# Newsletter

**Weeks XXVIII – XXXV - Summer Recess - 10th July to 3rd September 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 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 best 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.**

## Weeks XXIX - XXXV 16th July to 31st August

**The Court is in summer recess.**
**The Newsletter will resume from week XXXVI.**

## 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.