



Newsletter

Week IX - X: 26th February – 8th March 2024

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Week IX – 26th February to 1st March

Wednesday 28th February

General Court

[Judgments in Cases T-7/19 Scandlines Danmark and Scandlines Deutschland v Commission, T-364/20 Denmark v Commission and T-390/20 Scandlines Danmark and Scandlines Deutschland v Commission](#)

(State aid)

The Fehmarn Belt fixed link is a tunnel under the Baltic Sea, which is currently under construction and is approximately 19km long. It connects Rodby (on the Danish island, Lolland) and Puttgarden (on the German island, Fehmarn). The Danish public entity Femern A/S is responsible for financing, building and operating the fixed link, which will contain an electrified railroad line and a freeway.

In 2014, the Danish authorities notified the Commission of the financing model for this project. In a decision adopted on July 23, 2015, the Commission did not raise any objections to this model. The measures granted to Femern A/S were compatible with the internal market.

In 2016, Scandlines Danmark and Scandlines Deutschland – operating ferry services between Denmark and Germany – asked the Commission to rule on certain measures granted in favour of the Fehmarn project, not included in its 2015 decision. To this aim, on September 28, 2018, the Commission adopted [decision C\(2018\) 6268](#): the measures in question were compatible with the internal market and did not constitute unlawful state aid.

By its judgments of December 13, 2018 (**Scandlines Danmark and Scandlines Deutschland v Commission**, [T-630/15](#) and **Stena Line Scandinavia v Commission**, [T-631/15](#)), confirmed by the Court of Justice by judgment of October 6, 2021 ([C-174/19 P and C-175/19 P](#)), the General Court of the EU annulled decision C(2015) 5023 on the grounds that the Commission had not initiated the formal investigation procedure.

All times are 9:30 unless otherwise stated.

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

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After conducting the investigation procedure, the Commission adopted [decision C\(2020\) 1683](#). The measures in favour of Femern A/S, consisting of capital injections and a combination of state loans and state guarantees – which Denmark had at least partially implemented unlawfully – constituted state aid.

However, in view of the fact that these measures had been modified after the opening decision, the Commission considered them to be compatible with the internal market.

In Case **T-7/19**, Scandlines Danmark and Scandlines Deutschland appealed against Commission Decision C(2018) 6268.

In case **T-364/20**, Denmark seeks the annulment of decision C(2020) 1683 insofar as the Commission considered that the measures in favour of Femern A/S constitute state aid.

In case **T-390/20**, Scandlines Danmark and Scandlines Deutschland seek annulment of decision C(2020) 1683 on the grounds of a series of alleged faults committed by the Commission.

[Background Documents T-7/19](#)

[Background Documents T-364/20](#)

[Background Documents T-390/20](#)

There will be one press release for these cases.

Thursday 29th February

[Judgment in Case C-222/22 Bundesamt für Fremdenwesen und Asyl \(Religious conversion at further stage\)](#)

(Area of Freedom, Security and Justice – Asylum policy)

An Iranian man, whose first application for international protection had been rejected by the Austrian authorities, submitted a new application (*hereinafter* "subsequent application") for international protection in Austria. He claimed that, in the meantime, he had converted to Christianity and feared persecution in his country of origin.

Having considered that he had converted as a result of "inner conviction", the Austrian authorities subsequently granted subsidiary protection. However, the Austrian authorities refused to grant him refugee status.

Under Austrian law, recognition of refugee status following a subsequent application is subject to the condition that the new circumstance, created by

the person concerned through his or her own actions, constitutes the expression and extension of a conviction already held in the country of origin.

The Austrian Administrative Court asks the Court of Justice whether such a condition is compatible with the [Qualification Directive](#).

[Background Documents C-222/22](#)

There will be a press release for this case.

Thursday 29th February

[Judgment in Case C-606/21 Doctipharma](#)

(Agriculture and Fisheries – Free movement of capital – Freedom to provide services – Internal market – Principles of approximation of laws)

The referring court – the Court of Appeal, Paris – asks the Court about the interpretation of the [Directive laying down a procedure for the provision of information in the field of technical standards and regulations](#) (Directive 98/34/EC).

