



Newsletter

Week XXXVI - XXXVII: 2th to 13th September 2024

Contact us

@ENDesk

Jacques René
Zammit
Press Officer
+352 4303 3355

Monica Pizzo
Assistant
+352 4303 3366

Desk Email
Press.ENDesk@curia.europa.eu

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All times are 9:30
unless otherwise
stated.

Week XXXVI 2nd to 6th September

Tuesday 3rd September

[Judgments in Joined Cases C-611/22 P Illumina v Commission and C-625/22 P Grail v Commission](#)

(Competition – Concentrations between undertakings)

On September 21, 2020, Grail LLC, a US company developing blood tests for the early detection of cancer, and Illumina Inc, a US company specialising in genetic analysis solutions, made public a proposal for the acquisition of sole control of Grail by Illumina. As the concentration did not have a European dimension due to the small turnover of the companies, it was not notified to the Commission. Nor was it notified in the Member States of the European Union or in the States party to the European Economic Area (EEA) Agreement because it did not meet the relevant national thresholds.

Having received a complaint about this merger, the Commission invited the Member States to submit any requests they might have for the Commission to assess this project, in accordance with the [Merger Regulation](#), given that it might affect trade between the Member States and threaten to significantly affect competition on their territory.

The Commission received a request to this effect from the French competition authority, which was also joined by the Greek, Belgian, Norwegian, Icelandic and Dutch competition authorities. In its Illumina v Commission judgment ([T-227/21](#), see also [press release n. 123/22](#)), the General Court Illumina's action against the decisions by which the Commission granted the main application and the requests for joinder.

Illumina and Grail have each appealed against this judgment before the Court of Justice.

[Background Documents C-611/22 P and C-625/22 P](#)

There will be one press release for these cases.

Don't forget to check the diary on our website for details of other cases.

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Wednesday 4th September

General Court

[Judgments in Cases T-381/15 RENV II and T-509/21 IMG v Commission](#)

(Financial provisions)

In 2013, the European Commission entrusted the International Management Group (IMG) with the management of certain development cooperation funds in accordance with the 'joint management' modality, now known as 'indirect management'. This method, provided for in the EU's financial regulations, allows international organisations to implement funds from the EU budget.

International Management Group - Infrastructure for Bosnia and Herzegovina (IMG-IBH), now headquartered in Belgrade (Serbia), was established on November 25, 1994 to provide a dedicated entity for governments and international organisations involved in the reconstruction of Bosnia and Herzegovina. Since then, this entity has gradually expanded its activities in the fields of reconstruction and development.

However, on December 16, 2014, the Commission suspended its relations with IMG due to doubts about the entity's status as an international organisation and, in a decision dated May 8, 2015, informed it of its intention not to conclude any further delegation agreements under indirect management with it until its legal status had been definitively clarified.

From 2015 IMG has been challenging the Commission's decisions of December 16, 2014 and May 8, 2015 before the General Court of the European Union and the Court of Justice, giving rise to several years of legal proceedings (see judgments [T-29/15](#), [T-381/15](#) of the General Court, as well as judgments [C-183/17 P](#) and [C-184/17 P](#) and [C-619/20 P](#) and [C-620/20 P](#) of the Court of Justice. In this last ruling, the Court referred Case T-381/15 RENV back to the General Court for a ruling on IMG's claim for compensation for the material damage allegedly caused by the decision of May 8, 2015).

In particular, following the Court's annulment of these decisions, on June 8, 2021 the Commission adopted a new decision refusing to recognise IMG's status as an international organisation with retroactive effect to December 16, 2014.

IMG is contesting this latest decision and is seeking compensation for the material and non-material damage that would have resulted from it, as well as for the financial damage that it attributes to the decision of May 8, 2015.

[Background Documents T-381/15 RENV II](#)

[Background Documents T-509/21](#)

There will be one press release for these cases.

