Pérez-Llorca

YEAR IN REVIEW 2023

BRUSSELS OFFICE

Legislative and Case Law Overview **of European Union Law**

YEAR IN REVIEW 2023

European Union Law

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EDITORIAL

Reflections on 2023 and a glimpse at 2024

Since the opening of Pérez-Llorca's Brussels office more than a year ago, we have assisted our clients not only in interpreting European Union (the "**EU**") law but also in "translating" or assessing its application to Spanish law, which is not always easy. What happens when an EU Regulation, which has direct effect from its entry into force, coexists with a law that transposes a Directive repealed by that Regulation? What effects can a future judgment of the Court of Justice in a Czech case have on my Spanish case? Does the Regulation on foreign subsidies affect me apart from public procurement and concentrations? Can I complain to the European Commission about being required to obtain a certain authorisation when it represents an undue restriction on non-residents as opposed to residents?

The coexistence of two legal systems, national and European, interacting according to common principles under the supervision of courts forming part of a single jurisdictional order is the key to the proper functioning of the whole system. This is not without difficulties and sometimes creates problems that must be solved, if possible at an early stage, either by a warning during the legislative stage about possible unhelpful or unduly bureaucratic provisions or by reaching compromises at the administrative stage to avoid lengthy, costly and uncertain litigation. In our experience, in many cases, misunderstandings that arise in relation to the European Commission do not stem from a real problem, but, rather, from an inadequate mutual understanding, stemming from the two different approaches at national and European level.

2023 was an important year from a regulatory point of view. 2023 was the last full year before the new European elections in June 2024 and resulted in the adoption of a very large number of regulations, particularly concerning the European Green Deal and the digital transition. Also noteworthy is the new European vision that has been described as "open strategic autonomy", or perhaps more pragmatically, "economic security", which seeks a balance between an open economy and protection in certain strategic sectors in order to avoid the failings we suffered with the COVID virus or the war in Ukraine. However, many of us ask ourselves the following questions: Isn't the investment screening that is carried out excessive? Aren't we seeing too much state intervention in the market? Is this the right trend to maintain the position of EU companies in the global economy? Is there a need for regulation with so many reporting obligations and so many measurements?

EU law is unwieldy and in a permanent state of expansion, which makes it increasingly difficult to maintain the cross-cutting nature of its practice, which is essential for good advice or defence in a lawsuit. Therefore, we combine a cross-cutting approach with specialisation, and this is particularly noticeable when there is a clear link between the problem and EU law. For this reason, in this annual overview, we have chosen some of the areas in which we have worked and which appear to us to be the most relevant to this changing world in the face of the advances in technology - which are already tangible - and the new geopolitical reality.

In this annual overview, we take a look at developments in the world of Competition law, which is essential for maintaining the internal market free of obstacles, and which has undergone important changes since 2020, which have not always been positive. We have also included developments in the area of energy and the environment, which has ceased to be a sectoral topic and has become a cross-cutting issue, through ESG legislation. Finally, we have incorporated developments in the digital sector, ranging from new obligations for platforms, consumer and user protection, and the regulation of new technology, as well as internal market issues, the "big catch-all" and key to many of today's problems.

This overview would be incomplete if we did not take a brief look at the activity of the Court of Justice of the European Union (the "**CJEU**"), an institution that is oblivious to the "political noise" that surrounds us, but which continues to be the great architect of the European project, preserving the pillars of the system, even if more than once its rulings leave the judiciary perplexed. In the world of Competition law, for example, there have been some major rulings this year, the application of which will undoubtedly be felt in the work of the European Commission.

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Similarly, in the area of State aid, there have been several rulings in which the CJEU has held that the European Commission has misinterpreted national law.

Finally, we cannot end without trying to guess what 2024 will bring, perhaps more in the form of wishful thinking. 2024 should be a less regulatory-intensive year, as its legislative activity will conclude in March until it gets back on track after the European elections, and the new institutional map in Brussels is reconfigured. This is the year in which all the institutions should take the opportunity to reflect together on the future of the EU on a "macro" level. This must include not only institutional reflection but also reflection on its policies, with its businesses and its citizens in mind. The EU must continue to strive to maintain its place in the world not just as a "regulatory power", but as an engine for the creation of wealth and prosperity in a more sustainable world. This means a friendlier environment for business competitiveness, including legal certainty, and necessary and coherent regulation. In the meantime, the CJEU will continue to deliver its rulings, some predictable, others less so, but always as the great guardian of the uniform application of EU law. Reading and analysing the rulings of the CJEU is essential to understand the new trends in litigation in this fast-changing world.

And if one thing is certain, it is that, as we welcome the new year, Pérez-Llorca's Brussels office will be fully prepared for all the challenges of 2024.

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1. Concentrations

1.1. Legislative developments

» **New Merger Simplification Package**

The new package consists of (i) the Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 [C(2023) 2400], Official Journal of the European Union ("OJ") L 119, 5.5.2023, p. 22/102; (ii) the Commission Notice on a simplified treatment of certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings 2023/C 160/01 [C (2023) 2401], OJ C 160, 5. 5.2023, p. 1/10; and (iii) the Communication from the Commission Communication pursuant to Articles 3(2), 13(3), 20 and 22 of Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004 2023/C 160/02 [C (2023) 2402], OJ C 160, 5.5.2023, p. 11/13.

1.2. The main judgments of the CJEU

» **Concentrations - Standard of proof required from the European Commission - Judgment of the CJEU of 13 July 2023, *Commission v CK Telecoms UK Investments*, C-376/20 P, EU:C:2023:561**

This case concerned an appeal brought by the European Commission against the judgment of the General Court of 28 May 2023, Case T-399/16, *CK Telecoms UK Investments v Commission*, in which the General Court annulled a decision of the European Commission (adopted on the basis of Regulation 139/2004 on the control of concentrations between undertakings) declaring a merger in which the UK telecommunications company and internet service provider, Hutchison 3G UK, intended to acquire the telecommunications company Telefónica Europe (O2) to be incompatible with the internal market.

The CJEU upheld the European Commission's appeal and set aside the judgment of the General Court of 28 May 2023, Case T-399/16, *CK Telecoms UK Investments v Commission*, referring the case back to the General Court. The CJEU's grounds included the following: (i) the standard of proof that Regulation 139/2004 imposes on the European Commission to demonstrate the compatibility or incompatibility of a concentration with the internal market cannot be considered not to be identical and to vary according to the type of Decision; (ii) the European Commission is not required to meet a higher standard of proof in Decisions declaring a concentration incompatible with the internal market than it would apply in Decisions declaring a concentration compatible with the internal market; (iii) previous CJEU case law confirms that when analysing a conglomerate-type concentration, the European Commission's evidentiary practice is of particular importance and must be sufficiently convincing, but the standard of proof required by Regulation 139/2004 also does not vary according to the type of concentration examined or the complexity of applying a particular theory of harm when assessing a concentration; (iv) given that Regulation 139/2004 establishes a preventive system of merger control, the European Commission has a significant margin of discretion in economic matters which it exercises by carrying out prospective analyses involving greater risk than the ex post assessments of Article 101 of the Treaty on the Functioning of the European Union (the "**TFEU**"). Therefore, the EU Court's review of a decision of the European Commission in this area will be limited to verifying the accuracy of the statement of facts and the absence of a manifest error of assessment, without requiring the European Commission to meet a particularly high standard of proof to demonstrate whether or not a concentration would impede effective competition in the market; (v) Regulation 139/2004 covers all concentrations that would significantly impede effective competition in the internal market, including those that give rise to non-coordinated effects in oligopolistic

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markets, an interpretation contrary to this statement would be incompatible with the objective pursued by this Regulation; (vi) one cannot accept the General Court's rationale in its judgment that Regulation 139/2004 must be interpreted as meaning that where, in a concentration, there is no creation or strengthening of a dominant position in an oligopolistic market, the existence of a significant impediment to competition can only be established if the European Commission proves that two cumulative requirements have been met. These are, firstly, the elimination of significant competitive constraints that the merging parties exerted on each other, and secondly, the reduction of competitive pressure on other competitors; (vii) the European Commission's Merger Guidelines are not binding legal rules, may be waived in individual cases where duly justified, and may be subject to interpretation by the EU Courts, just as the European Commission's previous Merger Decisions are advisory and not binding; (viii) the concept of "important competitive force" for the purposes of the Merger Guidelines cannot be applied exclusively to firms that compete particularly aggressively on price or to firms whose pricing policy may significantly alter the competitive dynamics of the market, it is sufficient for a firm to have a competitive influence beyond that which is apparent from its market share or similar criteria; (ix) it cannot be considered that only a merger between particularly close competitors can significantly impede effective competition in the relevant market; and (x) there is no requirement that the European Commission, in its analysis of the compatibility of a given merger with the internal market, must reflect the "standard" efficiencies in all mergers, there are efficiencies specific to certain mergers.

