Newsletter

Weeks VII-VIII: 13th to 24th 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 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

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.

Thursday 16th February

Opinion in Case C 488/21 Chief Appeals Officer and Others
(Citizenship)

GV is a national of Romania and the mother of AC, a Romanian citizen residing and working in Ireland. AC is also a naturalised Irish citizen. GV joined her daughter in Ireland in 2017 and has legally resided there ever since. During the past 15 years, she has been financially dependent on AC. In 2017, GV suffered degenerative changes in

her arthritis, after which she made an application for Disability Allowance under the Irish Social Welfare Consolidation Act 2005.

That request was refused on the ground that under the relevant Irish law GV must not become an unreasonable burden on the national social assistance system.

The Court of Appeal (Ireland) has asked the Court of Justice whether the Citizenship Directive precludes Irish legislation that allows such refusal.

Background Documents C-488/21

There will be a press release in this case.

Week VIII – 20th to 24th February

The Court will be in recess from the 20th to 26th February.