Thursday 5th September

[Judgment in Case C-109/23 Jemerak](#)

(External Relations – Common Foreign and Security Policy – Restrictive Measures Ukraine)

A notary in Berlin (Germany) refused to authenticate a contract of sale for a flat in Berlin belonging to a Russian company.

The European Union had introduced the general ban on providing legal advice services in 2022 to step up pressure on Russia to end its war of aggression against Ukraine (see [Council Regulation \(EU\) 2022/1904](#) amending Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine).

The Berlin Regional Court asked the Court of Justice guidance on this matter.

[Background Documents C-109/23](#)

There will be a press release for this case.

Thursday 5th September

[Judgment in Case C-603/22 M.S. and Others \(Procedural rights of a minor\)](#)

(Area of Freedom, Security and Justice – Judicial cooperation in criminal matters – Fundamental Rights)

During the criminal trial before a Polish court against three minors prosecuted for breaking into the buildings of a disused holiday centre, it was revealed that the suspects had been questioned by the police in the absence of a lawyer.

Neither they nor their parents were informed of their rights or of the procedure before the first interrogation. The lawyers appointed by the judge are now requesting that these suspects' previous statements be removed from the file as evidence.

Questioning the effectiveness of the procedural guarantees for minors during the pre-trial phase of criminal proceedings, the Polish court addressed the Court of Justice. It wondered, in particular, whether the national rules comply with the European Union law ([Directive \(EU\) 2016/800](#) on procedural safeguards for children who are suspects or accused persons in criminal proceedings) and what consequences it should draw

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from any incompatibility.

[Background Documents C-603/22](#)

There will be a press release for this case.

Thursday 5th September

[Judgment in Joined Cases C-498/22, C-499/22 and C-500/22 Novo Banco and Others](#)

(Freedom of establishment – Consumer protection)

In August 2014, the Bank of Portugal adopted measures to resolve the Portuguese credit institution Banco Espírito Santo SA (BES), which was experiencing serious financial difficulties. This led to the creation of the bridge bank Novo Banco. The assets, liabilities and other non-current assets of BES were transferred to Novo Banco. However, certain liabilities were excluded from this transfer and remained with BES.

In October 2014, the Bank of Spain published information on the partial transfer of the activities of BES to Novo Banco as regards Spain. It was stated that Novo Banco would continue the ordinary activities of BES without interruption and that this measure was deemed to be a reorganisation measure within the meaning of [Directive 2001/24/EC](#) on the reorganisation and winding-up of credit institutions.

In December 2015, the Bank of Portugal adopted two decisions to amend and clarify its decision of August 2014 in relation to BES liabilities that had not been transferred to Novo Banco.

A number of customers of Novo Banco's Spanish branch considered that Novo Banco assumed liabilities relating to various contracts for financial products and services that they had previously entered into with BES Spain.

Faced with Novo Banco's refusal to assume these responsibilities, the customers initiated legal proceedings.

In this context, the Spanish Supreme Court has doubts about the obligation of the Spanish courts to recognise the effects of the reorganisation measures adopted by the Bank of Portugal, as these measures were not subject to the publication provided for in the mentioned EU Directive.

The Spanish Supreme Court asked the Court of Justice for guidance as to interpret Directive 2001/24/EC as well as Council Directive 93/13/EEC on unfair terms in consumer contracts, read in the light of the Charter of Fundamental Rights of the

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European Union and of the principles of legal certainty and the protection of legitimate expectations to clarify the impact of those reorganisation measures on various contracts for financial products and services.

Background Documents C-498/22

There will be one press release for these cases.

Thursday 5th September

Opinion in Case C-233/23 Alphabet and Others

(Competition – Dominant position)

Google (referring here to three undertakings: Google Italy Srl, the Italian subsidiary of Google LLC, in turn owned by Alphabet Inc.) is the author and developer of Android OS, an open-source operating system for Android mobile devices.

In 2015, Google launched Android Auto, an app for mobile devices with an Android operating system that enables users to access certain apps on their smartphone through a car's integrated display. Third-party developers can create their versions of their own apps that are compatible with Android Auto by using templates provided by Google.

