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Legal Alert

EU Law

In this issue:

Legislation

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014

OJ publication date: 05.12.2019 ● Date of entry into force: 25.12.2019 ● Applies from: 26.06.2021

The Regulation applies to investment firms, as they are defined in Directive 2014/65/EU. This category of entities includes any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

The provisions lay down uniform prudential requirements which apply to investment firms in relation to:

a) Own funds relating to quantifiable, uniform and standardized elements of risk-to-firm, risk-to-client and risk-to-market;

b) Limiting concentration risk;

c) Liquidity relating to quantifiable, uniform and standardized elements of liquidity risk;

d) Reporting related to points (a), (b) and (c);

e) Public disclosure.

The Regulation requires that the firms keep a ratio between capital instruments and the related share premium accounts, on one hand, and their own funds, on the other hand. The latter are defined as the highest of the following values: one quarter of the fixed overheads of the preceding year, the initial capital value, or the sum of client, market and firm risk factors. The

three values form the investment firm's own funds which it is mandated to hold at all times, a third of which must comprise of liquidities.

An investment firm's limit regarding the concentration risk of an exposure value for an individual client or group of connected clients shall not exceed 25 % of its own funds. If that individual client is a credit institution or an investment firm, or if a group of connected clients includes one or more credit institutions or investment firms, the limit regarding the concentration risk is the highest of 25% of the firm's own investment funds, or EUR 150 million.

The investment firms are required to make public information related to their objectives and risk management policies, governance, own funds and their conformity with the Regulation, remuneration practices and policies by the date that they publish their annual financial statements. Certain information on the structure of their own funds, activity level and concentration risks are reported to the competent authorities every trimester.

Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU

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The Directive provides a legal framework for the initial capital of investment firms, supervisory powers and tools for the prudential supervision of investment firms by competent authorities, the prudential supervision of investment firms by competent authorities and publication requirements for competent authorities in the field of prudential regulation and supervision of investment firms.

The Directive provides for the obligation of the Member States' competent authorities to cooperate for the purpose of prudential supervision of the investment firms. This responsibility belongs to the authority from the home Member State which acts based on the information provided by the host Member State, taking all necessary measures to avoid or remedy the issues and potential risks.

Member States ensure that competent authorities and all persons who work or who have worked for those competent authorities are bound by the obligation of professional secrecy. Confidential information which such competent authorities and persons receive in the course of their duties may be disclosed only in summary or aggregate form, provided that individual investment firms or persons cannot be identified, without prejudice to cases covered by criminal law.

The Directive provides that Member States shall lay down rules on administrative sanctions and other administrative measures and ensure that their competent authorities have the power to impose such sanctions and measures when an investment firm:

1. Fails to have in place internal governance arrangements;

2. Fails to report information or provides incomplete or inaccurate information on compliance with the obligation to meet own funds requirements;
3. Fails to report to the competent authorities' information about concentration risk or provides incomplete or inaccurate information;
4. Incurs a concentration risk in excess of the limits set out in the Directive;
5. Repeatedly or persistently fails to hold liquid assets;
6. makes payments to holders of instruments included in the own funds of the investment firm.

The competent authorities of the Member States can request information from the investment firms or financial holding companies and make all the necessary investigations and inspections at the headquarters of these firms. The administrative sanctions will be published on the public authority's website which will mention the type and nature of the breach and the natural or legal person who is subject to the sanction or measure.

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law

OJ publication date: 26.11.2019 ● Date of entry into force: 16.12.2019 ● Transposition deadline: 17.12.2021

This Directive provides for a system for the protection of persons reporting breaches of Union law, which, as an example, may consist in:

1. Breaches in public procurement, financial services, products and markets, and prevention of money laundering and terrorist financing, product safety and compliance, transport safety, public health, consumer protection;
2. breaches affecting the financial interests of the Union;
3. breaches relating to the internal market, including breaches of Union competition and State aid rules.

The protected persons are those who work in the public or private sector and who have obtained the information on the breaches show above in a professional context. This protection applies to workers, public officials, independent contractors, company shareholders, as well as to any person who works under the supervision and direction of contractors, subcontractors and suppliers.

Member States are required to take all necessary measures to prohibit any form of retaliation against persons referred to prior, which may consist of:

1. Suspension, lay-off, dismissal or equivalent measures;
2. Demotion or withholding of promotion;

3. Transfer of duties, change of location of place of work, reduction in wages, change in working hours;
4. Coercion, intimidation, harassment or ostracism;
5. Discrimination, disadvantageous or unfair treatment;
6. Early termination or cancellation of a contract for goods or services;
7. Cancellation of a licence or permit.