» **Concentrations - Abuse of a dominant position - Ex-post control - Judgment of the CJEU of 16 March 2023, *Towercast*, C-449/21, ECLI:EU:C:2023:207**

This case concerned a reference for a preliminary ruling from the Court of Appeal of Paris (France) concerning the interpretation of the Regulation on the control of concentrations between undertakings in a dispute between Towercast SASU ("**Towercast**"), a French operator of fast and television broadcasting services, and the French Competition Authority and the French Minister for the Economy, in relation to a decision rejecting a complaint brought by Towercast concerning the abuse of a dominant position. Towercast argued that the acquisition of control of the digital terrestrial television ("**DTT**") broadcasting company by Télédiffusion de France hindered competition in the wholesale markets for the production and distribution of DTT broadcasting services and significantly strengthened Télédiffusion de France's dominant position in those markets.

The CJEU interpreted the Regulation on the control of concentrations between undertakings and held that it does not preclude a concentration between undertakings which does not have a Community dimension, which does not meet the thresholds for mandatory ex-ante control established by national law and which has not given rise to a referral procedure to the European Commission, from being considered by a national competition authority as constituting an abuse of a dominant position prohibited by Article 102 TFEU, in light of the structure of competition on a market with a national dimension. The CJEU explained that the Regulation provides for ***ex-ante control*** of concentrations with a Community dimension, when certain thresholds are reached, but does not exclude ***ex-post control*** of concentrations that do not reach that threshold, as the contrary would be tantamount to excluding the direct applicability of Article 102 TFEU. It follows that Article 102 TFEU may be applied to a concentration which does not meet the thresholds for *ex ante* control established, respectively, by the Regulation on the control of concentrations and by the applicable national law, where the conditions set out in that article are satisfied in order to establish the existence of an abuse of a dominant position. It is the responsibility of the authority hearing the case to verify whether the acquirer (which holds a dominant position in a given market) has hindered competition in the relevant market.

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1.3. Cases pending before the CJEU

» **Case C-611/22 P, *Illumina v Commission***

This case concerned an appeal brought by Illumina against the judgment of the General Court of 13 July 2022, Case T-227/21, which confirmed that the European Commission is authorised to examine a concentration that does not exceed the turnover thresholds, where there is a risk that it will affect trade between Member States and threatens to significantly affect competition, where it would otherwise escape control at both national and EU level.

2. Antitrust

2.1. Legislative developments

» **European Commission Guidelines on the exclusion from Article 101 TFEU for sustainability agreements of agricultural producers** pursuant to Article 210a of Regulation (EU) No 1308/2013, [C (2023) 8306], OJ C, C/2023/1446, 08.12.2023.

» **Commission Communication of 27 March 2023, amending the Guidance** on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to **abusive exclusionary conduct by dominant undertakings** [C(2023) 1923 final].

It should also be noted that on 27 March 2023, the European Commission also announced new **Guidelines on the application of Article 102 TFEU**, although the date of their final publication is not known.

» **The European Commission is presenting new Block Exemption Regulations and Horizontal Guidelines**: (i) Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements (Text with EEA relevance), [C (2023) 3443], OJ L 143, 2.6.2023, p. 9/19; (ii) Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements (Text with EEA relevance), [C(2023) 3448], OJ L 143, 2.6.2023, p. 20/26; and (iii) Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements [C (2023) 4752], OJ C 259, 21.7.2023, p. 1/125; adopted on the basis of a proposal submitted by the Commission on 1 June 2023, [C (2023) 3445 final].

2.2. Pending legislative proposals

» **The reform of Regulations 1/2003 and 773/2004**

In 2023, the European Commission continued the process of evaluating Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [EUR-Lex - 32003R0001 - EN - EUR-Lex (europa. eu)]; and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty [EUR-Lex - 32004R0773 - EN - EUR-Lex (europa.eu)]. This review was launched in 2022 with the opening of a public consultation and the next step will be the publication in the second quarter of 2024 of a Commission staff working document, with the results of the entire review process.

2.3. The main judgments of the CJEU

» **Abuse of a dominant position - Destruction of essential infrastructure - Judgment of the CJEU of 12 January 2023 *Lithuanian Railways*, C-42/21 P, EU:C:2023:12**

This case concerned an appeal brought by Lithuanian Railways against the Judgment of the General Court of 18 November 2020, Case

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T-814/17. In 2017, the European Commission fined Lithuanian Railways, a Lithuanian state-owned company in charge of the management of railway infrastructure and the provision of railway services, €22 million for the abuse of a dominant position. Specifically, Lithuanian Railways dismantled the infrastructure on one of its routes, preventing access to it by an oil company with which it had previously reached an agreement for the provision of rail services. The General Court upheld the finding of an infringement, holding that the Bronner doctrine, which seeks to encourage investment, could not be applied where the regulatory framework already requires the dominant undertaking to supply or where the dominant position arises from a legal position. However, it reduced the penalty to 20 million euros.

The CJEU dismissed the appeal on the grounds that: (i) the destruction of infrastructure by a dominant operator is not equivalent to a refusal of access; (ii) the Bronner conditions, designed to encourage investment, are not applicable in a situation where infrastructure was destroyed and which was financed with state resources; and (iii) where there is a legal obligation of access, as was the case here, the Bronner criteria are not applicable.

» **Concerted practices - Restrictions by object - Judgment of the CJEU of 29 June 2023, *Super Bock*, C-211/22, EU:C:2023:529**

Judgment of the CJEU in response to a reference for a preliminary ruling from the Tribunal da Relaçao de Lisboa, in proceedings between Super Bock, AN and BQ, on the one hand, and the Competition Authority, on the other, concerning a decision of the latter that found that Super Bock and two of its directors had engaged in a practice of fixing prices and other conditions applicable to the resale of products by a network of distributors, contrary to competition law.

The CJEU held that: (i) a vertical agreement to fix minimum resale prices does not constitute a restriction by object in any event, but it will have to be established that it presents a sufficient degree of harmfulness, having regard to its content, its objectives and the context in which it occurs; (ii) for an agreement to exist, it must be proven that there is a concordant will between the parties, which may be given expressly or tacitly; (iii) in order to prove the existence of an agreement, in compliance with the principle of effectiveness, evidence and concordant coincidences may also be taken into account; and (iv) even if the agreement concerns the marketing of products in a single State, or even part of it, it may also affect trade between Member States.

» **Concerted practices - Vertical agreements - Non-competition clause - Judgment of the CJEU of 26 October 2023, *EDP - Energias de Portugal y otros*, C-331/21, EU:C:2023:812**

Judgment of the CJEU delivered in the context of a reference for a preliminary ruling from the Court of Appeal of Lisbon (Portugal) concerning the interpretation of Article 101 TFEU and certain provisions of Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices. The reference for a preliminary ruling was sought by the referring court in relation to a dispute concerning fines imposed as a result of the conclusion of an anti-competitive association agreement.

The CJEU answered the questions referred by stating that: (i) an undertaking which operates a network of mass-market retailers must be regarded as a potential competitor of an electricity supplier with which it has concluded a partnership agreement containing a non-compete clause, provided that there is a likelihood of its entering the market; (ii) a commercial partnership agreement between undertakings operating in different markets aimed at promoting the sales of those undertakings does not fall into the category of "vertical agreements" or "agency agreements"; (iii) a non-compete clause in such an agreement is not ancillary in nature; and (iv) a non-compete clause which prevents one of the parties from entering the electricity supply market is anti-competitive by object.

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2.4. Cases pending before the CJEU

» **Case C-209/23, *RRC Sports***

Reference for a preliminary ruling from a German court concerning FIFA's regulation of the activities of football agents and its possible incompatibility with Article 101 TFEU as a restriction of competition by object.

» **Case C-48/22 P, *Google Shopping***

Appeal brought by Google and Alphabet against the Judgment of the General Court of 10 November 2021, Case T-612/17, which upheld the finding that Google had abused its dominant position as a search engine by giving an illegal advantage to its own comparison shopping service, and also upheld the fine of 2.42 billion euros imposed by the European Commission.

3. State Aid

3.1. Legislative developments

» **The new *de minimis* regulations for State aid, which entered into force on 1 January 2024:** (i) Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid [C (2023) 9700 final]; and (ii) Commission Regulation (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest [C (2023) 9701 final].

» **Temporary Crisis and Transition Framework for State Aid Further extension of some of its sections**

On 21 November 2023, the European Commission adopted the Communication from the Commission - Amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ C, C/2023/1188, 21.11.2023, [C (2023) 8045]. This temporary framework was adopted on 9 March 2023, in order to allow EU Member States to use the flexibility of state aid rules to support the economy in the context of the Ukrainian war.

