



Newsletter

Weeks XX - XXI: 15th to 26th 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.

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Week XX – 15th to 19th May

Wednesday 17th May

[Judgment in Case C-97/22 DC \(Rétractation après l'exécution du contrat\)](#)

(Consumer)

This application is made in the context of a dispute between natural persons concerning a security interest in favour of the contractor as the assignor of the claim at issue to the claimant or, in the alternative, a remuneration for the contractor's services.

The respondent and the contractor concluded a construction contract for the renewal of an electrical installation. The defendant and the contractor entered into a construction contract for the renewal of an electrical installation. The contractor did not fulfil his obligation to inform the defendant as a customer.

On 21 December 2020, after completion of the work, the contractor presented the final account to the defendant, who did not pay the invoice. On 15 March 2021, the contractor assigned its rights under the contract with the defendant to the claimant. On 17 March 2021, the defendant withdrew its declaration of intent to conclude a construction contract.

The national court has questions concerning Directive 2011/83 on consumer rights. In particular it wonders whether EU law should be interpreted as meaning that, in a case in which a client withdraws from his declaration of intent to conclude a construction contract concluded off-premises after the trader has provided his service, the Directive excludes the trader's right to compensation or indemnity. It asks whether this is the case where the requirements for compensation are not met but the client has benefited from an improvement in his assets as a result of the contractor's service.

[Background Documents C-97/22](#)

There will be a press release in this case.

Wednesday 17th May

[Judgment in Case C-176/22 BK and ZhP \(Partial suspension of main procedure\)](#)

(Law Governing the Institutions)

A Bulgarian Court (Spetsializiran nakazatelen sad) refers the following question to the ECJ:

Is Article 23 of the Statute of the Court of Justice to be interpreted as imposing an obligation on a national court that has made a request for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union to stay the main proceedings in their entirety, or is it sufficient to stay only that part of the main proceedings that relates to the question referred for a preliminary ruling?

[Background Documents C-176/22](#)

There will be a press release in this case.

Wednesday 17th May

General Court

[Judgment in Case T-312/20 EVH v Commission](#)

(Mergers)

In March 2018, the German-based companies RWE AG and E.ON SE announced that they wanted to carry out a complex exchange of assets through three merger transactions.

In the first transaction, RWE, which is active across the entire energy supply chain in several European countries, wished to acquire sole or joint control over certain generation assets of E.ON, an electricity supplier operating in several European countries. The second transaction consisted of the acquisition by E.ON of sole control of the energy distribution and retail activities as well as certain generation assets of Innogy SE, a subsidiary of RWE. In the third transaction, RWE acquired 16.67% of E.ON's shares.

In April 2018, the German company EVH GmbH, which generates electricity in Germany from both conventional and renewable energy sources, notified the European Commission that it wished to participate in the procedure relating to the first and second mergers and, consequently, to receive the documents relating to them.

The first merger was notified to the Commission on 22 January 2019.

By decision of 26 February 2019, the Commission decided not to oppose the notified transaction and to declare it compatible with the internal market pursuant to Article 6(1)(b) of Regulation No 139/2004 .

EVH brought an action before the General Court for annulment of the contested decision.

[Background Documents T-312/20](#)

There will be a press release in this case.

Wednesday 17th May

General Court

[Judgment in Case T-321/20 enercity v Commission](#)

(Mergers)

In March 2018, the German-based companies RWE AG and E.ON SE announced that they wanted to carry out a complex exchange of assets through three merger transactions.

In the first transaction, RWE, which is active across the entire energy supply chain in several European countries, wanted to acquire sole or joint control of certain generation assets of E.ON, an electricity supplier operating in several European countries. The second transaction consisted of the acquisition by E.ON of sole control over the energy distribution and retail activities and certain generation assets of innogy SE, a subsidiary of RWE. In the third transaction, RWE acquired 16.67% of E.ON's shares.

On 24 July 2018, the German municipal utility enercity AG, which generates and supplies energy in Germany, notified the European Commission that it wished to participate in the procedure relating to the first and second concentrations and, consequently, to receive the documents relating to them.

As the first merger was notified to the Commission on 22 January 2019, the Commission carried out, inter alia, a market investigation, sending a questionnaire to certain companies.

By decision of 26 February 2019, the Commission declared the concentration compatible with the internal market.

enercity brought an action for annulment of that decision.

[Background Documents T-321/20](#)

There will be a press release in this case.

