Does the owner of a competition horse training stable provide the horse owner with a single supply, consisting in the stabling and training of horses and the participation of horses in competitions, for consideration even where the horse owner remunerates that supply by assigning half of the claim to prize money to which he or she is entitled in the event of successful participation in a competition?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(2) C 432/15 (EU:C:2016:855).

Request for a preliminary ruling from the Landgericht Saarbrücken (Germany) lodged on 1 December 2021 — GP v juris GmbH

(Case C-741/21)

(2022/C 119/26)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: GP

Defendant: juris GmbH

Questions referred

1. In the light of recital 85 and the third sentence of recital 146 of the GDPR, (1) is the concept of 'non-material damage' in Article 82(1) of the GDPR to be understood as covering any impairment of the protected legal position, irrespective of the other effects and materiality of that impairment?

2. Is liability for compensation under Article 82(3) of the GDPR excluded by the fact that the infringement is attributed to human error in the individual case on the part of a person acting under the authority of the processor or controller within the meaning of Article 29 of the GDPR?

3. Is it permissible or necessary to base the assessment of compensation for non-material damage on the criteria for determining fines set out in Article 83 of the GDPR, in particular in Article 83(2) and 83(5) of the GDPR?

4. Must the compensation be determined for each individual infringement, or are several infringements — or at least several infringements of the same nature — penalised by means of an overall amount of compensation, which is not determined by adding up individual amounts but is based on an evaluative overall assessment?

(1) 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 (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

Appeal brought on 2 December 2021 by Altice Group Lux Sàrl, formerly New Altice Europe BV, in liquidation against the judgment of the General Court (Sixth Chamber) delivered on 22 September 2021 in Case T-425/18, Altice Europe v Commission

(Case C-746/21 P)

(2022/C 119/27)

Language of the case: English

Parties

Appellant: Altice Group Lux Sàrl, formerly New Altice Europe BV, in liquidation (represented by: R. Allendesalazar Corcho, H. Brokelmann, abogados)

Other parties to the proceedings: European Commission, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— Annul Articles 1, 2, 3 and 4 of Commission Decision C(2018) 2418 final of 24 April 2018 imposing a fine for putting into effect a concentration in breach of Article 4(1) and Article 7(1) of Council Regulation (EC) No. 139/2004 ([1]) (Case M. 7993-Altice/PT Portugal, Article 14 (2) procedure) ('the contested decision');

— In the alternative, exercise its unlimited jurisdiction to substantially reduce the fines imposed in Article 3 and Article 4 of the contested decision, the latter as amended by the Judgment of the General Court;

— In the further alternative, to refer the case back to the General Court for it to decide, bound by the decision of the Court on points of law;

— Order the Commission to pay the appellant's costs, both in the appeal and in the proceedings before the General Court.

Pleas in law and main arguments

First: The Judgment under appeal erred in law in rejecting Altice's objection of illegality

The Judgment under appeal erred in law and infringed the principle of proportionality and the prohibition of double punishment rooted in the general principles common to the legal systems of the Member States governing the concurrence of laws, in rejecting Altice's objection of illegality (Article 277 TFEU) regarding Article 14(2)(a) in conjunction with Article 4(1) of Regulation 139/2004 (EUMR). There is no 'notification obligation' in Article 4(1) EUMR distinct from the 'standstill obligation' of Article 7(1) EUMR, as infringing Article 4(1) necessarily requires the 'implementation' of a concentration. Article 4(1) and the first limb of Article 7(1) apply to the same conduct and pursue the same legal interest. The possibility of imposing two cumulative fines under letters (a) and (b) of Article 14(2) EUMR therefore contravenes the said general principles of EU law.

