TUCA ZBARCEA
ASOCIATII

23 January 2020

Legal Alert

EU Law

In this issue:

1. **EU legal instruments and relevant case law of the ECJ – December 2019**

Legislation

Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions

OJ publication date: 12.12.2019 ● Date of entry into force: 01.01.2020 ● Transposition deadline: 31.01.2023

The Directive provides a legal framework for cross-border conversions, mergers and divisions (collectively, "*cross-border operations*") in order to remove the barriers to the exercise of the freedom of establishment and to protect the employees, creditors and minority members within the internal market.

These provisions are applicable to limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union.

Entities which are subject to resolution procedures provided for by Directive 2014/59/EU, or which are in liquidation and have begun to distribute assets to their members are exempt from the application of this Directive.

Member States may decide not to apply the provisions related to cross-border operations to companies which are the subject of insolvency proceedings or subject to preventive restructuring frameworks.

The conversions, mergers and divisions can only be completed based on a preliminary (pre-operation) certificate which can be obtain in accordance with procedures and formalities governed by the law of the departure Member State which will designate the court, the public notary, or another competent authority to control the legality of cross-border operations. The procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements.

Drafting the application to obtain a pre-operation certificate, as well as transmitting the information and necessary documents can be done entirely online. The evaluation of the documents and making a decision shall take place within three months of filing the application.

The draft terms for the three operations are drawn up by the administrative or management body of the company and must contain a list of documents and information, such as the instrument of constitution of the company or the statute, the legal form and name of the company in the departure Member State, as well as the destination Member State, the indicative timetable, safeguards offered to creditors, special advantages granted to associates, and possible repercussions on employment. The operation is approved by the general meeting with a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital.

The Directive mandates the administrative or management body of the company to draw up a report for members and employees, explaining and justifying the legal and economic aspects of the cross-border operation, as well as explaining the implications of the cross-border operation for employees and for the future business of the company. The report shall be made available to the associates and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than six weeks before the date of the general meeting mentioned in the previous paragraph. A separate report regarding as to whether the cash compensation is adequate is drafted by an independent expert and is provided to the associates at least one month prior to the general meeting.

Member States shall ensure that the cross-border operation project, the notification for the associates, creditors and employee representatives, as well as the independent expert's report are disclosed to the public in the departure Member States' registry. Confidential information may be excluded from the disclosure by the company.

The Directive also provides for means for protecting the company's associates, employees and creditors. Thus, the associates who voted against the approval of the draft terms of the cross-border operation have the right to dispose of their shares for adequate cash compensation. The decision regarding this choice shall be declared in a period that shall not exceed one month after the general meeting in which the cross-border operation was discussed. If the member considers that the cash compensation offered by the company has not been adequately set, he or she is entitled to claim additional cash compensation before the competent authority or body mandated under national law.

Creditors whose claims antedate the disclosure of the draft terms of the cross-border operation and have not fallen due at the time of such disclosure benefit from a special form of protection.

If they are dissatisfied with the safeguards offered, they can file a request to obtain the adequate safeguards within three months from the discloser of the project. Moreover, Member States shall ensure that creditors whose claims antedate the disclosure of the draft terms of the cross-border

conversion are able to institute proceedings against the company also in the departure Member State within two years of the date the conversion has taken effect

Last, but not least, the employees have the right to be informed and consulted on the cross-border conversions, mergers and divisions before drafting the project or the internal report, whichever comes first, in such a way that a reasoned response is given to the employees before making a final decision.

Directive (EU) 2019/2161 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (**"Directive 2019/2161"**).

OJ publication date: 18 December 2019 ● Date of entry into force: 07 January 2019 ● Applies from: 28 May 2022

The amendments to Directive 2019/2161 are intended to contribute to achieving a higher level of consumer protection and modernizing the consumer protection legislation.

In this respect, some of the measures laid down by Directive 2019/2161 are:

1. Harsher sanctioning regime governing consumer protection

Although the EU policies ensure a high level of consumer protection, the current national regulations on sanctions in case of infringements of consumer rights vary significantly among Member States. Thus, not all Member States ensure a high protection level, by proportionate and dissuasive fines for widespread or cross-border infringements.

Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (**"Regulation (EU) 2017/2394"**) imposes the application of sanctions (fines or periodic penalty payments) on the trader responsible for widespread infringements, or widespread infringements with a Union dimension. In this connection, in case of widespread or cross-border infringements, the new regulations impose on the relevant national authorities the obligation to order harsher monetary sanctions. Thus, the maximum fines that can be imposed amount to at least 4 % of the trader's annual turnover in the Member State or, in case of cross-border infringements, in the Member States concerned. If information on the seller's or supplier's annual turnover is not available, the imposed fines may reach the amount of EUR 2 million.

However, for national constitutional reasons Member States may limit the imposition of fines in the cases expressly provided as misleading commercial practices, aggressive commercial practices, and commercial practices deemed unfair in any situation, in accordance with Regulation (EU) 2017/2394. For instance, the imposition of fines may be limited in situations such as: using harassment, coercion or undue influence in cases of commercial practices; statement made in any form, according to which the sale of a product is legal, or the ungrounded claim that a product is able to cure illnesses, dysfunctions or other malformations.

Note: amendments to Directive 93/13/EEC on unfair terms in consumer contracts and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council

2. Rules on announcing and calculating price reductions

In accordance with Article 2 of Directive 2019/2161, when applying a price reduction traders shall be bound to indicate the lowest price they applied during a period of time not shorter than 30 days prior to the price reduction announcement, which is the price by reference to which the reduction is applied.

Where the product has been on the market for less than 30 days, Member States may also provide for a shorter period of time in consideration of which the price reduction shall be set.

These rules to be harmonized at the level of all Member States have already been transposed into Romania's domestic legislation (Government Ordinance No. 99/2000 on the sale of products and services on the market).

Note: amendments to Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers

3. Transparency as regards online searches and consumer reviews of products

When searching online via specialized platforms products offered by various traders, the average consumer usually accesses the first results of the search, without having a picture of the criteria underlying the ranking of those offers.

Thus, the new provisions impose that consumers be provided, in a specific and easily accessible section, with general information about the main parameters determining the ranking of the presented products. Thus, consumers will know if, for instance, an offer ranks top in the online search results because of paid advertising or any other contribution influencing the display of search results.

However, these regulations do not apply to providers of online search engines.

Moreover, the traders providing access to consumer reviews will be bound to ensure review genuineness. Thus, traders have the obligation to take reasonable measures for informing consumers about how they guarantee that the published reviews originate from consumers who have actually used or purchased the product.

Note: amendments to Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council

4. Prohibition to resell tickets acquired by using automated means

Directive 2019/2161 introduces the prohibition to implement procedures for purchasing online tickets to various events, by using automated means, if this method is intended either to circumvent any limit imposed on the number of tickets that a person can buy, or to circumvent any other rules applicable to the purchase of such tickets. This measure is intended to protect consumers against purchasing events tickets at much higher prices, as a result of resales by traders.

Note: amendments to Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council

5. Rules on the dual quality of consumer products

It is rather common to market across Member States goods as being identical, although they have a different composition or characteristics, thus misleading consumers to take a transactional decision that they would not have taken otherwise.

Thus, Directive 2019/2161 sets out that such practice will be treated as misleading and will be sanctioned as such, unless it is justified by legitimate and objective factors.

Note: amendments to Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council

6. Remedies in case of unfair commercial practices

In the current context, a clear frame is required for the individual remedies consumers could have access to in case they are affected by unfair commercial practices. Such harmed consumers could demand compensation for damage suffered and, where relevant, a price reduction or the termination of the contract. These remedies do not impact the application of other remedies available to consumers under the EU law or the national law.

Note: amendments to Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council

7. Other information requirements specific to contracts concluded in online marketplaces

Many times, in case of various transactions conducted online, the consumer has no clear representation of the party he/ she is contracting with and is unaware of whether he/ she is purchasing a good or a service from a trader, or from another individual. Thus, if the third party

offering the goods or the services is not a trader, the consumer will not be protected by the EU laws on consumer protection.