Member States are also required to grant support to the persons who report through offering information and counselling on the procedures and remedies available, on protection and on the rights provided for by EU and national law. The competent authorities are also required to provide effective means of assisting the persons who find themselves in these situations who will benefit from legal counselling in criminal and civil cross-border procedures.

The protection measures against retaliation include a series of exemptions from the restrictions on acquiring, accessing and disclosing information, resulting in the lack of liability of the person who reports the breaches.

The rights and remedies provided for by this Directive cannot be waived or limited by any agreement, policy, form or condition of employment, including a pre-dispute arbitration agreement.

Directive (EU) 2019/1936 of the European Parliament and of the Council of 23 October 2019 amending Directive 2008/96/EC on road infrastructure safety management

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This instrument provides for a limited extension of the scope of Directive 2008/96/EC as to include motorways and other main roads outside the trans-European transport network (TEN-T).

New provisions are introduced for follow-up of procedures for roads in operation. Member States shall ensure that the findings of network-wide road safety assessments are followed up either by targeted road safety inspections or by direct remedial action whose necessity is established by means of a motivated decision.

Special emphasis is put on readability and detectability for human drivers and automated driver assistance systems, the Directive providing for the adoption of implementing acts by the Commission in this field.

Through a newly introduced article, the Directive establishes a national system for the purpose of voluntary reporting, accessible online to all road users, to facilitate the collection of details of occurrences transmitted by road users and vehicles, and of any other safety-related

information which is perceived by the reporter as an actual or potential hazard to road infrastructure safety.

The Commission shall establish a system for the exchange of information and best practices between the Member States, covering, *inter alia*, training curricula for road safety, existing road infrastructure safety projects and proven road safety technology.

The Member States shall send the report on the safety classification of the entire network assessed in accordance with the provisions of Directive 2008/96/EC to the Commission by 31 October 2025.

Case Law

Judgment of the Court (Grand Chamber) of 5 November 2019. European Central Bank (ECB) and Others v Trasta Komercbanka and Others. (Joined Cases C-663/17 P, C-665/17 P and C-669/17 P)

Appeal — Admissibility — Representation of a party before the Court — Power of attorney given to the lawyer — Power of attorney withdrawn by the liquidator of the appellant company — Further steps in the proceedings by the decision-making body of the appellant company — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Regulation (EU) No 1024/2013 — Prudential supervision of credit institutions — Decision to withdraw a credit institution's authorisation — Action for annulment before the General Court of the European Union — Admissibility — Whether the shareholders of the company whose authorisation has been withdrawn are directly concerned.

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60. The right of a legal person, such as Trasta Komercbanka, to an effective legal remedy before the Courts of the European Union would be infringed if, under the law of the Member State concerned, a liquidator empowered to take such decisions were to be appointed on the basis of a proposal from a national authority which took part in the adoption of the act adversely affecting the legal person concerned and which resulted in its going into liquidation. Having regard to the relationship of trust between that authority and the appointed liquidator which is involved in such an appointment procedure and to the fact that a liquidator's task is to carry out the final liquidation of the legal person which has gone into liquidation, there is a risk that that liquidator may avoid challenging, in court proceedings, an act which that authority has itself adopted or which has been adopted with its assistance and which has led to the legal person concerned going into liquidation.

61. That is a fortiori the case where the liquidator of the legal person concerned may be relieved of its duties by that authority or on a proposal from that authority in the event of annulment, following an action the bringing or maintaining of which depends on its

own decision, of an act of the European Union adopted with the assistance of that authority and which led to that legal person going into liquidation.

62. As the Advocate General noted, in essence, in points 75 to 77 of her Opinion, situations such as those described in paragraphs 60 and 61 above, given that they involve a conflict of interests, may adversely affect the right of the legal person concerned to an effective remedy (see, to that effect, judgment of the European Court of Human Rights of 24 November 2005, Capital Bank AD v. Bulgaria, CE:ECHR:2005:1124JUD004942999, §§ 117 and 118).

