Newsletter

Weeks V-VI: 30th January to 10th February 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.

Week V– 30th January to 3rd February

Tuesday 31st January

Judgment in Case C-158/21 Puig Gordi e.a.

(Area of Freedom, Security and Justice)

This request for a preliminary ruling concerns the interpretation of a number of provisions of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

The referring court asks the Court of Justice a series of questions designed, essentially, to establish whether an executing judicial authority may refuse to execute a European arrest warrant on grounds of the alleged lack of competence of the issuing judicial authority to issue such a warrant and the alleged lack of jurisdiction of the court called upon to try the person charged, and whether Framework Decision 2002/584 precludes the issue of a new European arrest warrant after the execution of a first European arrest warrant has been refused.

Those questions have arisen in connection with the prosecution of former Catalan leaders following a referendum, held on 1 October 2017, concerning self-determination for the Autonomous Community of Catalonia (Spain). European arrest warrants have been issued for a number of those defendants who left Spain at the end of 2017. Those warrants have not been executed, either because a number of the defendants in question were elected to the European Parliament or because of controversy surrounding the criminal proceedings in question. In so far as concerns the case under consideration, that controversy concerns the rules establishing the jurisdiction of the Tribunal Supremo (Supreme Court, Spain) to try the defendants, those rules applying, inter alia, on the basis of the place where the offences were committed and on the connection between the offences with which the defendants are charged.

More specifically, this request for a preliminary ruling has arisen from the refusal of the Belgian courts to give effect to the European arrest warrant issued against Mr Lluís

Puig Gordi. The appellate court which gave a final ruling in the matter based its refusal on the existence of a risk of infringement of the right to be tried by a tribunal established by law, in that it found there to be no express legal basis conferring jurisdiction on the Tribunal Supremo (Supreme Court) to try Mr Puig Gordi. It also held that the likelihood of the presumption of innocence being breached was also to be taken very seriously. Although that refusal directly concerns Mr Puig Gordi alone, the referring court's request is presented as a means of determining what decisions should be taken with regard to all of the defendants.

Background Documents C-158/21

There will be a press release in this case.

Tuesday 31st January

Judgment in Case C-284/21 P Commission / Braesch e.a

(State Aid)

In 2008, the Italian bank Banca Monte dei Paschi di Siena (BMPS) carried out a capital increase of 950 million euros reserved to J.P. Morgan Securities Ltd (JPM). JPM obtained the funds necessary to finance this transaction from Mitsubishi UFJ Investor Services & Banking (Luxembourg) SA, which issued 1 billion euros of bonds for this purpose.
In 2016, the Italian authorities set out the legal framework for liquidity aid and precautionary recapitalisations and, in 2017, they notified the Commission of aid for the recapitalisation of BMPS of 5.4 billion euros, accompanied by a restructuring plan and commitments. This aid was in addition to an individual liquidity support of 15 billion euros in favour of BMPS.

By decision of 4 July 2017, the Commission approved both the liquidity support and the aid for the preventive recapitalisation. These aid measures were considered to constitute State aid compatible with the internal market on grounds of financial stability.

However, since the BMPS restructuring plan entailed the cancelation of the contracts between BMPS and JPM, some bondholders brought actions before the General Court seeking the annulment of the Commission's decision. In particular, those applicants argued that they had suffered substantial economic loss as a result of the restructuring plan accompanying the aid measures.

Before entering on the merits of this claim, the Commission raised a plea of inadmissibility on the ground that the applicants had neither an interest in bringing proceedings nor standing. The General Court rejected this plea of inadmissibility, holding that the Commission's decision was of direct and individual concern to

applicants as both 'parties concerned' and 'interested parties'.

Therefore, the Commission appealed the General Court's judgment to the Court of Justice. In allowing this appeal, the Grand Chamber of the Court clarifies the concept of "interested party" within the meaning of Article 108(2) TFEU.

Background Documents C-284/21 P

Thursday 2nd February

Judgment in Case C-372/21 Freikirche der Siebenten-Tags-Adventisten in Deutschland

(Freedom to provide services)

Freikirche der Siebenten-Tags-Adventisten in Deutschland KdöR (Free Church of the Seventh-day Adventists in Germany; 'the appellant') is a religious society recognised in Germany, where it has the status of a body governed by public law. It does not have the same status in Austria.

