



## Newsletter

Weeks XVIII - XIX: 1<sup>st</sup> to 12<sup>th</sup> May 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 XVIII – 1<sup>st</sup> to 5<sup>th</sup> May

### Thursday 4<sup>th</sup> May

#### [Judgment in Case C-40/21 Agenția Națională de Integritate](#)

(Principles of Community Law)

In 2016, the applicant in the main proceedings was elected mayor of the commune of MN (Romania). In a report drawn up in 2019, the Agenția Națională de Integritate (ANI) (National Integrity Agency, Romania) found that he had failed to comply with the rules governing conflicts of interest in administrative matters. In the event that this report became final, the mandate of the applicant in the main proceedings would be automatically terminated and an additional prohibition from holding elective public office for a period of three years would be imposed on him.

The applicant in the main proceedings brought an action for annulment of that report, arguing that Union law precluded national legislation under which such a prohibition is imposed, automatically and without the possibility of modulation according to the seriousness of the breach committed, on a person considered to have acted in a situation of conflict of interest.

The referring court decided to ask the Court whether this prohibition complied with the principle of proportionality of penalties, the right to work and the right to an effective remedy and to a fair trial, guaranteed by the Charter of Fundamental Rights of the European Union.

#### [Background Documents C-40/21](#)

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

### Thursday 4<sup>th</sup> May

#### [Judgment in Case C-389/21 P ECB v Crédit Lyonnais](#)

(Economic Policy)

Crédit Lyonnais is a public limited company incorporated under French law and authorised as a credit institution. This credit institution is a subsidiary of Crédit Agricole SA and, as such, is subject to direct prudential supervision by the European Central Bank (ECB).

On 5 May 2015, Crédit Agricole, on its own behalf and on behalf of the entities of the Crédit Agricole group, including Crédit Lyonnais, requested the ECB's authorisation to exclude from the calculation of the leverage ratio the exposures to Caisse des Dépôts et Consignations (CDC), a French public institution, resulting from deposits made in several savings books, which, according to the applicable French regulations, must be compulsorily transferred to CDC.

The decision of 24 August 2016, by which the ECB had refused to grant Crédit Agricole the requested authorisation, was annulled by a judgment of the General Court.

Following this judgment, Crédit Agricole reintroduced its request to the ECB for permission to exclude exposures to CDC. By decision of 3 May 2019, the ECB authorised Crédit Agricole and the entities forming part of the Crédit Agricole group, with the exception of Crédit Lyonnais, to exclude from the calculation of the leverage ratio all their exposures to CDC. Crédit Lyonnais, on the other hand, was only allowed to exclude 66%. In the contested decision, the ECB applied a methodology which took into account three elements, namely, the credit quality of the French central government, the risk of a distressed sale and the level of concentration of exposures to CDC.

Crédit Lyonnais' application for annulment of the contested decision insofar as it refused to authorise Crédit Lyonnais to exclude from the calculation of its leverage ratio all of its exposure to CDC was upheld by the General Court.

Specifically, the General Court found that the reason for the contested decision based on the level of risk of distressed sales was vitiated by "illegality". Consequently, the other two elements of the methodology applied by the ECB could not have led to the ECB refusing, in the contested decision, to grant Crédit Lyonnais the benefit of the exclusion for all of that institution's exposure to CDC.

The ECB appealed the General Court judgment.

[Background Documents C-389/21 P](#)

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

Thursday 4<sup>th</sup> May

### [Judgment in Case C-487/21 Österreichische Datenschutzbehörde and CRIF](#)

(Approximation of Laws)

CRIF is a business intelligence agency which provides, at the request of its clients, information concerning the creditworthiness of third parties. For that purpose, it processed the personal data of the applicant in the main proceedings, an individual. The latter requested CRIF, on the basis of the General Data Protection Regulation, to have access to his personal data. In addition, he asked to be provided with a copy of the documents, namely e-mails and database extracts, containing, inter alia, his data, 'in a standard technical format'.

In response to that request, CRIF sent the applicant in the main proceedings a list of his personal data being processed, in summary form. Taking the view that CRIF should have sent him a copy of all the documents containing his data, such as e-mails and database extracts, the applicant in the main proceedings lodged a complaint with the Österreichische Datenschutzbehörde (Austrian data protection authority).

That authority rejected the complaint, considering that CRIF had not committed any breach of the right of access to the personal data of the applicant in the main proceedings.

The Bundesverwaltungsgericht (Federal Administrative Court, Austria), before which the applicant in the main proceedings appealed against the rejection decision adopted by that authority, questioned the scope of the obligation laid down in the first sentence of Article 15(3) of the RGPD to provide the data subject with a 'copy' of his or her personal data undergoing processing.

In particular, the court wonders whether that obligation is satisfied when the controller transmits the personal data in the form of a summary table or whether that obligation also entails transmitting extracts of the documents or even entire documents, as well as extracts from databases, in which those data are reproduced.

The referring court also requests clarification of the precise meaning of the term 'information' in the third sentence of Article 15(3) of the RGPD.

### [Background Documents C-487/21](#)

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

**Thursday 4<sup>th</sup> May**

[Judgment in Case C-300/21 Österreichische Post \(Moral prejudice due to treatment of personal data\)](#)

(Approximation of Laws)

This reference for a preliminary ruling concerns the interpretation of the General Data Protection Regulation, read in conjunction with the principles of equivalence and effectiveness.

That application was made in the context of a dispute between UI and Österreichische Post AG concerning the action brought by the former for compensation for the non-material damage which he claims to have suffered as a result of the processing by that company of data relating to the political affinities of persons residing in Austria, in particular himself, even though he had not consented to such processing.

[Background Documents C-300/21](#)

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

### Thursday 4<sup>th</sup> May

[Opinion in Case C-451/21 P Luxembourg v Commission and in Case C-454/21 P Engie Global LNG Holding and others v Commission](#)

(State Aid)

By decision of 20 June 2018, the Commission found that Luxembourg had granted unlawful State aid to the Engie Group in the context of restructuring operations within Luxembourg.

The group had been promised tax treatment in tax rulings under which almost all profits generated by two subsidiaries in Luxembourg ultimately remained untaxed. This was because although at the level of the operating subsidiaries only a low level of taxation was applied on the basis of an agreed tax base, the parent companies benefited from the tax exemption for investment income (intercompany privilege).

This had granted the Engie group a selective advantage in derogation of Luxembourg tax law. This is because a corresponding correspondence principle (tax exemption at the level of the parent company only with prior taxation at the level of the subsidiary) can be inferred from national law. In addition, the tax authorities had unlawfully refrained from applying a provision to avoid abuses.

The EU General Court, seised by the Engie Group and Luxembourg, fully endorsed the Commission's view and dismissed the claims. The Engie Group and Luxembourg then appealed to the Court of Justice.

[Background Documents C-451/21 P](#)

## [Background Documents C-454/21 P](#)

**There will be one press release covering the two opinions.**

### Thursday 4<sup>th</sup> May

#### [Opinion in Case C-148/22 Commune d'Ans](#)

(Social Policy)

This case concerns the issue of the wearing of religious symbols in the public space, in educational institutions and in the workplace. Similarly to previous cases before the court it concerns the issue of whether an employer has the right to impose restrictions on employees in the course of their work.

The present reference for a preliminary ruling, submitted by the Labour Court of Liège (Belgium), is in line with these cases, but with the particularity that, this time, the prohibition on wearing religious symbols in the workplace comes not from a private employer but from a public employer, in this case a commune.

#### [Background Documents C-148/22](#)

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

### Week XIX – 8<sup>th</sup> to 12<sup>th</sup> May

#### Monday 9<sup>th</sup> May

**Europe Day is a public holiday in Luxembourg. The Court of Justice will be holding an Open Day on this day. Visitors can visit the Court both physically and virtually and discover how it works.**



### Wednesday 10<sup>th</sup> May

#### General Court

#### [Judgment in Joined Cases T-34/21 Ryanair v Commission \(Lufthansa; Covid-19\) & T-87/21 Condor Flugdienst v Commission \(Lufthansa; Covid-19\)](#)

(State aid)

On 12 June 2020, the Federal Republic of Germany notified the European Commission of individual aid in the form of a recapitalisation of € 6 billion granted to Deutsche Lufthansa AG. This recapitalisation, which was part of a wider support package for the Lufthansa group, was aimed at restoring the balance sheet position and liquidity of the Lufthansa group companies in the exceptional situation caused by the COVID-19 pandemic.