In this respect, an obligation is set out to inform consumers about the capacity of the third party providing the goods or the services – whether such party is a trader or merely an individual – and to warn consumers if the EU laws on consumer protection are not applicable.

Note: amendments to Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU

OJ publication date: 18.12.2019 ● Date of entry into force: 07.01.2020 ● Transposition deadline: 08.07.2021

The Directive applies to covered bonds – debt obligations issued by a credit institution established in the Union - secured by cover assets to which covered bond investors have direct recourse as preferred creditors.

A dual recourse system is established consisting of rules entitling covered bond investors and counterparties of derivative contracts a claim against the credit institution issuing the covered bonds. In the case of the insolvency or resolution of the credit institution issuing the covered bonds, the priority claim is against the principal and any accrued and future interest on cover assets, as well as against the insolvency estate of that credit institution.

Member States may lay down rules granting the covered bond investors and counterparties of derivative contracts a claim that ranks senior to the claim of that specialized mortgage credit institution's ordinary unsecured creditors, but junior to any other preferred creditors.

According to the Directive, covered bonds are secured at all times by high-quality cover assets that ensure that the credit institution issuing the covered bonds has a claim for payment or by assets in the form of loans to or guaranteed by public undertakings. The credit institutions issuing covered bonds assess the enforceability of claims for payment and the ability to realize collateral assets before including them in the cover pool. Moreover, credit institutions issuing covered bonds have in place procedures to monitor that the physical collateral assets which secure assets are adequately insured against the risk of damage and that the insurance claim is segregated[1].

[1] "segregation" means the actions performed by a credit institution issuing covered bonds to identify cover assets and put them legally beyond the reach of creditors other than covered bond investors and counterparties of derivative contracts.

Member States may allow credit institutions issuing covered bonds to include assets in the cover pool that are secured by collateral assets located outside the Union as long as the investors are protected by requiring that credit institutions verify that those collateral assets meet all the requirements set out in this Directive.

The provisions allow for the use of intragroup pooled covered bond structures under which covered bonds issued by a credit institution that belongs to a group are used as cover assets for the external issue of covered bonds by another credit institution that belongs to the same group.

The composition of the cover pool is set by the Member States who lay down rules that set the conditions for the inclusion by credit institutions issuing covered bonds of primary assets that have differing characteristics in terms of structural features, lifetime or risk profile. These institutions may be required to appoint a cover pool monitor whose tasks will be provided for by the transposition legislation. The monitor shall be separate and independent from the credit institution issuing the covered bonds and from that credit institution's auditor.

The cover pool includes at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of the covered bond program over the next 180 days.

The information provided to the investors regarding the portfolio of the credit institutions issuing covered bonds must include at least the following information:

- The value of the cover pool and outstanding covered bonds;
- A list of the International Securities Identification Numbers (ISINs) for all covered bond issues under that program;
- The geographical distribution and type of cover assets, their loan size and valuation method;
- Details in relation to market risk, including interest rate risk and currency risk, and credit and liquidity risks;
- The maturity structure of cover assets and covered bonds, including an overview of the maturity extension triggers if applicable;
- The levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralization;
- The percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 and in any case where the loans are more than 90 days past due.

Investor protection is ensured by the Member States by requiring that covered bond programs comply at all times with at least the coverage requirements laid down in Article No. 15, paragraphs 2 to 8. Essentially, all liabilities of the covered bonds are covered by claims for payment attached to the cover assets.

The issue of covered bonds is subject to public supervision by one or more competent authorities which monitor the issue of covered bonds to assess compliance with the requirements laid down in the provisions of national law transposing this Directive. Moreover, a permission for a covered bond program must be obtained from these authorities before issuing covered bonds under that program. The powers of these authorities include the review the covered bond program, carrying out inspections, imposing sanctions or other administrative measures.

Case Law

Judgment of the Court (Ninth Chamber) of 4 December 2019. UB v VA and Others. Request for a preliminary ruling from the Cour de cassation. (Case C-493/18)

Reference for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Regulation (EC) No 1346/2000 — Article 3(1) — Actions which derive directly from insolvency proceedings and which are closely connected with such proceedings — Sale of immovable property and creation of a mortgage — Action brought by the trustee in bankruptcy seeking a declaration that the transactions concerned are ineffective — Article 25(1) — Exclusive jurisdiction of the courts of the Member State in which the insolvency proceedings were opened.

1. Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that an action brought by the trustee in bankruptcy appointed by a court of the Member State within the territory of which the insolvency proceedings were opened seeking a declaration that the sale of immovable property situated in another Member State and the mortgage granted over it are ineffective as against the general body of creditors falls within the exclusive jurisdiction of the courts of the first Member State.

2. Article 25(1) of Regulation No 1346/2000 must be interpreted as meaning that a judgment by which a court of the Member State in which the insolvency proceedings were opened authorises the trustee in bankruptcy to bring an action in another Member State, even if that action falls within the exclusive jurisdiction of that court, cannot have the effect of conferring international jurisdiction on the courts of that other Member State.

Judgment of the Court (First Chamber) of 5 December 2019. Proceedings brought by Centraal Justitieel Incassobureau, Ministerie van Veiligheid en Justitie (CJIB). Request for a preliminary ruling from the Sąd Rejonowy w Chełmnie. (Case C-671/18)

Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in criminal matters — Mutual recognition — Financial penalties — Grounds for non-recognition and non-execution — Framework Decision

2005/214/JHA — Decision by an authority of the issuing Member State based on vehicle registration data — Notification of the penalties and the appeal procedures to the person concerned — Right to effective judicial protection.

---

1. Article 7(2)(g) and Article 20(3) of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that where a decision requiring payment of a financial penalty has been notified in accordance with the national legislation of the issuing Member State, indicating the right to contest the case and the time limit for such a legal remedy, the authority of the Member State of execution may not refuse to recognise and execute that decision provided that the person concerned has had sufficient time to contest that decision, which is for the national court to verify, and the fact that the procedure imposing the financial penalty in question is administrative in nature is not relevant in that regard.

2. Article 20(3) of Framework Decision 2005/214, as amended by Framework Decision 2009/299 must be interpreted as meaning that the competent authority of the Member State of execution may not refuse to recognise and execute a decision requiring payment of a financial penalty in respect of road traffic offences where such a penalty has been imposed on the person in whose name the vehicle in question is registered on the basis of a presumption of liability laid down in the national legislation of the issuing Member State, provided that that presumption may be rebutted.

Judgment of the Court (First Chamber) of 5 December 2019. Ordre des avocats du barreau de Dinant v JN. Request for a preliminary ruling from the Tribunal de première instance de Namur. (Case C-421/18)

Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Article 7(1)(a) — Special jurisdiction in matters relating to a contract — Concept of 'matters relating to a contract' — Claim for payment of annual fees payable by a lawyer to a bar association.

Article 1(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a dispute concerning a lawyer's obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain.

Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance services, such as insurance services, must be regarded as constituting an action in 'matters relating to a contract', within the meaning of that provision, provided that those fees constitute consideration for services provided by that bar association to its members and those services are freely consented to by the member concerned, which it is for the referring court to ascertain.

Judgment of the Court (Fourth Chamber) of 5 December 2019. „EVN Bulgaria Toplofikatsia" EAD v Nikolina Stefanova Dimitrova and „Toplofikatsia Sofia" EAD v Mitko Simeonov Dimitrov. Requests for a preliminary ruling from the Rayonen sad Asenovgrad and Sofiyski rayonen sad. (Joined Cases C-708/17 and C-725/17)

References for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Consumer law — Article 2(1) — Concept of 'consumer' — Article 3(1) — Contract concluded between a trader and a consumer — Contract for the supply of district heating — Article 27 — Inertia selling — Directive 2005/29/EC — Unfair business-to-consumer commercial practices in the internal market — Article 5 — Prohibition of unfair commercial practices — Annex I — Unsolicited supply — National law requiring each owner of a property in a building in co-ownership connected to a district heating network to contribute to the costs of thermal energy consumption by the common areas and internal installation of the building — Energy efficiency — Directive 2006/32/EC — Article 13(2) — Directive 2012/27/EU — Article 10(1) — Billing information — National law providing that, in a building in co-ownership, bills for the consumption of thermal energy by the internal installation are calculated, for each owner of an apartment in the building, in proportion to the heated volume of his or her apartment.

