

C-11720, case of bpost

Background:

- **bpost**, the Belgian national postal operator, implemented a new tariff system in 2010.
- The **Belgian Competition Authority (BCA)** found this system abusive (excluding competitors and harming clients) and imposed a fine.
- Later, the **Belgian Institute for Postal and Telecommunications Services (BIPT)**, the national postal regulator, also fined bpost for breaching postal regulations related to the same tariff system.

Legal Question:

- bpost challenged the second fine, arguing it violated the "**non bis in idem**" principle: being punished twice for the same offense.

Court Ruling:

- The **Court of Justice of the European Union (CJEU)**, in its Grand Chamber judgment of March 22, 2022, **upheld the compatibility of double sanctions under certain conditions**:
 - The offenses must not be identical, even if related.
 - Each sanction must pursue a distinct public interest objective.
 - The overall penalty must be proportionate.

Key Points:

- The CJEU clarified the scope of the non bis in idem principle in competition law.
- Double sanctions are allowed when pursuing different regulatory objectives (competition vs. postal regulation).
- Proportionality remains crucial to avoid excessive punishment.

C-339/20 VD, also known as "Joined Cases C-339/20 and C-397/20".

Background:

- Two individuals (VD and SR) were investigated for insider trading and other financial crimes.
- French authorities relied on their phone call data, collected under national laws requiring general data retention by communication providers. VD and SR challenged the data collection, arguing it violated their privacy rights under EU law.

Key Questions:

- Can EU member states legally mandate general data retention for combating financial crimes?
- Does such retention violate fundamental rights to privacy and data protection?

Court Ruling:

- **General and indiscriminate data retention for a year is not allowed** under EU law, even for fighting financial crimes like insider trading.
- EU law on data protection (Privacy and Electronic Communications Directive) takes precedence over national laws allowing such retention.
- National courts cannot limit the effects of declaring national laws invalid if they are incompatible with EU law.

Implications:

- National laws requiring general data retention are incompatible with EU data protection rules.
- Evidence obtained via such retention may be inadmissible in court if it unfairly disadvantages the accused.
- Authorities must find alternative, data-minimizing methods for investigating financial crimes.

Google (De-referencing of allegedly false information) (C-460/20, EU:C:2022:962)

Background:

- Two individuals (TU and RE) requested Google to de-reference search results linking to articles containing allegedly inaccurate information about them.
- Google refused, arguing the information was relevant to the public and the individuals had provided no proof of inaccuracy.

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- The case reached the Court of Justice of the European Union (CJEU) for a preliminary ruling on balancing rights:
 - Right to privacy and protection of personal data (GDPR)
 - Freedom of expression and information (Charter of Fundamental Rights)

Court Ruling:

- The CJEU ruled that under certain conditions, search engine operators like Google **must de-reference information on request if it's:**
 - **Manifestly inaccurate:** Proven demonstrably wrong, not just subjective disagreement.
 - **Relevant to the data subject:** Concerns the individual directly.
 - **No overriding public interest:** Information isn't crucial for public debate or historical significance.
- The **burden of proof** lies with the individual requesting de-referencing to demonstrate the inaccuracy, but not necessarily through a court judgment. **De-referencing should be limited to the specific inaccurate information**, not the entire webpage or website.

Key Implications:

- The judgment strengthens the "right to be forgotten" in the digital age.
- Search engines have more responsibility to assess information accuracy on request.
- Balancing fundamental rights remains crucial, ensuring both data protection and open access to information.

Commission v United Kingdom (Action to counter undervaluation fraud) (C-213/19, EU:C:2022:167)

Background:

- The European Commission sued the United Kingdom for failing to properly combat **undervaluation fraud** on imports of textiles and footwear from China.
- This alleged fraud involved intentionally declaring a lower value for the goods, resulting in lower customs duties and VAT collection, harming the EU's financial interests.
- The UK was accused of inadequate customs controls, lacking systematic risk analysis and security measures.

Court Ruling:

- The CJEU **ruled in favor of the Commission**, finding the UK had breached its obligations under EU law by failing to:
 - **Implement systematic and effective customs controls based on risk analysis** before releasing the goods.
 - **Systematically require security deposits** where undervaluation was suspected.
- The **statistical method** used by the Commission to estimate the financial losses for the EU was deemed **acceptable**.

