



Newsletter

Week XXII - XXIII: 27th May – 7th June 2024

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**Graziella
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Week XXII 27th to 31st May

Wednesday 29th May

General Court

[Judgment in Cases T-200/22 and T-314/22 Poland v Commission](#)

(Law governing the institutions)

In February 2021, the Czech Republic brought an action against Poland before the Court of Justice alleging that the extension and prolongation of lignite extraction activities at the Turów mine (Poland) infringed EU law (see case [C-121/21](#) Czech Republic v Poland (Mine de Turów)).

In the course of the proceedings, the Court ordered Poland (see Order [C-121/21 R](#), May 21, 2021 – [press release 89/21](#)), by way of interim measures, to immediately cease extraction activities at the mine until the delivery of the judgment closing the case. On September 20, 2021, since Poland had not complied, the European Commission ordered it to pay a daily penalty of €500,000 until it complied with the interim measure.

Poland has not paid the sums due in this respect. For this reason, in five consecutive decisions, the Commission informed it that it was offsetting this debt against various claims held by Poland against the EU. The principal amount thus recovered is €68,500,000.

Poland asks the Court to annul the offsetting decisions. It relies, in particular, on the amicable agreement, which it concluded in February 2022 with the Czech Republic, resulting in the removal of the case from the Court's register. The conclusion of this agreement means that the pecuniary effects of the measures ordered by the Court have ceased to apply retroactively.

The compensation paid by the Commission would therefore be unlawful.

[Background Documents T-200/22](#)

[Background Documents T-314/22](#)

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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There will be one press release for these cases.

Wednesday 29th May

General Court

[Judgment in Case T-58/23 Supermac's v EUIPO - McDonald's International Property \(BIG MAC\)](#)

(Intellectual, industrial and commercial property – Trade marks)

Supermac's and McDonald's, an Irish and American fast food chain respectively, are involved in a dispute concerning the use of the word sign BIG MAC registered in the EU.

McDonald's registered the word sign in 1996 to cover a number of goods and services.

In 2017, Supermac's applied for revocation on the grounds that the mark had not been put to genuine use in the EU for an uninterrupted period of five years. The European Union Intellectual Property Office (EUIPO) had established the revocation of rights in respect of certain goods and services.

However, it confirmed McDonald's right to use the word sign BIG MAC for certain goods and services, including meat and chicken sandwiches, as well as for services provided or connected with the operation of restaurants and other catering establishments or infrastructures for consumption and "drive-in".

Supermac challenged EUIPO's decision before the General Court.

[Background Documents T-58/23](#)

There will be a press release for this case.

Wednesday 29th May

General Court

[Judgment in Case T-395/22 Hypo Vorarlberg Bank v SRB \(Ex-ante contributions 2022\)](#)

(Economic and monetary policy)

The Austrian credit institution Hypo Vorarlberg Bank is challenging before the General Court of the European Union the lawfulness of the Decision SRB/ES/2022/18 of the Single Resolution Board (SRB) of 11 April 2022 on the calculation of the 2022 *ex-ante* contributions to the Single Resolution Fund (SRF), in so far as that decision concerns

Hypo Vorarlberg Bank.

According to the Bank, that decision was unlawful because it was based on rules, which were, in turn, unlawful.

Moreover, in the contested decision, Hypo Vorarlberg Bank states that SRB exceeded an annual ceiling imposed by the applicable legislation, particularly [Regulation \(EU\) No 806/2014](#), establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund.

In particular, the *ex-ante* contributions of all the institutions authorised in the territories of all the Member States participating in the Single Resolution Mechanism (SRM) are not to exceed 12.5% of the financial means that should be available in the SRF at the end of 2023.

[Background Documents T-395/22](#)

There will be a press release for this case.

Thursday 30th May

[Judgment in Joined Cases C-662/22 | Airbnb Ireland and C-667/22 | Amazon Services Europe, Case C-663/22 | Expedia, Joined Cases C-664/22 | Google Ireland and C-666/22 | Eg Vacation Rentals Ireland and Case C-665/22 Amazon Services Europe](#)

(Freedom to provide services – Internal market & Principles – Consumer protection)

In Italy, providers of intermediation services and online search engines, such as Airbnb, Google, Amazon and Vacation Rentals, are subject to certain obligations.

In particular, they must join a register, periodically submit a document on their economic situation, provide a series of detailed information to an administrative authority and pay a financial contribution. Penalties are in place for failure to meet these obligations.

The companies concerned are challenging these obligations before an Italian court.