70. As is apparent from paragraph 60 above, the fact, mentioned in paragraph 35 of the order under appeal, that the liquidator had the power, under Latvian law, to revoke the power of attorney issued to Trasta Komercbanka's lawyer for the purpose of bringing an action before the Courts of the European Union against the decision at issue is not sufficient to justify recognition of such a revocation by the Courts of the European Union if that revocation infringes, inter alia for the reasons stated in paragraphs 61 and 62 above, Trasta Komercbanka's right to effective judicial protection as enshrined in Article 47 of the Charter.

Judgment of the Court (First Chamber) of 7 November 2019. Profi Credit Polska S.A. v Bogumiła Włostowska and Others and Profi Credit Polska S.A. v OH. Requests for a preliminary ruling from the Sąd Rejonowy dla Warszawy Pragi-Południe w Warszawie and Sąd Okręgowy w Opolu, II Wydział Cywilny Odwoławczy. (Joined Cases C-419/18 and C-483/18)

References for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Article 3(1) — Article 6(1) — Article 7(1) — Directive 2008/48/EC — Article 10(2) — Credit agreements for consumers — Lawfulness of securing the debt arising under the agreement by means of a blank promissory note — Demand for payment of the debt owed under the promissory note — Scope of the court's powers and obligations.

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1. Articles 1(1), 3(1), 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of securing the payment of the debt arising under a consumer credit agreement concluded between a seller or supplier and a consumer, makes it possible to stipulate in that contract an obligation on the borrower to issue a blank promissory note, and which makes the lawfulness of the issuance of such a note subject to the prior conclusion of a promissory note agreement determining the detailed rules in accordance with which that note may be completed, provided that that stipulation and that agreement comply with Articles 3 and 5 of that directive and Article 10 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, a matter which is for the referring court to verify.

2. Articles 6(1) and 7(1) of Directive 93/13 and Article 10(2) of Directive 2008/48 must be interpreted as meaning that where, in circumstances such as those at issue in the main proceedings, a national court has serious doubts as to the merits of an application based on a promissory note intended to secure the debt arising under a consumer credit agreement and that note was initially left blank when issued by the maker and subsequently completed by the payee, that court must examine of its own motion whether the provisions agreed between the parties are unfair and, in that respect, may require the seller or supplier to produce the document recording those provisions so that that court is able to verify that the rights that consumers derive from those directives are observed.

Judgment of the Court (Fifth Chamber) of 7 November 2019. Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Mbutuku Kanyeba and Others. Requests for a preliminary ruling from the Vredegerecht te Antwerpen. (Joined Cases C-349/18 to C-351/18)

References for a preliminary ruling — Rail transport — Passengers' rights and obligations — Regulation (EC) No 1371/2007 — Article 3(8) — Transport contract — Concept — Passenger without a ticket at the time of boarding a train — Unfair terms in consumer contracts — Directive 93/13/EEC — Article 1(2) and Article 6(1) — General conditions of carriage of a railway undertaking — Mandatory statutory or regulatory provisions — Penalty clause — Powers of the national court.

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1. Article 3(8) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations must be interpreted as meaning that a situation in which a passenger boards a freely accessible train for the purposes of travel without acquiring a ticket comes within the concept of a 'transport contract' for the purposes of that provision.

2. Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding, firstly, that a national court which establishes that a penalty clause in a contract concluded between a seller or supplier and a consumer is unfair moderate the amount of the penalty imposed on the consumer and, secondly, that a national court replace that term, in accordance with the principles of its contract law, with a supplementary provision of national law, except where the contract at issue cannot continue in existence in the event that the unfair term is deleted and where the cancelation of the contract in its entirety exposes consumers to particularly unfavourable consequences.

Judgment of the Court (Sixth Chamber) of 7 November 2019. K.H.K. v B.A.C. and E.E.K. Request for a preliminary ruling from the Sofiyski rayonen sad. (Case C-555/18)

Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 655/2014 — European Account Preservation Order — Article 5(a) — Obtention procedure –Article 4(8) to (10) — Definition of 'judgment', 'court settlement' and 'authentic instrument' — National order for payment against which an objection may be lodged — Article 18(1) — Time limits — Article 45 — Exceptional circumstances — Definition.

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1. Article 4(10) of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters must be interpreted as meaning that an order for payment, such as that at issue in the main proceedings, which is not enforceable, does not constitute an 'authentic instrument' within the meaning of that provision.

2. Article 5(a) of Regulation No 655/2014 must be interpreted as meaning that ongoing proceedings for an order for payment, such as those in the main proceedings, may be regarded as proceedings 'on the substance of the matter' within the meaning of that provision.

3. Article 45 of Regulation No 655/2014 must be interpreted as meaning that judicial vacations are not covered by the concept of 'exceptional circumstances' within the meaning of that provision.

Judgment of the Court (Fifth Chamber) of 7 November 2019. Asociación Española de la Industria Eléctrica (UNESA) and Others v Administración General del Estado. Requests for a preliminary ruling from the Tribunal Supremo. (Joined Cases C-105/18 to C-113/18)

Reference for a preliminary ruling — Polluter pays principle — Directive 2000/60/EC — Article 9(1) — Recovery of the costs of water services — Common rules for the internal market in electricity — Directive 2009/72/EC — Article 3(1) — Principle of non-discrimination — Article 107(1) TFEU — State aid — Tax on the use of inland waters for the production of electricity — Tax imposed only on hydroelectricity producers operating on inter-communities river basins.

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1. Article 191(2) TFEU and Article 9(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as not precluding a tax on the use of inland waters for the production of electricity, such as the tax at issue in the cases in the main proceedings, which does not incentivise the efficient use of water, nor establish mechanisms for the preservation and protection of public water resources, the quantification of that tax being unconnected to the capacity to cause

damage to those public water resources, as it is focused solely and exclusively on the income-generating capacity of hydroelectricity producers.

2. The principle of non-discrimination, as provided for in Article 3(1) 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 not precluding a tax, such as the tax on the use of inland waters for the production of electricity at issue in the cases in the main proceedings, which exclusively affects hydroelectricity generators operating in river basins encompassing more than one autonomous community.

3. Article 107(1) TFEU must be interpreted as meaning that the fact that the tax on the use of inland waters for the production of electricity, at issue in the cases in the main proceedings, is not payable, first, by hydroelectricity producers operating within river basins encompassing a single autonomous community and, secondly, by producers of electricity from sources other than water, does not constitute State aid, within the meaning of that provision, in favour of those producers provided that the latter are not, in the light of the relevant reference framework and the objective pursued by that tax, in a comparable situation to that of hydroelectricity producers operating within river basins encompassing more than one autonomous community subject to that tax, which it is for the national court to determine.

Judgment of the Court (First Chamber) of 7 November 2019. Alain Flausch and Others v Ypourgos Perivallontos kai Energeias and Others. Request for a preliminary ruling from the Symvoulio tis Epikrateias. (Case C-280/18)

Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Public participation in decision-making and access to justice — Date from which the time for bringing proceedings starts to run.

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1. Article 6 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as precluding a Member State from carrying out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls, where the specific arrangements implemented do not ensure that the rights of the public concerned are actually complied with, a matter which is for the national court to establish.

2. Articles 9 and 11 of Directive 2011/92 must be interpreted as precluding legislation, such as that at issue in the main proceedings, which results in a period for bringing proceedings that starts to run from the announcement of consent for a project on the internet being relied on against members of the public concerned where they did not

previously have an adequate opportunity to find out about the consent procedure in accordance with Article 6(2) of that directive.

Judgment of the Court (Grand Chamber) of 12 November 2019. European Commission v Ireland. (Case C-261/18)

Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Directive 85/337/EEC — Consent for, and construction of, a wind farm — Project likely to have significant effects on the environment — Absence of a prior environmental impact assessment — Obligation to regularise — Article 260(2) TFEU — Application for an order to pay a penalty payment and a lump sum.

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75. Under the principle of sincere cooperation provided for in Article 4(3) TEU, Member States are nevertheless required to eliminate the unlawful consequences of that breach of EU law. That obligation applies to every organ of the Member State concerned and, in particular, to the national authorities which have the obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted, in order to carry out such an assessment (see, to that effect, judgments of 7 January 2004, Wells, C-201/02, EU:C:2004:12, paragraph 64, and of 26 July 2017, Comune di Corridonia and Others, C-196/16 and C-197/16, EU:C:2017:589, paragraph 35).

89. First of all, the Court points out that, according to settled case-law, a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law (judgments of 2 December 2014, Commission v Greece, C-378/13, EU:C:2014:2405, paragraph 29, and of 24 January 2018, Commission v Italy, C-433/15, EU:C:2018:31, paragraph 56 and the case-law cited). It follows that Ireland, for the purposes of justifying the failure to comply with the obligations stemming from the judgment of 3 July 2008, Commission v Ireland (C-215/06, EU:C:2008:380), cannot rely on national provisions limiting the possibilities for commencing a regularisation procedure, such as Section 177 B and Section 177 C of Part XA of the PDAA, a procedure which it introduced into its national legislation specifically in order to ensure compliance with that judgment.