Week XXI – 22nd to 26th May

Wednesday 24th May

General Court

[Judgment in Cases T-451/20 Meta Platforms Ireland v Commission & T-452/20 Meta Platforms Ireland v Commission](#)

(Competition)

Suspecting anti-competitive behaviour by the Facebook group in its use of data and in the management of its social networking platform, the European Commission sent a request for information to Meta Platforms Ireland Ltd, formerly Facebook Ireland Ltd, by decision of 4 May 2020 .

This decision, adopted under Article 18(3) of Regulation 1/2003 , obliged Meta Platforms Ireland to provide the Commission with all documents prepared or received by three of its managers during the relevant period which contained one or more of the search terms defined in the annexes. Failure to provide the requested information was subject to a potential daily penalty payment of € 8 million.

The decision of 4 May 2020 replaced an earlier similar decision, which provided for broader search criteria. Following discussions between the Commission and Meta Platforms Ireland, the new decision sought to reduce the number of documents requested by refining the search terms and limiting the number of officials involved.

On 15 July 2020, Meta Platforms Ireland brought an action for annulment of the decision of 4 May 2020 and an application for interim measures.

By an interim order of 29 October 2020, the President of the General Court ordered a stay of execution of the decision of 4 May 2020 until a specific procedure for the production of the requested documents, which are not related to the commercial activities of Meta Platforms Ireland and which, moreover, contain sensitive personal data, is put in place.

Following this order, the Commission adopted an amending decision stipulating that these documents will only be placed on the investigation file after they have been examined in a virtual data room in the manner specified in the interim order. Meta Platforms Ireland adapted its application for annulment to take account of this amending decision.

[Background Documents T-451/20](#)

[Background Documents T-452/20](#)

There will be a press release in this case.

Wednesday 24th May

General Court

[Judgment in Case T-268/21 Ryanair v Commission \(Italy, Aid Scheme, COVID-19\)](#)

(State Aid)

In October 2020, the Italian Republic notified the European Commission of an aid measure consisting of subsidies to certain Italian licensed airlines through a compensation fund of € 130 million. This measure was aimed at remedying the damage suffered by the eligible airlines as a result of travel restrictions and other containment measures taken in the context of the COVID-19 pandemic.

In accordance with the eligibility conditions laid down in the measure, only airlines applying a remuneration equal to or higher than the minimum remuneration set by the national collective agreement applicable to their employees whose base of assignment is in Italy and to employees of third companies involved in their activities were eligible for the measure.

Without opening the formal investigation procedure under Article 108(2) TFEU, the Commission decided not to raise objections to the measure at issue, on the grounds that it was compatible with the internal market.

An action for annulment was brought by the airline Ryanair.

[Background Documents T-268/21](#)

There will be a press release in this case.

Wednesday 24th May

General Court

[Judgment in Case T-2/21 Emmentaler Switzerland v EUIPO \(Emmentaler\)](#)

(Intellectual Property)

Emmentaler Switzerland obtained from the International Bureau of the World Intellectual Property Organisation (WIPO) the international registration of the word sign EMMENTALER for goods corresponding to the description "cheeses with the

protected designation of origin 'emmentaler'".

This international registration was notified to the European Union Intellectual Property Office (EUIPO), but the examiner rejected the application. Emmentaler Switzerland therefore filed an appeal, which was subsequently rejected by the Second Board of Appeal of the EUIPO on the grounds that the mark applied for was descriptive.

Emmentaler Switzerland is challenging this decision of the Second Board of Appeal before the General Court.

[Background Documents T-2/21](#)

There will be a press release in this case.

Thursday 25th May

[Judgment in Case C-575/21 WertInvest Hotelbetrieb](#)

(Environment)

Extract from AG Collins' Opinion of November 2022:

Vienna is a city with a rich historical, cultural and architectural heritage. What began as a Celtic settlement became the strategic Roman garrison town of Vindobona. In 1857, the walls and other defences that had been erected around the city in the 13th century were razed and replaced by the Ringstraße, which opened in 1865 and along which many large public buildings were erected in an eclectic historicism style, sometimes called Ringstraßenstil, using elements of Classical, Gothic, Renaissance and Baroque architecture. UNESCO has designated the historic centre of Vienna, including the Ringstraße, as a World Heritage Site.

