Newsletter

Weeks XII - XIII: 20th to 31st 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 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

Week XIII – 27th to 31st March

Tuesday 21st March

Judgment in Case C-100/21 Mercedes-Benz Group (Liability of manufacturers of vehicles equipped with defeat devices)

(Transport)

The Regional Court of Ravensburg (Germany) is seized of an action for damages opposing an individual (QB) to Mercedes-Benz Group. This lawsuit aims to repair the damage that Mercedes-Benz Group would have caused by equipping the diesel-powered vehicle, purchased by QB, with software that reduces the rate of exhaust gas recirculation when outside temperatures are below a certain threshold. Such a defeat device, resulting in an increase in nitrogen oxide (NOx) emissions, would be prohibited by Regulation No 715/2007 on the type-approval of motor vehicles with regard to emissions from passenger and commercial vehicles light.

Under German law, in the event of simple negligence, a right to compensation may exist when a law intended to protect others has been violated. Accordingly, the German judge asks the Court of Justice whether the relevant provisions of Directive 2007/46 establishing a framework for the type-approval of motor vehicles, read in combination with Regulation No 715/2007, must be interpreted as protecting the

particular interests of an individual purchaser of such a vehicle.

With regard to the calculation of the amount of any compensation due to QB, the Ravensburg Regional Court also wishes to know whether it is necessary, in order to give practical effect to EU law, that the benefit derived from the use of the vehicle is not deducted from the right to repair, or whether that it is only to a limited extent.

Background Documents C-100/21

There will be a press release in this case.

Thursday 23rd March

Judgment in Case C-653/21 Syndicat Uniclima

(Approximation of Laws)

By an order issued in 2019, the French Minister of the Interior amended a 1980 order relating to safety against the risk of fire and panic in establishments open to the public, to authorize, under certain safety conditions, the use, in these establishments, of equipment using flammable refrigerants such as refrigerators, freezers or even air conditioners.

The decree in question makes the use of equipment using flammable refrigerants, in these establishments, subject to compliance with a certain number of requirements. On the other hand, it provides that equipment with CE marking is not subject to it, provided that it is hermetically sealed.

Syndicat Uniclima (union of the thermal, aeraulic and refrigeration industries, which, among other activities, supports companies and represents them before French, European and international authorities in regulatory and normative work) referred the matter to the French Council of State. It argues that the condition established by the contested decree, requiring that the equipment be hermetically sealed, constitutes an additional requirement to those provided for by three directives, whereas equipment with the CE marking complies with the requirements of those directives.

It takes the view that the contested order creates distortions of competition insofar as it requires economic operators to modify their products solely for the provision of these products on the French market.

The Council of State questioned the Court of Justice in this regard.

Background Documents C-653/21

There will be a press release in this case.

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Weeks XI - XII: 13th to 24th March 2023