



## Newsletter

Week X - XI: 4<sup>th</sup> – 15<sup>th</sup> March 2024

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**Sorchadh  
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## Week X – 4<sup>th</sup> to 8<sup>th</sup> March

### Tuesday 5<sup>th</sup> 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 to keep 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 such firearms before June 13, 2017, benefit from a transitional regime that allows them to keep them.

According to the 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.**

All times are 9:30 unless otherwise stated.

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



## Tuesday 5<sup>th</sup> 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 common mission is to make the law freely accessible to all citizens.

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

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

The Court must now rule on the appeal.

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

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

## Tuesday 5<sup>th</sup> 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 key. 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 a European Union institution and in particular by Europol.

Mr. Kočner appealed this decision to the Court of Justice.

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

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

## Wednesday 6<sup>th</sup> March

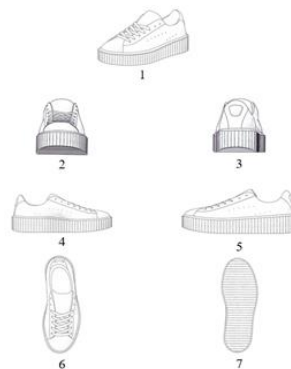
### General Court

#### [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 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 by Puma. The invalidation followed an application filed by the sports goods manufacturer in July 2016. 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 7<sup>th</sup> 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, 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 7<sup>th</sup> 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 Turkey, 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.**

## Week XI – 11<sup>th</sup> to 15<sup>st</sup> March

## Thursday 14<sup>th</sup> March

### [Judgment in Case C-291/22 P D & A Pharma v Commission and EMA](#)

*(Public health)*

By its appeal, Debrégeas et associés Pharma SAS (D & A Pharma) seeks annulment of the judgment of the General Court of March 2, 2022, in Case T-556/20 D & A Pharma v Commission and EMA.

The contested judgment had dismissed their action seeking, *inter alia*, to annul Commission's implementing decision of July 6, 2020, (the "contested decision") refusing the application for marketing authorisation for the medicinal product for human use Hopveus - sodium oxybate (hereinafter "Hopveus") under Regulation (EC) No

726/2004, as amended by Regulation (EU) 2019/5.

The regulation seeks to guarantee high standards of quality and safety of medicines in the EU. It sets out procedures for authorising and supervising medicinal products for human and veterinary use and sets up the European Medicines Agency (EMA), responsible for providing scientific advice to the EU institutions and to the Member States in the field of medicinal products, concerning the authorisation and supervision of medicinal products.

EMA's Committee for Medicinal Products for Human Use (CHMP) is in charge, *inter alia*, of preparing opinions on the granting, variation, suspension or withdrawal of a marketing authorisation for a medicinal product for human use, in accordance with the regulation and pharmacovigilance.

On June 26, 2018, D & A Pharma submitted a conditional marketing authorisation application to the EMA for Hopveus under Commission Regulation (EC) No 507/2006, falling within the scope of Regulation No 726/2004. Hopveus, containing sodium oxybate as an active substance, is intended to combat alcohol dependence.

On October 17, 2019, the CHMP issued an unfavourable opinion on this application.

On October 29, 2019, D & A Pharma lodged a request for reconsideration of the CHMP's opinion.

For the purposes of that review, the CHMP convened an ad hoc group of experts. Following a further unfavourable opinion of the CHMP dated April 30, 2020, the European Commission, by the contested decision, again refused the application for conditional marketing authorisation, on the ground, *inter alia*, of the lack of demonstration of the efficacy of the Hopveus medicinal product.

### [Background Documents C-291/22](#)

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

## Thursday 14<sup>th</sup> March

### [Judgment in Case C-516/22 Commission v United Kingdom \(Supreme Court judgment\)](#)

*(Arbitration Clauses - Member State Obligations - Brexit)*

The European Commission has alleged that the UK breached its obligations under EU law and the Withdrawal Agreement as a result of a UK Supreme Court judgment on February 19, 2020.

Through its judgment, the UK Supreme Court had authorised the enforcement of the arbitral award rendered in ICSID Case No ARB/05/20, notwithstanding the existence of a Commission

decision prohibiting Romania from paying the compensation awarded. The UK Supreme Court concluded that the enforcement of that award was governed by a multilateral treaty – the [ICSID Convention](#) – which the UK entered into before it acceded to the EU. This imposed obligations on the UK, the performance of which can be required by non-EU countries that are party to that agreement.

The Commission lodged an application for infringement proceedings with the Court in July 2022 but the UK refused to enter submissions to the proceedings.

The Commission sought a declaration that, in authorising the enforcement of the arbitral award, the UK had breached the principle of sincere cooperation. Additionally, it sought a declaration that the UK had misinterpreted and misapplied a Treaty provision. It claimed that the UK failed to refer a question of interpretation of EU law and so breached their obligation to do so. Finally, it argued that the UK failed to inform the Commission of its plan to grant aid, putting its measures into practice before the Commission made its final decision.

### [Background Documents C-516/22](#)

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

## Thursday 14<sup>th</sup> March

### [Judgment in Case C-46/23 Újpesti Polgármesteri Hivatal](#)

*(Principles, objectives and tasks of the Treaties – Data protection)*

In 2020, the municipal administration of Újpest (Hungary) decided to provide financial assistance to people made vulnerable by the COVID-19 pandemic. To this end, it has asked the Hungarian Treasury and the Government Office of the Fourth District of Budapest-Capital to provide it with the personal data needed to verify the eligibility conditions for receiving the aid.

Subsequently, the Hungarian Data Protection Authority ("the supervisory authority") found that both the Újpest administration and the Hungarian State Treasury and Government Office had violated rules of the [General Data Protection Regulation \(GDPR\)](#) and subsequently imposed a fine on them.

The supervisory authority noted that the Újpest administration had not informed the data subjects of the use of their data nor of its purpose, or of their data protection rights within the one-month time limit set by the Regulation. It also ordered Újpest's administration to delete the data of eligible individuals who had not applied for assistance.

The Újpest administration contested this decision, arguing that the supervisory authority does not have the power to order the deletion of personal data in the absence of a prior request to that effect from the data subjects.

## [Background Documents C-46/23](#)

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

## Thursday 14<sup>th</sup> March

### [Judgment in Case Case C-439/22 Commission v Ireland \(European Electronic Communications Code\)](#)

*(Approximation of laws)*

[Directive \(EU\) 2018/1972](#) establishing the European Electronic Communications Code ('the Directive') establishes a set of updated rules to regulate the internal market for very high capacity electronic communications (telecoms) networks, telecoms services, and associated facilities and services at EU level, including an efficient and effective management of the radio spectrum, spectrum authorizations and market access rules.

The directive had to be transposed and incorporated into the Member States' national law by December 21, 2020: all internal laws, regulations and administrative rules necessary to comply with the directive should be adopted and communicated to the Commission by that date (Article 124 of the Directive).

Having received no communication from Ireland, the Commission sent a letter of formal notice on February 3, 2021 and a reasoned opinion on September 23, 2021, requesting Ireland to comply with it by November 23, 2021. A new deadline, following Ireland's request for extension, was set for February 23, 2022.

On July 5, 2022, the Commission lodged the present action for failure.

On December 2, 2022, with reiteration on October 27, 2023, Ireland justified the transposition delay with the impossibility to incorporate the Directive into national law according to the new constitutional requirements before the Judgment of Ireland Supreme Court *Zalewski v Adjudication Office* (Zalewski ruling) of April 6, 2021. That means after the Directive's deadline for transposition had expired. The ruling indeed greatly extended the number of powers considered as involving the administration of justice under Irish constitutional law. It was therefore legally impossible to transpose the Directive in accordance with Ireland's Constitution beforehand.

On June 16, 2023, Ireland informed the Court to have communicated to the Commission the completion of the transposition of the Directive, with the exception of Article 110, which was transposed on November 29, 2023.

## [Background Documents C-439/22](#)

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

## HEARINGS OF NOTE\*

**Court of Justice**



Weeks X – XI: 4<sup>th</sup> – 15<sup>th</sup> March 2024

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

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

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

Monday 11<sup>th</sup> March: 14:30 – Case [C-15/24 PPU Stachev](#) (Fundamental rights – Charter of Fundamental Rights – Area of Freedom, Security and Justice – Judicial cooperation in criminal matters)

Tuesday 12<sup>th</sup> March: 09:30 – Joined Cases [C-146/23 Sąd Rejonowy w Białymstoku and C-374/23 Adoreiké](#) (Fundamental rights – Charter of Fundamental Rights – Principles, objectives and tasks of the Treaties)

Thursday 14<sup>th</sup> March: **09:00** – Case [C-134/23 Elliniko Symvoulío gia tous Prosfyges](#) (Area of Freedom, Security and Justice – Border checks)

### General Court

Monday 04<sup>th</sup> March and Tuesday 05<sup>th</sup> 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)

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

Tuesday 12<sup>th</sup> March: 09:30 – Case [T-797/22 Ordre néerlandais des avocats du barreau de Bruxelles and Others v Council](#), Case [T-798/22 Ordre des avocats à la cour de Paris and Couturier v Council](#) and Case [T-828/22 ACE v Council](#) (Restrictive measures – Ukraine)

Thursday 14<sup>th</sup> March: 09:30 – Case [T-692/20 Iliad Italia v Commission](#) (Competition)

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