In 2019, the appellant recognised as a denominational school a private institute in Austria which was being run by a private association – combining primary and middle school – and introduced a request for public funding of its staff pursuant to the provisions of the PrivSchG. By decision of 3 September 2019, the Bildungsdirektion für Vorarlberg (Directorate of Education of Vorarlberg, Austria) rejected that request.

The appellant brought an appeal against that decision. However, that appeal was dismissed as unfounded by judgment of 26 February 2020 of the Bundesverwaltungsgericht (Federal Administrative Court, Austria). That court found that the school in question did not possess the special legal status granted to 'denominational' schools within the meaning of Paragraph 18 of the PrivSchG, since the appellant was not legally recognised in Austria as a church or religious society. It thus concluded that the requirements of Paragraph 17 et seq. of the PrivSchG were not met.

The appellant brought an appeal on a point of law against the judgment of the Bundesverwaltungsgericht (Federal Administrative Court) before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria). That court, harbouring doubts as to the compatibility of the relevant national legislation ('the national legislation at issue') with EU law, decided to stay the proceedings and to refer the questions to the Court of Justice.

Background Documents C-372/21

There will be a press release in this case.

Week VI – 6th to 10th February

Tuesday 7th February

Judgment in Case C-688/21 Confédération paysanne e.a. (Mutagenèse aléatoire in vitro)

(GMO's)

In 2015, the Confédération paysanne, a French farmers' union, and eight associations whose aim is to protect the environment and disseminate information about the dangers posed by genetically modified organisms (GMOs) brought an action before the Conseil d'État (France) concerning the exclusion of certain mutagenesis techniques or methods from the scope of the French regulations intended to transpose Directive 2001/18 on the deliberate release into the environment of GMOs. In this context, the Conseil d'État referred a request for a preliminary ruling to the Court, which gave rise to the Confédération paysanne and Others judgment (C-528/16).

The present case follows on from that judgment, in which the Court ruled that only organisms obtained by means of mutagenesis techniques which have been traditionally used for various applications and whose safety has long been proven are excluded from the scope of Directive 2001/18.

The Council of State considered that it follows from the said judgment that organisms obtained by means of techniques/methods which appeared or mainly developed after the date of adoption of this directive, in particular by means of "random in vitro mutagenesis" techniques, must be included in the scope of Directive 2001/18.

Thus, the Council of State issued an injunction, and in order to ensure its execution, the French government, among other things, drew up a draft decree relating to the modification of the list of techniques for obtaining GMOs that have been traditionally used without any proven disadvantage for public health or the environment. This draft decree provided that random mutagenesis, with the exception of in vitro random mutagenesis, was to be considered as such use.

Following notification of the draft decree, the European Commission issued a detailed opinion in which it stated that it was not justified, in the light of EU law and scientific advances, to make a distinction between random mutagenesis in vivo and random mutagenesis in vitro . As the draft decree was not adopted by the French authorities, the Confédération paysanne and the group of environmental protection associations once again brought the matter before the Council of State in order to obtain the enforcement of the injunction issued.
The high administrative court, referred the matter to the Court in order to obtain

clarification as to the scope of the *Confédération paysanne and others* judgment in order to determine whether, in view of the characteristics and uses of random in vitro mutagenesis, there were grounds for considering that this technique/method fell within the scope of Directive 2001/18.

Background Documents C-688/21

There will be a press release in this case.

Wednesday 8th February

General Court
Judgment in Case T-295/20 Aquind and others v Commission

(Energy Market)

The applicants, Aquind Ltd, Aquind SAS and Aquind Energy Sàrl, are the promoters of an electricity interconnection project linking the electricity transmission networks of the United Kingdom and France (hereinafter the "Aquind interconnection project"). Considered fundamental in the infrastructure needed to complete the internal energy market, this project has been included in the European Union's list of "projects of common interest" (PCIs) by Delegated Regulation 2018/540.

As this list of EU PCIs is drawn up every two years, the list established by Delegated Regulation 2018/540 was replaced by that of Delegated Regulation 2020/389 (hereinafter the "contested regulation"). The new list, set out in the annex to the contested regulation, included the Aquind interconnector project on the list of projects no longer considered to be EU PCIs.