Should Doctipharma's activity on and from its website www.doctipharma.fr be classified as an "information society service" within the meaning of Directive 98/34? If so, does Doctipharma's activity on and from its website www.doctipharma.fr fall within the scope of directive 2001/83?

This request was made in the context of a dispute between Doctipharma SAS and the Union des Groupements de pharmaciens d'officine (UDGPO) concerning the legality of the online sale of medicines not subject to compulsory medical prescription from pharmacies' websites via a platform designed and managed by Doctipharma, www.doctipharma.fr, powered by Pictime Coreyre.

The UDGPO claims that the online sales process offered to pharmacies by Doctipharma allows it to participate in e-commerce in medicinal products despite not being a pharmacist. The UDGPO submits that such sales activities are unlawful and requests that they be stopped, bringing the case in front of the Commercial Court, Nanterre.

By judgment of May 31, 2016, the Nanterre Commercial Court found that the www.doctipharma.fr site was unlawful as far as the sale of medicinal products was concerned and essentially ordered Doctipharma to stop engaging in e-commerce in medicinal products on that site.

Doctipharma then referred the matter to the Court of Appeal, Versailles, which overturned the judgment by its judgment of December 12, 2017. It took the view that

the www.doctipharma.fr site was lawful because the internet users' orders of medicinal products merely passes through the platform as technical support for the pharmacies' sites. Indeed, the orders are received by the pharmacists themselves, and the company has no other involvement in their processing since the contested site puts the customers in direct contact with the pharmacies.

By judgment of June 19, 2019, the Court of Cassation set aside the judgment of the Versailles Court of Appeal, and remitted the case to the Paris Court of Appeal, the referring court.

[Background Documents C-606/21](#)

There will be a press release for this case.

Thursday 29th February

[Judgment in Case C-679/22 Commission v Ireland \(Audiovisual media services\)](#)

(Freedom to provide services – Freedom of movement for workers)

The European Commission asks the Court to declare that Ireland has failed to fulfil its obligations by failing to adopt the laws, regulations and administrative rules necessary to comply with [Directive \(EU\) 2018/1808](#), amending the Audiovisual Media Services Directive ([Directive 2010/13/EU](#)).

On November 20, 2020, the Commission sent a letter of formal notice to Ireland.

The Irish authorities replied, explaining that giving effect to that directive in Ireland would entail a substantial revision of the national broadcasting and media regulatory framework. They indicated their hope that the transposition measures would be adopted during 2021, in particular after the expiry, on March 11, 2021, of the standstill period following the notification to the Commission of the general outline of the draft law transposing Directive 2018/1808.

On September 23, 2021, having not received any indications from the Irish authorities of a timetable or date for the required transposition, the Commission sent a reasoned opinion to Ireland.

The Irish authorities replied, reiterating the hope to publish the draft legislation before the end of 2021 so as to launch the process of its adoption by the *Oireachtas* (Irish Parliament).

On May 19, 2022, noting that the measures for the full transposition of Directive 2018/1808 had still not been adopted by Ireland, the Commission decided to bring the present action before the Court.

On November 4, 2022, the Commission lodged the present action at the Court.

[Background Documents C-679/22](#)

There will be an Info Rapide for the case (available on request).

Week X – 4th to 8th March

Tuesday 5th March

[Judgment in Case C-234/21 *Défense Active des Amateurs d'Armes and Others*](#)

(Approximation of laws – Fundamental rights – Charter of Fundamental Rights)

The association *Défense Active des Amateurs d'Armes ASBL* (DAAA) and two Belgian citizens are in dispute with the Belgian Council of Ministers over the reform of the law on weapons that came into force in 2019. Under this legislation, certain types of semi-automatic weapons converted to fire blank ammunition, which were on free sale in Belgium until the beginning of June 2019, have been banned: since then, holders of this type of weapon no longer have the choice of keeping them, as they have become owners of a prohibited weapon.

