



Newsletter

Weeks XLII – XLIII: 16th to 27th October 2023

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Week XLII – 16th to 20th October

Wednesday 18th October

General Court

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

(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.

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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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 have 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.

Week XLIII – 23rd to 27th October

Wednesday 25th October

General Court

[Judgment in Case T-136/19 Bulgarian Energy Holding and others v Commission](#)

(Competition)

Bulgarian Energy Holding (BEH), a company wholly owned by the Bulgarian state, has several subsidiaries operating in the energy sector, including Bulgargaz and Bulgartransgaz. The former is the country's public gas supplier. Bulgartransgaz manages and operates the gas transmission network. It also controls the country's only natural gas storage facility, located underground at Chiren.

Bulgaria's gas supply depended almost entirely on imports from Russia. It was transported via Ukraine and then Romania via three gas pipelines: Romanian transit pipelines 1, 2 and 3, administered by Transgaz, the Romanian gas transmission system operator.

Since 1974, an intergovernmental agreement between Bulgaria and Romania has guaranteed the conditions for operating Romanian gas pipeline 1. In 2005, a new agreement was concluded under which Bulgargaz was granted exclusive use of the pipeline until the end of 2011, before being extended until 2016. In return, the Bulgarian company paid Transgaz a fixed annual fee, independent of the capacity actually used.

In 2010, Overgas, a player in the Bulgarian gas supply market, lodged a complaint with the European Commission against BEH and its two subsidiaries for infringing EU competition rules. Following in-depth investigations, in a decision dated 17 December 2018, the Commission found that these companies had abused their dominant position on the market for the supply of gas in Bulgaria. Between 30 July 2010 and 1 January 2015, the infringement consisted of a refusal to grant third parties access to several gas infrastructures. As a result, it imposed a fine of approximately € 77 million on the companies concerned.

Following this decision, BEH and its subsidiaries brought an action before the General Court of the European Union seeking annulment of the decision or, failing that, a reduction of the fine.

[Background Documents T-136/19](#)

There will be a press release for this case.

Thursday 26th October

[Judgment in Case C-307/22 FT \(Copy of medical records\)](#)

(Principles, objectives and tasks of the Treaties)

A patient received dental treatment but suspected that his dentist had made mistakes. He asked the dentist for a copy of his medical records. The dentist required his patient to bear the costs of providing a copy of the medical records, as provided for under German national law.

Taking the view that he was entitled to a free copy, the patient brought the matter before the German courts. In this context, the German Federal Court of Justice referred questions to the Court of Justice for a preliminary ruling, since the German court considered that the resolution of the dispute depended on the interpretation to be given to the provisions of European Union law, namely the General Data Protection Regulation (GDPR).

[Background Documents C-307/22](#)

There will be a press release for this case.

Thursday 26th October

[Judgment in Case C-238/22 LATAM Airlines Group](#)

(Transport)

When a passenger was unable to check in for the flight from Frankfurt am Main to Madrid that she had booked for the following day, she contacted LATAM Airlines. LATAM Airlines informed her that it had transferred her to a flight that had taken place the previous day without informing her. It also informed her that her reservation for the return flight, which was due to take place more than two weeks later, had been blocked on the grounds that she had not taken the outbound flight. The passenger asked LATAM Airlines for lump-sum compensation of €250 because she had been denied boarding on the return flight.

The German court, to which the passenger appealed, asked the Court of Justice whether such compensation presupposes, under the regulation on air passenger rights, that the passenger presented himself at check-in despite the fact that the airline had informed him in advance that he would not be allowed to board. The court also wishes to know whether the airline can, as in the case of flight cancellations, exempt itself from the obligation to pay compensation if it informs the passenger of the denied boarding sufficiently in advance, i.e. at least two weeks before the

scheduled departure time of the flight.

[Background Documents C-238/22](#)

There will be a press release for this case.

Thursday 26th October

[Opinion in Case C-670/22 Staatsanwaltschaft Berlin \(EncroChat\)](#)

(Area of Freedom, Security and Justice)

A European Investigation Order (EIO) is an EU instrument that enables cross-border cooperation in criminal investigations. It is regulated by the EIO Directive. In this reference, the Court is invited for the first time to interpret that directive in a situation where an EIO was issued for the transfer of evidence already in the possession of another State.

For the purposes of a criminal investigation in Germany, the Public Prosecutor's Office, Frankfurt, Germany issued several EIOs requesting the transfer of evidence gathered during a joint French-Dutch criminal investigation of EncroChat users. EncroChat was an encrypted telecommunications network offering its users near-perfect anonymity.

The present reference results from one of the criminal proceedings initiated before the Landgericht Berlin (Regional Court, Berlin, Germany) against a person based on intercepted telecommunications data, transferred based on the abovementioned EIOs. The question that arose before the referring court is whether the EIOs were issued in breach of the EIO Directive, and if so, what consequences that may have for the use of such evidence in the criminal procedure.

[Background Documents C-670/22](#)

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)

Wednesday 25th October: 09.30 – [C-601/22 WWF Österreich and Others](#) (Environment)

Newsletter

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

General Court

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

Monday 23rd October: 09.30 – [T-734/22 Pumpyanskiy v Council](#) (Restrictive Measures)

Wednesday 25th October: 09.30 – [T-116/22 Belavia v Council](#) (Restrictive Measures)

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