In their view, this increase in administrative burdens is contrary to EU law, namely the principle of freedom to provide services (see in particular [Directive 2000/31/EC on electronic commerce](#) and [Regulation \(EU\) 2019/1150](#) on promoting fairness and transparency for business users of online intermediation services).

In addition, all these companies - except Expedia, which is established in the United

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States - argue that they are primarily subject to the legal regime of the Member State in which they are established (in this case, Ireland or Luxembourg).

As a result, they consider that Italian law cannot impose other requirements on them relating to access to an information company services activity.

Against this background, the Italian court decided to refer the matter to the Court of Justice.

[Background Documents C-662/22 and C-667/22](#)

[Background Documents C-664/22 and C-666/22](#)

[Background Documents C-665/22](#)

There will be one press release for these cases.

Thursday 30th May

[Judgment in Case C-400/22 Conny](#)

(Approximation of laws – Consumer protection)

In Germany, a tenant of a flat whose monthly rent exceeded the maximum authorised limit, asked a debt collection company to reclaim overpayments of rent from his landlord.

He placed the order via the company's website, where, before clicking on the order button, he ticked a box accepting the terms and conditions, which stated that the tenant had to pay a fee of one third of the annual rent saved if the service provider's attempts to enforce his rights were successful.

In the ensuing dispute between the service provider and the landlord, the latter argued that the tenant had not validly commissioned the service provider.

The order button did not contain the words "order with obligation to pay" (or similar wording), as required by the Consumer Rights Directive ([Directive 2011/83/EU](#)).

According to the lessor, this requirement also applies where the lessee's obligation to pay does not arise from the order alone, but still requires the successful enforcement of his rights.

The German court hearing this case asked the Court of Justice about this.

[Background Documents C-400/22](#)

There will be a press release for this case.

Thursday 30th May

[Opinion in Case C-23/23 Commission v Malta \(Derogation for research purposes\)](#)

(Environment)

In the European Union, wild finches are protected by the [Birds Directive](#). The primary objective of the Directive is the preservation of all bird species diversity, meaning that the deliberate killing or capture of birds and the use of large scale or non-selective methods to do so is forbidden.

The Directive, however, prescribes specific circumstances whereby the general prohibition may be derogated from.

When Malta joined the EU, the relative Accession Treaty provided for a transition period to gradually phase out the activities of bird trapping, prohibited under the Directive.

After successfully banning finch trapping, **in 2014** Malta adopted the recreational derogation regime, provided for under the Directive, to enable the trapping of seven species of wild finches as a recreational activity.

In 2018, the Court in *Commission v Malta* ([C-557/15](#)) declared that this regime failed to meet the respective derogation conditions and consequently Malta repealed it.

In **2020** Malta adopted the Finches Project under [Framework Regulations 2020](#), which provided for the live capture of the same seven species of wild finches, this time under the derogation for purposes of research.

The Commission viewed this as simply a 'cover up' to enable to continuation of the previous recreational regime.

On **December 3, 2020**, the Commission sent Malta **a letter of formal notice**. Malta replied on the **February 3, 2020**, claiming that the Project is indeed justified by the derogation since it serves research purposes, namely that of answering the research question; “where do finches that migrate over Malta during post-nuptial (autumn) migration come from?”.

On the **June 9, 2021**, the Commission sent its **reasoned opinion** expressing the same grievances as in the formal notice. Following discussions between the two parties, Malta repealed Framework Regulations 2020 and on **October 19, 2021** adopted [Framework Regulations 2021](#).

The Commission views both Framework Regulations as constituting the same conduct and therefore treats them collectively as one measure.

On **December 20, 2023**, the Commission lodged its application requesting the Court of Justice to declare that Malta has failed to fulfil its obligation under the Birds Directive.

On **April 21, 2023**, Malta filed its defence requesting the Court to dismiss the action on the basis of inadmissibility or, in the alternative, as unfounded.

An oral hearing was held on the **March 7, 2024** in Luxembourg.

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

There will be an Info Rapide for the case (available on request).

Week XXIII 3rd to 7th June

Wednesday 5th June

General Court

[Judgment in case T-134/21 Malacalza Investimenti and Malacalza v ECB](#)

(Economic and monetary policy – European Central Bank (ECB))

Banca Carige is a large credit institution based in Italy, listed on the stock exchange and subject to direct prudential supervision by the European Central Bank (ECB) since 2014.

Between 2015 and 2019, the ECB has adopted several intervention measures as part of this supervision.

Malacalza Investimenti and Mr Malacalza are shareholders in the bank. Mr Malacalza had also been a member and vice-chairman of the bank's board of directors.