Enel X, forms part of the Enel Group, and provides electric car charging services.

In May 2018, it launched JuicePass, an app which offers a set of features for charging electric vehicles. In September 2018, Enel X asked Google to make JuicePass compatible with Android Auto.

Google refused, stating that, in the absence of a specific template, media and messaging apps were the only third party apps compatible with Android Auto. Google justified its refusal on the basis of security concerns and the need to allocate the resources necessary for the creation of a new template.

The Italian Competition Authority found Google's conduct to be in breach of EU competition rules. It held that in obstructing and delaying the publication of JuicePass on Android Auto, Google had abused its dominant position.

Google challenged this decision before the Italian Council of State that referred the issue to the Court of Justice.

Background Documents C-233/23

There will be a press release for this case.

Week XXXIV 9th to 13th September

Tuesday 10th September

[Judgment in Case C-465/20 P Commission v Ireland and Others](#)

(Competition – State aid)

Tax rulings make it possible for undertakings to apply to the tax authority for an advance decision concerning the tax treatment to which they will be subject.

In 1991 and 2007, Ireland issued two tax rulings in relation to two companies of the Apple Group (Apple Sales International – ASI and Apple Operations Europe – AOE), incorporated under Irish law but not tax resident in Ireland. The rulings approved the method by which ASI and AOE proposed to determine their chargeable profits in Ireland deriving from the activity of their Irish branches.

In 2016, the European Commission declared incompatible with the internal market the aid that Ireland had allegedly granted to the Apple group through two advance tax rulings, known as ‘tax rulings’, issued in 1991 and 2007 by its tax authorities in favour of ASI and AOE. It ordered Ireland to recover that aid ([Commission Decision \(EU\) 2017/1283](#)).

The tax rulings concerned the determination of the taxable profits of ASI and AOE in Ireland, in accordance with the proposals made in this respect by representatives of the Apple group. According to the Commission's estimates, Ireland granted €13 billion in illegal tax advantages to Apple.

In 2020, the General Court annulled the Commission's decision, finding that the Commission had not shown that there was an advantage deriving from the adoption of the tax rulings (see judgment [T-778/16](#), Ireland v Commission and [T-892/16](#), Apple Sales International and Apple Operations Europe v Commission; see also press release [No 90/20](#)).

The Commission lodged an appeal with the Court of Justice, asking it to set aside the judgment of the General Court.

[Background Documents C-233/23](#)

There will be a press release for this case.

Tuesday 10th September

[Judgment in Joined Cases C-29/22 P KS and KD v Council and Others and C-44/22 P Commission v KS and Others](#)

(External relations – Common foreign and security policy – Fundamental rights)

In 2008, the European Union set up a civilian rule of law mission, known as Eulex Kosovo, tasked in particular with investigating crimes and people who disappeared or were killed in Kosovo in 1999 during the conflict there.

In 2009, the EU set up a Human Rights Monitoring Commission to examine complaints of human rights violations committed by Eulex Kosovo in the exercise of its mandate.

Following complaints lodged by KS and KD, between November 2015 and October 2016, the Control Commission concluded that several fundamental rights had been violated.

In March 2017, the Commission closed the cases in question, while noting that the head of Eulex Kosovo had only partially implemented the recommendations it had made.

KS and KD have taken the Council, the European Commission and the European External Action Service to the EU General Court.

They are seeking compensation for the damage they believe they have suffered as a result of various acts and omissions relating, in particular, to the investigations carried out during the Eulex Kosovo mission.

In December 2017, the Court declared itself manifestly incompetent to hear this action.

In June 2021, KS and KD filed an application for measures of inquiry, seeking the production of the full version of Eulex Kosovo's plan of operation (see Order of December 14, 2017, KS/Conseil and Others [T-840/16](#)).

In November 2021, the General Court dismissed this application, also on the grounds that it clearly lacked jurisdiction to hear it (see Order of November 10, 2021 KS et KD/Conseil and Others [T-771/20](#)).

