



Newsletter

Weeks XLI – XLII: 9th to 20th October 2023

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Week XLI – 9th to 13th October

Thursday 12th October

[Judgment in Case C-286/22 KBD Verzekeringen](#)

(Approximation of Laws)

A person riding an electrically-assisted bicycle on the public highway near Bruges (Belgium) was involved in a serious accident whereby she was hit by a car and gravely injured. She died a few months later.

During the subsequent legal proceedings to establish civil liability, a dispute arose over the legal classification of the electric bicycle: should it be considered a "vehicle"? In this case, the bike's motor only provided pedalling assistance, including the usage of the "turbo" function.

Moreover, this function could only be activated by using muscle power (by pedalling, walking with the bike or pushing it). The legal classification of the electric bicycle is crucial in determining whether or not the victim was the driver of a "self-propelled vehicle" and could claim compensation as a "weak road user" under Belgian law.

Given that the concept of "vehicle" in the relevant Belgian legislation is derived from a European directive on civil liability, the Belgian *Cour de Cassation* decided to refer a question to the Court of Justice on the interpretation of this concept.

[Background Documents C-286/22](#)

There will be a press release for this case.

Week XLII – 16th to 20th October

Wednesday 18th October

General Court

[Judgment in Case T-402/20 Zippo Manufacturing and others v Commission](#)

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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(Commercial Policy)

In January 2020, the United States increased customs duties on imports of certain aluminium and steel products. The Commission took the view that this measure was designed to protect domestic industry from foreign competition. In response, from 8th May 2020 and until 31st December 2021, it imposed additional customs duties on imports into the EU of certain products originating in the United States, in particular lighters.

According to Zippo Manufacturing, it is the only known manufacturer of metal mechanical storm lighters in the United States. A significant proportion of its lighters, which it distributes under the Zippo brand, are imported into the EU. Taking the view that the increase in customs duties on its lighters had, inter alia, infringed the principle of sound administration and in particular its right to a prior hearing, Zippo brought an action before the General Court for annulment of the decision.

[Background Documents T-402/20](#)

There will be a press release for this case.

Thursday 19th October

[Judgment in Case C-655/21 G.ST. T. \(Proportionality of fine in case of counterfeiting\)](#)

(Intellectual Property)

G. ST. T. is the owner of a sole proprietorship engaged in the sale of clothing.

In 2016, officers of the Bulgarian Ministry of the Interior carried out an inspection in a commercial premises rented by that company in the municipality of Nesebar (Bulgaria) and seized goods offered for sale there. The court-ordered expert report showed that the signs affixed to those goods were similar to registered trademarks and estimated the total value of those goods at BGN 1,404,590 (approximately € 718,000) 'as originals' and BGN 80,201 (approximately € 41,000) 'as imitations'.

The Burgas District Prosecutor's Office found that G. ST. T. had thus, without the consent of the proprietors of the exclusive rights, made use of trademarks, in the course of trade, which were the subject of those exclusive rights and that that activity had caused 'significant harmful consequences', with the result that the person concerned was referred to the District Court of Nesebar, on a charge of aggravated infringement under Article 172b(2) of the Criminal Code.

None of the injured legal persons has brought a claim for damages against G. ST. T. or

brought a civil action in the proceedings. The national court states, in substance, that, in the context of the option available to the Member States, in accordance with recital 28 in the preamble to Directive 2004/48, to provide for criminal penalties in the event of infringement of intellectual property rights, the Republic of Bulgaria has introduced Article 172b(1) and (2) of the Criminal Code.

The referring court asks whether legislation and case-law, under which the damage suffered by the rights holder is one of the constituent elements of the criminal offences comply with the rules on damage caused by the unlawful exercise of intellectual property rights introduced by Directive 2004/48.

[Background Documents C-655/21](#)

There will be a press release for this case.

Thursday 19th October

[Judgment in Case C-660/20 Lufthansa CityLine](#)

(Social Policy)

The parties are in dispute as to whether the applicant is entitled, as a part-time worker, to a higher level of remuneration – referred to as *Mehrflugdienststundenvergütung* (remuneration for additional flying duty hours).

The defendant is a limited liability company incorporated under German law. It runs an air carrier that operates short-haul and long-haul flights. The applicant has been employed by the defendant as a pilot and first officer since 2001.

The applicant has been working part-time since 2010, with his working hours reduced to 90% of full-time working hours. In accordance with an agreement between management and the works council, the applicant is deployed as a full-time worker without any reduction in the number of flying duty hours to be worked. However, he receives an additional 37 days of leave per year. His basic remuneration, including service increments, is reduced by 10%.

According to the collective wage agreements for the defendant's cockpit crew that are applicable to the employment relationship, one component of the working time that is remunerated by means of the basic pay is the flight duty time. A worker receives remuneration for additional flying duty hours on top of the basic remuneration if he or she has worked a certain number of flying duty hours in a month and has thereby exceeded ("triggered") the thresholds for the higher level of remuneration. For that

purpose, the provisions of the collective agreements establish three different hourly

rates, incrementally increasing in amount, which are higher than the hourly pay determined on the basis of the basic remuneration. These are to be used to calculate remuneration if the worker has worked 106, 121 and 136 monthly flying duty hours on short-haul flights and has thereby exceeded the "trigger" thresholds. Lower trigger thresholds of 93, 106 and 120 flying duty hours per month apply to long-haul flights. The collective agreements make no provision, in the case of workers who work part-time, for those thresholds to be reduced according to their part-time percentage.

In order to be able to determine the applicant's monthly remuneration for additional flying duty hours, the defendant calculates an individual trigger threshold which takes into account the applicant's part-time work. For flying duty hours which the applicant works in excess of his individual trigger threshold, he receives the hourly pay determined on the basis of his basic remuneration. It is only if his flight duty time exceeds the trigger thresholds applicable to full-time workers that he receives a higher level of remuneration.

By his action, the applicant seeks payment from the defendant of the difference between the remuneration already paid and the higher level of remuneration for additional flying duty hours on the basis – in accordance with the principle of pro rata temporis – of trigger thresholds that have been lowered according to his part-time factor.

The Arbeitsgericht (Labour Court) upheld the action. The Landesarbeitsgericht (Higher Labour Court) dismissed it. By his appeal on a point of law, for which leave was granted by the Higher Labour Court, the applicant continues to pursue his objective of having the defendant ordered to pay the difference in remuneration.

[Background Documents C-660/20](#)

There will be a press release for this case.

HEARINGS OF NOTE*

Court of Justice

Tuesday 17th October: 09.30 – [C-633/22 Real Madrid Club de Futbol](#) (Area of Freedom, Security and Justice)

General Court

Tuesday 10th October: 09:30 – Joined cases [T-258/22 BSW - management company of "BMC" holding v Council](#) and [T-259/22 Mostovdrev v Council](#) (Restrictive Measures)

Tuesday 10th October: 14:30 – [T-233/22 Islentyeva v Council](#) (Restrictive Measures)

Wednesday 11th October: 09:30 – [C-14/23 - Perle](#) (Area of freedom, security and justice – Immigration policy)

Wednesday 11th October: 14.30 – [T-205/22 Naass and Sea Watch v Frontex](#) (Provisions governing the institutions – Access to documents)

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Thursday 12th October: 09:30 – [T-536/22 PAN Europe v Commission](#) (Agriculture and fisheries)

Tuesday 17th October: 09.30 – [T-354/22 Bindl v Commission](#) (Provisions governing the institutions – Data Protection)

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