Newsletter

Weeks XI - XII: 13th to 24th March 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.

Week XI – 13th to 17th March

Thursday 16th March

Judgment in Case C-499/21 Towercast
(Competition)

The Digital Terrestrial Television (TNT) platform has been deployed in France since 2005. The main DTT network operator is TDF, which until then held a state monopoly on the French terrestrial television broadcasting market.

The liberalization of the French audiovisual space has notably enabled Towercast and Itas, operators competing with TDF, to enter the broadcasting market. In 2016, TDF took sole control of Itas through an acquisition operation below the thresholds provided for by the EU merger control regulation and by the French commercial code: it therefore did not have not been the subject of a notification, nor of an examination under the prior control of concentrations. Nor did this transaction give rise to a referral procedure to the Commission pursuant to Article 22 of the merger control regulation.

Towercast considers that the takeover of Itas by TDF constitutes an infringement of the prohibition of abuse of a dominant position provided for by primary EU law (Article 102 TFEU). According to Towercast, TDF hinders competition on the upstream and downstream wholesale markets for the distribution of DTT services, by significantly strengthening its dominant position on these markets.

The French Competition Authority having rejected Towercast's complaint, the latter appealed to the Court of Appeal of Paris (France). That court asks the Court whether it is possible for a national competition authority to review a posteriori, given the prohibition of abuse of a dominant position provided for by EU law, a concentration carried out by a company in a dominant position, when this concentration remains below the relevant turnover thresholds provided for by the regulation on the control of concentrations and by national law on concentrations and it has therefore not been the subject of a an ex ante control in this sense.

Background Documents C-499/21

There will be a press release in this case.

Thursday 16th March

Judgment in Case C-174/21 Commission v Buulgaria (Double manquement – PM10 pollution)

(Law governing the institutions)

The Ambient Air Quality Directive sets limit values for the concentration of certain atmospheric pollutants in ambient air and requires Member States to adopt air quality plans if they are exceeded, so that the overrun period is as short as possible.

In the Commission v Bulgaria judgment (C-488/15), delivered on 5 April 2017, the Court held that the Republic of Bulgaria had failed to fulfill its obligations under this directive, due to the systematic and persistent overstepping , in the zones and agglomerations concerned, of the daily and annual limit values applicable to the concentrations of fine particles (PM10) , as well as for not having ensured that the period of overrun is as short as possible . In that judgment, the Court found, more specifically, that the exceedances of those values had persisted in six areas and agglomerations of Bulgarian territory from 2007 to 2014 inclusive.

Following the delivery of the Commission v Bulgaria judgment on 5 April 2017, at the request of the European Commission, the Republic of Bulgaria provided information on the measures taken to execute this judgment, while specifying that certain limit values applicable to PM10 concentrations were now complied with in several municipalities located in the areas covered by that judgment. .

Based on raw air quality data for the years 2015 and 2016, the Commission found that for those years the daily limit value for PM10 concentrations had not been complied with in any of the six areas concerned by the judgment of the Court, while the annual limit value applicable to these concentrations had been exceeded in all these areas except for one area.

Therefore, on 9 November 2018, the Commission formally put Bulgaria on notice, in accordance with the procedure provided for in Article 260(1) and (2) TFEU. In the letter of formal notice, the Commission noted that the exceedance of the limit values had persisted around a year and a half after the delivery of the Commission v Bulgaria judgment of 5 April 2017 and almost eleven years after the entry into force of Directive 2008/50. Thus, the Commission invited the Republic of Bulgaria to submit its observations within the deadline set in the letter of formal notice, namely 9 February 2019, and to inform it of the any progress made in the meantime.

By its response to that letter of formal notice and by the additional information provided, the Republic of Bulgaria indicated that it had taken various measures to ensure compliance with the limit values relating to ambient air quality.

In view of the information provided by the Republic of Bulgaria, as well as the air quality reports submitted for the period from 2015 to 2019, the Commission considered that this Member State had not taken all the measures required to comply with the Commission v Bulgaria judgment of 5 April 2017.