---

1. Article 27 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council read in conjunction with Article 5(1) and (5) of 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), must be interpreted as not precluding a national law that provides that the owners of an apartment in a building in co-ownership connected to a district heating network are required to contribute to the costs of the consumption of thermal energy by the common parts and the internal installation of the building, even though they did not individually request the supply of that thermal energy and they do not use it in their apartment.

2. Article 13(2) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC and Article 10(1) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC must be interpreted as not precluding a national law that provides that in a building held in co-ownership the bills for thermal energy consumption by the internal installation are calculated for each property owner in the building in proportion to the heated volume of his or her apartment.

Judgment of the Court (Third Chamber) of 11 December 2019. TK v Asociația de Proprietari bloc M5A-ScaraA. Request for a preliminary ruling from the Tribunalul București. (Case C-708/18)

Reference for a preliminary ruling — Protection of individuals with regard to the processing of personal data — Charter of Fundamental Rights of the European Union — Articles 7 and 8 — Directive 95/46/EC — Article 6(1)(c) and Article 7(f) — Making the processing of personal data legitimate — National legislation allowing video surveillance for the purposes of ensuring the safety and protection of individuals, property and valuables and for the pursuit of legitimate interests, without the data subject's consent — Installation of a video surveillance system in the common parts of a residential building.

Article 6(1)(c) and Article 7(f) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, read in the light of Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national provisions which authorise the installation of a video surveillance system, such as the system at issue in the main proceedings, installed in the common parts of a residential building, for the purposes of pursuing legitimate interests of ensuring the safety and protection of individuals and property, without the consent of the data subjects, if the processing of personal data carried out by means of the video surveillance system at issue fulfils the conditions laid down in Article 7(f), which it is for the referring court to determine.

Judgment of the Court (Fifth Chamber) of 12 December 2019. Slovenské elektrárne a.s. v Úrad pre vybrané hospodárske subjekty, formerly Daňový úrad pre vybrané daňové subjekty. Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky. (Case C-376/18)

Reference for a preliminary ruling — Admissibility — Common rules for the internal market in electricity — Directive 2009/72/EC — Scope — Article 3 — Objectives — Principle of non-discrimination — Special levy on the revenue of entities that are holders of an authorisation to carry on activity in regulated sectors — Electricity sector.

Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and, in particular, Article 3(1) to (3) and (10) thereof, must be interpreted as not precluding national legislation that establishes a special levy on the revenue, with respect to activities performed both nationally and abroad, of undertakings operating, on the basis of an authorisation issued by a public authority, in various regulated activity sectors, including undertakings that hold an authorisation for supplying electricity issued by the competent national regulatory authority.

Judgment of the Court (Fifth Chamber) of 12 December 2019. Otis Gesellschaft m.b.H. and Others v Land Oberösterreich and Others. Request for a preliminary ruling from the Oberster Gerichtshof. (Case C-435/18)

Reference for a preliminary ruling — Article 101 TFEU — Compensation for loss caused by a cartel — Right to compensation of persons not operating as suppliers or customers on the market affected by the cartel — Loss suffered by a public body which granted loans with favourable terms with a view to the acquisition of products covered by the cartel.

Article 101 TFEU must be interpreted as meaning that persons who are not active as suppliers or customers on the market affected by a cartel, but who provide subsidies, in the form of promotional loans, to buyers of the products offered on that market, may seek an order that the undertakings which participated in that cartel pay compensation for the losses they suffered as a result of the fact that, since the amount of those subsidies was higher than what it would have been without that cartel, those persons were unable to use that difference more profitably.

Judgment of the Court (First Chamber) of 12 December 2019. ML v Aktiva Finants OÜ. Request for a preliminary ruling from the Korkein oikeus. (Case C-433/18)

Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Requirement for adversarial proceedings and an effective remedy — Decision of a national court declaring enforceable a judgment delivered by a court of another Member State — National procedure granting leave for further consideration of an appeal.

1. Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding a procedure granting leave for further consideration of an appeal in which, first, a court of appeal rules on the grant of that leave on the basis of the judgment delivered at first instance, the appeal brought before it, any

observations of the respondent and, if necessary, other information in the file and, second, leave for further consideration must be granted, in particular, if there are doubts as to the correctness of the judgment in question, if it is not possible to assess the correctness of that judgment without granting leave for further consideration or if there is another significant reason to grant leave for further consideration of the appeal.

2. Article 43(3) of Regulation No 44/2001 must be interpreted as not precluding a procedure examining an appeal against a judgment on the application for a declaration of enforceability which does not require the respondent to be heard in advance when a decision in the respondent's favour is made.

Order of the Court (Sixth Chamber) of 17 December 2019. B & L Elektrogeräte GmbH v GC. Request for a preliminary ruling from Amtsgericht Straubing. (Cauza C-465/19)

Reference for a preliminary ruling – Consumer protection – Directive 2011/83/UE – Article 2 point 8 letter (c) and point 9 – Contract negotiated outside of a commercial space – The notion of «commercial space» – Contract concluded at the stand of a trade fair immediately after the consumer who is in a common space of the fair was approached by the trader.

Article 2 (8) of Directive 2011/83 / EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13 / EEC and Directive 1999/44 / EC of the European Parliament and of the Council and repealing Council Directive 85/577 / EEC and Directive 97/7 / EC of the European Parliament and of the Council, read in conjunction with Article 2 (9) thereof must be interpreted as meaning that a contract concluded between a professional and a consumer in a stand kept by a professional at the time of a trade fair, immediately after this consumer, who was in the aisle common to various stands present in an exhibition hall of the fair, has been requested by this professional, is an "off-premises contract", within the meaning of this provision.

Order of the Court (Ninth Chamber) of 18 December 2019. Hochtief AG v Fővárosi Törvényszék. Request for a preliminary ruling from the Székesfehérvári Törvényszék. (Case C-362/18)

Reference for a preliminary ruling - Public procurement - Appeal procedures - Directive 89/665 / EEC - Directive 92/13 / EEC - Right to effective judicial protection - Principles of efficiency and equivalence - Actions to review judicial decisions that violate Union law - Liability of Member States in case of violation of Union law by national courts - Assessment of compensatory damages

---

1) The liability of a Member State for damages caused by a decision of a national court delivering a final judgement which violates a rule of Union law is governed by the conditions laid down by the Court, in particular in paragraph 51 of the judgment of 30

September 2003, Köbler (C - 224/01, EU: C: 2003: 513), without however excluding that the responsibility of that State could be engaged in less restrictive conditions on the basis of national law. This responsibility is not excluded from the fact that this decision acquired res judicata. In the context of the implementation of this responsibility, it is for the national court hearing the claim for compensation to assess, taking into account all the elements which characterize the situation in question, whether the national court ruling in the last resort committed a sufficiently serious breach of Union law by manifestly disregarding the applicable Union law, including the relevant case-law of the Court. On the other hand, Union law precludes a rule of national law which, in such a case, generally excludes damage liable to be repaired from the costs incurred by a party by the decision injurious to national jurisdiction.

2) Union law, in particular Council Directive 89/665 / EEC of 21 December 1989 coordinating the laws, regulations and administrative provisions relating to the application of appeal procedures in the field of public procurement of supplies and works, as amended by Directive 2007/66 / EC of the European Parliament and of the Council of 11 December 2007, and Council Directive 92/13 / EEC of 25 February 1992 relating to the coordination of legislative provisions , regulatory and administrative matters relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 2007/66 , as well as the principles of equivalence and effectiveness, must be interpreted as not precluding the laws of a Member State which does not authorize the revision of a judgment, having the force of res judicata, of a court of that Member State, having decided on an action for annulment against an act of a contracting authority without addressing a question if the examination was envisaged in an earlier judgment of the Court delivered in response to a request for a preliminary ruling submitted in the framework of the proceedings relating to this action for annulment or in an earlier judgment of the Court delivered in response to a request for a decision preliminary ruling in another case. However, if the applicable internal procedural rules include the possibility for the national court to reverse a judgment endowed with res judicata with a view to making the situation resulting from this judgment compatible with a previous final national court decision, of which the court which rendered the judgment and the parties to the case giving rise to it were already aware, this possibility must, in accordance with the principles of equivalence and effectiveness, under the same conditions, prevail, to make the situation compatible with Union law, as interpreted by a previous judgment of the Court.