In the consolidated version of the Temporary Crisis and Transition Framework following the extension adopted on 21 November, it is worth noting: (i) the Sections whose validity has been extended until **30 June 2024**, Sections 2.1 *(Limited amounts of aid)* and 2.4 *(Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices)*; (ii) the Sections whose validity has been extended until **31 December 2025**, Sections 2.5 *(Aid for accelerating the rollout of renewable energy and energy storage relevant for REPowerEU)*; 2.6 *(Aid for the decarbonisation of industrial production processes through electrification and/or the use of renewable and electricity-based hydrogen fulfilling certain conditions and for energy efficiency measures)*; and 2.8 *(Aid for accelerated investments in sectors strategic for the transition towards a net-zero economy)*; and (iii) the Sections that ceased to apply from **31 December 2023**, Sections 2.2 *(Liquidity support in the form of guarantees)*; 2.3 *(Liquidity support in the form of subsidised loans)*; and 2.7 *(Aid for additional reduction of electricity consumption)*.

» **The new *de minimis* Regulation for the fisheries and aquaculture sector**

Commission Regulation (EU) 2023/2391 of 4 October 2023 amending Regulations (EU) No 717/2014, (EU) No 1407/2013, (EU) No 1408/2013

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and (EU) No 360/2012 as regards *de minimis* aid for the processing and marketing of fishery and aquaculture products, and Regulation (EU) No 717/2014 as regards the total amount of *de minimis* aid granted to a single enterprise, its period of application and other matters ("the *de minimis* Regulation for fisheries") [C (2023) 6585], OJ L 2023/2391, 05.10.2023. It is scheduled to enter into force on 25 October 2023.

» **The prolongation of the Guidelines on State aid to airports and airlines**

On 11 July 2023, the European Commission published the Communication from the Commission extending the transitional period provided for in the Guidelines on State aid to airports and airlines concerning regional airports 2023/C 244/01, [C (2023) 4494], OJ C 244, 11.7.2023, p.1-3. This extends the validity of the Guidelines on State aid to airports and airlines, [2014/C 99/03], OJ C 99, 4.4.2014, p. 3-34, until 4 April 2027.

» **The modernisation of the General Block Exemption Regulation**

Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473, declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance) [C(2023) 4278], OJ L 167 of 30.6.2023, p. 1-90.

3.2. The main judgments of the CJEU

» **State aid - Non-payment of part of the aid - Claim for compensation before a public authority other than the one granting the aid - Judgment of the CJEU of 12 January 2023, *DOBELES HES*, C-702/20, EU:C:2023:1**

must receive, under national law, an amount corresponding to State aid, but this does not in any way mean that it is the national court itself that grants the aid.

The CJEU has provided the necessary elements to determine whether the measure at issue can be classified as "State aid" under Article 107(1) TFEU. In this case, it held that funds deriving from a levy the financial burden of which was actually borne by a particular category of persons had the character of "state funds" where such a levy was compulsory under national law.

» **State aid - Tax scheme applicable to certain leasing agreements for the acquisition of vessels - Legitimate expectation and legal certainty - Judgment of the CJEU of 2 February 2023 *Spain v European Commission*, Joined Cases C-649/20 P, C-658/20 P and C-662/20 P, EU:C:2023:60**

Judgment issued by the CJEU in an appeal brought by the Kingdom of Spain and 31 other appellants (including companies such as Lico Leasing S.A., Pequeños y Medianos Astilleros Sociedad de Reconversión, S.A. ["PYMAR"], Caixabank S.A. and Banco Santander S.A.) against the judgment of the General Court of 23 September 2020, *Spain and Others v Commission*, Joined Cases T-515/13 RENV and T-719/13 RENV, which dismissed the actions for the annulment of the European Commission's decision declaring State aid incompatible with the internal market due to a breach of Article 108(3) TFEU, in relation to the tax scheme applicable to certain leasing agreements for the acquisition of ships (the so-called Spanish Tax Leasing System; "**SEAF**"); and ordered Spain to recover the

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aid from the investors of the economic interest groupings ("**EIGs**") which had benefited from it.

The CJEU upheld the appeal and ruled on the merits of the case, upholding Spain's appeal against the Decision, solely on the ground that the European Commission had not correctly identified the beneficiaries of the aid when recovering it, limiting itself to the EIGs and their investors. However, it dismissed all other arguments concerning the selectivity analysis and the principles of legal certainty and legitimate expectation.

This is a judgment that brought to an end a dispute that had dragged on for more than ten years. The way in which the European Commission implements the judgment will be crucial, given the large number of parties, and the fact that the recovery procedure is ongoing. It is also relevant to a number of cases pending before the General Court.

» **State aid - Financial goodwill amortisation - Recovery of aid - Legitimate expectation and legal certainty - Judgment of the General Court of 27 September 2023, *Telefónica v Commission and Iberdrola v Commission*, Joined Cases T-256/15 and T-260/15, EU:T: 2023:586**

In this judgment, the General Court upheld the action for annulment brought by Iberdrola and Telefónica against the so-called "third" decision of the European Commission, according to which the Commission declared the system of tax amortisation of financial goodwill for direct and indirect acquisitions of foreign shareholdings established by Spain in 2002 to promote the internationalisation of its companies to be State aid that was incompatible with the internal market.

It annulled the decision, citing the following reasoning: (i) the initial (now final) decisions examined the regime of Article 12.5 of the Spanish Law on Corporate Income Tax (the "**LIS**" in Spanish) as a whole, including direct and indirect acquisitions; (ii) the European Commission has erred in its understanding of the system of assessment of corporation tax under Spanish law by holding that the interpretation of the Spanish Directorate-General for Taxation (the "**DGT**") is binding only on the administration, with companies being able to challenge the interpretation before the national courts; (iii) there was no definitive interpretation under national law regarding the application of Article 12. 5 LIS, because it was under appeal before the Supreme Court; (iv) the European Commission could not revoke the previous decisions, as they were not based on incorrect information, and there was no ground for finding them unlawful. Therefore, the General Court held that the decision was contrary to the principle of legal certainty; (v) the European Commission infringed the principle of legitimate expectation of undertakings on the basis of the answers to the European Commission's parliamentary questions. The General Court further stated that the answers themselves mentioned the specific transaction, which was authorised by the European Commission itself; (vi) the General Court concluded that the European Commission gave precise and unconditional assurances, meaning that the undertakings acted as reasonably prudent, careful and diligent economic operators who could rely on the legitimate expectation of the first two decisions; and (vii) finally, the General Court noted that it is the duty of Spanish courts to determine whether or not each transaction falls within the scope of Article 12. 5 LIS and that legitimate expectation would only extend to deductions made in respect of acquisitions of shareholdings in companies established in the territory of an EU Member State or in certain third countries and prior to 21 December 2007 or even, for certain transactions, prior to 21 May 2011 (paragraph 99).

In the same vein, we consider the judgments of the General Court of 27 September 2023: (i) Case T-253/15, *Sociedad General de Aguas de Barcelona v Commission*, EU:T:2023:585; (ii) Joined Cases T-252/15 and T-257/15, *Ferrovial and Others v Commission and Arcelormittal Spain Holding v Commission*, EU:T:2023: 584; (iii) Joined Cases T-12/15, T-158/15 and T-252/15, *Banco Santander and Santusa v Commission*,

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Abertis Infraestructuras and Abertis Telecom Satellites v Commission and Axa Mediterranean v Commission, EU:T:2023:583; and (iv) Case T-826/14, *Spain v Commission*, EU:T:2023:582.

» **State aid - Temporary State aid framework - Public guarantee on a revolving credit line - Judgment of the CJEU of 28 September 2023, *Ryanair v Commission*, Case C-320/21 P, EU:C:2023:712**

This case concerned an appeal brought by Ryanair against a judgment of the General Court dismissing an action seeking the annulment of a decision of the European Commission authorising aid granted by the Kingdom of Sweden to the airline SAS AB to mitigate the effects of COVID-19. This is one of the CJEU judgments in the "Ryanair" saga concerning aid to alleviate the effects of COVID-19.

The CJEU dismissed all the arguments, providing the following reasons for doing so: (i) if Member States were obliged to grant aid to all undertakings affected by an exceptional occurrence (in this case, COVID-19), they would be deterred from making use of this power due to the costs it would represent; (ii) the measure was proportionate, as it did not exceed the amount of the damage suffered by the airline; (iii) the difference in treatment between the beneficiary company and its competitors was justified by the exemptions provided for in the EU State aid rules; (iv) the effects on the internal market were inherent to the aid and would be justified when the aid was considered compatible as a whole; (v) Ryanair's allegations concerning the incompleteness of the European Commission's prior examination of the aid had previously been analysed by the General Court, which concluded that the existence of "serious difficulties" requiring a formal investigation had not been proven; and (vi) such a decision was considered sufficiently well-grounded provided that the reasons why the European Commission considered that there were no difficulties in assessing the compatibility of the aid with the internal market were clearly shown.

