



European Law - News

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(1) **Satellite and Cable Directive 93/83/EEC: ECJ, Judgment of 25 May 2023, C-290/21 (AKM): Broadcasting Member State principle for satellite package providers also in the case of cross-border satellite retransmission of programmes**

In a judgment, delivered on 25 May 2023, the European Court of Justice had to rule on a preliminary question referred by the Austrian Supreme Court in third instance **concerning the interpretation of Art. 1 para. 2 lit. b) of the European Satellite and Cable Directive**. According to the EJC, this provision must be interpreted as follows: Where a satellite package provider is required to obtain, for the communication to the public by satellite in which it participates, the authorisation of the holders of the copyright and related rights concerned, that authorisation must be obtained **only in the Member State in which the programme-carrying signals are introduced into the chain of communication leading to the satellite**.

(2) **Antitrust law / data protection law: ECJ, judgment of 04 July 2023, C-252/21 (Meta Platforms and others ./ Bundeskartellamt): Examination of abuse of a dominant**

position also with regard to the GDPR

The starting point of the decision by the Grand Chamber on 4 July 2023 were questions referred to the ECJ by the Higher Regional Court of Düsseldorf. These arose from a legal dispute as to whether the German Bundeskartellamt, even if not acting as a supervisory authority within the meaning of the General Data Protection Regulation (GDPR), was entitled **to prohibit the processing of certain personal data in the General Terms of Use of the social network Facebook**.

According to the ECJ, a competition authority of an EU Member State can find in the context of the examination of an abuse of a dominant position by an undertaking, that undertaking's general terms of use relating to the processing of personal data and the implementation thereof are not consistent with Article 102 TFEU. However, the ECJ requires that such finding is necessary to establish the existence of such an abuse. Additionally, it explicitly recalls the competition authorities' duty to cooperate sincerely with the GDPR supervisory authorities.

(3) Data protection law: Adequacy Decision of the European Commission of 10 July 2023 regarding the level of data protection EU - USA

On 10 July 2023, the European Commission issued the long hoped-for adequacy decision in business circles with regard to data exchange between the EU and the USA. It recognises that the US ensures an **adequate level of protection for personal data comparable to the EU**. This is important if data is to be transferred from the EU to the US without additional data protection measures. If the Commission has decided that the third country in question offers an adequate level of protection, a transfer of personal data to the third country may be carried out under Article 45(1) and (3) of the GDPR without such a transfer requiring a special authorisation. Less far-reaching solutions (Safe Harbor, Privacy Shield) have been considered insufficient by the ECJ in the past. However, it is to be expected that here, too, the ECJ will be called on, which will then ultimately have to decide whether the adequacy decision is to be considered in conformity with EU law. Until then, legal certainty is greater than in the past, but not yet absolute.

(4) State aid law: ECJ, judgment of 24 May 2023, T-268/21 (Ryanair v. Commission): Invalid State aid decision for subsidies in favour of Italian airlines

The ruling of the European Court of Justice of 24 May 2023 on State aid law is very remarkable from a formal point of view: The European Commission's subsidy decision in favour of COVID-related aid measures for certain airlines with Italian operating licences was not declared null and void because it should not have been issued at all in terms of content, but because the **Commission had not sufficiently justified in it why no formal investigation procedure was**

to be initiated. As a consequence, competitors have a good chance of overturning such State aid decisions from a purely formal point of view.

(5) Sanctions law (Iran): General Court, judgment of 12 July 2023, T-8/21 (IFIC Holding ./ Commission): Commission authorisation for Clearstream Banking AG to comply with US sanctions against Iran

After withdrawing from the nuclear deal with Iran in 2018, the US re-imposed sanctions on Iran and certain individuals (**Specially Designated Nationals and Blocked Persons, “SDN“**). Even persons not subject to US jurisdiction were again prohibited from having business relations with such SDN. In order to protect EU businesses and its own interests, the EU reacted by adopting Delegated Regulation 2018/1100. EU nationals resident in the EU and legal persons incorporated in the EU are prohibited from complying with US laws having extraterritorial effects. An exception to this is stated for cases in which the European Commission authorises such behaviour. This is possible if non-compliance with the foreign Acts would seriously harm the interests of persons covered by Regulation (EC) No 2271/96 or of the EU.

The Commission had granted such authorisation for 12 months to **Clearstream Banking AG**, which no longer paid dividends to **IFIC Holding AG**, a German company whose shares are indirectly held by the Iranian State. Instead, the dividends were blocked on a special account. IFIC objected to this. The General Court dismissed the action.

(6) Consumer protection law: ECJ, judgment of 17 May 2023, C-97/22 (DC): Services without remuneration and compensation for loss of value if a consumer has not been properly informed on his right of withdrawal

If service contracts are concluded with consumers outside the business premises of a company, information about an existing right of withdrawal must be provided. This is required by EU law as well as the relevant national law. However, if a consumer withdraws such a service contract within the revocation period, he is released from any obligation to pay. This means according to the ECJ that the service provider **must not only waive his remuneration despite the service having been provided, but also compensation for lost value** if a return is not possible. The withdrawal period is not only 14 days as in the case of proper information, but it is extended by a whole year due to failure to provide information. Hence, the ECJ attaches **overriding importance to consumer protection**, which is a particular risk for craftsmen.

Even if the ECJ did not have to rule explicitly on this point, the corresponding evaluations can also apply when service contracts are concluded with a consumer by means of distance communication, be it by fax, e-mail or telephone, unless exceptions apply.

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

- **EU trade marks: General Court, judgment of 24 May 2023, T-2/21 (Emmentaler Switzerland ./ EUIPO):** The term "Emmentaler" is descriptive and cannot be protected as an EU trade mark. As it describes a cheese variety for the relevant German public, the term also does not enjoy protection as an EU collective mark.
- **EU trade marks: General Court, judgment of 07 June 2023, T-735/21 (Aprile and Commerciale Italiana ./ EUIPO):** The Batman logo with the representation of a bat in an oval round was attacked. The applicant did not succeed in providing sufficient evidence that the corresponding EU trade mark would not have had any distinctive character.
- **State aid law:** Extension of the possibility to grant operating aid for certain regional airports until 04 April 2027
- **Reform of the European Construction Products Regulation** adopted in the EU Parliament (11 July 2023). This contains uniform rules for the marketing of construction products. Criticism comes in particular from the Greens, who see the goals of the Green Deal as insufficiently taken into account.
- **EU Disclosure Regulation:** On 10 July 2023, BaFin answered various questions regarding Regulation (EU) 2019/2088 on sustainability-related disclosure obligations. According to this, for example, financial investment intermediaries are not addressees of the Disclosure Regulation. The English term "promote" goes beyond the meaning of advertising and also includes, for example, the fulfilment of legally prescribed information obligations.
- **Markets in Crypto-Assets Regulation (MiCA):** The European Securities and Markets Authority (ESMA) published the first MiCA consultation package for detailed crypto regulations in July 2023.

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