The Court of Justice has been called to rule on these appeals.

[Background Documents C-29/22 P and C-44/22 P](#)

There will be a press release for this case.

Tuesday 10th September

[Judgment in Case C-351/22 Neves 77 Solutions](#)

(External Relations – Common Foreign and Security Policy – Restrictive Measures Ukraine)

Neves 77 Solutions SRL (Neves), a Romanian company specialising in brokering aviation products, acted as an intermediary in a transaction between a Ukrainian company, SFTE Spetstechnoexport, and an Indian company for the sale of 32 radio stations, 20 of which were manufactured in Russia.

In July 2019, the Romanian authorities informed Neves that the brokerage activities related to these products were covered by the ban on providing intermediation services related to military equipment to an operator in Russia, adopted by the European Union in response to Russia's actions destabilising the situation in Ukraine ([Council Decision 2014/512/CFSP](#) and successive amendments).

In August 2019, Neves received nearly €3 million from SFTE for the provision of its intermediation services. In May 2020, the Romanian authorities fined Neves 30,000 lei (approximately €6,000) and confiscated the entire amount it had received from SFTE on the grounds that the provision of its brokerage services was in breach of the aforementioned prohibition.

The Bucharest District Court asked the Court of Justice whether that prohibition applied to a situation where the equipment concerned had never been imported into the European Union and whether the penalties imposed for breach of that prohibition were compatible with the property rights of the undertaking concerned.

[Background Documents C-351/22](#)

There will be a press release for this case.

Tuesday 10th September

[Judgment in Case C-48/22 P Google and Alphabet v Commission \(Google Shopping\)](#)

(Competition – Dominant position)

By [decision](#) of June 27, 2017, the Commission found that Google had favoured, on its general search results page, the results of its own product comparator over those of competing product comparators.

Google presented the search results of its product comparator in the first position and highlighted them in the "Shopping Units" with attractive visual and textual

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information. In contrast, search results from competing product comparators only appeared in a lower position, as a blue link.

The Commission concluded that Google had abused its dominant position on the market for general Internet search services and on the market for specialised product search services, and imposed a fine of €2,424,495,000, for which Alphabet, as Google's sole shareholder, was jointly and severally liable to pay €523,518,000.

Google and Alphabet challenged the Commission's decision before the General Court of the European Union. By judgment of November 10, 2021 ([T-612/17](#), see also press release [No 197/21](#)), the General Court dismissed the action and confirmed the fine. However, the General Court found that it had not been established that Google's practice had had even potential anti-competitive effects on the general search market. Consequently, it annulled the Commission's decision insofar as it found an infringement of the prohibition on abuse of a dominant position also in relation to that market.

Google and Alphabet then appealed to the Court, asking the Court to set aside the judgment of the General Court in so far as it dismissed their appeal and to annul the Commission's decision.

[Background Documents C-48/22 P](#)

There will be a press release for this case.

Wednesday 11th September

General Court

[Judgment in Case T-494/22 NSD v Council](#)

(External Relations – Common Foreign and Security Policy – Restrictive Measures Ukraine)

NKO AO National Settlement Depository (NSD) is a company incorporated under Russian law as a licensed depository, providing securities archiving and custody services as well as a central depository. It also provides financial services, in particular as a non-bank credit institution licensed to provide bank settlement services.

In June 2022, NSD was included on the list of legal entities subject to the restrictive measures adopted by the European Union following Russia's aggression against Ukraine, and its funds were frozen according to [Council Decision \(CFSP\) 2022/883](#) amending Decision 2014/145/CFSP and [Council Implementing Regulation \(EU\) 2022/878](#) implementing Regulation (EU) No 269/2014.

The Council's reasons for listing NSD state, among other things, that it is the main

custodian of Russian securities, has access to the international financial system, and is recognised as a systemically important financial institution playing an essential role in the functioning of the Russian financial system, hence directly or indirectly enabling the Russian government to carry out its activities and policies and to mobilise its resources.