» **State aid - Advance tax decisions ("tax rulings") - Recovery of aid - Review by the CJEU of the interpretation and application of national law by the European Commission and the General Court - Judgment of the CJEU of 5 December 2023, *Luxembourg v Commission*, Joined Cases C-451/21 P and C-454/21 P, EU:C:2023:948**

Judgment of the CJEU issued in the context of an appeal brought by the Grand Duchy of Luxembourg, Engie Global LNG Sàrl, Engie Invest International SA and Engie SA against the judgment of the General Court of 12 May 2021, Joined Cases T-516/18 and T-525/18, *Luxembourg and Others v Commission*.

The CJEU upheld the appeals and annulled both the judgment in Joined Cases T-516/18 and T-525/18 and the European Commission's decision. The CJEU's grounds included the following: (i) in determining the frame of reference for the application of Article 107(1) TFEU, the European Commission is, in principle, bound to accept the interpretation of the relevant provisions of national law given by the Member State insofar as it is compatible with the literal wording of the provisions and may depart from that interpretation only if it can demonstrate that there is a dominant interpretation in the case-law or administrative practice of that Member State, based on reliable and concordant evidence; (ii) in the present case, the European Commission did not prove that the Member State's interpretation and practice was incompatible with the literal wording of the provisions; and (iii) the choice to introduce provisions into national law and to decide how they are to be applied by the tax authorities falls within the Member States' own competence for direct taxation in areas which have not been harmonised in EU law, and is therefore a manifestation of their fiscal autonomy. Therefore, the General Court erred in law when it held that it was not necessary for the European Commission to take into account the administrative practice of the Luxembourg tax authorities in relation to the provisions at issue.

3.3. Cases pending before the CJEU

» **Case C-465/20 P, *Commission v Ireland and Others***

In this case, the case concerns the so-called "advance tax decisions" ("tax rulings"). This case involved the Apple group as the subject of the advance tax decisions adopted by the Irish government. On 9 November 2023, the Opinion of the Advocate General in this case was published.

» **Case C-441/21 P, *Ryanair v Commission***

An appeal brought by Ryanair on 16 July 2021, against the judgment of the General Court of 19 May 2021, Case T-628/20, *Ryanair v Commission (Spain; COVID-19)*, in which the Court dismissed the action for annulment brought by Ryanair against a decision of the European Commission concerning the establishment by Spain of the Solvency Support Fund for Strategic Companies to strengthen the solvency of viable companies, considered systemic or strategic for the Spanish economy, experiencing difficulties due to the COVID-19 pandemic.

» **Cases relating to the Spanish leasing system ("SEAF")**

These are various cases that were commenced between 2013 and 2014. The oral hearing was held on 16 November 2023. It concerns the following cases: (i) the joined Cases T-700/13, *Caixabank v Commission*; T-10/14, *Inditex and Naviera Nebulosa de Omega v Commission*; T-16/14, *Caixabank v Commission*; T-18/14, *Aguas de Valencia v Commission*; T-2/14, *Caixabank v Commission*; T-24/14, *Abanca Corporación Bancanria v Commission*; T-6/14, *Banco Santander and others v Commission*; T-701/13, *Asociación Española de Banca v Commission*; T-702/13, *Unicaja Banco v Commission*; T-703/13, *Liberbank v Commission*; T-704/13, *Banco de Sabadell v Commission*; and T-705/13, *Banco Bilbao Vizcaya Argentaria v Commission*; (ii) Case T-1/14, *Aluminios Cortizo y Cortizo Cartera v Commission*; (iii) Joined Cases T-29/14, *Taetel v Commission*; and T-31/14, *Banco Popular Español v Commission*; (iv) Joined Cases T-401/14, *Duro Felguera v Commission*; T-406/14, *Promoinmo v Commission*; T-407/14, *Gres La Sagra v Commission*; T-408/14, *Venatto Design v Commission*; T-415/14, *Embutidos Rodríguez v Commission*; T-416/14, *APM Terminals Management v Commission*; T-417/14, *Afar 4 v Commission*; T-433/14, *Superficies de Alimentación v Commission*; T-442/14, *Metalúrgica Galaica v Commission*; and T-443/14, *Ibereolica Renovables v Commission*; (v) Case T-508/14, *Naturgy Energy Group v Commission*; (vi) Case T-509/14, *Decal España v Commission*; (vii) Case T-514/14, *Hispavima v Commission*; and (viii) Case T-519/14, *Grupo Morera y Vallejo and DSA v Commission*.

4. Foreign subsidies

» **Entry into force of the Foreign Subsidies Regulation and adoption of the Implementing Regulation**

The new foreign subsidies regime consists of: (i) Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, [PE/46/2022/REV/1], OJ L 330, 23.12.2022, p. 1/45; and (ii) Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market, [C(2023) 4622], OJ L 177 of 12.7.2023, p. 1-44.

Prior notification obligations in cases of concentrations and public procurement procedures became applicable as of 12 October 2023. However, it is a broader regulation because it seeks to protect the internal market as a whole, with the European Commission having wide-ranging powers.

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1. Legislative developments

» **Reform of the regulation on CO_2 emission performance standards for new passenger cars and vans.** Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's enhanced climate ambition (Text with EEA relevance) [PE/66/2022/REV/1], OJ L 110, 25.4.2023, p. 5/20.

» **Effort Sharing Regulation**. Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999 (Text with EEA relevance) [PE/72/2022/REV/1], OJ L 111, 26.4.2023, p. 1/14.

» **Reform of the Regulation on land use, land use change and forestry ("LULUCF")**. Regulation (EU) 2023/839 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/841 as regards the scope, simplifying the reporting and compliance rules, and setting out the targets of the Member States for 2030, and Regulation (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review (Text with EEA relevance) [PE/75/2022/REV/1], OJ L 107 of 21.4.2023, p. 1/28.

» **Revision of the EU emission trading system ("ETS") Directive**. Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance) [PE/9/2023/REV/1], OJ L 130, 16.5.2023, p. 134/202.

» **Reform of the Regulation on monitoring, reporting and verification in maritime transport**. Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions from additional greenhouse gases and emissions from additional ship types (Text with EEA relevance) [PE/10/2023/REV/1], OJ L 130 of 16.5.2023, p. 105/114.

» **Revision of the ETS Directive for aviation**. Directive (EU) 2023/958 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of a global market-based measure (Text with EEA relevance) [PE/8/2023/REV/1], OJ L 130 of 16.5.2023, p. 115/133.

» **Social Climate Fund**. Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 [PE/11/2023/REV/1], OJ L 130 of 16.5.2023, p. 1/51.

» **Carbon Border Adjustment Mechanism**. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance) [PE/7/2023/REV/1], OJ L 130 of 16.5.2023, p. 52/104.

» **Regulation on batteries and waste batteries**. Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive

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2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (Text with EEA relevance) [PE/2/2023/REV/1], OJ L 191 of 28.7.2023, p. 1/117.

» **Energy Efficiency Directive**. Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (Text with EEA relevance) [PE/15/2023/INIT], OJ L 231 of 20.9.2023, p. 1/111.

» **Alternative fuels infrastructure**. Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU (Text with EEA relevance) [PE/25/2023/INIT], OJ L 234 of 22.9.2023, p. 1/47.

» **ReFuelEU Aviation**. Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation) [E/29/2023/REV/1], OJ L, 2023/2405, 31.10.2023.

» **European Green Bond Regulation**. Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds [PE/27/2023/REV/1], OJ L, 2023/2631, 30.11.2023

2. Pending legislative proposals

» **The Zero-Net Industry Act**. Proposal for a Regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (**Zero Net Industry Act**), of 16.3.2023, [COM (2023) 161 final].

This is a key regulation within the "**European Green Deal Industrial Plan**" adopted by the European Commission through its Communication of 1 February 2023 to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - A Green Deal Industrial Plan for the Zero-Net Era,[COM (2023) 62 final].

» **Green Claims Directive**. In March 2023, the European Commission published the Proposal for a Directive of the European Parliament and of the Council on the substantiation and communication of explicit environmental claims (Green Claims Directive) [COM (2023) 166 final], to be adopted by the Council and the Parliament, following the ordinary legislative procedure.

» **EU Action Plan for Grids**. Although not legislative in nature, the European Commission will implement the Action Plan to accelerate the deployment of electricity grids, which was adopted in November 2023, over the course of 2024. This plan includes 14 specific steps, such as the development of new guidelines by the European Commission in several areas.

In addition, in 2023, a number of **political agreements were reached between the European Parliament and the Council of the European Union (the "Council")** in the framework of the legislative procedure, with the final texts of each piece of legislation to be finalised and published in the OJEU in the coming months:

» Proposal for a Directive of the European Parliament and of the Council on **Corporate Sustainability Due Diligence** and amending Directive (EU) 2019/1937 of 23.2.2022, [COM (2022) 71 final] - Political agreement reached on 14 December 2023.

