# Newsletter

**Weeks XIII - XV: 27th March – 14th April 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 XIII – 27th to 31st March

### Tuesday 29th March

**General Court**

**Judgment in Case T-142/21 Wizz Air Hungary v Commission (Blue Air; COVID-19 and recovery aid)**

(Transport)

On August 18, 2020, Romania notified the European Commission of an aid measure in favor of the airline Blue Air Aviation S.A. in the form of a loan of approximately € 62,130,000 guaranteed by the State and with subsidized interest.

The notified measure consisted of two separate aid measures based on two different legal bases, each covering a defined amount of aid. The first aid consisted of a loan of € 28 290 000 to compensate Blue Air for the damage directly suffered as a result of the cancellation or rescheduling of its flights following the introduction of travel restrictions in the context of the COVID-19 pandemic, during the period between 16 March and 30 June 2020. € 33,840,000 to partially cover Blue Air's urgent liquidity needs resulting from the operating losses incurred as a result of the pandemic.

Without initiating the formal investigation procedure provided for in Article 108(2) TFEU, the Commission found, by decision of 20 August 2020 , that the notified measure constituted State aid, both parts of which were compatible with the internal market.

Thus, the Commission declared the compensation measure compatible with the internal market under Article 107(2)(b) TFEU . The rescue aid was declared compatible under Article 107(3)(c) TFEU , read in conjunction with the Guidelines on State aid for rescuing and restructuring firms in difficulty other than financial institutions.

The airline Wizz Air Hungary brought an action for annulment of that decision.

**Background Documents T-142/21**

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

## Thursday 30th March

**Judgment in Case C-34/21 Hauptpersonalrat der Lehreninen und Lehrer**

(Approximation of Laws)

In two acts adopted in the year 2020, the Minister of Education and Culture of the state of Hesse (Germany) established the legal and organizational framework for school education during the COVID-19 pandemic period, including the possibility for students who could not be present in class to attend live lessons via videoconference. In order to protect the rights of students with regard to the protection of personal data, it was established that the connection to the videoconference service would only be authorized with the consent of the students themselves or, in the case of a minority of students, their parents. However, the consent of the teachers concerned to their participation in the service was not provided for.

Complaining that the live broadcasting of lessons by video conference, as provided for in the national regulations, was not subject to the condition of the consent of the teachers concerned, the main committee of teachers' staff at the Ministry of Education and Culture of the Land of Hesse lodged an appeal against the minister responsible for these matters. The latter argued that the processing of personal data in the form of live video conferencing was covered by national regulations, so that it could be carried out without the consent of the teachers concerned.

The administrative court to which the case was referred stated that, in accordance with the will of the legislator of the Land of Hessen, the national regulation on the basis of which the processing of the teachers' personal data is carried out falls within the category of "more specific rules" which the Member States may provide for, in accordance with Article 88(1) of the General Data Protection Regulation, to ensure the protection of the rights and freedoms of employees with regard to the processing of their personal data in the context of employment relationships. However, the court had doubts as to the compatibility of this regulation with the requirements of Article 88(2) of the GDPR. It therefore referred the matter to the Court for a preliminary ruling.

**Background Documents C-34/21**

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

## Thursday 30th March

**Judgment in Case C-5/22 Green Network**

(Approximation of Laws)

In 2019, the Autorità di Regolazione per Energia Reti e Ambiente (regulatory authority for energy, networks and the environment, Italy) imposed an administrative financial penalty of €655,000 on Green Network, an Italian electricity and natural gas distribution company, for violating tariff transparency obligations. The authority also ordered Green Network to return to its end customers an amount of €13,987,495.22, which was charged to them as administrative management fees in application of a contractual clause considered illegal by the authority.

After having unsuccessfully challenged this decision before an administrative court, Green Network has appealed to the Consiglio di Stato (Council of State, Italy). Before the Consiglio di Stato, Green Network argued that the power of the national regulatory authority to impose restitution of sums billed to customers, as provided for in Italian law, was contrary to Directive 2009/72.

In this context, the Consiglio di Stato (Council of State) referred two questions to the Court for a preliminary ruling on Article 37(1) and (4) of Directive 2009/72, concerning the powers of regulatory authorities, and Annex I thereto, which sets out the measures to be taken by Member States to protect consumers.

**Background Documents C-5/22**

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

## Thursday 30th March

**Opinion in Case C-27/22 Volkswagen Group Italia and Volkswagen Aktiengesellschaft**

(Approximation of Laws)

The principle of non bis in idem prohibits the joinder of criminal proceedings or penalties for the same acts against the same person. This principle is enshrined in Article 50 of the Charter of Fundamental Rights of the European Union ("Charter"). This case is concerned with the cross-border application of that principle and the difficulties it raises.

The Volkswagen group marketed worldwide 10.7 million diesel vehicles fitted with devices which altered the measurement of pollutant emissions for the purposes of their type-approval under European regulations. Seven hundred thousand of these vehicles were sold in Italy.

On August 4, 2016, the Italian Competition Authority fined Volkswagen and its Italian subsidiary €5 million on the grounds that the sale of these vehicles and the misleading

advertising of them - by highlighting their compliance with environmental regulations - constituted unfair commercial practices. Volkswagen challenged before the Italian courts the fine, which was the highest fine for such an infringement. Under Italian law, such infringements and their sanction are administrative in nature.

Before the Italian courts could rule, the Brunswick Public Prosecutor's Office, which had instituted criminal proceedings in Germany against Volkswagen, notified Volkswagen that it had been ordered to pay a penalty of €1 billion for the worldwide marketing of the aforementioned vehicles and its advertising of them. The penalty responded to the negligent behavior in installing the tricked devices. Volkswagen did not contest the penalty and paid the fine on June 18, 2018.

On April 3, 2019, the Italian courts dismissed Volkswagen's appeal, despite the fact that it would have been ordered to pay the penalty in Germany, as they found that the penalty imposed by the Italian competition authority had a different legal basis, so that the *non bis in idem* principle did not represent any obstacle for the company to be sanctioned in Italy.

Volkswagen appealed the judgment to the Italian Council of State, which has referred several questions to the Court of Justice for a preliminary ruling on the application of the *non bis in idem* principle to this case.

**Background Documents C-27/22**

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

## Thursday 30th March

**Opinion in Case C-106/22 Xella Magyarország**

(Free movement of capital)

In 2021, the Hungarian Minister for Innovation and Technology blocked the intended acquisition by Xella Magyarország Építőanyagipari, a Hungarian company, of another Hungarian company owning a quarry from which sand, clay and gravel are extracted. In the decision substantiating that veto, the Minister explained that it would be contrary to Hungarian national interests to allow a company with indirect Bermudan ownership to take control of a company in the field of the extraction of construction aggregates.

Considering that the decision prohibiting the acquisition constitutes a restriction to the free movement of capital which cannot be justified under EU law, Xella Magyarország Építőanyagipari challenged the decision before the Budapest High Court.

This court asks the Court of justice whether national law requiring that takeovers by 'foreign investors' of 'strategic companies' are notified to the Minister and thus subsequently empowering

him to examine and to prohibit transactions which might be deemed to be contrary to national interest, public security or public policy is compatible with EU law.

**Background Documents C-106/22**

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

## Weeks XIV & XV – 3rd to 14th April

**The Court is in Easter recess between the 3rd and 16th of April.**