



## Newsletter

Week XXX - XXXI: 22<sup>nd</sup> to 29<sup>th</sup> July 2024

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**Graziella  
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## Week XXX 22<sup>nd</sup> to 26<sup>th</sup> July & Week XXXI 29<sup>th</sup> July

**The Court is in summer recess.**

**The Newsletter will resume from week XXXV (29<sup>th</sup> August).**

**An exceptional session for the reading of judgments  
will be held on 29<sup>th</sup> July.**

### Monday 29<sup>th</sup> July

#### Judgment in Case C-591/21 P Ryanair and Laudamotion v Commission

*(State aid)*

On June 23, 2020, Austria notified the Commission of an aid measure in the form of a subordinated loan (convertible into a grant) of €150 million in favour of Austrian Airlines (AUA), which together with other airlines, such as Brussels Airlines, Swiss International Air Lines et Edelweiss Air, forms part of the Lufthansa group. The purpose of the measure was to compensate AUA for the damage caused from the cancellation or rescheduling of its flights due to the Covid-19 pandemic.

By [decision](#) of July 6, 2020, the Commission approved this aid.

Ryanair and Laudamotion unsuccessfully challenged the Commission's decision before the General Court of the European Union ([T-677/20](#), see also press release [125/21](#)). By its judgment dated July 14, 2021, the General Court dismissed their action. In particular, it found that the aid in question, when deducted from the subsidies granted by Germany to the Lufthansa group in the same context, did not constitute overcompensation in its favour.

Ryanair and Laudamotion appealed against the judgment of the General Court of the Court of Justice.

#### [Background Documents C-591/21 P](#)

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



constitute a restriction of competition by object. This means that the infringement is so serious that it is not necessary to examine its possible effects on the market.

Most of the participating credit institutions appealed the AdC's decision to the Portuguese Competition Court.

They claim that the exchange of information in question was not, in itself, sufficiently harmful to competition to qualify as a restriction of competition by object and therefore an examination of its effects would be required. They added that, in any event, the AdC should have taken account of the economic, legal and regulatory context surrounding that exchange.

The referring Portuguese court (Competition, Regulation and Supervision Court) asked the Court of Justice about the concept of restriction of competition by object in relation to autonomous and informal exchanges of information.

### [Background Documents C-298/22](#)

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

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### [Judgment in Case C-436/22 ASCEL](#)

*(Environment)*

The [Habitats Directive](#) was adopted to achieve an essential objective of general interest pursued by the European Union: preserving, protecting and improving the quality of the environment by helping to ensure biodiversity through the conservation of natural habitats and of wild fauna and flora.

In Spain, in accordance with the directive, the Iberian wolf populations are subject to separate protection regimes: those located south of the Duero river benefit from strict protection, whilst those located north of this river are classified as an animal species of EU interest likely to be the subject of management measures.

Under a regional law, the wolf was designated as a huntable species in north of the River Duero in Castilla y León (Spain). In 2019, the government of this autonomous community approved a plan for the local exploitation of the wolf in said areas for the 2019/2020, 2020/2021 and 2021/2022 seasons. This plan allowed a total of 339 wolves to be hunted. The Association for the Conservation and Study of the Iberian Wolf (ASCEL) appealed against this plan to the Superior Court of Justice of Castilla y León.

The Spanish court has doubts as to whether the regional law is compatible with the directive and has referred the matter to the Court of Justice.

In 2019, Spain sent a report to the Commission for the period between 2013-2018, according to which the wolf was in an "unfavourable inadequate" conservation status in the three regions it occupied in Spain (Mediterranean, Atlantic and Alpine), the first two including Castilla y León.

### [Background Documents C-436/22](#)

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

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### [Judgment in Case C-623/22 Belgian Association of Tax Lawyers and Others](#)

*(Taxation)*

[Directive 2011/16/UE](#) stipulates that all intermediaries and, failing that, the taxpayer, involved in potentially aggressive cross-border tax arrangements (which may lead to tax evasion or fraud) must be declared to the competent tax authorities (hereinafter referred to as the "obligation to declare").

In 2020, organisations of lawyers and tax advisers and the Bar Associations referred the matter to the Belgian Constitutional Court. In their view, the Belgian law transposing the EU directive should be annulled because, in their view, said infringes a number of provisions of the Charter of Fundamental Rights of the European Union and general principles of EU law.

The Belgian Constitutional Court has decided to refer questions to the Court of Justice for a preliminary ruling.