However, owners of genuine semi-automatic firearms (which have not been converted and are therefore capable of propelling bullets) who legally purchased and registered them before 13 June 2017 benefit from a transitional regime that allows them to keep them.

According to DAAA, this situation would lead to a difference in treatment between people in these two categories of weapons and the EU directive that the Belgian reform was intended to transpose would infringe, in particular, the right to property as well as the principles of equal treatment, non-discrimination and the protection of legitimate expectations.

The Belgian Constitutional Court, before which the case has been brought, has asked the Court whether, by not allowing the Member States to provide for transitional arrangements for the benefit of persons who have lawfully acquired and registered before 13 June 2017 a semi-automatic firearm which has been converted for use solely for firing blank ammunition, the relevant provision of the directive is invalid.

[Background Documents C-234/21](#)

There will be a press release for this case.

Tuesday 5th March

[Judgment in Case C-588/21 P Public.Resource.Org et Right to Know v Commission and Others](#)

(Provisions governing the institutions – Access to documents)

Public.Resource.Org and Right to Know are two non-profit organisations whose mission is to make the law freely accessible to all citizens.

In 2018, they asked the Commission to grant them access to harmonised technical standards at European Union level concerning toy safety. These standards specifically concerned chemical toys and sets.

The Commission rejected their request, and the General Court confirmed this rejection ([T-185/19](#)).

Now the Court has to decide on the appeal.

[Background Documents C-588/21 P](#)

There will be a press release for this case.

Tuesday 5th March

[Judgment in Case C-755/21 P Kočner / Europol](#)

(Principles, objectives and tasks of the Treaties – Data protection – Provisions governing the institutions)

Following the murder of a Slovak journalist and his fiancée, Mr. Ján Kuciak and Ms. Martina Kušnírová, in Slovakia on February 21, 2018, the Slovak authorities conducted an extensive investigation.

At the request of the Slovak authorities, the European Union Agency for the Cooperation of Law Enforcement Services (Europol) extracted data stored on two cell phones allegedly belonging to Mr. Marian Kočner and on a USB storage medium. Europol provided these authorities with its forensic reports and handed over a hard disk containing the extracted encrypted data.

In May 2019, the press published information relating to Mr. Kočner from his cell phones, including transcripts of his intimate communications. Furthermore, in one of its reports, Europol stated that Mr. Kočner had been in custody for suspected financial crime since 2018 and that his name was, *inter alia*, directly

linked to the "so-called Mafia lists" and the "Panama Papers".

Mr. Kočner brought an action before the General Court seeking compensation to the amount of €100,000 for the non-material damage he claims to have suffered as a result of Europol's unlawful processing of his data.

By judgment of September 29, 2021, the General Court dismissed his action ([T-528/20](#)). It concluded, firstly, that Mr Kočner had not proved a causal link between the alleged damage and Europol's conduct. Secondly, he had not proved that the so-called "Mafia lists" had been drawn up and maintained by an European Union institution and in particular by Europol.

Mr Kočner appealed to the Court of Justice.

[Background Documents C-755/21 P](#)

There will be a press release for this case.

Wednesday 6th March

General Court

[Judgment in Case T-647/22 Puma v EUIPO - Handelsmaatschappij J. Van Hilst \(Shoes\)](#)

(Intellectual, industrial and commercial property – Designs)

The applicant, Puma SE, seeks annulment of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) of August 11, 2022 (the "contested decision").

By decision of the EUIPO of 11 August 2022, Handelsmaatschappij J. Van Hilst (HJVH) had succeeded in obtaining a declaration of invalidity of a Community design for sports shoes that had been registered in favour of Puma. The invalidation followed an application filed by the sports goods manufacturer in July 2016. The EUIPO considered that the contested design lacked individual character and could not be registered because it had been disclosed to the public by Puma before the twelve-month grace period preceding the filing of the application for registration.



[Background Documents T-647/22](#)

There will be a press release for this case.