Key Implications:

- The judgment emphasizes the **obligation of Member States to protect the EU's financial interests**, including combating fraud at customs.
- It sets a **precedent for stricter customs controls** based on risk assessments and potential security measures.
- The case strengthens the EU's ability to hold Member States accountable for inadequate customs controls.

Grossmania (C-177/20, EU:C:2022:175)

Background:

- This case involved **Grossmania**, a company owned by non-Hungarian nationals, which had rights of usufruct over agricultural land in Hungary.
- Following a change in Hungarian law in 2014, **these rights were extinguished by operation of law**.
- Grossmania did not challenge this initially, but after a subsequent preliminary ruling by the CJEU deemed such legislation an unjustified restriction on the free movement of capital, they sought reinstatement of their rights.

Question to the CJEU:

- The Hungarian court asked the CJEU whether, despite Grossmania's initial inaction, they could still:

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- Disapply the national legislation (now found to be incompatible with EU law)
- Require the authorities to reinstate Grossmania's rights of usufruct

Court Ruling:

- The CJEU ruled that **national courts** can disapply national legislation **contravening EU law** even if not challenged earlier, subject to specific conditions:
 - The legal situation is still open (e.g., no final administrative act).
 - The principle of equality and effectiveness of EU law wouldn't be undermined.
 - National law doesn't preclude disapplication in such circumstances.

On Grossmania's specific case:

- The CJEU **didn't definitively answer** whether reinstatement was possible due to specific details of the national legal framework and lack of clarity on finality of the administrative decision.
- It **remitted the case back to the Hungarian court** for further assessment based on the provided guidance.

Key Implications:

- This judgment strengthens the **primacy and direct effect of EU law** over national law.
- National courts have a duty to ensure effective application of EU law even if national legislation contradicts it.
- However, specific national procedural rules and circumstances still need to be considered in each case.

Servizio Elettrico Nazionale and Others (C-377/20, EU:C:2022:379)

Background:

- This case involved **Servizio Elettrico Nazionale (SEN)**, the former Italian electricity incumbent, accused of abusing its dominant market position.
- The **Autorità Garante della Concorrenza e del Mercato (AGCM)**, the Italian competition authority, fined SEN for sharing commercially sensitive information with its subsidiaries, allegedly hindering competition in the retail electricity market.
- SEN challenged the fine, arguing its actions were lawful and not anti-competitive.

Key Questions:

- Can the transfer of commercially sensitive information within a group of undertakings constitute an **abusive exclusionary practice** under EU competition law?
- Can the conduct of a subsidiary be imputed to the parent company for competition law purposes?

Court Ruling:

- The CJEU confirmed that sharing sensitive information within a group can be an **abusive exclusionary practice**, even if the information itself is not confidential. However, this depends on several factors, including:
 - The **nature and impact of the information** on competitors.
 - Whether the information was **necessary for legitimate commercial reasons**.
 - The **alternative means available** to achieve the same commercial objectives without harming competition.
- For **imputing a subsidiary's conduct to the parent company**, the CJEU established a test:
 - The parent company must **exercise decisive influence** over the subsidiary's commercial policy.
 - The subsidiary's conduct must be **designed to implement the parent company's instructions or wishes**.

On SEN's case:

- The CJEU **didn't rule definitively** on whether SEN's specific actions constituted an abuse, as it required further assessment by the national court based on the provided criteria.
- The judgment clarifies the conditions for imputing a subsidiary's conduct to the parent company in competition law cases.

Key Implications:

- Companies in dominant positions must be **cautious when sharing sensitive information**, even within their group, to avoid competition law concerns.
- National courts have a clearer framework for **assessing the imputability of a subsidiary's conduct** to its parent company.

Austro-Mechana (C-433/20, EU:C:2022:217)

Background:

- **Austro-Mechana**, a society managing mechanical reproduction rights in Austria, sued **Strato AG**, a cloud storage service provider, demanding payment of a private copying levy on storage space offered to users.
- Strato refused, arguing that its servers weren't "private copying devices" as defined in the Directive and their users were not engaged in private copying.

Key Questions:

- Does the concept of "private copying device" under the Directive encompass **servers owned by third parties made available to natural persons for private use**?
- Are providers of such services obliged to pay a private copying levy?
- Is national legislation compatible with the Directive if it doesn't subject cloud storage service providers to the levy?

