Newsletter

Weeks XXVII – XXVIII 3rd to 14th July 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 XXVII – 3rd to 7th July

Tuesday 4th July

Judgment in Case C-252/21 Meta Platforms and others (User conditions for a social network)

09:00

(Approximation of Laws)

Meta Platforms is the owner of the Facebook online social network. In order to use this social network, users must accept Facebook's general terms and conditions when they register, which refer to the company's policies on the use of data and cookies. Under these policies, in addition to the data that users provide directly when they register, Meta Platforms also collects data from other online services provided by the Facebook group, such as Instagram and WhatsApp.

Meta Platforms links this data to the Facebook account of the users concerned and uses it in particular for advertising purposes. The business model of this social network is based on financing through online advertising, which is tailored to its individual users. Such advertising is technically made possible by the automated compilation of detailed profiles of users of the network and online services offered at Facebook group level.

By decision of 6 February 2019, the Bundeskartellamt (Federal Competition Authority, Germany) prohibited Meta Platforms, on the one hand, from making the use of the Facebook social network by private users resident in Germany subject to the processing of their personal data in the general terms and conditions in force at the time and, on the other hand, from processing such data without their consent.

In addition, the Federal Competition Authority required the company to amend its General Terms and Conditions to make it clear that the data in question would not be collected, linked to Facebook user accounts or used without the consent of the users concerned. Finally, the authority emphasised that such consent was not valid when it constituted a condition for using the social network. It based its decision on the fact that the processing of the data in question, which did not comply with the GDPR,

constituted an abuse of Meta Platforms' dominant position on the online social networking market.

Meta Platforms appealed against this decision to the Oberlandesgericht Düsseldorf (Higher Regional Court of Düsseldorf, Germany). The Düsseldorf Higher Regional Court referred questions to the Court for a preliminary ruling because it had doubts as to whether the competition authorities could monitor the compliance of personal data processing with the requirements set out in the RGPD and as to the interpretation and application of certain provisions of that regulation.

Background Documents C-252/21

There will be a press release in this case.

Wednesday 5th July

General Court
Judgment in Case T-115/20 Puigdemont i Casamajó and Comín i Oliveres v Parliament and in Case T-272/21 Puigdemont i Casamajó and Others v Parliament

(Law governing the institutions)

The three applicants stood as candidates in the elections to the European Parliament held in Spain on 26 May 2019. On 13 June 2019 the Junta Electoral Central (Central Electoral Commission, Spain) adopted the decision proclaiming the candidates elected to Parliament in those elections, which included the first and second applicants. On 17 June 2019 the Central Electoral Commission notified Parliament of the list of candidates elected in Spain, which did not include the names of the first and second applicants.

On 20 June 2019, it notified Parliament of a decision in which it found that the first and second applicants had not taken the oath to uphold the Spanish Constitution required by Spanish electoral law , and consequently declared the seats allocated to them in Parliament to be vacant and all prerogatives that might accrue to them by virtue of their office to be suspended until they had taken that oath. On 27 June 2019, the then President of Parliament informed the first and second applicants that he was unable to treat them as future members of Parliament.

On 14 October 2019 the investigating judge of the Criminal Division of the Tribunal Supremo (Supreme Court, Spain) issued a national arrest warrant, a European arrest warrant and an international arrest warrant for the first applicant, so that he could be tried in the criminal proceedings brought against them by the VOX political party, for acts falling within the offences of rebellion, sedition and misappropriation of public funds. On 4 November 2019, similar arrest warrants were issued by the same judge

for the second and third applicants. On 13 January 2020, the President of the Tribunal Supremo (Supreme Court) notified Parliament of the request to lift the parliamentary immunity of the first and second applicants.

At the plenary sitting of 13 January 2020, Parliament took note, following the Junqueras Vies judgment, of the election to Parliament of the first and second applicants with effect from 2 July 2019, the date of the opening of the first session of the newly elected Parliament following the elections of 26 May 2019. On 16 January 2020, the Vice-President of Parliament notified the plenary of the requests for waiver of the immunity of the first and second applicants and referred them to the committee responsible, namely Parliament's Legal Affairs Committee.