The applicants then brought an action before the General Court for annulment of the contested regulation in so far as it removed the Aquind interconnector project from the list of Union PCIs.

Background Documents T-295/20

There will be a press release in this case.

Wednesday 8th February

General Court
Judgment in Case T-522/20 Carpatair v Commission

(State Aid)

Timisoara International Airport, located in eastern Romania, is operated by Societatea

Națională "Aeroportul Internaţional Timişoara – Traian Vuia" SA (hereinafter "AITTV"), which is a joint stock company whose state Romanian holds 80% of the shares.

In anticipation of the increase in traffic expected to result from Romania's accession to the European Union in 2007, and in order to meet the security conditions for accession to the Schengen area, AITTV has received Romanian State financing for the construction of a terminal for non-Schengen flights and for security equipment.

Furthermore, as part of a strategy aimed at attracting low-cost airlines and increasing the overall profitability of the airport, AITTV signed in 2008 with Wizz Air Hungary Légiközlekedési Zrt (hereinafter "Wizz Air), a Hungarian low-cost airline, agreements defining the principles of their cooperation as well as the general conditions of use of airport infrastructure and services by Wizz Air (hereinafter the "2008 agreements").

Two of these agreements were amended in 2010 by means of a new discount scheme agreed between Wizz Air and AITTV (hereinafter the "2010 Amending Agreements"). In accordance with the Aeronautical Information Publications (hereinafter the "AIPs") of 2007, 2008 and 2010, Wizz Air has also benefited from discounts and rebates on airport charges.

In 2010, the Romanian regional airline Carpatair SA lodged a complaint with the European Commission questioning aid granted by the Romanian authorities to the international airport of Timisoara in favor of Wizz Air.

By decision of 24 February 2020 ('the contested decision'), the Commission considered, on the one hand, that the public funding granted between 2007 and 2009 to AITTV for the development of the terminal for non-Schengen flights, the the improvement of the traffic lane, the extension of the apron and the beaconing material constitutes State aid which is compatible with the internal market under Article 107(3)(c), TFEU.

On the other hand, the Commission noted that the public financing of the access road and the development of the car park in 2007 and of the safety equipment in 2008, the airport charges appearing in the PIAs of 2007, 2008 and 2010 and the 2008 agreements concluded with Wizz Air, including the amending agreements of 2010, do not constitute State aid within the meaning of Article 107(1) TFEU.

Carpatair SA has brought an action seeking the annulment of this decision.

Background Documents T-522/20

There will be a press release in this case.

Thursday 9th February

Judgment in Case C-555/21 UniCredit Bank Austria

(Consumer Protection)

In its credit agreements secured by a mortgage directed at consumers, UniCredit Bank Austria AG ('UniCredit') uses standard terms governing the right to repay the loan early, with a reduction in the interest payable and the costs that are dependent on the duration of the agreement.

The agreements include the following standard term: 'It is pointed out that the processing costs that are not dependent on the duration of the agreement will not be reimbursed (even on a pro-rata basis)'.

The Verein für Konsumenteninformation ('VKI') is a consumer protection association which brought an action against UniCredit in the Handelsgericht Wien (Commercial Court, Vienna, Austria), seeking an order for it to cease using the above term.

The court of first instance dismissed the action. However, the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) upheld the appeal lodged by VKI and granted the forms of order sought in the application.

The Oberster Gerichtshof (Supreme Court, Austria) is asked to rule on the appeal lodged against the decision of the Oberlandesgericht Wien (Higher Regional Court, Vienna) by Unicredit, by which UniCredit seeks to have the judgment at first instance reinstated. Before doing so, it has referred the following question to the Court for a preliminary ruling:

'Is Article 25(1) of Directive [2014/17] to be interpreted as precluding national legislation that provides for the sum of interest to be paid by the borrower and the costs that are dependent on the duration of the agreement to be proportionally reduced in the event that the borrower exercises the right to repay the amount of credit, either fully or partially, prior to the expiry of the agreed term, with no corresponding rule for costs that are not dependent on the duration of the agreement?'

Background Documents C-555/21

There will be a press release in this case.