### [Background Documents C-623/22](#)

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

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### [Judgment in Joined Cases C-771/22 HDI Global and C-45/23 MS Amlin Insurance](#)

*(Approximation of laws)*

In 2020, due to the Covid-19 pandemic, travellers in Austria and Belgium cancelled their package holidays to Gran Canaria and the Dominican Republic, respectively. After their tour operators went bankrupt, they asked their insurers to reimburse them for the payments made.

The insurers refused to make these reimbursements on the grounds that they would only insure in the event that the trip is not carried out due to the organiser's insolvency. However, in the present cases, the trips were cancelled by the travellers,

and the organiser's insolvency occurred at a later date.

The Austrian and Belgian courts hearing these cases have asked the Court of Justice to interpret the [Package Travel Directive](#). This directive stipulates that Member States must ensure that organisers provide a guarantee for the reimbursement of all payments made by travellers if the services concerned are not carried out due to the organisers' insolvency.

### [Background Documents C-771/22](#)

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

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### [Judgment in Case C-774/22 FTI Touristik \(Foreign element\)](#)

*(Area of freedom, security and justice – Judicial cooperation in civil matters)*

A consumer living in Nuremberg (Germany) entered into a contract for a trip abroad with tour operator FTI Touristik, which has its registered office in Munich (Germany).

The consumer considered that he had not been sufficiently informed about entry conditions and the necessary visas and therefore, brought an action for damages against FTI Touristik before the Nuremberg District Court.

FTI Touristik argued that that court lacked territorial jurisdiction. In particular, the [Brussels Ia Regulation](#) on jurisdiction does not apply where both parties are domiciled in the same Member State.

The District Court of Nuremberg asked the Court of Justice for guidance.

### [Background Documents C-774/22](#)

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

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### [Judgment in Case C-14/23 Perle](#)

*(Area of freedom, security and justice – Immigration policy)*

In August 2020, a Cameroonian national applied for a visa to study in Belgium. The Belgian government refused the application on the grounds that the applicant's study plan was inconsistent. It considered that her application was in fact for purposes other than studying. The young woman contested this decision before the Aliens Litigation Council (Belgium), which subsequently rejected her appeal. In January 2021, she appealed to the Council of State (Belgium).

The Council of State asked the Court of Justice whether a Member State that intends to reject an application for a residence permit or 'student' visa on the basis of EU law, namely [Directive \(EU\) 2016/801](#), is obliged to expressly provide for such an option in its domestic law, i.e. by having necessarily transposed the ground for refusal set out in the directive in question.

By the same token, it questions the Member States' ability to verify the non-EU-country national's desire and intention to pursue studies, to combat the risks of misuse of the residence permit or "student" visa.

Finally, the Council of State asked the Court about the procedural arrangements for appealing against a decision rejecting an application.

In this regard, the Cameroonian national referred to the fact that the Council for Alien Law Litigation could only annul a rejection decision, without being able to take a new decision: in her view, this lack of a power of reversal was contrary to EU law.

### [Background Documents C-14/23](#)

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

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### [Judgment in Case C-119/23 Valančius](#)

*(Provisions governing the institutions)*

Mr Virgilijus Valančius was appointed Judge of the General Court of the European Union in 2016. Following the expiry of his term of office in 2019, the Lithuanian government published a call for applications and established a procedure for the selection of a candidate for this post. In accordance with this procedure, a working group composed mainly of independent experts drew up a merit list of candidates, sorted in descending order according to the score obtained.

The highest-ranked candidate on the merit list was Mr Valančius. By decision of May 4, 2022, the Lithuanian Government proposed the person in second place on the merit list as a candidate for the post of judge at the General Court.

Following an unfavourable opinion on that candidate by the "255 Committee", the Lithuanian Government, by decision of April 19, 2023, proposed the person appearing third on the merit list, namely Mr Saulius Lukas Kalėda, as a candidate for that post.

By a decision of September 15, 2023, taken following a favourable opinion of the 255 Committee, the Governments of the Member States appointed Mr Kalėda Judge of the General Court.

Mr Valančius asked the Vilnius Regional Administrative Court (Lithuania) to annul the Lithuanian Government's two nomination decisions. Having doubts as to the impact of European Union law on national procedures for proposing candidates for the office of judge of the General Court, that court referred the matter to the Court of Justice.

### [Background Documents C-119/23](#)

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

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### [Judgment in Case C-202/24 Alchaster](#)

*(Charter of Fundamental Rights – Area of freedom, security and justice – Judicial cooperation in criminal matter)*

On November 26, 2021, the District Judge of the Magistrates' Courts of Northern Ireland (UK) issued four warrants for the arrest of MA (anonymised) in respect to four offences involving terrorism, alleged to have been committed between 18<sup>th</sup> and 20<sup>th</sup> July 2020. By judgment of October 24, 2022 and orders dated October 24 and 7 November 2022, the High Court (Ireland) ordered MA's surrender to the UK, while refusing him leave to appeal to the Court of Appeal (Ireland).