Court Ruling:

- The CJEU ruled that:
 - The concept of "private copying device" is **not limited to traditional devices** like personal computers but can include other equipment used for private copying, **potentially encompassing servers if the conditions are met**.
 - Providers of such services can be **obliged to pay a private copying levy** if they meet the definition of "making or importing devices" under the Directive.
 - However, national legislation that **doesn't subject cloud storage service providers to the levy is not automatically incompatible with the Directive**, provided it ensures **fair compensation** for copyright holders through alternative means.

Key Implications:

- The judgment clarifies the scope of the private copying exception under EU copyright law, potentially including cloud storage services depending on specific circumstances.
- National authorities have flexibility in implementing the private copying levy but must ensure fair compensation for copyright holders.
- The case raises ongoing debates about adapting copyright rules to new technologies and balancing the interests of right holders and users in the digital environment.

Louboutin (C-148/21 and C-184/21, EU:C:2022:1016)

Background:

- **Christian Louboutin**, a designer known for his red-soled shoes, sued **Amazon** for trademark infringement based on the sale of shoes with similar red soles on its online marketplace.
- Louboutin argued that Amazon, despite not directly selling the infringing shoes itself, played an active role in their promotion and advertising, essentially "using" the infringing trademark.
- The case centered on the interpretation of EU trademark law and the responsibility of online platforms for third-party sellers' activities.

Key Questions:

- Can an online platform like Amazon be held liable for trademark infringement committed by third-party sellers using its marketplace?
- Under what circumstances could an online platform be considered to be "using" an infringing trademark?
- Does the method of presenting advertisements and the lack of clear distinction between platform offerings and third-party offerings influence the platform's liability?

Court Ruling:

- The CJEU ruled that an online platform like Amazon can be held liable for trademark infringement by **third-party sellers** under **certain conditions**:
 - **Perception of integral part:** The platform's own commercial communication must create a perception that the infringing sign is part of its own offerings.
 - **Active role in promotion:** The platform actively promotes the infringing goods through targeted advertising or other actions.
 - **Insufficient distinction:** The platform's presentation doesn't clearly distinguish its own offerings from those of third-party sellers.

Key Implications:

- This judgment reinforces the responsibility of online platforms to monitor and address potential trademark infringements by third-party sellers.
- Platforms need to carefully design their presentation and promotion methods to avoid being perceived as using infringing trademarks themselves.
- The ruling provides clearer guidance for both rights holders and online platforms navigating the complex legal landscape of e-commerce and intellectual property.

Unicaja Banco (C-869/19, EU:C:2022:397)

Background:

- L, a consumer in Spain, took out a mortgage loan with **Unicaja Banco** containing a "floor clause," setting a minimum interest rate regardless of market fluctuations.
- L challenged the clause as unfair, arguing it created an imbalance in favor of the bank and harmed consumers.
- The Spanish Supreme Court requested a preliminary ruling from the CJEU on the interpretation of the Directive in this context.

Key Questions:

- Can national rules limit the temporal effects of a declaration that an unfair term is void, making it inapplicable only from the date of the judgment?
- Does the consumer have a right to restitution of all amounts paid under the unfair term?
- Do national appeal courts have the power to review their own decisions on their own motion in light of CJEU rulings on the unfairness of contractual terms?

Court Ruling:

- The CJEU ruled that:
 - National rules **cannot limit the temporal effects** of a declaration of unfairness, meaning the entire period during which the clause was applied should be considered for potential restitution.
 - The consumer has a **right to restitution of all amounts paid** under the unfair clause, unless the bank justifies its retention based on equitable principles.
 - National appeal courts **must review their own decisions on their own motion** when necessary to comply with CJEU rulings on unfair terms, ensuring effective consumer protection.

Key Implications:

- This judgment strengthens the rights of consumers facing unfair terms in financial contracts, allowing them to claim restitution for the entire period of application.
- National courts have a clear obligation to ensure effective remedies for consumers harmed by unfair terms, even if it affects past judgments.
- The case contributes to a broader discussion about consumer protection in financial markets and the application of EU law in national legal systems.