Judgment of the Court (Seventh Chamber) of 19 December 2019. Brussels Securities SA v État belge. Request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles. (Case C-389/18)

Reference for a preliminary ruling — Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — Directive 90/435/EEC — Prevention of double taxation — First indent of Article 4(1) — Prohibition on taxing profits received — Inclusion of the dividend distributed by the subsidiary in the parent company's tax base — Deduction of the dividend distributed from the parent company's tax base and the indefinite carrying forward of the surplus to the following tax years — The order in which tax deductions on profits are to be applied — Loss of a tax advantage.

Article 4(1) of Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003 must be interpreted as precluding legislation of a Member State which provides that dividends received by a parent company from its subsidiary must first be included in the tax base of the parent company, before 95% of the amount of the dividends is then deducted, and any surplus may be carried forward to subsequent tax years indefinitely, that deduction having priority over another tax deduction which may only be carried forward for a limited time.

Judgment of the Court (Second Chamber) of 19 December 2019. GRDF SA v Eni Gas & Power France SA and Others. Request for a preliminary ruling from the Cour de cassation. (Case C-236/18)

Reference for a preliminary ruling — Common rules for the internal market in natural gas — Directive 2009/73/EC — Article 41(11) — Settlement of disputes concerning the obligations imposed on the system operator — Temporal effects of decisions of the dispute settlement authority — Legal certainty — Legitimate expectations.

It follows from the foregoing considerations that the answer to the question referred is that Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC must be interpreted as not precluding that the effects of a decision of a regulatory authority, referred to in Article 41(11) of that directive, extend to the situation of the parties to the dispute before that authority which prevailed between them before the emergence of that dispute, inter alia, as regards a contract for the transmission of natural gas, by requiring a party to that dispute to bring that contract into conformity with Union law for the entire contractual period.

Judgment of the Court (First Chamber) of 19 December 2019. Bondora AS v Carlos V. C. and XY. Request for a preliminary ruling from Juzgado de Primera Instancia n° 11 de Vigo and Juzgado de Primera Instancia n° 20 de Barcelona. (Joined Cases C-453/18 and C-494/18)

Reference for a preliminary ruling — Judicial cooperation in civil matters — European order for payment procedure — Regulation (EC) No 1896/2006 — Provision of additional documents to support the claim — Unfair terms in consumer contracts — Directive 93/13/EEC — Review by the court seized in the context of an application for a European payment order.

Article 7(2)(d) and (e) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as interpreted by the Court and read in the light of Article 38 of the Charter of Fundamental Rights of the European Union, must be interpreted as allowing a 'court', within the meaning of that regulation, seized in the context of a European order for payment procedure, to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an ex officio review of the possible unfairness of those terms and, consequently, that they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible.

Judgment of the Court (Fifth Chamber) of 19 December 2019. Engie Cartagena S.L. v Ministerio para la Transición Ecológica. Request for a preliminary ruling from the Audiencia Nacional. (Case C-523/18)

Reference for a preliminary ruling — Internal market in electricity — Common rules — Directive 2003/54/EC — Article 3(2) — Directive 2009/72/EC — Article 3(2) — Public service obligations — Meaning — National rules — Financing of energy efficiency plans — Designation of electricity generating undertakings — Mandatory contribution.

Article 3(2) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as meaning that a financial contribution imposed on certain electricity generating undertakings for the purpose of financing savings and energy efficiency plans managed by a public authority does not constitute a public service obligation falling within that provision.