On 10 February 2020, following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union on 31 January 2020, Parliament noted the election of the third applicant as a Member of Parliament with effect from 1 February 2020. On the same day, the President of the Tribunal Supremo (Supreme Court) notified Parliament of the request for the waiver of the third applicant's parliamentary immunity.

On 13 February 2020, the Vice-President of Parliament notified the plenary sitting of the request to waive the third applicant's immunity and referred it to the Committee on Legal Affairs. After hearing the applicants, the Committee on Legal Affairs adopted three reports on the requests for waiver of their immunity.

By three decisions of 9 March 2021, Parliament granted the requests for waiver of the immunity of the three applicants, who then brought an action for annulment of those three decisions before the General Court.

Background Documents T-115/20
Background Documents T-272/21

There will be one press release covering both cases.

Thursday 6th July

Judgment in Cases:
C-633/21 Bundesamt für Fremdenwesen und Asyl (Refugee who committed serious crime)
C-8/22 Commissaire général aux réfugiés and aux apatrides Asyl (Refugee who committed serious crime)
C-402/22 Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)

(Area of Freedom, Security and Justice)

These three cases concern queries by national courts with regards to the conditions

for revocation of refugee status. In particular the courts require clarification of the provision of Directive 2008/115 that authorises the Member States to revoke the status granted to a refugee in the event of a threat to their society. They also ask the Court to clarify whether Directive 2008/115 precludes a return decision from being adopted in respect of a third-country national where it has been established that the latter cannot be returned to his or her country of origin.

Background Documents C-633/21
Background Documents C-8/22
Background Documents C-402/22

There will be one press release covering these cases.

Thursday 6th July

Judgment in Case C-510/21 Austrian Airlines (First aid on board an aircraft)

(Transport)

The reference for a preliminary ruling is made in proceedings between DB, an air passenger, and Austrian Airlines, established in Austria, concerning compensation for damage caused by allegedly inadequate first aid carried out following burns suffered on a flight operated by the defendant.

On 18 December 2016, the claimant took a flight from Tel Aviv (Israel) to Vienna (Austria). During the flight, a coffee pot used to serve passengers fell off the catering trolley, causing burns to the claimant from the hot coffee. As is apparent from the decision to refer, the first aid given to the claimant caused him further injuries.

On 31 May 2019, the claimant submitted a claim for compensation in the sum of €10,196 together with an application for a declaration that the defendant was liable for all present and future damage arising from the said incident, arguing that the

defendant was liable not only for the accident but also for the inadequate first aid.

Moreover, the claim is not yet time-barred because the first aid on board does not constitute an accident within the meaning of Article 17(1) of the Montreal Convention. I In so far as the incident does not fall within the scope of that Convention, national law should be applied to the dispute in the main proceedings, providing for a longer limitation period.

The defendant contests the merits of that action, taking the view that the claimant's injuries were properly treated. In addition, the defendant requested that the claim also be dismissed on the ground that it was time-barred due to the two-year limitation period.

The court of first instance and the Court of Appeal dismissed the claim, essentially on the ground that the claim was time-barred. The appeal against the decision of the Court of Appeal is before the referring court.

Background Documents C-510/21

There will be a press release for this case.

Thursday 6th July

Opinion in Case C-122/22 P Dyson and others v Commission

(Law governing the institutions)

In the 2021 judgment under appeal, the General Court had dismissed Dyson Ltd's compensation claims (valued at € 176.1 million) for damages allegedly suffered during the period of time when a 2013 Commission delegated regulation to measure the energy efficiency levels of vacuum cleaners was in force.

Dyson had successfully contested that regulation in previous proceedings before the General Court, claiming that the standardised testing method used by the Commission placed its bagless cyclonic vacuum cleaners at a disadvantage in relation to bagged vacuum cleaners.

Indeed, in a judgment of 2018, the General Court had annulled that regulation on the ground that the testing method carried out with an empty receptacle did not reflect conditions as close as possible to actual conditions of use.

Background Documents C-122/22

There will be a press release for this case.