In these circumstances, the Commission brought an action for failure to fulfill obligations before the Court, in order to have it declared that the Republic of Bulgaria has not complied with this judgment. The Commission also requested that this Member State be ordered to pay a lump sum and a daily penalty payment until the judgment of the Court is fully complied with.

Background Documents C-174/21

There will be a press release in this case.

Thursday 16th March

Judgment in Case C-339/21 Colt Technology Services and others
(Freedom of establishment)

In Italy, telecommunications operators are required, in the event of a request from the judicial authorities, to carry out communications interception operations (voice, computer, telematics and data), subject to flat rates. The amounts they receive were modified by a decree of 2017, which established a reduction of at least 50% in reimbursements of expenses related to said interception operations. The telecommunications operators concerned have asked the Italian courts to annul this decree, alleging that the amounts provided do not fully cover the costs incurred.

The Italian Council of State, seised on appeal, asks the Court of Justice whether EU law requires full reimbursement of the costs actually borne by operators in the context of the performance of such operations of interception.

Background Documents C-339/21

There will be a press release in this case.

Thursday 16th March

Opinion in Case C-634/21 SCHUFA Holding and others and in Joined Cases C-26/22 SCHUFA Holding and others and C-64/22 SCHUFA Holding and others
(Approximation of Laws)

These requests for a preliminary ruling from the Verwaltungsgericht Wiesbaden

(Administrative Court, Wiesbaden, Germany) relate to the interpretation of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union as well as the General Data Protection Regulation.

These requests are part of two disputes opposing, the individuals to Land Hessen (Land of Hesse, Germany), represented by the Hessischer Beauftragte für Datenschutz und Informationsfreiheit (Commissioner for Data Protection and Freedom of Information for the Land of Hesse, hereinafter the "HBDI"), with regard to the requests, lodged with the HBDI, to act for the purpose of deleting an entry relating to the release of a residual debt with SCHUFA Holding AG (hereinafter "SCHUFA").

Background Documents C-634/21
Background Documents C-26/22
Background Documents C-64/22

There will be a press release in this case.

Week XII – 20th to 24th March

Tuesday 21st March

Judgment in Case C-100/21 Mercedes-Benz Group
(Transport)

Extract from AG Rantos' Opinion of 2nd June 2022

This reference for a preliminary ruling has been made in the context of cases referred to the Court concerning failure to comply with the provisions of EU law relating to emissions of pollutant gases, inter alia nitrogen oxide (NOx), by diesel vehicles. In particular, in that regard, the Court has already ruled in the judgment of 17 December 2020, CLCV and Others (Defeat device on diesel engines) (C-693/18, EU:C:2020:1040; 'the CLCV judgment'), on the definition of a 'defeat device', within the meaning of Article 3(10) of Regulation (EC) No 715/2007, and on the conditions for authorising such a device, under Article 5(2)(a) of that regulation.

Moreover, Cases C-128/20, GSMB Invest; C-134/20, Volkswagen, and C-145/20, Porsche Inter Auto and Volkswagen, in which I delivered a Joined Opinion on 23 September 2021, concern the conformity with EU law of a 'temperature window' established by software installed in the electronic engine controller fitted to the vehicles concerned.

In the present case, the Landgericht Ravensburg (Regional Court, Ravensburg, Germany) asks the Court whether Directive 2007/46/EC, read in conjunction with Regulation No 715/2007, confers on an individual purchaser of a vehicle which does

not comply with the NOx emission limits laid down by that regulation a right to compensation from the vehicle manufacturer, on the basis of tortious liability, and, if so, what method of calculating compensation must be established by the Member States in order to comply with EU law.

The referring court also seeks to ascertain whether Article 267 TFEU precludes national legislation under which the single judge having jurisdiction to rule on a dispute is able to refer a question to the Court for a preliminary ruling only if he or she has previously referred that dispute to a civil chamber, which has decided not to re-examine it.

Background Documents C-100/21

There will be a press release in this case.

Wednesday 22nd March

General Court
Judgment in Case T-72/20 Satabank v ECB
(Economic Policy)

In this case, the Malta-based Satabank seeks to obtain the annulment of an ECB decision in which the latter had denied it access to its file.

Background Documents T-72/20

Thursday 23rd March

Judgment in Case C-653/21 Syndicat Uniclima
(Approximation of laws)

The reference was made in the context of a dispute between the applicant - trade union Uniclima and the Minister of the Interior (France) concerning the annulment of the provisions of an order of 10 May 2019 of the latter authorising, subject to conditions, the use of flammable refrigerants in establishments open to the public.

Refrigerants may be defined as fluids or mixtures of fluids with physical characteristics that allow them to exploit a compression/expansion cycle to transfer heat. They are used to cool refrigerating devices such as refrigerators, freezers or even air conditioners. The use of such fluids is in the context of the legislation enacted to protect the environment by reducing emissions of fluorinated greenhouse gases, established by Regulation No 517/2014.

The applicant describes itself on its website as the trade union for the heating, ventilation and refrigeration industries, which, among other activities, supports companies and represents them before French, European and international bodies in regulatory and standardisation work.

By an order of 10 May 2019, the Minister of the Interior amended the order of 25 June 1980 approving the general provisions of the safety regulations against the risks of fire and panic in establishments open to the public, to authorise, under certain safety conditions, the use in these establishments of equipment using flammable refrigerants.

The safety standards that it introduces do not apply to equipment using flammable refrigerants that have the 'CE mark', provided that such equipment is 'hermetically sealed'. As its application for judicial review dated 17 July 2019 was rejected by the Minister for the Interior, the applicant lodged an appeal for annulment of the order on 25 October 2019 before the referring court on the grounds of misuse of power.

Background Documents C-653/21

There will be a press release in this case.

Thursday 23rd March

Judgment in Joined Cases C-514/21 and C-515/21 Ministry for Justice and Equality (Levée du sursis)
(Area of Freedom, Security and Justice)

Extract from AG Capeta's Opinion of 22 October 2022

A person committed an offence and was found guilty following a fair trial. That finding of guilt resulted in the imposition of a suspended prison sentence. Afterwards, that same person was accused of a second offence committed during the probation period for the first offence. The second trial was conducted in absentia and resulted in a finding of guilt and the imposition of a prison sentence. As a consequence, the suspension of the prison sentence for the first offence was revoked. The person concerned being out of the country, a European arrest warrant ('EAW') was issued for the execution of the prison sentence for the first offence.

Can the executing authority refuse surrender on the foot of an EAW for the execution of the sentence relating to the first offence because the second trial was held in absentia? The answer to that question requires the interpretation of Article 4a(1) of Framework Decision 2002/584/JHA. More specifically, it requires answering whether the expression 'trial resulting in the decision' used in that provision also captures that second trial.

In addition to the interpretation of Article 4a(1) of the EAW Framework Decision, those references bring about a more profound challenge for the EAW system. They raise the question of whether the executing authority should be allowed (or even obliged), outside the situations envisaged by the EAW Framework Decision, to refuse surrender if it finds that a fundamental right (or at least the essence of that right) of the person to be surrendered would be breached by the issuing State.

The EAW Framework Decision exhaustively enumerates the situations that oblige or allow the executing authority to refuse the execution of an EAW. (3) Aside from those situations, the Court of Justice has interpreted an additional possibility from the EAW Framework Decision. On the basis of that case-law, the executing authority may also refuse surrender if there are, in the issuing State, systemic or generalised deficiencies affecting a certain group of people or places of detention, or else general or systemic deficiencies with the rule of law. Before deciding not to surrender when such systemic issues exist, the executing authority additionally needs to establish whether the individual who is to be surrendered runs a real risk that his or her fundamental right would be breached in the issuing State.

In the present case, however – and the same is true in a number of other cases pending before the Court at the time this Opinion is delivered –the systemic deficiencies in the issuing State are not being invoked. That raises a new question: does a potential single breach of fundamental rights of a person to be surrendered suffice to enable the executing authority to refuse surrender? That also (re)opens the question of whether the executing authority is at all allowed to verify whether the fundamental rights of the person to be surrendered would be respected by the issuing State. All of those cases, including the present references, bring to the surface problems that executing judicial authorities face in accepting automatic mutual recognition, the very principle on which the EAW system is based.

Background Documents C-514/21
Background Documents C-515/21