Judgment of the Court (Eighth Chamber) of 19 December 2019. Amărăşti Land Investment SRL v Direcţia Generală Regională a Finanţelor Publice Timişoara and Administraţia Judeţeană a

Finanţelor Publice Timiş. Request for a preliminary ruling from the Tribunalul Timiş. (Case C-707/18)

Reference for a preliminary ruling — Taxation — Common system of value added tax — Directive 2006/112/EC — Taxable transactions — Deduction of input tax — Purchase of immovable property not registered in the national land register — First-registration costs incurred by the purchaser — Recourse to specialist third companies — Participation in a supply of services or investment expenditure carried out for the purposes of an undertaking.

---

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not precluding the parties to a transaction, the aim of which is to transfer the ownership of immovable property, from agreeing a clause according to which the future purchaser will incur some or all of the costs of the administrative formalities relating to that transaction, in particular those connected with the first registration of that property in the national land register. However, the mere presence of such a clause in a bilateral promise for the sale of immovable property is not determinative in order to ascertain whether the future purchaser is entitled to deduct the value added tax relating to the payment of the costs arising from the first registration of the property concerned in the national land register.

2. Directive 2006/112, and in particular Article 28 thereof, must be interpreted as meaning that, in the context of a bilateral promise for the sale of immovable property not registered in the national land register, the future purchaser — a taxable person — who, as he or she contractually undertook to do with regard to the future vendor in that promise, carries out the necessary steps for the first registration of the property concerned in that register by having recourse to the services provided by third parties who are taxable persons, is deemed to have supplied the services in question himself or herself to the future vendor, within the meaning of Article 28, even though the parties to the contract agreed that the sale price of that property does not include the value of the land-registration operations.

Judgment of the Court (Sixth Chamber) of 19 December 2019. RN v Home Credit Slovakia a.s. Request for a preliminary ruling from the Krajský súd v Trnave. (Case C-290/19)

Reference for a preliminary ruling — Consumer protection — Directive 2008/48/EC — Consumer credit agreements — Article 10(2) — Information to be included in credit agreements — Annual percentage rate of charge — Lack of indication of the exact percentage of that rate of charge — Rate of charge expressed as a range between 21.5% and 22.4%.

Article 10(2)(g) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, as amended by Commission Directive 2011/90/EU of 14 November 2011, must be interpreted as precluding, in a consumer credit agreement, the annual

percentage rate of charge from being expressed not as a single rate but as a range referring to a minimum and a maximum rate.

Order of the Court (Ninth Chamber) of 19 December 2019. NL v Direcția Generală Regională a Finanțelor Publice București. (Case C-679/19)

Reference for a preliminary ruling - Article 99 of the Rules of Procedure of the Court - Control of cash at the entrance or exit of the European Union - Regulation (EC) no. 1889/2005 - Scope - Articles 63 and 65 TFEU - Free movement of capital - Transport of large amounts of cash at or from the territory of a Member State - Obligation to declare - Sanctions - Amends and confiscation for the benefit of the State of the undeclared amount exceeding EUR 10,000 - Proportionality.

Articles 63 and 65 TFUE must be interpreted as precluding national legislation which, in order to sanction the omission to declare important sums of money when entering or leaving this state, provides for, in addition to applying an administrative fine, the confiscation of the undeclared sum exceeding EUR 10,000 in the benefit of the state.

---

alina.turcanu@tuca.ro

catalin.curteza@tuca.ro

Editors

Țuca Zbârcea & Associates provides complex legal services in matters involving **European Union Law** whose norms take precedence over the applicable national legislation. Our team includes lawyers who are specialized in the specific areas of this field of law, which includes public procurement, free movement of goods and services, free movement of capital and payments, freedom, security and justice, transport, competition, state aid, insolvency and restructuring, indirect taxation, economic and monetary policy, social policy and public health, consumer protection, environment, energy, tourism, agriculture policies, and others.

Our practice in European Union Law coupled with our relevant knowledge and experience regarding national legislation enables us to offer the highest standard of legal services to our clients.

Manuela Gornoviceanu
Managing Associate
+4 021 204 88 90
manuela.gornoviceanu@tuca.ro

Sergiu Crețu
Managing Associate
+4 021 204 88 90
sergiu.cretu@tuca.ro

TUCA ZBARCEA
ASOCIATII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro