Newsletter

Weeks VI-VII: 6th to 17th February 2023

Contact us
Jacques René Zammit
+352 4303 3355

EN Desk Email
Press.ENdesk@curia.europa.eu

Follow @EUCourtPress on Twitter

***

Download our app

***

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 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.

Week VII – 13th to 17th February

Wednesday 15th February

General Court

Judgment in Cases T-606/20 and T-607/20 Austrian Power Grid and others v ACER (Energy)

The European Commission Regulation 2017/2195 on balancing of the electricity system provides for the implementation of several European platforms for the exchange of balancing energy. These platforms include, on the one hand, the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation (the "aFRR platform") and, on the other hand, the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation (the "mFRR platform") .

In accordance with the procedure laid down in Regulation 2017/2195 , all transmission system operators ("TSOs") have submitted for approval by the national regulatory authorities (hereinafter "NRAs") common proposals for the methodology for the implementation of the aFRR platform and the mFRR platform .

Following a joint request from the NRAs, the European Union Agency for the Cooperation of Energy Regulators ("ACER") decided, under the same Regulation, on these proposals, as amended following exchanges and consultations between ACER, the NRAs and the TSOs. Thus, ACER adopted two decisions, one on the aFRR methodology and the other on the mFRR methodology (hereinafter the "ACER Decisions"), to which the methodologies in question, as amended and approved by ACER, were attached.

Austrian Power Grid, ČEPS, a.s., Polskie sieci elektroenergetyczne S.A., Red Eléctrica de España SA, RTE Réseau de transport d'électricité, Svenska kraftnät, TenneT TSO BV and TenneT TSO GmbH appealed against the Decisions to the ACER Board of Appeal (hereinafter the 'Board of Appeal'). Their appeals having been dismissed, they brought two actions before the Court of First Instance seeking annulment of the decisions of the Board of Appeal, in so far as they concern them, of certain provisions of ACER's decisions and of the methodologies attached to them.

Background Documents T-606/20

There will be a press release in this case.

Thursday 16th February

Judgment in Cases C-632/20 P Commission v Italy and C-635/20 P Commission v Italy and Spain
(Law governing the institutions)

In 2016, the European Personnel Selection Office (EPSO) published two notices of open competition to draw up reserve lists of administrators in the field of audit (i) and in the field of inquiries related to EU's expenses, anti-corruption, customs and trade and tobacco and counterfeit goods (ii).

One of the requirements in both notices was knowledge (B2 level) of either English, French or German. Respectively, Italy and Spain brought an action before the General Court, seeking the annulment of the aforementioned notices. The General Court upheld the applicant's arguments and annulled the notices on the ground that they gave rise to an unjustified discrimination based on language.

Therefore, the Commission appealed the decision before the Court of justice arguing inter alia that the burden the General Court imposed on the Commission as regards the justification given for the language restriction is unreasonably high.

Background Documents C-632/20 P
Background Documents C-635/20 P

There will be a press release in this case.

Thursday 16th February

Judgment in Case C-312/21 Tráficos Manuel Ferrer
(Competition)

On 11 October 2019, Mr Ignacio and the Spanish company Tráficos Manuel Ferrer, SL ('the applicants') brought a civil action for damages against Daimler AG ('Daimler' or 'the defendant') on the basis of Article 101 TFEU and Article 1902 of the Spanish Civil Code.

The background to that action is the defendant's infringement of competition law in the form of a concerted practice with other European truck manufacturers in the years 1997 to 2011 (referred to as the 'truck cartel'), as established in the Commission's decision of 19 July 2016. (4) Those practices consisted of collusive arrangements intended to fix and increase gross prices for certain types of trucks and to pass on costs for introducing new technologies for preventing polluting emissions.

In support of their action, the applicants state that, for the duration of the cartel, they purchased Mercedes-, Renault- and Iveco-branded trucks which were affected by the conduct of the truck manufacturers penalised by the Commission. The Mercedes-branded truck is manufactured by the defendant in the main proceedings.

The applicants claim that, as a consequence of the defendant's anticompetitive price-fixing, they suffered harm in the form of surcharges on the vehicles purchased. They submit that this is proven by an expert report which they submitted and which quantifies the harm suffered. The defendant challenged that expert report by way of its own expert report, which stated that the grounds, assumptions and methodology of the applicants' report are incorrect. The defendant then granted the applicants access to all data taken into consideration in its expert report. The applicants then filed another 'technical report' on the results obtained through access to the defendant's data, but they did not re-draft their own expert report.

Furthermore, an application made by the defendant for the compulsory intervention of Renault Trucks SAS and Iveco SPA (manufacturers of the other trucks purchased by the applicants) in the proceedings was refused by the court on the ground that the statutory conditions were not met, and the conduct of the proceedings continued with Daimler as sole defendant.

Background Documents C-312/21

There will be a press release in this case.

Thursday 16th February

Judgment in Case C-393/21 Lufthansa Technik AERO
(Area of Freedom, Security and Justice)

On 14 June 2019, the Amtsgericht Hünfeld (Hünfeld District Court, Germany) served Arik Air Limited, a Nigerian airline, with an order to pay for the recovery of a claim of € 2,292,993.32 for the benefit of Lufthansa Technik AERO Alzey GmbH ("Lufthansa"), and subsequently issued a European Enforcement Order on 24 October 2019 and a European Enforcement Order Certificate on 2 December 2019.

A bailiff practising in Lithuania (the "bailiff") was seized by Lufthansa to enforce this enforcement order and a civil aircraft belonging to Arik Air was seized in January 2020.

The latter company has applied to the Landgericht Frankfurt am Main (Regional Court of Frankfurt am Main, Germany) for the withdrawal of the European Enforcement Order certificate and for an end to the enforcement of the claim. In its view, the Hünfeld District Court improperly served the procedural documents on Arik Air, which would have meant that the time limit for opposing the order for payment in question was not met.

In Lithuania, Arik Air also asked the bailiff to suspend the enforcement proceedings until the final decision of the Frankfurt am Main Regional Court, which the bailiff refused, considering that national regulations did not allow for a suspension in these

circumstances.

By an order of April 2020, the Frankfurt am Main Regional Court, considering inter alia that Arik Air had not demonstrated that the writ had been issued illegally, made the suspension of enforcement of the European enforcement order concerned conditional on the deposit of a security of € 2,000,000.

By an order adopted in June 2020, the Kauno apylinkės teismas (Kaunas District Court, Lithuania) dismissed Arik Air's appeal against the bailiff's decision refusing to suspend this enforcement procedure.

On appeal, the Kauno apygardos teismas (Kaunas Regional Court, Lithuania) overturned this order, suspending the enforcement proceedings at issue, pending the final decision of the German court on Arik Air's claims. The court held that, given the risk of disproportionate harm that might result from the enforcement proceedings against Arik Air, the lodging of an appeal against the European Enforcement Order certificate before the court of the Member State of origin was sufficient to justify the suspension of those proceedings. It also found that there were no grounds for considering that the Regional Court of Frankfurt am Main could rule on the merits of the application for a stay of enforcement.

Lufthansa then appealed to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania – the referring court) against this decision.

Background Documents C-393/21

There will be a press release in this case.

Thursday 16th February

Judgment in Case C-633/21 Commission v Greece (Nitrogen dioxide limit values) (Environment)

The Commission is asking that the Court should:

(A) Declare that the Hellenic Republic:

first, by systematically and consistently exceeding the yearly limit values for nitrogen dioxide with regard to the agglomeration of Athens (EL0003) since 2010, has failed to fulfil its obligations under Article 13 of Directive 2008/50/EC, 1 read in conjunction with Annex XI to the directive,

second, by failing to adopt, from 11 June 2010, appropriate measures to ensure compliance with the yearly limit value for NO2 in the agglomeration of Athens (EL0003), the Hellenic Republic has failed to fulfil its obligations under Article 23(1) of

Directive 2008/50/EC (in conjunction with Section A of Annex XV to that directive), and in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to take the necessary measures so that that the duration of the exceedance of limit values is as short as possible.

(B) Order the Hellenic Republic to pay the costs of the proceedings.

Background Documents C-633/21

There will be a press release in this case.

Thursday 16th February

Judgment in Case C-349/21 HYA and others
(Area of Freedom, Security and Justice)

The Spetsializirana prokuratura (Specialised public prosecutor's office, Bulgaria) brought criminal proceedings against five persons for their alleged participation in an organised criminal group that assisted third-country nationals in entering Bulgarian territory illegally; the same individuals were also accused of giving or taking bribes in connection therewith. Those acts constitute 'serious offences' under Bulgarian law.