A private company seeks to carry out the 'ICV Heumarkt Neu – Neubau Hotel InterContinental, Wiener Eislaufverein WEV' (New ICV Haymarket – rebuilding of the InterContinental Hotel, Vienna Ice Sports Club; 'the New Haymarket project') approximately 250 m from that part of the Ringstraße named Schuberting. (2) The New Haymarket project involves demolishing the existing InterContinental Hotel and replacing it with several new structures, including a 19-storey tower building for hotel, commercial, conference, residential and office use with an underground ice rink, a sports hall, a swimming pool and a car park with 275 parking spaces. It is anticipated that the New Haymarket project will occupy around 1.55 ha with a gross floor area of around 89 000 m².

The project has given rise to some controversy due to its proximity to the centre of Vienna, a UNESCO World Heritage Site, and the alleged impact of the height of the proposed tower building on the city skyline. This reference for a preliminary ruling

from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) essentially asks whether a Member State, which chooses to determine that projects are to be subject to an environmental impact assessment by reference to thresholds or criteria that it has adopted may be required to make that determination by way of an individual examination of a project that does not meet those prescribed thresholds or criteria but is likely to have significant effects on the environment.

[Background Documents C-575/21](#)

There will be a press release in this case.

Thursday 25th May

[Judgment in Case C-290/21 AKM \(Provision of Satellite packages in Austria\)](#)

(Intellectual Property)

The applicant in the main proceedings, Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger Reg. Gen. mbH (AKM), is an Austrian copyright collective management society. It is the holder of an exploitation licence for musical works, entitling it to exercise, on a fiduciary basis, broadcasting rights on Austrian territory.

Canal+ Sàrl, established in Luxembourg, is a television operator which offers, via satellite, packages of coded programmes of several broadcasting organisations located in other Member States in high definition or standard definition in Austria. The introduction of each of the programme-carrying satellite signals into the communication chain (uplink) is mostly carried out by these broadcasters themselves, sometimes by Canal+, in these other Member States.

A beam containing the entire programme in high definition quality and additional information, such as audio and subtitle data, is transmitted. After being "bounced" by the satellite, this beam is picked up by satellite reception facilities within a coverage area. This beam is then split and the user can access each of the programmes on a terminal by means of a decoder. The satellite packages provided by Canal+ contain both pay and free TV programmes. In contrast to the pay-TV programmes, the latter are not encrypted and can be received by anyone in standard quality in Austria.

Taking the view that Canal+ was infringing the rights which it administers, AKM brought an action before the Austrian courts seeking, in substance, the cessation of the broadcasting by Canal+ of the satellite signals in Austria and the payment of compensation, arguing that, in the Member States in which the act of broadcasting or communicating to the public by satellite takes place, no authorisation had been obtained for such exploitation and that it had not authorised that broadcasting in

Austria.

AKM considered that the broadcast served an additional category of Canal+ customers which would not be covered by the authorisations obtained for the communication to the public of the works in question by satellite and that Canal+ should have obtained authorisation from AKM to broadcast the satellite signals in Austria.

The Oberster Gerichtshof (Supreme Court, Austria), hearing appeals on points of law against a judgment of the Oberlandesgericht Wien (Higher Regional Court, Vienna), which had held, inter alia, that the satellite packages in question reached a new audience, that is to say, an audience different from that targeted by the free-to-air transmissions of the broadcasting operators, decided to refer a question to the Court of Justice for a preliminary ruling on the interpretation of Directive 93/83 and, in particular, Article 1(2)(b) thereof.

According to that article, communication to the public by satellite takes place only in the Member State in which, under the control and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and returning to earth.

[Background Documents C-290/21](#)

There will be a press release in this case.

HEARINGS OF NOTE*

Monday 15th May: 09:30 – [C-470/21 La Quadrature du Net](#) (Approximation of Laws)
Monday 15th May: 14:30 – [T-364/22 Shulgin v Council](#) (Ukraine Restrictive Measures)
Tuesday 16th May: 09:30 – [C-470/21 La Quadrature du Net](#) (Approximation of Laws)
Monday 22nd May: 09:30 – [T-216/21 Ryanair & Malta Air v Commission](#) (State Aid)
Monday 22nd May: 09:30 – [T-494/21 Ryanair & Malta Air v Commission](#) (State Aid)
Tuesday 23rd May: 09:30 – [C-465/20 P Commission v Ireland and Others](#) (State Aid)
Wednesday 24th May: 09:30 – [T-248/22 Mordashov v Council](#) (Ukraine Restrictive Measures)

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