Week XXVIII – 10th to 14th July

Wednesday 12th July

General Court
Judgment in Case T-34/22 Cunsorziu di i Salamaghji Corsi - Consortium des Charcutiers Corses and Others v Commission

(Agriculture and Fisheries)

The names 'Jambon sec de Corse'/'Jambon sec de Corse - Prisuttu', 'Lonzo de Corse'/'Lonzo de Corse - Lonzu' and 'Coppa de Corse'/'Coppa de Corse - Coppa di Corsica' were registered as protected designations of origin (PDO) in 2014.

In 2015, the Cunsorziu di i Salamaghji Corsi - Consortium des Charcutiers Corses (hereinafter the "Consortium") applied to the French national authorities, pursuant to Regulation No 1151/2012 , to register the names "Jambon sec de l'Île de Beauté", "Lonzo de l'île de Beauté" and "Coppa de l'île de Beauté" as protected geographical indications (PGI).

In 2018, these authorities issued orders approving the corresponding specifications, with a view to forwarding them to the European Commission for approval.
The union holding the specifications for the PDOs 'Jambon sec de Corse - Prisuttu', 'Lonzo de Corse - Lonzu' and 'Coppa de Corse - Coppa di Corsica' applied to the Conseil d'État (France) to have these decrees annulled.

It argued that the term "Île de Beauté" imitated or evoked the term "Corse" and therefore introduced confusion with the names already registered as PDOs. The Conseil d'État rejected the claim on the grounds that the use of different terms and the difference in the protection afforded by a PDO and a PGI were such as to rule out the risk of confusion.

The Conseil d'État rejected this application, on the grounds, in particular, that the use of different terms and the difference in the protection conferred by a PDO, on the one hand, and by a PGI, on the other, were such as to rule out this risk of confusion.

However, in its implementing decision 2021/1879 , the Commission refused to register the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'île de Beauté' and 'Coppa de l'Île de Beauté' as PGIs. It considered, inter alia, that it was common knowledge that the name 'Île de Beauté' was a customary circumlocution univocally designating Corsica in the eyes of French consumers. The proposed names would therefore infringe the protection granted to the PDOs concerned by Regulation 1151/2012. As a result, they do not meet the conditions for eligibility for registration.

The Consortium and certain of its members brought an action against this decision before the General Court.

Background Documents T-34/22

There will be a press release in this case.

Wednesday 12th July

General Court

Judgment in Case T-8/21 IFIC Holding v Commission

(Commercial Policy)

In 2018, the United States of America withdrew from the Iran Nuclear Deal, signed in 2015 to control Iran's nuclear programme and lift economic sanctions against Iran. As a result of this withdrawal, on the basis of the Iran Freedom and Counter-Proliferation Act of 2012, the United States once again imposed sanctions on Iran and a list of specific individuals. Since that date, all persons outside the United States have been prohibited from doing business with persons on the SDN list.

Following this decision, in order to protect its interests, the EU adopted Delegated Regulation 2018/1100 amending the Annex to Regulation 2271/96 to include a reference to the Iran Proliferation and Freedom Act of 2012. It also adopted Implementing Regulation 2018/1101 laying down criteria for the application of the second paragraph of Article 5 of Regulation No 2271/96.

IFIC Holding AG is a German company whose shares are indirectly held by the Iranian state and which itself holds stakes in various German companies, in respect of which it is entitled to dividends. Clearstream Banking AG is the only authorised securities depository bank in Germany. Following IFIC's inclusion on the US SDN list in November 2018, Clearstream Banking AG suspended dividend payments to IFIC and blocked the dividends in a separate account.

On 28 April 2020, following a request for authorisation, within the meaning of the second paragraph of Article 5 of Regulation No 2271/96, from Clearstream Banking, the Commission adopted implementing decision C(2020) 2813 final, by which it authorised that bank to comply with certain US laws in relation to the applicant's securities or funds, for a period of 12 months (hereinafter "the contested authorisation").

That authorisation was subsequently renewed in 2021 and 2022 by implementing decisions C(2021) 3021 final and C(2022) 2775 final.

IFIC applied to the General Court for annulment of the decisions adopted by the Commission at the request of Clearstream Banking, which intervened in the proceedings.

Background Documents T-8/21

There will be a press release in this case.