» **The Proposals on electricity market reform**: (i) the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the

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Union's protection against market manipulation in the wholesale energy market [COM(2023) 147 final] - Political agreement reached on 16 November 2023; and (ii) the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design [COM (2023) 148 final] - Political agreement reached on 14 December 2023.

- **The Gas and Hydrogen Markets Package**: (i) Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen, [COM (2021) 803 final]; and (ii) Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) [COM (2021) 804 final] - Political agreement reached on 8 December 2023.

- Proposal for a Directive of the European Parliament and of the Council on the **energy performance of buildings** (recast) of 15.12.2021 [COM(2021) 802 final] - Political agreement reached on 7 December 2023.

- Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, **labelling and packaging of substances and mixtures**, 19.12.2022, [COM (2022) 748 final] - Political agreement reached on 5 December 2023.

- Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting **ecodesign requirements for sustainable products** and repealing Directive 2009/125/EC, 30.3.2022, [COM (2022) 142 final] - Provisional political agreement reached on 4 December 2023.

- The Proposals for the **modernisation of the management of industrial emissions**:(i) the Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on **industrial emissions (integrated pollution prevention and control)** and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (Industrial Emissions Directive), 5.4.2022, [COM (2022) 156 final 3];and (ii) the Proposal for a Regulation of the European Parliament and of the Council on **reporting of environmental data from industrial installations** and establishing an Industrial Emissions Portal [COM (2022) 157 final] - Political agreements reached on 28 November 2023.

- The Proposal for a Regulation of the European Parliament and of the Council on **shipments of waste** and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, 17.11.2023, [COM (2021) 709 final] - Political agreement reached on 16 November 2023.

- Proposal for a Directive of the European Parliament and of the Council on the **protection of the environment through criminal law** and replacing Directive 2008/99/EC, of 15.12.2021, [COM (2021) 851 final] - Political agreement reached on 16 November 2023.

- Proposal for a Regulation of the European Parliament and of the Council on **methane emissions reduction in the energy sector** and amending Regulation (EU) 2019/942, of 15.12.2021, [COM (2021) 805 final] - Political agreement reached on 15 November 2023.

- The Proposal for a Regulation of the European Parliament and of the Council on **nature restoration**, of 22.6.2023, [COM (2022) 304 final] - Provisional political agreement reached on 9 November 2023.

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3. The main judgments of the CJEU

» **Energy - Obligation of the Regulator - Intensity of Control - Judgment of the CJEU of 9 March 2023, *ACER v Aquind*, C-46/21 P, EU:C:2023:182**

Appeal brought by ACER against the judgment of the General Court in Case T-735/18 annulling a decision of the Board of Appeal of ACER that upheld a decision of ACER rejecting an application for exemption from certain obligations relating to the management of an electricity interconnector of the UK and French electricity transmission networks, consisting of a duty to use the revenues from the allocation of interconnector capacity to ensure the actual availability of the allocated capacity and to carry out investments for the maintenance and increase of that capacity; as well as the obligations to ensure the unbundling of transmission networks and their operators; to ensure third-party access to the transmission and distribution network and the duty to establish the necessary methodology for the calculation of transmission and distribution tariffs for electricity.

The CJEU dismissed ACER's appeal. The CJEU held that: (i) the competence of the Board of Appeal to review ACER decisions is not necessarily limited to the review of a manifest error of assessment; (ii) the appeal bodies of the EU Agencies, such as the ACER Board of Appeal, are created in order to protect the rights of the parties concerned in a context where the facts are of great technical or scientific complexity, making it possible to limit the review of the EU courts to examining whether or not the EU authorities' discretion exceeded the limits of their power of assessment; (iii) the differences between the Board of Appeal's powers of review of ACER's activity and the powers of review of other Boards of Appeal of other EU Agencies cannot affect the Board of Appeal's power of review, as the Board of Appeal satisfies the requirements necessary for a complete review of ACER's decisions; (iv) the Board of Appeal was not created to limit itself to a restricted review of complex technical and economic assessments; and (v) in this sense, the restricted nature of the EU court's review of such assessments cannot be extrapolated to the appeal bodies of the EU agencies, as this would mean that the EU judge would have to carry out a "limited review of a limited review", which does not offer the guarantees of effective judicial protection to companies whose requests for exemption are refused.

» **Environment - Vehicle type-approval - Compensation - Judgment of the CJEU of 21 March 2023, *Mercedes-Benz Group*, C-100/21, EU:C:2023:229**

Judgment of the CJEU in response to a reference for a preliminary ruling from the Ravensburg Regional Court, Germany, in proceedings between an individual and Mercedes-Benz Group AG ("Daimler") concerning the individual's right to compensation for the purchase of a diesel vehicle equipped with software which alters the results of emission tests.

The CJEU held that: (i) the Directive 2007/46 framework for the type-approval of motor vehicles and Regulation 715/2007 on the type-approval of motor vehicles also protect the interests of individuals, including the individual purchaser of a vehicle, against the vehicle manufacturer, in a situation such as that in the main proceedings; and (ii) in the absence of EU legislation governing compensation for damage caused by the purchase of a vehicle with a prohibited defeat device, it is up to the Member State to determine the applicable law.

» **Energy - Carbon tax - Judgment of the CJEU of 22 June 2023, *Endesa Generación*, C-833/21, EU:C:2023:516**

Judgment of the CJEU ruling on the question referred for a preliminary ruling by the Spanish National High Court concerning the interpretation of Directive 2003/96/EC in the context of a dispute between Endesa and the Central Economic-Administrative Tribunal concerning a decision of the latter relating to the taxation of coal consumed by a thermal power station that belonged to Endesa for the production of electricity.

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The referring court asked the CJEU, on the basis of Directive 2003/96/EC, whether the tax on coal reflected an environmental objective since the revenue was not intended to reduce the impact on the environment of the use of coal in the production of electricity.

The CJEU held that national legislation providing for the taxation of coal used for electricity production satisfies the requirement that the tax must be imposed "for environmental policy objectives" (i) where there is a direct link between the use of the revenue and the purpose of the taxation in question; (ii) or where the tax, without having a purely budgetary purpose, is designed in terms of its structure (in particular, the chargeable event for that tax or the tax rate) in such a way that it influences the behaviour of taxpayers in a way that leads to greater environmental protection; and (iii) therefore, the carbon tax would be compatible with Directive 2003/96/EC to the extent that the revenues are earmarked for purposes related to the improvement of the electricity system in order to achieve the environmental objectives of the Union.

» **Environment - Aarhus Convention - Right of access to an EIB agreement - Judgment of the CJEU of 6 July 2023, *EIB v ClientEarth*, C-212/21 P, EU:C:2023:546**

Judgment of the CJEU issued in the context of two appeals brought by the European Investment Bank (Case C-212/21 P) and the European Commission (Case C-223/21 P) against the judgment of the General Court of 27 January 2021, Case T-9/19, *ClientEarth v EIB*, which annulled a decision of the European Investment Bank ("EIB") that refused ClientEarth's request for a review of the EIB Board of Directors' agreement approving the financing of a biomass power plant project in Galicia.

The CJEU upheld the extensive right of access to documents, holding that the actions of EU institutions and bodies can only be excluded from the scope of Regulation 1367/2006 and the Convention when they exercise judicial or legislative powers or act as an administrative review body under the provisions of the Treaties, which is not the case here with the EIB's Board of Directors. Furthermore, the Court noted that the term "environmental law" should be interpreted broadly to include any EU act which, irrespective of the legal basis on which it is adopted, aims to achieve the objectives of EU environmental policy as set out in Article 191 TFEU.

4. Cases pending before the CJEU

» **Cases T-214/23, *Greenpeace and others v Commission* and T-215/23, *ClientEarth and others v Commission***

Actions for annulment brought by several environmental NGOs against the provisions of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, which provides for the inclusion of fossil gases.

» **Case T-802/22, *ExxonMobil Producing Netherlands and Mobil Erdgas-Erdöl v Council***

An action for annulment of Articles 14, 15 and 16 of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, by means of which the solidarity contribution of energy undertakings was established. Among other aspects, the legal basis of the Regulation itself was disputed, as it was adopted on the basis of Article 122 TFEU.

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1. Legislative developments

» The Digital Markets Act enters into force and the Implementing Regulation of the Digital Markets Act is adopted

On 2 May 2023, most of the provisions of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), [PE/17/2022/REV/1], OJ L 265, 12.10.2022, p. 1-66, commonly known as the "Digital Markets Act" or "DMA", began to apply.

On 6 September 2023, the European Commission appointed the first six "gatekeepers" on the basis of the provisions of the DMA. The gatekeepers designated so far are Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft, as listed on the European Commission's official DMA website.