By decision of January 17, 2023, the Supreme Court granted MA leave to appeal against the above-mentioned High Court's (Ireland) judgement and orders

MA submitted that his surrender is incompatible with the principle of the legality of criminal offences and penalties.

The [EU-UK Trade and Cooperation Agreement](#) (TCA) provides that surrender mechanisms apply between the UK and the Member States. It considers that, pursuant to the applicable Irish legislation and to [Council Framework Decision 2002/584/JHA](#) on European Arrest Warrant, the UK must be treated as if it were a Member State.

The referring court noted that, if MA was to be surrendered to the UK and sentenced to imprisonment, his right to conditional release would be governed by the relative UK legislation adopted after the alleged commission of the offences subject to criminal proceedings. The regime permitting conditional release in Northern Ireland was amended with effect from April 30, 2021.

Prior to this change, a person convicted of certain terrorism-related offences was eligible for automatic parole after serving half of the sentence. Under the regime applicable from that date, the conditional release of such a person will have to be approved by a specialised authority and may only take place after the person concerned has served two thirds of the sentence.

The compatibility of UK legislation in question with the [European Convention on Human Rights \(ECFHR\)](#) has already been reviewed by UK courts and MA's argument of a risk of breach of rights was dismissed in that context.

The referring court wonders whether it was possible to reach a similar conclusion as regards a risk of breach of the [Charter of Fundamental Rights of the European Union](#). Since the Court of Justice has not yet ruled on the implications of Article 49 of the Charter as regards an amendment to the provisions on conditional release, the Irish Court Supreme Court referred the case.

### [Background Documents C-202/24](#)

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

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### [Judgment in Case C-318/24 PPU Breian](#)

*(Charter of Fundamental Rights – Area of freedom, security and justice – Judicial cooperation in criminal matter – Police cooperation)*

This case concerns a European arrest warrant (EAW) issued on the basis of [Framework Decision 2002/584](#) for the enforcement of a custodial sentence in Romania. On December 17, 2020 the Court of Appeal of Braşov, Romania, the referring court, issued a EAW against P.P.R. to enforce a prison sentence imposed on him.

On June 28, 2022, P.P.R. was arrested in Paris (France) and surrender proceedings were initiated against him. Said proceedings were terminated by a judgment of the Court of Appeal of Paris, France dated November 29, 2023. The executing judicial authority in France has refused, in a decision that has become final, to surrender the requested person (hereinafter the "sentenced person").

According to the referring court, the Paris Court of Appeal based its refusal on the existence of a risk of breach of the fundamental right to a fair trial by an independent and impartial tribunal established in advance by law, enshrined in the second paragraph of [Article 47](#) of the Charter.

The Paris Court of Appeal also considers that there are systemic or general failings in Romania with regard to the swearing in of judges, and in particular it doubts whether two of the three judges who handed down the prison sentence actually took the oath.

The Paris Court of Appeal also took into consideration the decision of deletion from Interpol's database of the international wanted persons notice for P.P.R., on the grounds that the data concerning him did not comply with Interpol's rules on the processing of personal data. The Paris Court of Appeal considered that this decision highlighted the existence of serious concerns about the existence of political elements



in the general context and about respect for the principles of fundamental rights during the proceedings against P.P.R. in Romania.

P.P.R. was arrested in Malta pursuant to the EAW issued against him. On the same day, the Romanian court responsible for enforcing the custodial sentence referred a question to the Court of Justice for a preliminary ruling seeking clarification of the scope of the decision rejecting the EAW.

The main issues are the effect that the *res judicata* effect of the refusal decision – preventing from bringing a claim once that particular claim got to a final judgment in some previous lawsuit – has on the other Member States and doubts concerning the oath.

The referring court also wondered about the scope of an Interpol decision relied on by the French executing judicial authority, and about the possibility of intervening itself in the proceedings before the executing judicial authority or, at the very least, of approaching the Commission.

In the meantime, another executing judicial authority in Malta, where the sentenced person had again been arrested, was considering whether to surrender him to Romania.

The Maltese executing judicial authority asked the referring court for further information, stating that P.P.R. had relied on the judgment of the Paris Court of Appeal.

As the Maltese court of first instance had refused to execute the EAW because of doubts about the conditions of detention in Romania, the Romanian court referred a new question to the Court.

This question concerned, on the one hand, cooperation with the Maltese court and, on the other, the level of protection of fundamental rights applied by the Maltese court.

**[Background Documents C-318/24](#)**

**We would like to wish a happy summer to all our readers.**

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