By virtue of the maintenance acts adopted in March and September 2023 ([Council Decision \(CFSP\) 2023/572](#) and [Council Implementing Regulation \(EU\) 2023/571](#)), the Council extended the measures taken in respect of NSD until March 15, 2024.

NSD asked the General Court of the European Union to annul the acts by which it was included on the list of persons subject to restrictive measures.

[Background Documents T-494/22](#)

There will be a press release for this case.

Wednesday 11th September

General Court

[Judgment in Case T-671/19 Qualcomm v Commission \(Qualcomm – predatory pricing\)](#)

(Competition – Dominant position)

Qualcomm is an American company founded in 1985, active in cellular and wireless technologies. Qualcomm's chips are sold (and its system software licensed) to companies that use them to equip mobile phones, tablets, laptops, data modules and other electronic consumer goods.

On June 30, 2009, the UK company Icera lodged a complaint with the European Commission against Qualcomm, revised and updated on April 8, 2010, on the basis of which the Commission began its investigation.

In 2012, the intervener, the US company Nvidia, which had acquired Icera in May 2011, provided additional information, incorporating the complaint and making allegations of predatory pricing against Qualcomm.

Between June 2010 and July 2015, the Commission sent several requests for information to Qualcomm, Icera or Nvidia and other players in the baseband chips sector. In the following years, the Commission completed its investigation by sending additional requests for information, issuing statements of objections and holding hearings.

On July 18, 2019, the Commission adopted the contested decision imposing a fine on Qualcomm amounting to €242 042 000 (see [summary](#) of Commission Decision of 18 July 2019).

The Commission defined the relevant market as that for stand-alone integrated baseband chips compatible with Universal Mobile Telecommunications System (UMTS) technology.

It found that Qualcomm held a dominant position on this market worldwide, at least between January 1, 2009 and December 31, 2011.

It also found that Qualcomm had abused its dominant position by supplying, during that period, certain quantities of some of its UMTS chips to two of its main customers, Huawei and ZTE, at prices below its costs, with the aim of eliminating Icera, its main competitor at the time.

Qualcomm asks the General Court to annul or, in the alternative, substantially reduce the amount of the fine imposed.

[Background Documents T-671/19](#)

There will be a press release for this case.

Wednesday 11th September

General Court

[Judgment in Case T-386/19 CQ v Court of Auditors](#)

(Law governing the institutions)

CQ, as a member of the European Court of Auditors, was reimbursed for various expenses and provided with a company car and a driver.

The European Anti-Fraud Office (OLAF) was informed following information obtained by the Court of Auditors concerning a number of serious irregularities attributed to this member, which resulted in potentially undue expenditure being charged to the EU budget.

Following an investigation, OLAF concluded that there had been a number of abuses of the Court of Auditors' resources in connection with activities unrelated to the QC's duties, as well as the passing on of confidential information and the existence of conflicts of interest.

Following OLAF's investigation, the Court of Auditors adopted a decision establishing

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the existence of a claim against CQ and ordering its recovery.

CQ paid the sum demanded by the Court of Auditors, but at the same time applied to the General Court of the European Union for annulment of the decision and for compensation for the non-material damage suffered.

[Background Documents T-386/19](#)

There will be a press release for this case.

Wednesday 11th September

General Court

[Judgment in Case T-793/22 TU v Parliament](#)

(Staff Regulations of Officials and Conditions of Employment of other servants)

TU, an accredited parliamentary assistant at the European Parliament, reported cases of harassment and financial irregularities involving an MEP.

After requesting protection as an informant, he was relieved of his duties. His contract was not renewed. He challenged this decision, as well as the implicit refusal to recognise his status as an informant and to grant him additional protection to the measure of discharge from his duties.

TU also claimed compensation of €200,000 for breach of the rules protecting whistleblowers and the confidentiality of his identity.

The Parliament rejected these claims.

TU then brought the case before the General Court of the European Union.

[Background Documents T-793/22](#)

There will be a press release for this case.