They have brought an action before the General Court of the European Union, seeking compensation for the damage they believe they have suffered as a result of various actions taken by the ECB in connection with the exercise of its supervisory functions over Banca Carige.

In their view, the ECB's conduct and measures are contrary, in several respects, to the duties associated with its supervisory functions, in particular as regards safeguarding the sound and prudent management of banks, and in breach of the principles of protection of property, proportionality, sound administration, equality, impartiality and equal treatment, transparency, good faith and the protection of legitimate expectations.

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They request that the ECB be ordered to pay Malacalza Investimenti €870,525,670 and Mr Malacalza €9,546,022 and to order the ECB to take a number of measures of inquiry.

[Background Documents T-134/21](#)

There will be a press release for this case.

Thursday 6th June

[Judgment in Case C-441/21 P Ryanair v Commission](#)

(Competition – State aid)

In July 2020, Spain notified the European Commission of an aid scheme to create a solvency support fund. The beneficiaries were strategic Spanish companies (non-financial) that were experiencing temporary difficulties as a result of the Covid-19 pandemic.

The scheme provided for the adoption of various recapitalisation measures. It sought to remedy the serious disruption to the Spanish economy, taken as a whole, in its diversity and with a view to sustainable economic development.

The budget, financed by the State, has been set at €10 billion until June 30, 2021.

By decision of July 31, 2020, the Commission declared the notified scheme compatible with the internal market.

The Irish airline Ryanair brought an action before the General Court of the European Union against the Commission's decision.

This action was dismissed by judgment of 19 May 2021 ([T-628/20](#), see also [press release 83/21](#)).

Ryanair has appealed to the Court of Justice against the judgment of the General Court.

[Background Documents C-441/21](#)

There will be a press release for this case.

Thursday 6th June

[Judgment in Case C-547/22 INGSTEEL](#)

(Approximation of laws)

In 2013, during the award of a public contract for the reconstruction, modernisation and construction of sixteen football stadiums, the Slovak Football Association excluded a bidding association, which included the company INGSTEEL spol s.r.o., on the grounds that it had not met the requirements of the contract notice concerning, in particular, its economic and financial capacity.

This exclusion was annulled in court and a new decision was adopted in 2018 by the Slovak Public Procurement Regulatory Authority, ordering the contracting authority to annul the exclusion of the bidding association from the public procurement procedure in question.

In the meantime, this procedure having been closed by the conclusion of a framework agreement with the only remaining bidder, INGSTEEL brought an action for damages for the loss suffered as a result of the unlawful decisions against it.

In particular, compensation was claimed for a lost opportunity, even though Slovak law does not distinguish between different categories of compensable loss, so that the loss of an opportunity falls within the category of loss of profit.

Bratislava II District Court, Slovakia asks the Court of Justice for guidance on how to interpret [Directive 89/665/EEC](#) on the rules relating to the application of review procedures to the award of public supply and public works contracts.

In particular, the referring Court is asking whether the EU law requires Member States to admit a claim in damages for loss of opportunity by a tenderer unlawfully excluded from a procedure for the award of a public contract, where that procedure has concluded and a contract entered into with the successful tenderer.

The answer to that question requires the Court of Justice to determine whether the laws of the Member States regulate the award of damages to which Directive 89/665/EEC refers. If so, the Court must examine the consequences of the requirement that those laws must comply with the principle of effectiveness.

[Background Documents C-547/22](#)

There will be a press release for this case.

HEARINGS OF NOTE*

Court of Justice

Wednesday 29th May 2024: 09:30 – Case [C-18/23 Dyrektor Krajowej Informacji Skarbowej \(UCITS management method\)](#) (Taxation)

Monday 3rd June 2024: 14.30 – Case [C-247/23 Deldits](#) (Principles, objectives and tasks of the Treaties – Data protection)

Wednesday 5th June 2024: 09:30 – Case [C-2/23 FL und KM Baugesellschaft and S](#) (Competition)

Thursday 6th June 2024: 09:30 – Case [C-393/23 Athenian Brewery and Heineken](#) (Area of freedom, security and justice – Judicial cooperation in civil matter)

General Court

Thursday 30th May 2024: 09:30 – Case [T-524/23 Boehringer Ingelheim Pharma v EUIPO - Glenmark Pharmaceuticals Europe \(Inhaler shape\)](#) (Intellectual, industrial and commercial property – Trade marks)

Tuesday 04th June 2024: 09:30 – Case [T-732/22 Deripaska v Council](#) (Restrictive measures – Ukraine)

Thursday 6th June 2024: 09:30 – Case [T-23/23 Noyan Abr Arvan v Council](#) (Restrictive measures – Iran)

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