In addition, on 17 April 2023, Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council (Text with EEA relevance), [C(2023) 2530], OJ L 102, 17.4.2023, p. 6-19, was published in the Official Journal of the European Union. This Implementing Regulation complements the Digital Markets Act and its rules entered into force on 2 May 2023.

» The Digital Services Act and its practical application in 2024

Some of the provisions of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (the Digital Services Act) (Text with EEA relevance), [PE/30/2022/REV/1], OJ L 277, 27.10.2022, p. 1-102, started to apply on 16 November 2022. However, as of 17 February 2024, all provisions of the Digital Services Act ("**DSA**") will apply.

The European Commission has already used its powers under the DSA to designate "very large online platforms" ("VLOPs") on two occasions: (i) the first on 25 April 2023 and (ii) the second on 20 December 2023.

» The Regulation on fair access to and use of data

Specifically, this concerns Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules for fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Regulation), [PE/49/2023/REV/1], OJ L, 2023/2854, 22.12.2023. In general terms, the Regulation will apply from 12 September 2025. However, special rules will delay the application of its provisions until 12 September 2026 or 2027 in certain circumstances.

2. Pending legislative proposals

» Political agreement on the European Media Freedom Act

On 15 December 2023, the European Parliament and the Council reached a political agreement on the Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (**European Media Freedom Act**) and amending Directive 2010/13/EU, 16.09.2022, [COM(2022) 457 final].

» Political agreement on the Artificial Intelligence Act

On 9 December 2023, the European Parliament and the Council reached a political agreement on the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (**Artificial Intelligence Act**), of 21.04.2021, [COM (2021) 206 final].

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» **Political agreement on the Cyber Resilience Act**

On 1 December 2023, the European Parliament and the Council reached a political agreement on the Proposal for a Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020, of 15.09.2022, [COM (2022) 454 final].

» **Political Agreement on the Interoperable Europe Act**

On 14 November 2023, the European Parliament and the Council reached a political agreement on the Proposal for a Regulation of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union (**Interoperable Europe Act**), of 18.11.2022, [COM (2022) 720 final].

» **Political agreement on the "European Digital Identity Wallet"**

On 8 November 2023, the European Parliament and the European Council reached a political agreement on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity, 3.6.2021, [COM (2021) 281 final].

3. The main judgments of the CJEU

» **The judgments of the CJEU concerning personal data protection in the *SCHUFA Holding* cases - Automated decisions.**

These include:

Judgment of the CJEU of 7 December 2023, *SCHUFA HOLDING (Scoring)*, Case C-634/21, EU:C:2023:957

Judgment of the CJEU in a preliminary ruling from the Contentious-Administrative Court of Wiesbaden (Germany) concerning the right of access to certain personal data and the right to erasure under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("**Regulation 2016/679**" or "**General Data Protection Regulation**").

The CJEU held that under the General Data Protection Regulation, the automated generation, by a commercial information agency, of a probability value from personal data relating to an individual and concerning that individual's ability to meet future payment commitments constitutes an "automated individual decision" within the meaning of Article 22(1) of Regulation 2016/679, in circumstances where such a probability value decisively determines whether a third party, to whom that value is communicated, will enter into, perform or terminate a contractual relationship with that person.

Judgment of the CJEU of 7 December 2023, *SCHUFA HOLDING (Libération de reliquat de dette)*, Joined Cases C-26/22 and C-64/22, EU:C:2023:958

Judgment of the CJEU in a preliminary ruling from the Contentious-Administrative Court of Wiesbaden (Germany).

The CJEU held that the provisions of the General Data Protection Regulation must be interpreted as meaning that: (i) a decision concerning a complaint made by a supervisory authority is subject to full judicial review; (ii) it precludes a practice of commercial information agencies of retaining, in their own databases, information from a public register relating to the grant of a waiver of unsatisfied liabilities in favour of natural persons in order to be able

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to provide information on the creditworthiness of those persons, for a period exceeding that for which the data is retained in the public register; (iii) the data subject has the right to obtain without undue delay from the controller the erasure of personal data relating to him/her provided that he/she objects to the processing in accordance with the provisions of the Regulation and that there are no compelling legitimate grounds justifying, in exceptional circumstances, the processing of the data concerned; and (iv) the controller is obliged to erase without undue delay personal data which has been processed unlawfully.

» **Data protection - Concepts of "processing" and "controller" - Development of a mobile software application - Administrative fines - Judgment of the CJEU of 5 December 2023, *Nacionalinis visuomenės sveikatos centras*, Case C-683/21, EU:C:2023:949**

Judgment of the Grand Chamber of the CJEU in a preliminary ruling from the Vilnius Regional Administrative Court (Lithuania) declaring that the provisions of the General Data Protection Regulation must be interpreted as meaning that: (i) an entity which has commissioned an undertaking to develop a mobile software application and which has been involved in determining the purposes and means of the processing of personal data carried out by the application, may be regarded as a data controller even though it has not itself carried out processing operations on that data, has not expressly consented to the carrying out of the specific processing operations or to the making available to the public of the mobile application and has not purchased the mobile application itself, unless, prior to making it available to the public, that entity has expressly objected to the mobile application and to the processing of personal data resulting therefrom; (ii) the classification of two entities as joint controllers does not presuppose either the existence of an agreement between them on the determination of the purposes and means of the processing of the personal data concerned or the existence of an agreement setting out the requirements for joint control of the processing; (iii) the use of personal data for IT testing of a mobile application constitutes "processing", unless such data has been anonymised meaning that the data subject is not or no longer identifiable or concerns fictitious data which does not relate to an existing natural person; and (iv) administrative fines can only be imposed if it has been established that the controller committed, intentionally or negligently, an infringement specified by the Regulation, in particular as regards the processing of data; and, moreover, such a fine may be imposed on a controller in relation to personal data processing operations carried out by a processor on behalf of the controller, unless, in the course of those operations, the processor has processed personal data for purposes which are its own or has processed such data in a manner incompatible with the framework or the arrangements for processing as determined by the controller or in such a way that the controller could not reasonably be regarded as having given its consent.

» **Data protection - "Controller" - Power of supervisory authorities to impose corrective measures and administrative fines - Judgment of the CJEU of 5 December 2023, *Deutsche Wohnen*, Case C-807/21, EU:C:2023:950**

Judgment of the Grand Chamber of the CJEU in a preliminary ruling from the Berlin Higher Regional Court for Civil and Criminal Matters concerning the conditions for the imposition of administrative fines on a legal person for infringement of certain provisions of the General Data Protection Regulation.

The CJEU held that: (i) the provisions of the Regulation must be interpreted as precluding national legislation under which an administrative fine may only be imposed on a legal person in its capacity as a controller in respect of an infringement referred to in Article 83(4) and (6) of the General Data Protection Regulation if that infringement has previously been imputed to a specific natural person; and (ii) an administrative fine may only be imposed under the General Data Protection Regulation if it is established that the controller, who is both a legal person and an undertaking, committed, intentionally or negligently, an infringement referred to in Article 83(4) and (6) of Regulation 2016/679.

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» **Data protection - Abuse of a dominant position consisting of the processing of personal data of users of a social network - National competition and data protection authorities - Judgment of the CJEU of 4 July 2023, *Meta Platforms and Others (Conditions générales d'utilisation d'un réseau social)*, Case C-252/21, EU:C:2023:537**

Judgment of the Grand Chamber of the CJEU in a preliminary ruling from the Higher Regional Court for Civil and Criminal Matters, Düsseldorf, Germany, which held that the provisions of the General Data Protection Regulation and Article 4(3) TFEU must be interpreted as meaning that: (i) a competition authority of a Member State may conclude, in an examination of abuse of a dominant position, that the general terms and conditions of the undertaking under examination in relation to the processing of personal data and the implementation of those terms and conditions infringe the General Data Protection Regulation, where this is necessary to declare the existence of such abuse; (ii) where a user of a social network consults Internet sites or applications in relation to special categories of data and, where applicable, enters data by registering or ordering online, the processing of data by the operator of the social network is to be considered "processing of special categories of personal data", in principle prohibited, subject to the exceptions of the General Data Protection Regulation; (iii) where a user of a social network consults Internet sites or applications in relation to one or more of the special categories of data, he does not manifestly make public the data relating to that consultation collected by the operator of that online social network by means of cookies or similar storage technologies, if he has not explicitly stated his prior intention to do so; (iv) the processing of data by an operator of a social network can only be considered necessary for the performance of a contract to which the data subjects are parties if such processing is objectively indispensable meaning that the main purpose of the contract could not be achieved without the processing; (v) processing may only be necessary for the purposes of the legitimate interests pursued by the controller or a third party if the operator has indicated to the users concerned a legitimate interest pursued by the processing, if the processing is carried out within the limits necessary for the satisfaction of that interest and if it is apparent that the interests, freedoms and fundamental rights of the users do not override the said legitimate interest of the controller; (vi) the processing is justified where it is necessary for compliance with a legal obligation applicable to the controller under EU or national law; (vii) the processing cannot, in principle, be regarded as necessary for the protection of the vital interests of the data subject or of another natural person, or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and (viii) the fact that the operator of a social network holds a dominant market position does not prevent its users from validly consenting to the processing of their data under the provisions of the General Data Protection Regulation, which the operator itself must prove.