Wednesday 11th September

General Court

[Judgments in Cases T-644/22 Timchenko and Timchenko v Council and T-635/22 Fridman and Others v Council](#)

(External Relations – Common Foreign and Security Policy – Restrictive Measures Ukraine)

The names of Elena Timchenko and those of Gennady Timchenko, Mikhail Fridman, Petr Aven and German Khan have been included on the lists of persons, entities and bodies subject to restrictive measures adopted by the Council of the European Union in the context of Russia's invasion of Ukraine.

In view of the increasing complexity of the systems that make it possible to evade this system of penalties and prevent its implementation, on July 21, 2022 the Council adopted amending [Regulation \(EU\) 2022/1273](#) laying down obligations to declare funds and cooperate with the competent authorities. Failure to comply with these obligations will be treated as circumventing the freezing of funds.

In practical terms, the aim is to prevent the use of complex legal and financial arrangements which are likely to make it more difficult for the competent national authorities to identify the funds or economic resources subject to restrictive measures, if not easier to circumvent the measures (Judgment in Case [T-644/22](#)).

The parties concerned applied to the General Court of the European Union for the annulment of these obligations to declare their funds or economic resources before September 1, 2022 and to cooperate with the competent national authorities.

They consider that such obligations were not included in the penalty measures adopted by the Council from 2014: in their view, they did not therefore constitute measures necessary for their implementation.

In particular, they consider that the Council Regulation constitutes a misuse of powers because the adoption of the obligations in question should fall within the implementing powers of the Member States.

[Background Documents T-644/22](#)

[Background Documents T-635/22](#)

There will be one press release for these cases.

Thursday 12th September

[Judgment in Case C-557/23 SPAR Magyarország](#)

(Agriculture and Fisheries)

In February 2022, in the context of the COVID-19 pandemic, Hungary regulated the marketing of six basic products (certain types of sugar, wheat flour, sunflower oil, pork and poultry meat, and milk) by government decree.

From November 2022, due to the war in Ukraine, the decree was amended and two more products were added to the list, namely eggs and potatoes.

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The government decree remained in force until July 31, 2023.

Under the terms of the government decree, distributors who had already marketed these products at an earlier date were required, on pain of a fine, to offer for sale a predefined quantity - based firstly on the average daily quantity offered for sale during a reference period and secondly on the quantity of the products in question in stock during that reference period – at a regulated price.

In May 2023, the Hungarian authorities imposed a fine on the retailer SPAR Magyarország, finding that, in one of its sales outlets, it had not complied with the daily stock quantities for five products covered by the decree.

SPAR brought proceedings before the court in Szeged (Hungary) to have the authorities' decision annulled.

Having doubts about the compatibility of the government decree with the [Common organisation of the markets \(CMO\) Regulation](#) and in particular with the principle of free determination of selling prices for agricultural products on the basis of free competition, the Hungarian court referred the matter to the Court of Justice.

[Background Documents C-557/23](#)

There will be a press release for this case.

HEARINGS OF NOTE*

Court of Justice

Tuesday 03rd September 2024: 09:30 – Joined Cases

[C-244/24 and C-290/24 Kaduna and Abkez](#) (Area of Freedom, Security and Justice –

Asylum policy) ([streamed on Curia](#))

Thursday 12th September 2024: 09:30 – Case [C-395/23 Anikovi](#) (Area of Freedom, Security and Justice – Judicial cooperation in civil matters)

General Court

Wednesday 04th September 2024: 14:00 – Case [T-284/23 Rotenberg v Council](#) (Restrictive measures – Ukraine)

Monday 09th September 2024: 09:30 – Cases [T-95/23 RWE Supply & Trading v ACER](#) and [T-96/23 Uniper Global Commodities v ACER](#) (Energy)

Tuesday 10th September 2024: 09:30 – Case [T-483/22 Sanofi v Commission](#) (Public health)

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Friday 13th September 2024: 09.30 – Joined Cases [T-362/21 Telly v Commission](#) and [T-363/21 Česká asociace satelitních operátorů v Commission](#) (State aid)