

6. If both the second and third questions are answered in the negative, does the failure of the insurer or the policyholder offering unit-linked life insurance to explain to the consumer in detail the precise characteristics of the instrument in which the assets of the investment fund (unit-linked fund) are invested, including information on the operating rules of such an instrument, where it is a derivative (or a structured instrument with a derivative embedded in it) constitute an unfair commercial practice within the meaning of Article 5 of the Unfair Commercial Practices Directive or does the failure to provide the information required constitute a misleading commercial practice within the meaning of Article 7 of that directive?

⁽¹⁾ OJ 2009 L 335, p. 1.

⁽²⁾ OJ 2002 L 345, p. 1.

⁽³⁾ OJ 2004 L 145, p. 1.

⁽⁴⁾ OJ 2014 L 173, p. 349.

⁽⁵⁾ OJ 2005 L 149, p. 22.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 27 March 2020 — Bundeswettbewerbsbehörde v Nordzucker AG and Others

(Case C-151/20)

(2020/C 209/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Bundeswettbewerbsbehörde

Defendants: Nordzucker AG, Südzucker AG, Agrana Zucker GmbH

Questions referred

1. Is the third criterion established in the Court of Justice's competition case-law on the applicability of the 'ne bis in idem' principle, namely that conduct must concern the same protected legal interest, applicable even where the competition authorities of two Member States are called upon to apply the same provisions of EU law (here: Article 101 TFEU), in addition to provisions of national law, in respect of the same facts and in relation to the same persons?

In the event that this question is answered in the affirmative:

2. Does the same protected legal interest exist in such a case of parallel application of European and national competition law?
3. Furthermore, is it of significance for the application of the 'ne bis in idem' principle whether the first decision of the competition authority of a Member State to impose a fine took account, from a factual perspective, of the effects of the competition law infringement on the other Member State whose competition authority only subsequently took a decision in the competition proceedings conducted by it?
4. Do proceedings in which, owing to the participation of a party in the national leniency programme, only a declaratory finding of that party's infringement of competition law can be made also constitute proceedings governed by the 'ne bis in idem' principle, or can such a mere declaratory finding of the infringement be made irrespective of the outcome of previous proceedings concerning the imposition of a fine (in another Member State)?
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