On 10 April 2017, during the pre-trial stage of the proceedings, the prosecutor filed an application to use special investigative methods, including telephone tapping, in respect of one of the accused persons, IP.

On the same day, the President of the Spetsializiran nakazatelen sad (Specialised Criminal Court) authorised the interception of telephone conversations, the recording thereof and the storage of the recordings for the purposes of criminal proceedings. The order records the name and function of the person who authorised the measures. It states that the authority making the application acted within its competence and that there are sufficient indications that an offence under Article 172(2) of the NPK or Article 3(1) of the ZSRS, which falls within the jurisdiction of the Spetsializiran nakazatelen sad (Specialised Criminal Court), has been committed. It states that the requirements of Articles 4, 12 and 21 of the ZSRS, or Article 175(2) of the NPK, have been complied with. It authorises the surveillance methods listed with regard to the person identified in the application bearing a reference number corresponding to that which appears on the first page and in the footer of pages 2 to 8 of the application. The authorisation is signed, sealed and dated 10 April 2017. The first page of the request for authorisation bears the same signature, seal and date.

Similar applications were made in respect of other persons under investigation in connection with their involvement in the same criminal group. The statements of reasons given by the President of the Spetsializiran nakazatelen sad (Specialised Criminal Court) appear to be identical, save that in each case the authorisation

appears to cross-refer to a different application.

According to the referring court, the generic template text of the authorisations covers the various scenarios in which covert surveillance may lawfully be authorised. It is standard practice that the authorisation does not include an individualised statement of the reasons for its issue. The referring court therefore had doubts as to whether the authorisations were properly reasoned.

As a result of the authorised surveillance measures, certain of the suspects' telephone conversations were recorded and stored. The referring court accepts that those conversations are relevant to prove the criminal charges against the accused, but queries whether they are admissible if the authorisations are deemed to be unlawful.

Background Documents C-349/21

There will be a press release in this case.

Thursday 16th February

Opinion in Case C-478/21 China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission
(Commercial policy)

The China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) is an association governed by Chinese law whose members include Chinese exporting producers of certain cast iron articles (manhole covers).

In 2018, the CCCME had unsuccessfully challenged before the General Court a Commission Regulation that imposed an anti-dumping duty on imports of cast iron articles originating in the People's Republic of China (PRC). By the present appeal, CCCME is asking the Court to set aside the General Court judgment of May 2021.

The Commission, as well as a number of European companies operating in the cast iron market (interveners) request that the Court dismiss this appeal. In particular, the Commission and interveners argue that the CCCME cannot be an association representing exporting producers in the PRC, since it acts under the supervision, management and business direction of the PRC ministries concerned. The interveners add that CCCME does not merely take instruction from the State, but acts on behalf of the State in the organisation of the commercial activities of the exporting producers.

Background Documents C-478/21

There will be a press release in this case.

Thursday 16th February

Opinion in Case C-520/21 Bank M. (Conséquences de l'annulation du contrat)
(Consumer Protection)

From the early 2000s, banks in Poland made tens of thousands of mortgage loans denominated in or indexed to the Swiss franc (CHF) with consumers who sought to purchase properties. Since those mortgage loans afforded borrowers the benefit of interest rates far lower than those applicable to loans denominated in Polish zloty (PLN) they were very much in demand.

With the onset of the Global Financial Crisis, the exchange rate between the CHF and the PLN deteriorated from the perspective of holders of the latter currency. Thousands of borrowers, including the applicant in the main proceedings, filed lawsuits against the banks from which they had taken out their mortgages. They argued before the Polish courts that the conversion clauses from PLN to CHF and from CHF to PLN in their mortgage loan agreements were unfair. In a significant number of cases the courts accepted that argument and deemed the mortgage loan agreement void in its entirety.

Arising out of one such dispute, the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court of Warsaw – Śródmieście, Warsaw, Poland) asks the Court of Justice whether parties to a mortgage loan agreement between a consumer and a bank that has been declared void in its entirety on the ground that it contains an unfair term may pursue claims that go beyond reimbursement of the monetary consideration made under that agreement and the payment of default interest at the statutory rate from the date of the demand for reimbursement.

Background Documents C-520/21

There will be a press release in this case.