90. In any event, as regards the alleged impossibility for that Member State to require the competent local authorities to commence the regularisation procedure provided for by the Irish legislation, it must be borne in mind that, according to the case-law cited in paragraph 75 above, every organ of that Member State and, in particular, those local authorities are required to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment of the wind farm.

92. As regards Ireland's argument based on the contention that the principle of legal certainty and the principle of the protection of legitimate expectations preclude the consents unlawfully granted to the wind farm's operator from being withdrawn, it must be borne in mind, first, that the infringement procedure is based on the objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation and, secondly, that while the withdrawal of an unlawful measure must occur within a reasonable time and regard must be had to how far the person concerned might have been led to rely on the lawfulness of the measure, the fact remains that such withdrawal is, in principle, permitted (judgment of 4 May 2006, Commission v United Kingdom, C-508/03, EU:C:2006:287, paragraphs 67 and 68).

93. Ireland cannot, therefore, rely on legal certainty and legitimate expectations derived by the operator concerned from acquired rights in order to contest the consequences flowing from the objective finding that Ireland has failed to fulfil its obligations under Directive 85/337 with regard to assessment of the effects of certain projects on the environment (see, to that effect, judgment of 4 May 2006, Commission v United Kingdom, C-508/03, EU:C:2006:287, paragraph 69).

Judgment of the Court (Grand Chamber) of 19 November 2019. A. K. and Others v Sąd Najwyższy. Requests for a preliminary ruling from the Sąd Najwyższy. (Joined Cases C-585/18, C-624/18 and C-625/18)

Reference for a preliminary ruling — Directive 2000/78/EC — Equal treatment in employment and occupation — Non-discrimination on the ground of age — Lowering of the retirement age of judges of the Sąd Najwyższy (Supreme Court, Poland) — Article 9(1) — Right to a remedy — Article 47 of the Charter of Fundamental Rights of the European Union — Effective judicial protection — Principle of judicial independence — Creation of a new chamber of the Sąd Najwyższy (Supreme Court) with jurisdiction *inter alia* for cases of retiring the judges of that court — Chamber formed by judges newly appointed by the President of the Republic of Poland on a proposal of the National Council of the Judiciary — Independence of that council — Power to disapply national legislation not in conformity with EU law — Primacy of EU law.

Article 47 of the Charter of Fundamental Rights of the European Union and Article 9(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal, within the meaning of the former provisions. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to

the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Sąd Najwyższy (Supreme Court).

If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the abovementioned chamber, so that those cases may be examined by a court which meets the abovementioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

Judgment of the Court (Second Chamber) of 20 November 2019. Infohos v Belgische Staat. (Case C-400/18)

Reference for a preliminary ruling – Taxation – value added Tax (VAT) – Sixth Directive 77/388/EEC – Article 13, Section A, paragraph 1(f) – Exemptions – Provision of services by independant groups of persons – Services provided to members and non-members of the group.

Article 13A (1) (f) of the Sixth Council Directive 77/388 / EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which subjects the grant of the exemption from the tax value-added tax (VAT) provided that autonomous groups of persons provide services exclusively to their members, with the result that such groups which also provide services to non-members are fully subject to VAT, including for the services they provide to their members.

Judgment of the Court (Fourth Chamber) of 21 November 2019. CeDe Group AB v KAN Sp. z o.o. in bankruptcy. Request for a preliminary ruling from the Högsta domstolen. (Case C-198/18)

Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Articles 4 and 6 — Insolvency proceedings — Applicable law — European order for payment procedure — Failure to pay a contractual claim before bankruptcy — Exception of set-off based on a contractual claim arising prior to bankruptcy.

Article 4 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, as amended by Council Regulation (EC) No 788/2008 of 24 July 2008, must be interpreted as not applying to an action brought by the liquidator of an insolvent company established in one Member State for the payment of goods delivered under a

contract concluded before the insolvency proceedings were opened in respect of that company, against the other contracting company, which is established in another Member State.

Judgment of the Court (Fourth Chamber) of 21 November 2019. Deutsche Lufthansa AG v Land Berlin. Request for a preliminary ruling from the Bundesverwaltungsgericht. (Case C-379/18)

Reference for a preliminary ruling — Air transport — Directive 2009/12/EC — Articles 3 and 6 — Article 11(1) and (7) — Airport charges — Protection of airport users' rights — Whether it is possible for the airport managing body to agree charges lower than those approved by the independent supervisory authority — Remedies available to an airport user — Collateral challenge before a civil court giving judgment on the basis of equitable criteria.

