosecutors engaged in criminal proceedings against her to the Judicial Inspection. The Judicial Inspection dismissed her complaints. The Chief Inspector confirmed the decisions of the Judicial Inspection. The applicant proceeded to challenge those decisions before the courts of Romania.

In the context of those proceedings the Curtea de Apel București (Court of Appeal, Bucharest, Romania) seeks to ascertain whether a body, such as the Judicial Inspection, must offer the same guarantees of independence and impartiality as are required of courts under EU law. In particular, it asks whether, in the light of the rules described above, EU law precludes national legislation or regulations that make the Deputy Chief Inspector of the Judicial Inspection responsible for overseeing the investigation of complaints made against the Chief Inspector of the Judicial Inspection and any disciplinary investigations and proceedings that might arise therefrom.

### [Background Documents C-817/21](#)

**There will be a press release in this case.**