4. Cases pending before the CJEU

» **Case C-470/21, *La Quadrature du Net and others () and lutte contre la contrefaçon)***

Reference for a preliminary ruling from the Council of State of France, in its capacity as Supreme Contentious-Administrative Court, regarding the interpretation of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector and the processing of civil identity data corresponding to IP addresses.

The Advocate General delivered two Opinions: (i) the Opinion of the Advocate General of 27 October 2022 *La Quadrature du Net and Others () and lutte contre la contrefaçon)*, Case C-470/21, EU:C:2022:838; and (ii) the Opinion of the Advocate General of 28 September 2023, *La Quadrature du Net and Others () and lutte contre la contrefaçon)*, Case C-470/21, EU:C:2023:711.

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» **Case C-115/22, *NADA and Others***

Reference for a preliminary ruling from the Independent Arbitration Commission, Vienna, (Austria) concerning the interpretation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and on the question of whether information relating to a certain person who has committed a certain doping offence and whose participation in national and international competitions has been suspended constitutes “data concerning health” within the meaning of the General Data Protection Regulation. Advocate General’s Opinion of 14 September 2023, *NADA and others*, C-115/22, EU:C:2023:676.

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1. Legislative developments

» **The Regulation for the protection of geographical indications for craft and industrial products**. On 16 November 2023, Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753, [PE/31/2023/REV/1], OJ L, 2023/2411, 27.10.2023 entered into force. Except for the provisions expressly recognised by the Regulation itself which have applied since 16 November 2023, the date of application set by the Regulation is 1 December 2025.

» **The European Chips Act**. Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe's semiconductor ecosystem and amending Regulation (EU) 2021/694 (the Chip Regulation) (Text with EEA relevance), [PE/28/2023/INIT], OJ L 229, 18.9.2023, p. 1-53. The Regulation entered into force on 21 September 2023.

» **Regulations on energy labelling of smartphones and slate tablets and their ecodesign**. Specifically, these are two Regulations that were adopted on 16 June 2023, but were not published in the OJEU until 31 August 2023: (i) Commission Delegated Regulation (EU) 2023/1669 of 16 June 2023 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to the energy labelling of smartphones and slate tablets (Text with EEA relevance), [C (2023) 1672], OJ L 214, 31.8.2023, p. 9/46; and (ii) Commission Regulation (EU) 2023/1670 of 16 June 2023 laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 2023/826 (Text with EEA relevance), [C(2023) 3538], OJ L 214 of 31.8.2023, p. 47/93.

» **The Unitary Patent System**. After more than ten years, on 1 June 2023, the Regulations governing the Unitary Patent System have entered into force together with the Agreement establishing the Unified Patent Court. These include: (i) Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, OJ L 361, 31.12.2012, p. 1/8; and (ii) Council Regulation (EU) No 1260/2012, of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, OJ L 361, 31.12.2012, p. 89/92

2. Pending legislative proposals

» Proposal for a Regulation of the European Parliament and of the Council on **type-approval of motor vehicles and engines and of systems, components and separate technical units intended for such vehicles, with respect to their emissions and battery durability** (Euro 7), and repealing Regulations (EC) No 715/2007 and (EC) No 595/2009, 10.11.2022, [COM(2022) 586 final] - Political agreement reached on 18 December 2023.

» Proposal for a Directive of the European Parliament and of the Council on **liability for defective products**, of 28.9.2022, [COM (2022) 495 final] - Political agreement reached on 14 December 2023.

» Proposal for a Directive of the European Parliament and of the Council on improving **working conditions in platform work**, of 9.12.2021, [COM(2021) 762 final] - Political agreement reached on 13 December 2023.

» Proposal for a Regulation of the European Parliament and of the Council on **horizontal cybersecurity requirements for products**

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with digital elements and amending Regulation (EU) 2019/1020, 15.9.2022, [COM (2022) 454 final] - Political agreement reached on 30 November 2023.

» Proposal for a Regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (**Critical Raw Materials Act**), 16.3.2023, [COM (2023) 160 final] - Political agreement reached on 13 November 2023.

It is also worth mentioning some legislative proposals made by the European Commission in 2023, in respect of which there is still no political agreement:

» **The Proposal for a Regulation on combating late payment in commercial transactions.** This is the Proposal for a Regulation of the European Parliament and of the Council on combating late payment in commercial transactions, 12.9.2023, [COM (2023) 533 final 2].

» **The legislative proposals of the BEFIT package**. This is a legislative package presented by the European Commission on 12 September with the aim of introducing a single set of rules to make it easier to determine the tax base of groups of companies operating in the EU, simplifying their administrative burden and significantly reducing the compliance costs for SMEs operating in the internal market.

The proposal for this legislative package, adopted on the basis of the Communication from the Commission of 18 May 2021 to the European Parliament and the Council - Business Taxation for the 21st Century [COM (2021) 251 final]; entitled "Business in Europe: Framework for Income Taxation" , consists of: (i) the Proposal for a Council Directive on Business in Europe: Framework for Income Taxation, 12.9.2023, [COM (2023) 532 final]; (ii) the Proposal for a Council Directive on Transfer Pricing, 12.9.2023, [COM (2023) 529 final]; and (iii) the Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium-sized enterprises and amending Directive 2011/16/EU, 12.9.2023, [COM (2023) 528 final].

3. The main judgments of the CJEU

» **Economic and Monetary Union - Resolution of Banco Popular - Single Resolution Mechanism - Refusal to compensate shareholders and creditors - Judgments of the General Court of 22 November 2023 *Del Valle Ruíz and Others v CRU*, Joined Cases T-302/20, T-303/20 and T-307/20, EU:T:2023:735.**

Judgment of the General Court in an action for annulment brought by an individual, Antonio del Valle Ruiz, supported by Aeris Invest Sàrl (intervener in Case T-302/20); another individual, José María Arias Mosquera (appellant in Case T-303/20); and the company Calatrava Real State 2015, S. L. (appellant in Case T-307/20) and other individuals, against a decision of the Single Resolution Board ("SRB"), in which the SRB assessed the potential award of compensation to the shareholders and creditors of Banco Popular Español in respect of which resolution measures were taken.

The General Court dismissed the parties' appeal. Among its findings, the Court: (i) rejected the lack of independence of the appraiser, despite having provided services to Banco Popular; (ii) considered that obliging the shareholders and creditors to submit their comments in a questionnaire did not infringe their right to be heard, even if there was a limitation on the length of their responses; and (iii) concluded that the parties' rights of defence and property rights were not infringed, as they did not prove that the SRB made a manifest error in concluding that the shareholders and creditors would not have received better treatment in ordinary insolvency proceedings.

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» **Screening of foreign direct investments - Free movement of capital and freedom of establishment - Regulation (EU) 2019/452 - Acquisitions of "strategic" undertakings - Judgment of the CJEU of 13 July 2023 *Xella Magyarország*, C-106/22, EU:C:2023:568**

Judgment of the CJEU delivered in the context of a reference for a preliminary ruling from the General Court of the Capital (Hungary) concerning the interpretation of Article 65(1)(b) TFEU (possibility for the Member States, under certain conditions, to introduce rules into their legal systems which operate as exceptions to the free movement of capital), in relation to Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union (FDI Regulation) and Article 4(2) of the Treaty on European Union.

The CJEU responded by stating that the TFEU provisions on freedom of establishment preclude a foreign investment screening mechanism provided for in the legislation of a Member State, which permits the prohibition of the acquisition of ownership of a resident company, considered strategic, by another resident company which is part of a group of companies established in several Member States and in which a company from a third country has a decisive influence, on the ground that such acquisition harms or is likely to harm the national interest in ensuring security of supply in favour of the construction sector.

The case is highly relevant because the CJEU clarified the scope of application of Regulation 2019/452, as well as the concept of "foreign investor" as defined in Article 2(2) of that Regulation. The CJEU held, among other things, that: (i) Regulation 2019/452 establishes a framework for the screening by Member States of "foreign direct investments" in the EU carried out by a "foreign investor" and therefore does not cover investments between EU companies; (ii) Regulation 2019/452 does not cover investments that take place between EU companies, where in relation to one of them, a company from a third State has a "decisive influence"; and (iii) the CJEU, following its case law in Case C-563/17, *Associação Peço a Palavra* and others, paragraph 43, held that in such cases freedom of establishment - applicable only within the EU - should apply, noting that, under Article 54 TFEU, companies that are nationals of a Member State benefit from freedom of establishment regardless of the origin or nationality of their shareholders (natural and legal persons). Therefore, it concluded that the reasons of public security invoked to justify the national legislation in question were not based on a "genuine and sufficiently serious threat" that could be accepted, and, thus, declared it to be contrary to EU law.