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1. Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, in particular Article 3, Article 6(5)(a) and Article 11(1) and (7) thereof, must be interpreted as precluding a national provision that allows an airport managing body to determine, together with an airport user, airport charges different from those set by that body and approved by the independent supervisory authority, within the meaning of that directive.

2. Directive 2009/12 must be interpreted as precluding an interpretation of national law whereby an airport user is prevented from challenging directly the decision of the independent supervisory authority approving the charging system, but can bring an action against the airport managing body before a civil court and can plead in that action only that the charges determined in the charging system that that user must pay are inequitable.

Judgment of the Court (Fifth Chamber) of 27 November 2019. Tedeschi Srl in proprio e quale Mandataria Rti and Consorzio Stabile Istant Service in proprio e quale Mandante Rti v C.M. Service Srl și Università degli Studi di Roma La Sapienza. Request for a preliminary ruling from Consiglio di Stato. (Case C-402/18)

Reference for a preliminary ruling – Articles 49 and 56 TFEU – Award of public contracts – Directive 2004/18/EC – Article 25 – Subcontracting – national Rules which limit the possibility of subcontracting to 30 % of the total value of the public contract and which prohibit the prices applicable to the services entrusted subcontracting is reduced by more than 20 % compared to the prices resulting from the award.

Directive 2004/18 / EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that:

- it precludes national rules, such as those at issue in the main proceedings, which limit the share of the contract which the tenderer is authorized to subcontract to third parties to 30%;

- it precludes national legislation, such as that at issue in the main proceedings, which limits the possibility of reducing the prices applicable to the services subcontracted by more than 20% in relation to the prices resulting from the invitation to tender.

Judgment of the Court (Ninth Chamber) of 28 November 2019. KROL - Zakład Robót Wodno-Kanalizacyjnych Sp. z o.o., S.k. v Porr S.A. Request for a preliminary ruling from the Sąd Okręgowy w Warszawie. (Case C-722/18)

Reference for a preliminary ruling — Combating late payment in commercial transactions — Directive 2000/35/EC — Article 1 and Article 6(3) — Scope — National legislation — Commercial transactions financed by the EU Structural Funds and by the EU Cohesion Fund — Exclusion.

Article 1 and Article 6(3) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions must be interpreted as precluding national legislation, such as that at issue in the main proceedings, pursuant to which commercial transactions financed in whole or in part by resources from the EU Structural Funds and the EU Cohesion Fund are excluded from the benefit of the compensation for late payment provided for by that directive.

Judgment of the Court (First Chamber) of 28 November 2019. Criminal proceedings against Spetsializirana prokuratura. Request for a preliminary ruling from the Spetsializiran nakazatelen sad. (Case C-653/19 PPU)

Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings — Article 6 — Burden of proof — Continuation of the detention on remand pending trial of an accused person.

Article 6 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, and Articles 6 and 47 of the Charter of Fundamental Rights of the European Union do not apply to a national law that makes the release of a person held in detention on remand pending trial conditional on that person establishing the existence of new circumstances justifying that release.

Order of the Court (Ninth Chamber) of 6 November 2019. MF v BNP Paribas Personal Finance SA Paris Sucursala București and Secapital Sàrl. Request for a preliminary ruling from the Tribunalul Specializat Mureş. (Case C-75/19)

Reference for a preliminary ruling – Article 99 of the rules of procedure of the Court – Directive 93/13/EEC – Consumer Contracts – Consumer Credit – enforcement procedure – 15 days term after the communication of enforcement proceedings to invoke the abusive character of a clause.

Council Directive 93/13 / EEC of 5 April 1993 concerning unfair terms in consumer contracts must be interpreted as precluding a rule of national law under which a consumer who has taken out a loan agreement with a credit institution and against whom the professional has initiated a procedure in enforced execution shall be estopped, beyond a period of fifteen days from the notification of the first acts of that procedure, to invoke the existence of unfair terms to oppose the said procedure, and this even if the consumer has, under national law, a legal action for the purpose of ascertaining the existence of unfair terms, of which the implementation is not subject to any delay, but the solution of which has no effect on that resulting from the enforcement procedure, which may be imposed on the consumer before giving judgement in the request for ascertaining the existence of unfair terms.

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