Second: The Judgment under appeal erred in law in rejecting that, by imposing two cumulative fines for the same conduct, the Contested Decision infringed the principles of proportionality and the prohibition of double punishment

The case-law of the Court requires that, where the principle of ne bis in idem does not preclude the imposition of two fines on an undertaking in a single decision for the same facts, the authority 'must nevertheless ensure that the fines are proportionate to the nature of the infringement'. The Judgment under appeal does not comply with this mandate. Only one fine imposed pursuant to Article 14(2)(b) EUMR for infringing Article 7(1) EUMR can be compatible with the proportionality requirement. A second fine imposed pursuant to Article 14(2)(a) EUMR is, by definition, excessive and therefore disproportionate and also contrary to the prohibition of double punishment rooted in the general principles common to the legal systems of the Member States governing the concurrence of laws.

Third Ground: The Judgment under appeal erred in law in interpreting the notion of 'implementation' in Articles 4(1) and 7(1) EUMR

By holding that the 'possibility of exercising decisive influence' already amounts to the implementation of a concentration, the Judgment under appeal erred in law as it confounds the notions of 'concentration' and 'implementation', and relies on an inaccurate interpretation of the judgment of 31 May 2018 in case C-633/16, Ernst & Young, which clarified that transactions that are not necessary to achieve such a change of control do not fall under Article 7(1) EUMR because they do not present a functional link with its implementation.

Fourth Ground: The Judgment under appeal erred in law in interpreting the notion of 'veto right' for the purposes of Articles 3(2), 4(1) and 7(1) EUMR or, alternatively, distorted the SPA by interpreting that it conferred 'veto rights'

Assuming -quod non- that the mere 'possibility of exercising decisive influence' amounts to an 'implementation' of a concentration, Article 3(2) EUMR requires a change of control on a lasting basis resulting from means which confer 'veto rights over strategic business decisions', i.e., 'the power to block' the strategic behaviour of an undertaking. The Judgment under appeal erred in law by extending the notion of 'veto rights' to situations which do not confer the power to block strategic decisions. Alternatively, the Judgment under appeal distorted the SPA by interpreting its pre-closing covenants as conferring 'veto rights' on Altice.

Fifth Ground: The General Court erred in law in concluding that exchanges of information amount to an 'implementation' of a concentration within the meaning of Articles 4(1) and 7(1) EUMR

The Judgment under appeal erred in law in considering that exchanges of information in the context of a concentration fall under Articles 4(1) and 7(1) EUMR, whereas Article 101 TFEU and Regulation (EC) 1/2003 [2] presuppose an ex-post mechanism. This is inconsistent with the judgment in case C-633/16 and would reduce the scope of Regulation (EC) 1/2003. The Judgment under appeal also distorts the Contested Decision in finding that it interprets that the exchanges of information did not in themselves infringe Articles 4(1) and 7(1) EUMR but merely 'contributed' to demonstrate the infringement.

Sixth: The General Court erred in law in rejecting Altice's pleas of illegality and lack of proportionality of the fines

The Judgment under appeal erred in law in considering that Altice was negligent. Furthermore, the level of the fines resulting from the Judgment under appeal is not only inappropriate, but also excessive to the point of being disproportionate. The General Court therefore erred in law by not substantially reducing the amount of the fines in exercise of its unlimited jurisdiction.

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[1] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004, L 24, p. 1).

[2] 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 (OJ 2003, L 1, p. 1).

Appeal brought on 8 December 2021 by the European Parliament against the judgment of the General Court (Eighth Chamber) delivered on 29 September 2021 in Case T-384/19, Parliament v Axa Assurances Luxembourg SA and Others

(Case C-766/21 P)

(2022/C 119/28)

Language of the case: French

Parties

Appellant: European Parliament (represented by: E. Paladini and B. Schäfer, acting as Agents)

Other parties to the proceedings: Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA, La Luxembourgeoise SA, Nationale-Nederlanden Schadeverzekering Maatschappij NV

Form of order sought

— annul the second and fourth paragraphs of the operative part of the judgment under appeal;

— refer the case back to the General Court;

— reserve costs, with the exception of those which are subject to the third paragraph of the operative part of the judgment under appeal.

In the alternative,

— annul the second and fourth paragraphs of the operative part of the judgment under appeal;

— grant the form of order sought by the European Parliament at first instance in respect of Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA and La Luxembourgeoise SA.