» **Consumer protection - Directive 93/1/EEC on unfair terms - IRPH - Judgment of the CJEU of 13 July 2023, *Banco Santander (Référence à un indice officiel)*, C-265/22, EU:C:2023:578.**

Judgment of the CJEU issued in the context of preliminary proceedings initiated at the request of the Court of First Instance No. 17 of Palma de Mallorca, in relation to the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, in relation to the Mortgage Loan Reference Indices, commonly known as "IRPH" in Spanish.

Among all the issues dealt with in the judgment, it is worth highlighting: (i) the non-application to this case of Directive 2005/29 and the fact that the CJEU judgment did not analyse this issue; and (ii) the CJEU left the final decision in the hands of the national court without deciding whether the clause was unfair or not and in doing so, it referred to certain circumstances that the national court must analyse, as is the case of the issue of the negative differential.

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» **Freedom of establishment and VTCs - Dual authorisation regime - Limitation of VTC licences in relation to taxi licences - Judgment of the CJEU of 8 June 2023, *Prestige and Limousine*, C-50/21, EU:C:2023:448**

Judgment of the CJEU delivered in the context of preliminary ruling proceedings brought by the High Court of Justice of Catalonia in the main proceedings between Prestige and Limousine, S.L., (a company providing VTC services in Barcelona) and the Metropolitan Area of Barcelona, in relation to the limitations introduced by the Metropolitan Area of Barcelona through the *Regulation for the organisation of the activity of occasional urban transport of passengers with driver by means of vehicles with a maximum of nine seats circulating exclusively in the territory of the Metropolitan Area of Barcelona*, specifically, the limitation of the granting of VTC licences in a proportion of 1/30 in relation to the number of taxi licences.

The CJEU responded to the questions referred for a preliminary ruling by stating that: (i) Article 107(1) TFEU does not preclude legislation which, on one hand, makes the exercise of the activity of VTC services in a conurbation conditional upon obtaining a specific authorisation in addition to the national authorisation required for the provision of urban and interurban VTC services, and, on the other hand, which limits the number of VTC licences to one for every thirty taxi service licences granted for that conurbation, provided that those measures do not involve the commitment of State resources within the meaning of that provision; (ii) the freedom of establishment does not preclude legislation, applicable in a conurbation, which makes the exercise of the activity of VTC services conditional upon obtaining a specific authorisation, in addition to the national authorisation required for the provision of such urban and interurban services, provided that that specific authorisation is based on objective, non-discriminatory criteria which are known in advance, exclude any arbitrariness and do not overlap with the controls already carried out under the national authorisation procedure, but meet the particular needs of that conurbation; and (iii) Article 49 TFEU precludes legislation which limits the number of VTC service licences to one for every 30 taxi service licences granted in a conurbation, where it has not been established that such a measure is appropriate to ensure, in a consistent and systematic manner, the achievement of the objectives of sound management of transport, traffic and public space in that conurbation, and of environmental protection, or that that measure does not go beyond what is necessary to achieve those objectives.

4. Cases pending before the CJEU

» Cases relating to the resolution of Banco de Portugal

This concerns three cases referred for a preliminary ruling by the Spanish Supreme Court on 22 July 2022: (i) Case C-498/22, *Novo Banco SA*; (ii) Case C-499/22, *Novo Banco SA* and (iii) Case C-500/22, *Novo Banco SA*. The questions concerned the interpretation of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The domestic litigation concerned various claims and subsequent lawsuits brought by individuals against Novo Banco concerning a range of issues.

» Cases concerning the resolution of Banco Popular

Initiated on the basis of several references for preliminary rulings made by the Spanish Supreme Court on 20 December 2022. It concerns the following cases: (i) Case C-775/22, *Banco Santander*; (ii) Case C-794/22, *Banco Santander*; and (iii) Case C-779/22, *Banco Santander*. In all three cases, questions were referred to the CJEU for a preliminary ruling concerning the interpretation of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council Text with EEA relevance, OJ 2014 L 173, p. 190/348.

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» Cases relating to the limitation period for issuing proceedings to enforce the restitutionary effects of a declaration that a borrower's costs clause is null and void

There are a number of preliminary ruling proceedings which have been referred by the Spanish Supreme Court. These include Case C-561/21, *Banco Santander (Départ du délai de prescription)*; the Barcelona Court of First Instance No. 20, Case C-484/21, *Caixabank (Délai de prescription)*; and the 15th Section of the Barcelona Court of Appeal, Joined Cases C-810/21 to C-813/21 *Caixabank (Prescription de remboursement des frais hypothécaires) and others*.

The questions concern the calculation of the limitation period for issuing proceedings to enforce the restitutionary effects of a declaration of invalidity of a costs clause in relation to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

» Concerning the review of the transparency of the floor clause in the context of a collective action

In Case C-450/22, *Caixabank and Others (Contrôle de transparence dans l'action collective)*, the Spanish Supreme Court referred two questions to the CJEU for a preliminary ruling on the possibility of carrying out a transparency check in the context of a collective action for injunctive relief, under Articles 4(2) and 7(3) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, seeking a declaration that the floor clauses contained in mortgage loan contracts entered into with consumers are null and void, and a refund of the sums unduly charged in connection with their application.

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Legal academic contributions

In addition to the monthly newsletters and the briefings on legislative and jurisprudential developments, the following legal academic contributions have been made by the Pérez-Llorca Brussels office:

» **Contributions to the book *Estudios jurídicos sobre sostenibilidad: cambio climático y criterios ESG en España y la Unión Europea* (Legal studies on Sustainability: Climate Change and ESG criteria in Spain and the European Union)**

This is a joint publication by Pérez-Llorca published by Aranzadi, led by José María de Paz and coordinated by Marisa Delgado, and in which a number of lawyers from Pérez-Llorca have participated. The following chapters should be highlighted: (i) Chapter I - "The European Green Deal: The Transformation of the European Union's regulatory framework to achieve competitive sustainability of the economy"; (ii) chapter 22 - "Competition Law and ESG. Opportunity and challenges" and (iii) chapter 23 - "Sustainability Policy in State aid".

» **Tax Rulings and State Aid – Concurrences**

The "new normal" and the so-called flexibility of EU State aid rules: Fit for purpose, or do we need other solutions to keep the level playing field in the EU alive? Tax Rulings and State Aid, May 2023, Concurrences No 2-2023 - Dossier - S. Centeno, M. Karpenschif, P. Lampreave Márquez, I. Lunneryd, A. Maitrot de la Motte, J. Pellefigue, N. Robins.

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TEAM

European Union Law

Pérez-Llorca's European Union Law team is composed of lawyers with in-depth knowledge of the **Institutions and Law of the European Union**, both substantive and constitutional, as a result of the experience gained in recent years through participation in various proceedings before the institutions and bodies of the European Union, particularly before the European Commission and the Court of Justice of the European Union. Highlights of our work include advice on banking, energy and the electricity market, the internal market, transport, pharmaceuticals, consumer protection, public procurement, foreign subsidies and State aid.

Pérez-Llorca's European Union Law team is also supported by the lawyers in each of the Firm's practice areas, thus enabling it to adopt a comprehensive approach with the necessary specialisation, both in its advice and in the litigation in which it is involved.

The expansive nature of European Union law makes it necessary to provide advice that includes the perspective of the European Union, not only by sector, but as a whole. This allows companies to receive advice from the beginning of a problem until the end of any possible litigation, not only in national courts but also before the Court of Justice of the European Union. Current challenges require rigorous advice, with knowledge of how the various institutions operate, and with first-hand information that allows companies to anticipate new legislative proposals or decisions issued by the European Institutions.

Pérez-Llorca's European Union Law team provides advice that integrates national, European and international perspectives in all practice areas by working on multi-jurisdictional matters.

Pérez-Llorca's Brussels office provides our clients with two types of advice. Firstly, our proximity to the institutions allows us to provide better advice in proceedings before the European Commission and in litigation before the Court of Justice and the General Court of the European Union. Secondly, we provide regulatory advice, monitoring regulatory proposals and cases before the Court of Justice and the General Court of the European Union and offering answers to specific questions on European Union law, in relation to problems arising not only in Spain or Portugal but in any Member State of the Union.

Current events, marked by a major "regulatory transformation", require an adaptation of business practices and an assessment of opportunities and risks, allowing companies to **prepare for and anticipate the new regulations**. On this basis, the Pérez-Llorca European Union Law team, in collaboration with the teams from each of the Firm's practice areas, provides our clients with comprehensive advice on matters that are likely to affect their business.

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