Thursday 13th July

Judgment in Case C-376/20 P Commission v CK Telecoms UK Investments

(Competition)

On 11 May 2016, the Commission adopted a decision in which it blocked, under the Merger Regulation , the proposed acquisition of Telefónica UK (now "O2") by Hutchison 3G UK (now "Three"). Three applied to the General Court of the European Union to have this decision annulled. By judgment of 28 May 2020 , the General Court upheld the action and annulled the Commission's decision. (See Press Release 65/20).

The Commission is challenging that judgment before the Court of Justice.

Background Documents C-376/20 P

There will be a press release in this case.

Thursday 13th July

Judgment in Joined Cases C-615/20 YP and others (Lifting of immunity and suspension of a judge) & C-671/20 M. M. (Lifting of immunity and suspension of a judge)

(Principles of Community law)

Extract from AG Collins' Opinion – 15 December 2022

These requests for preliminary rulings again raise issues as to the compatibility with EU law of certain aspects of the recent reform of the Polish judicial system. They concern authorisations granted by the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) to prosecute and to suspend a judge from office, thereby preventing him or her from ruling on certain criminal cases to which he or she had been assigned.

For that purpose, the referring court asks the Court of Justice to interpret Article 2 and the second subparagraph of Article 19(1) TEU, Article 47 of the Charter of Fundamental Rights of the European Union, and the principles of primacy of EU law, sincere cooperation and legal certainty.

Should the Court decide that, as a matter of EU law, the Disciplinary Chamber could not lawfully grant those authorisations the referring court seeks to ascertain the consequences that conclusion has for the composition of the court seised of the criminal proceedings.

Background Documents C-615/20
Background Documents C-671/20

There will be a press release in this case.

Thursday 13th July

Judgment in Case C-106/22 Xella Magyarország

(Free movement of capital)

The Hungarian company Xella Magyarország, which manufactures concrete construction elements, is challenging before a Hungarian court the decision of the Hungarian Minister for Innovation and Technology prohibiting it from acquiring the Hungarian company Janes and Társa, which operates a gravel, sand and clay quarry.

Xella Magyarország is owned by a German company, which in turn is owned by a Luxembourg company, which in turn is indirectly owned by an umbrella company established in Bermuda and ultimately owned by an Irish national.

The Minister considered that Janes and Társa must be considered strategic within the meaning of Hungarian legislation establishing a foreign investment screening mechanism, which was adopted in the wake of the Covid-19 pandemic.

According to the Minister, the assumption that Janes and Társa would indirectly become the property of a company registered in a third State, namely in Bermuda, posed a longer-term risk to the security of supply of raw materials for the construction sector, particularly in the region where that company was established.

The Hungarian court asked the Court of Justice whether the foreign investment screening mechanism in question, as applied in the present case, was compatible with EU law.

Background Documents C-106/22

There will be a press release in this case.

Thursday 13th July

Judgment in Case C-134/22 G GmbH

(Social Policy)

On 28 January 2020, an employee who had worked for the German company G GmbH

since 1981 was informed that his employment contract with the company would be terminated. On 1 October 2019, insolvency proceedings were opened in respect of G GmbH and on 17 January 2020, it was decided that G GmbH would cease trading completely by 30 April 2020 at the latest and that more than 10% of the 195 employees it employed would be made redundant (including the employee concerned).
On the same 17 January 2020, the consultation procedure with the works council, acting as the employees' representative, was initiated. In the context of this consultation, the information referred to in the EU Directive on collective redundancies was communicated to the Works Council. However, no copy of this written communication was sent to the competent public authority, in this case the public employment agency in Osnabrück, Germany.

On 22 January 2020, the works council noted that it saw no possibility of avoiding the envisaged redundancies. On 23 January 2020, the public employment agency in Osnabrück was notified of the planned collective redundancies. The public employment office subsequently arranged counselling appointments for 153 employees affected by the planned redundancies.

In an action before the German courts, the employee concerned claimed that no copy of the communication sent to the works council on 17 January 2020 had been forwarded to the competent public employment agency, arguing that such forwarding constitutes a condition for the validity of the dismissal.