The measure in question consisted of three separate elements, namely a capital participation of approximately € 300 million, a silent participation not convertible into shares of approximately € 4.7 billion and a silent participation of € 1 billion with the characteristics of a convertible bond.

Without opening the formal investigation procedure under Article 108(2) TFEU, the Commission qualified the measure as State aid compatible with the internal market under Article 107(3)(b) TFEU and its Communication on the temporary framework for State aid measures to support the economy in the present context of the COVID-19.

The airlines Ryanair DAC and Condor Flugdienst GmbH brought two actions for annulment of that decision.

[Background Documents T-34/21](#)

[Background Documents T-37/21](#)

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

### Thursday 11<sup>th</sup> May

#### [Judgment in Case C-155/22 Bezirkshauptmannschaft Lilienfeld](#)

(Transport)

Union law provides that transport undertakings must satisfy a requirement of good repute. In particular, neither the undertaking nor its transport manager or another "relevant person" designated by the Member State concerned must have been convicted of a serious criminal offence or have had a penalty imposed on them for

serious infringements of Union law in relation to drivers' driving and rest periods, working time or the installation and use of recording equipment. Such convictions or sanctions may lead to the loss of good repute of the undertaking and the withdrawal of the authorisation to engage in the occupation of transport operator.

An Austrian transport company, in accordance with its national legislation, appointed a "responsible employee", who was responsible for the observance of working time within the company. This person was neither a transport manager nor an authorised representative of the company vis-à-vis third parties. Nor did he have any significant influence on the management of the company. She is challenging before an Austrian court several fines imposed on her by the administration for the violation of the rules on daily driving hours and the use of the tachograph.

According to this court, the appointment as a responsible employee transfers criminal liability for the offences in question to that person. Moreover, under Austrian law, the conduct of the person so appointed could not be taken into account in assessing whether the undertaking in question satisfied the requirement of good repute laid down by Union law. The Austrian court wonders whether, in such circumstances, such an appointment is compatible with Union law.

### [Background Documents C-155/22](#)

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

**Thursday 11<sup>th</sup> May**

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### [Background Documents C-155/22](#)

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

## Thursday 11<sup>th</sup> May

### [Judgment in C-817/21 \*Inspekția Judiciară\*](#)

(Principles of Community law)

*Extract from AG Collins' Opinion of the 26 January 2023:*

The *Inspekția Judiciară* (Judicial Inspectorate, Romania) is the judicial body responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors in Romania. Under the rules governing the Judicial Inspectorate, the Chief Inspector appoints the Deputy Chief Inspector at his or her sole discretion; the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector; and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

R.I. made several complaints against judges and prosecutors engaged in criminal proceedings against her to the Judicial Inspectorate. The Judicial Inspectorate dismissed her complaints. The Chief Inspector confirmed the decisions of the Judicial Inspectorate. The applicant proceeded to challenge those decisions before the courts of Romania. In the context of those proceedings the *Curtea de Apel București* (Court of Appeal, Bucharest, Romania) seeks to ascertain whether a body, such as the Judicial Inspectorate, must offer the same guarantees of independence and impartiality as are required of courts under EU law.

In particular, it asks whether, in the light of the rules described above, EU law precludes national legislation or regulations that make the Deputy Chief Inspector of the Judicial Inspectorate responsible for overseeing the investigation of complaints made against the Chief Inspector of the Judicial Inspectorate and any disciplinary investigations and proceedings that might arise therefrom.



[Background Documents C-817/21](#)

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

### HEARINGS – RESTRICTIVE MEASURES (UKRAINE)

Over the next two weeks, the following hearings will be held in cases concerning the restrictive measures related to the war in Ukraine:

Tuesday 2<sup>nd</sup> May : 09:30 - [T-355/22 Khudaverdyan v Council](#)

Wednesday 3<sup>rd</sup> May : 09:30 and 14:30 – [T-361/22 Timchenko v Council](#)