TimePartner Personalmanagement (C-311/21, EU:C:2022:983)

Background:

- **CM** worked as a temporary agency worker through **TimePartner Personalmanagement GmbH** in Germany.
- CM received lower pay than staff recruited directly by the user undertaking, despite performing the same tasks under the same conditions.
- CM challenged this difference in pay, arguing it violated the principle of equal treatment enshrined in the Directive.

Key Questions:

- Does the Directive require **equal pay for temporary agency workers and directly recruited staff** performing the same tasks under the same conditions?
- Can collective agreements derogate from the principle of equal treatment, justifying lower pay for temporary agency workers?
- How can national courts ensure effective judicial protection for temporary agency workers' claims of unequal treatment?

Court Ruling:

- The CJEU ruled that:
 - The Directive requires **equal pay for temporary agency workers and directly recruited staff** performing the same tasks under the same conditions.
 - **Collective agreements can derogate** from this principle **under certain conditions**:
 - The derogation must be **objectively justified** by legitimate reasons based on the specific circumstances of temporary agency work.
 - The overall protection of temporary agency workers must be **respected**, considering their specific vulnerabilities.
 - National courts have a duty to ensure **effective judicial protection** for temporary agency workers, including the ability to challenge unequal treatment provisions in collective agreements.

Key Implications:

- This judgment strengthens the principle of equal treatment for temporary agency workers across the EU, promoting fairer working conditions.
- Collective agreements have limited capacity to justify lower pay for temporary agency workers, requiring clear justification and respect for their overall protection.
- National courts play a crucial role in ensuring effective enforcement of the Directive and addressing potential discrimination against temporary agency workers.

Banka Slovenije (C-45/21, EU:C:2022:670)

Background:

- In 2013, the Slovenian government passed a law that bailed out several banks, including Banka Slovenije.
- The law imposed a levy on all depositors in these banks, including those who had already lost money due to the bank's collapse.
- Several depositors challenged the law, arguing that it was unfair and violated their property rights.

Key Questions:

- Can a government impose a levy on depositors in a failed bank, even if those depositors have already lost money? Does such a levy violate the depositors' property rights?

Court Ruling:

- The CJEU ruled that:
 - A government can impose a levy on depositors in a failed bank, even if those depositors have already lost money.
 - However, such a levy must be **fair and proportionate**, and it must not violate the depositors' property rights.
 - If the levy is found to be unlawful, the depositors are entitled to compensation.

Key Implications:

- This judgment provides important guidance on the limits of government power to impose levies on bank depositors.
- It also clarifies the rights of depositors in the event of a bank bailout.

Autorité des marchés financiers (C-302/20, EU:C:2022:190)

Background:

- In 2017, the Autorité des marchés financiers (AMF), the French financial markets regulator, sanctioned Mr. A for disclosing inside information about a potential takeover bid for a listed company.
- Mr. A argued that the disclosure was not unlawful because it was made to a journalist in the course of his professional duties.
- The AMF disagreed, arguing that the disclosure was still unlawful because it was made before the information had been made public.

Key Questions:

- Can a journalist be considered a "professional" for the purposes of the Market Abuse Regulation?
- When is information considered to be "precise" for the purposes of the Market Abuse Regulation?
- Can a person be sanctioned for disclosing inside information even if they did not intend to cause harm to the market?

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Court Ruling:

- The CJEU ruled that:
 - A journalist can be considered a "professional" for the purposes of the Market Abuse Regulation.
 - Information is considered to be "precise" if it is specific enough to allow an investor to make an informed decision about whether to buy or sell a financial instrument.
 - A person can be sanctioned for disclosing inside information even if they did not intend to cause harm to the market.

Key Implications:

- This judgment provides important guidance on the interpretation of the Market Abuse Regulation.
- It clarifies the circumstances in which a journalist can be considered a "professional" for the purposes of the Regulation.
- It also clarifies the meaning of "precise" information and the potential consequences of disclosing inside information.

Poland v Parliament and Council (C-401/19, EU:C:2022:297)

Background:

- Case dealt with the compatibility of **Article 17(4) of Directive (EU) 2019/790 on copyright and related rights in the information society** with the **freedom of expression and information** guaranteed by the **Charter of Fundamental Rights of the European Union**.
- Poland challenged the Directive, specifically provisions requiring online content-sharing platforms to implement **prior automatic filtering of content uploaded by users** to prevent copyright infringement.
- Poland argued this requirement violated fundamental rights of users to freely express themselves and access information.

