



European Law - News

March 2024



Content:

- **Banking law:** „Asset/liability method“ for early repayment compensation for residential mortgage loan agreements complies with European law (ECJ, judgement of 14 March 2024, C-536/22, VR Bank Ravensburg-Weingarten eG)
- **State aid law / Combined Heat and Power (CHP):** General Court takes the side of Germany and denies a State aid character of KWKG surcharges (judgement of 24 January 2024, T-409/21)
- Developments in the **semiconductor sector ("European Chips Act")**
- Truck cartel: ECJ, judgement of 1st February 2024, C-251/22 P (Scania and others)
- **Distance selling of medicinal products:** ECJ, judgement of 29 February 2024, C-606/21 (Doctipharma)
- **And in brief:** Miscellaneous, in particular on State aid law, banking law, data protection law, design law, AI, BREXIT and arbitration law

(1) **Banking law: ECJ, judgement of 14 March 2024, C-536/22 (MW, CY ./ VR Bank Ravensburg-Weingarten eG)**

In this landmark judgement, the ECJ approved the so-called „asset/liability method“ for early repayment compensations in the case of consumer mortgage loan agreements under European law. The question of the extent to which such a calculation within the framework of § 502 BGB violates EU Directive 2014/17 on consumer residential property loan agreements was highly controversial in Germany. The ECJ has now had the opportunity to comment on the requirements of European law in a request for a preliminary ruling by the Landgericht Ravensburg in a legal dispute between two consumers and VR Ravensburg-Weingarten. Accordingly, in the event of early repayment of the loan, the associated loss of profit and financial loss of the bank

can also be taken into account when calculating the early repayment compensation, provided that the compensation is fair and objective, that no penalty is imposed on the consumer and that the compensation does not exceed the financial loss. From the point of view of EU law, it is not necessary to take into account how the lender actually uses the amount repaid early.

(2) State aid law / Combined Heat and Power (CHP): General Court, judgement of 24 January 2024, T-409/21 (Federal Republic of Germany ./ European Commission)

In a landmark ruling on 24 January 2024, the European General Court upheld Germany's action against the European Commission. The Commission's State aid decision C(2021) 3918 final of 3 June 2021 was declared null and void. In this decision, the Commission had approved various amendments to the German CHP Act (KWKG) notified by Germany – possibly as a precautionary measure [see European Law – News, May 2023 edition].

Germany had challenged this decision before the General Court, inter alia, in so far as the promotion of the generation of CHP electricity in new, modernised and retrofitted high-efficiency CHP plants and other individually specified measures are regarded as State aid. For background understanding, it is important to note that the German CHP Act (KWKG) system has two levels in the electricity supply chain: The first level concerns the relationship between the operators of CHP plants and the grid operators; level 2 concerns the relationship between the grid operators and their customers. At level 1, the respective grid operator is legally obliged to pay financial subsidies to the eligible operators of CHP plants. The grid operators can then pass on the financial burden to their customers at level 2, but they are not legally obliged to do so.

At this aforementioned level 1, the Commission assumed the existence of State aid. The General Court, on the other hand, denied this, as did the Federal Republic of Germany, inter alia, because in order for funds to be regarded as "State resources" within the meaning of Art. 107 (1) TFEU, they must be raised by means of a tax or other compulsory levy and administered and distributed in accordance with the law. These amounts may only be used for the purpose of granting an advantage to the beneficiaries. However, this is not the case: the amounts are not paid from State funds. The payments made by the grid operators to the operators of the CHP plants would not provide any information about the origin of the funds. It remains to be seen whether the Commission will appeal against the decision and whether the ECJ will confirm this view and other additional lines of argument in the judgement at first instance.

(3) Developments in the field of semiconductors ("European Chips Act")

In the field of semiconductors, which will play a key role in artificial intelligence in the future, Europe should not suffer the same fate as in the solar industry, where Asia has been the market

leader in recent years. European legislators are therefore keen to promote an international leadership role for European companies in the semiconductor sector. To this end, it enacted the "European Chips Act" (Regulation (EU) 2023/1781 establishing a framework for measures to strengthen the European semiconductor ecosystem) and the Regulation on the Joint Undertaking for Chips (Regulation (EU) 2023/1782), which came into force on 21 September 2023.

In the meantime, the European Commission has established the intended "Joint Undertaking for Chips", which is – inter alia – to set up pilot plants. Now it is a question of the further implementation of the multi-billion euro project: companies can apply for the status of an "integrated production facility" or an "open EU foundry", which should bring with it various advantages: In State aid law, this is to be taken into account as a positive balancing element in the assessment, authorisation procedures are to be accelerated and access to pilot plants is to be granted as a priority. To this end, the Commission has now published a „Draft Guidance on the application for an undertaking to obtain the status of integrated production facility and open production foundry“. However, in the event of a crisis, "integrated production facilities" and "open EU foundries " may be obliged to prioritise orders for crisis-relevant products.