The Federal Labour Court, which is examining the case in Revision, considers that this omission does indeed constitute a breach of the German law transposing the EU Directive into national law. However, neither the directive nor national law provided for an explicit sanction for such a breach. In these circumstances, the Federal Court expressed doubts as to whether such a breach could also lead to nullity. Crucial to the analysis is whether the rule in question is intended to confer individual protection on workers.

The Federal Court has decided to refer this question to the Court of Justice.

Background Documents C-134/22

There will be a press release in this case.

Thursday 13th July

Judgment in Case C-265/22 Banco Santander (Reference to an official index)

(Approximation of laws)

The reference for a preliminary ruling concerns the interpretation, of the Directive concerning unfair business-to-consumer commercial practices in the internal market and of the Directive on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

That application was made in proceedings between ZR and PI and Banco Santander SA concerning the validity of the clause providing for periodic review of the interest rate applicable to a mortgage loan granted to ZR and PI by Banco Santander's predecessor in title.

Background Documents C-265/22

There will be a press release in this case.

Thursday 13th July

Opinion in Case C-382/21 P EUIPO v The KaiKai Company Jaeger Wichmann

(Intellectual Property)

In 2018, The KaiKai Company Jaeger Wichmann Gbr ("KaiKai") filed a multiple application for the registration of gymnastic and sports equipment as twelve Community designs and claimed priority. EUIPO refused the priority claim because the date of the filing of KaiKai's international application exceeded the six-month period set out in the EU legislation.

KaiKai lodged an appeal against that decision, considering, that the applicable priority period was twelve months, not six months, according to the Paris Convention. The Third Board of Appeal of EUIPO dismissed that appeal in 2019 and thus refused to recognise the right of priority in the application submitted by Kaikai.

By judgement, the General Court annulled the decision of the Third Board of Appeal of EUIPO in 2021. It considered that EUIPO had erred in applying a six-month priority period rather than a twelve-month priority period. Kaikais international application under the PCT could be characterised as an international application for a patent, not only for a utility model and that the EU-Law is silent as to the priority period arising from an application for a patent. In order to fill that legislative gap, the General Court held that account must be taken of the Paris Convention (international law).

EUIPO lodged the present appeal against the judgment of the General Court. In EUIPO's understanding, the Paris Convention does not have direct effect in the EU legal order. It claims that the General Court filled the (non-existent) gap in the EU legislation by giving direct effect to the Paris Convention. The Court is thus invited to clarify when an international agreement has direct effect and whether it can have interpretative effect if it lacks direct effect.

Background Documents C-382/21 P

There will be a press release in this case.

Thursday 13th July

Opinion in Case C-261/22 GN (Reason for refusal based on the greater interest of the child)

(Area of Freedom, Security and Justice)

A Belgian judicial authority issued a European Arrest Warrant against a woman for the execution of a sentence of five years' imprisonment. A few months later, she was arrested in Bologna, Italy. At the time of the arrest, her minor son lived with her, so the detention was replaced by house arrest to allow the child to be with the mother. The Court of Appeal of Bologna submitted a request for information from the Belgian judicial authority asking about the procedures for execution of a sentence in Belgium for mothers living with minor children.

Not having received a reply, it refused to surrender the woman since it was not certain that Belgian law recognised a system of custody similar to that of Italy. The Italian system protects the right of the mother not to be deprived of her relationship with her children and to ensure that her children receive the necessary maternal and family assistance.

The Italian Supreme Court of Cassation, hearing the appeals against the decision refusing the surrender, referred to the Court of Justice for the interpretation of the Europe Arrest Warrant Framework Decision. Namely, the Supreme Court of Cassation asked if it is possible to refuse or postpone the execution of an EAW if the requested person is a mother who lives with her minor children, when the surrender risks breaching the fundamental right of family life or the best interest of the child.

Background Documents C-261/22

There will be a press release in this case.

HEARINGS OF NOTE*

Tuesday 11th July: 09:30 – T-249/22 Ponomarenko v Council (Restrictive Measures – Ukraine)
Wednesday 12th July: 09:30 – T-313/22 Abramovich v Council (Restrictive Measures – Ukraine)
Wednesday 12th July: 09:30 – C-221/22 P Commission v Deutsche Telekom (Competition)

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