Key Questions:

- Does mandatory prior filtering by online platforms breach the **freedom of expression and information**?
- How can **copyright holders' rights** be protected **proportionately** without unduly restricting fundamental rights?
- Are there alternative measures to achieve the objectives of the Directive while respecting fundamental rights?

Court Ruling:

- The CJEU ruled that **prior automatic filtering** can violate fundamental rights but **may be permissible in certain circumstances**:
 - It must be accompanied by **appropriate safeguards** to minimize filtering errors and protect legitimate expressions.
 - National courts must conduct ex-ante assessments to ensure the measure is **necessary and proportionate** to achieve legitimate aims.
 - Alternative, less restrictive measures should be considered first.

Key Implications:

- The judgment clarifies the potential conflict between copyright protection and fundamental rights in the digital environment.
- It places the burden on national authorities to carefully assess the proportionality of prior filtering measures before implementing them.
- Online platforms face challenges in implementing prior filtering while respecting user rights and minimizing collateral damage.
- The debate on effective copyright protection in the digital age continues, requiring a balanced approach that respects both rights holders and users.

Getin Noble Bank (C-132/20, EU:C:2022:235)

Background:

- This case involved Polish banking regulations and the impartiality of the judiciary.
- The Polish Supreme Court requested a preliminary ruling from the CJEU regarding the status of a judicial body involved in a dispute between Getin Noble Bank and its customers.

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- The specific body in question, the National Council of the Judiciary (NCJ), had been appointed under a law deemed unconstitutional by some due to concerns about its political influence.

Key Questions:

- Can a judicial body whose composition and appointment procedures violate EU law be considered an "impartial and independent tribunal" within the meaning of EU law?
- Does the existence of such a body hinder the effectiveness of judicial protection guaranteed by EU law?
- Do national courts have an obligation to disapply national rules incompatible with EU law, even if those rules were adopted by national parliaments?

Court Ruling:

- The CJEU **didn't directly answer** whether the specific NCJ composition violated EU law, leaving that assessment to the national court based on the provided criteria.
- However, the Court established **clear guidance** for assessing the impartiality and independence of tribunals:
 - **Objectively justifiable factors** must exist to guarantee the absence of any legitimate doubt about the independence of the judge.
 - The composition and appointment procedure of the judicial body must provide **sufficient guarantees** against risks of influence or pressure.
 - The national court must **carefully examine all relevant factors** to ensure the tribunal can effectively offer impartial and independent judicial protection.

Key Implications:

- This judgment highlights the importance of judicial independence and impartiality in EU law.
- National courts have a strong responsibility to assess the compatibility of national legal frameworks with these principles.
- The case raises ongoing discussions about the rule of law and the separation of powers within the EU.

Hungary v Parliament and Council (C-156/21, EU:C:2022:97) - also known as the "Rule of Law Conditionality Mechanism" case

Background:

- Hungary challenged **Regulation (EU, Euratom) 2020/2092**, establishing a **general regime of conditionality for the protection of the Union budget**. This regulation allows the EU to suspend budget payments to member states found to be in breach of the rule of law principles.
- Hungary argued that the regulation was unlawful, based on various claims, including:
 - It violated the principle of legal certainty.
 - It circumvented existing procedures under Article 7 TEU.
 - It infringed on member states' competences.

Key Questions:

- Is the "Rule of Law Conditionality Mechanism" compatible with EU treaties?
- Does it respect the principles of legal certainty, proportionality, and equality of member states?
- Can the EU restrict access to EU funds based on rule of law concerns?

Court Ruling:

- The CJEU upheld the **validity of the Regulation**, rejecting Hungary's arguments:
 - The regulation has a clear legal basis in Article 322(1)(a) TFEU and respects the principle of legal certainty.
 - It does not circumvent Article 7 TEU but complements existing procedures.
 - The measures under the regulation respect the principle of proportionality and do not violate the principle of equality of member states.

Key Implications:

- This judgment strengthens the EU's ability to protect the rule of law and the financial interests of the Union.
- It sets a precedent for using budget conditionality as a tool to address rule of law issues in member states.
- The case has triggered broader debates about the balance between national sovereignty and EU competences in upholding the rule of law.