(4) Truck cartel: ECJ, judgement of 1st February 2024, C-251/22 P (Scania and others ./ Commission)

In its judgement of 1st February 2024, the ECJ confirmed the first-instance judgement of the General Court of 2nd February 2022 (T-799/17) and upheld an antitrust fine of €880.52 million imposed on Scania by the European Commission. This was based on the Commission's finding that three Scania companies had participated in agreements to restrict competition in the market for medium and heavy trucks in the European Economic Area.

Scania had initially participated in a settlement procedure under the Regulation on EU antitrust rules of procedure (Regulation (EC) 773/2004 as revised), which enables the parties involved in antitrust proceedings to recognise their liability and in return obtain a reduction of the fine imposed. When Scania did not submit a request for a settlement, the same Commission team as before continued the investigation. The ECJ did not consider this to call into question the impartiality of the Commission without any other indications.

The ECJ also did not agree with Scania that the General Court should not have assumed that the geographical scope of its behaviour in Germany extended to the entire territory of the EEA. Furthermore, the Commission was also not required to prove that each of the practices complained of constituted an infringement of its own.

(5) **Distance selling of medicinal products: ECJ, judgement of 29 February 2024, C-606/21 (Doctipharma SAS ./ Union des Groupements de pharmaciens d'officine (UDGPO), Pictime Coreyre)**

In response to preliminary questions referred by the Cour d'appel de Paris, the ECJ had to deal with legal issues relating to a website-based service. This consisted of bringing together pharmacists who had subscribed to the service and customers for the sale of non-prescription medicines via pharmacy websites. The ECJ considered this to be an "information society service" within the meaning of the relevant EU law. If, on the basis of the characteristics of the service itself, the service provider is to be regarded as a seller without being authorised to sell medicinal products, the Member State in which it is established may prohibit the provision of this service. The situation is different, however, if the service provider, without being authorised to sell medicinal products, limits itself to bringing sellers and customers together by providing a service of its own which is independent of the sale. This in turn would have to be decided by the courts of the Member States. In the latter case, the Member States may not prohibit such a service on the grounds that the service provider is involved in e-commerce in medicinal products without having the status of a pharmacist.

(6) **And in brief: Miscellaneous**

- **State aid law:** General Court, judgements of 28 February 2023, T-7/19 (Scandlines Danmark and Scandlines Deutschland./ Commission), T-364/20 (Denmark ./ Commission) and T-390/20 (Scandlines Danmark and Scandlines Deutschland./ Commission): The General Court dismisses actions for allegedly unlawful State aid with regard to a fixed link across the Fehmarn Belt.
- **Banking law:** Opinion of Advocate General Medina of 18 January 2024, Caixabank e.a., C-450/22: Originating from Spanish proceedings, the Advocate General comes to the conclusion that minimum interest rate clauses („floor clauses“) in mortgage loan agreements can be reviewed in the context of a collective action. The reference point in EU law is the Unfair Terms Directive (Directive 93/13/EEC).
- **GDPR:** Opinion of Advocate General Pikamäe of 22 February 2024, C-693/22 (I. sp. z o. o. ./ M. W.): The Advocate General considers it possible that a company's database containing personal data may be sold in the context of enforcement proceedings, taking into account the right to property and the right to the protection of personal data, even if the persons concerned by that data have not consented to it. In his opinion, the data processing falls under Art. 6 para. 1 subpara. 1 lit. e) GDPR, according to which the data processing is lawful if it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

- **Artificial intelligence:** On 13 March 2020, the European Parliament approved the European "AI Act" by a large majority, which is also intended to set global standards. Among other things, it is intended to create key points for the handling of chat GPT. The parliamentary decision was preceded by years of discussions about the extent to which AI should be regulated by legal requirements and whether regulations stand in the way of further technical progress.
- **Design law:** General Court, judgment of 8 March 2024, T-647/22 (Puma ./ EUIPO - Handelsmaatschappij J. Van Hilst BV): The General Court dismisses an action brought by Puma against the EU Intellectual Property Office, which had declared a Community design for sport shoes registered for Puma invalid. The singer Rihanna had previously worn shoes with a prior design having the same features as the registered design.
- **BREXIT / Arbitration law / State aid law:** ECJ, judgement of 14 March 2024, C-516/22 (Commission ./ United Kingdom): The ECJ found that the Supreme Court of the United Kingdom seriously compromised the EU legal order by allowing the enforcement of an arbitration award during the BREXIT transition phase, even though the European Commission had prohibited Romania from paying compensation due to unauthorised State aid.

Contact (Legal notice on the website: <https://www.haver-mailaender.de/en/impressum>)



Rechtsanwalt

Dr. Thomas M. Grupp

Maître en droit (Aix-Marseille III)

Tel.: +49 (0) 711/22744-66

tg@haver-mailaender.de