Thursday 7th March

[Judgment in Case C-604/22 IAB Europe](#)

(Data protection)

When a user visits a website or application that contains advertising space, advertising companies, brokers and platforms that represent thousands of advertisers can bid for this advertising space in real time, behind the scenes, to display ads tailored to the user's profile (Real Time Bidding).

However, before such targeted advertising is displayed, the user's prior consent must be obtained for the collection and processing of his or her data (notably concerning location, age, search history and recent purchases) for marketing or advertising purposes, or for the sharing of such data with certain suppliers. The user may also object to this.

IAB Europe is a non-profit association based in Belgium representing companies in the digital advertising and marketing industry at European level. IAB has developed a solution that could make this auction system RGPD-compliant. Indeed, user preferences are encoded and stored in a string made up of a combination of letters and characters under the name "Transparency and Consent String" (TCString). This is shared with personal data brokers and advertising platforms; in this way, they know what the user has consented or objected to. A cookie is also placed on the user's device. When combined, the TCString and cookie can be linked to the user's IP address.

In 2022, the Belgian data protection authority considered that TCString constitutes personal data within the meaning of the [General Data Protection Regulation](#) (GDPR) and that IAB had acted as a data controller.

The authority imposed several corrective measures and an administrative fine. IAB is contesting this decision and has referred the matter to the Brussels Court of Appeal, which has referred questions to the Court of Justice.

[Background Documents C-604/22](#)

There will be a press release for this case.

Thursday 7th March

[Opinion in Case C-652/22 Kolin İnşaat Turizm Sanayi ve Ticaret](#)

(Freedom of establishment – Freedom to provide services – Approximation of laws)

The Croatian Administrative Court of Appeal asked the Court of Justice to clarify the circumstances in which, after the expiry of the deadline for the submission of bids, contracting authorities may seek corrections or clarifications from tenderers in the application of [Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors.

Kolin İnşaat Turizm Sanayi ve Ticaret (Kolin), a company established in Türkiye, had challenged a final award decision by the Croatian adjudicating authority concerning a contract to upgrade railway infrastructure between two Croatian towns.

[Background Documents C-652/22](#)

There will be a press release for this case.

HEARINGS OF NOTE*

Court of Justice

Tuesday 27th February: 09:30 – Case [C-188/23 Conti 11. Container Schiffahrt II](#) (Environment)

Wednesday 28st February: 09:30 – Case [C-683/22 Adusbef \(Pont Morandi\)](#) (Freedom of establishment)

Thursday 29th February: 09:30 – Joined Cases [C-17/22 and C-18/22 HTB Neunte Immobilien Portfolio](#) (Principles, objectives and tasks of the Treaties)

Thursday 29th February: 09:30 – Joined Cases [C-123/23 and C-202/23 Khan Yunis and Baabda](#) (Area of Freedom, Security and Justice – Asylum policy, Gaza Strip)

Newsletter

Weeks IX – X: 26th February – 8th March 2024

Thursday 29th February: 14:30 – Case [C-264/23 Booking.com and Booking.com \(Deutschland\)](#) (Competition)

Tuesday 05th March: 09:30 – Case [C-144/23 Kubera](#) (Intellectual property)

Thursday 7th March: 09:30 – Case [C-719/22 Profit Europe and Gosselin Forwarding Services \(Validity of an anti-dumping regulation\)](#) (Commercial policy – Dumping)

Thursday 7th March: 09:30 – Case [C-23/23 Commission v Malte \(Exemption for research purposes\)](#) (Environment)

Thursday 7th March: 09:30 – Case [C-84/22 UBS Group and Others v Commission](#) (Competition)

General Court

Tuesday 27th February: 09:30 – Case [T-744/22 Tokareva v Council](#) (Restrictive measures – Ukraine)

Monday 04th March and Tuesday 05th March: 09:30 – Joined Cases [T-624/15 RENV, T-694/14 RENV and T-704/15 RENV European Food and Others v Commission, Micula v Commission, Micula and Others v Commission](#) (State aid)

* This is a non-exhaustive list and does not include all the hearings over the next two weeks.