TUCA ZBARCEA
ASOCIATII

11 June 2019

# Legal Alert

## EU Law

**In this issue:**



## Legislation

### Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA

OJ publication date: 10.05.2019 ● Date of entry into force: 30.05.2019 ● Transposition deadline: 31.05.2021

Member states are mandated to bring into force laws that incriminate the participation of natural and legal persons as authors, or through incitement, aiding and abetting and attempt to offenses related to the fraudulent use of non-cash payment instruments.

The definitions provided for by the Directive regulate new types of non-cash payment instruments which allow for transferring digital and virtual currency. One such instrument may consist of different elements acting in conjunction, such as a mobile payment application and its respective authorization (i.e. a password). The notion of non-cash payment instrument refers to those instruments which allows their user to authorize a transfer of money or monetary value, or to issue a payment order. For example, the illegal procurement of a mobile payment application without the required authorization does not qualify as an unlawful procurement of a non-cash payment instrument because it does not grant the user an effective access to the transfer of money or monetary value.

### Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

OJ publication date: 03.05.2019 ● Date of entry into force: 23.05.2019 ● Transposition deadline: 24.02.2020

Directive 2009/73/CE should also apply to gas transmission lines on Union territory to and from third countries by redefining the „interconnector".

If the transmission system towards and from a third state belonged to a vertically integrated undertaking by the 23rd of May 2019, member states may decide to not apply article 9 paragraph 1 of Directive 2009/73/CE which provides for the separation of the transport system from the production and supply systems.

Modifications brought to articles 36, 41 and 42 provide for conditions in which the national regulatory authorities can collaborate with those from third states.

## Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries

OJ publication date: 14.05.2019 ● Date of entry into force: 03.06.2019 ● Applies from: 03.09.2019

The Regulation provides for a series of measures which credit and financial institutions must observe if the applicable legislation of third countries in which said credit and financial institutions own a subsidiary forbids or restricts the application of policies and procedures which are necessary for:

- Individual risk assessments;
- Customer data sharing and processing;
- Disclosure of information related to suspicious transactions;
- Transfer of customer data to Member States;
- Record-keeping.

Financial or credit institutions shall inform the competent authority of the home member state within 28 calendar days on the name of the third country concerned and how the implementation of the third country's law prohibits or restricts the application of the above measures.

Additional measures may consist in: carrying out enhanced reviews on the branches or majority-owned subsidiary in the third country, providing the findings of the reviews to the home member state and taking measures to combat money laundering and terrorism financing.

Where credit institutions and financial institutions cannot effectively manage the money laundering and terrorist financing risk by applying the measures referred to above, they shall close down some or all of the operations provided by their branch and majority-owned subsidiary established in the third country.

## Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services

OJ publication date: 22.05.2019 ● Date of entry into force: 11.06.2019 ● Transposition deadline: 01.07.2021

The Directive applies to any contract where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price or provide personal data to the trader.

The Directive does not apply to contracts regarding the provision of services other than digital services or are related to services provided for by other European legislation (i.e. gambling, healthcare etc.).

The purpose is to harmonise the legislation of member states which shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive which ensure a different level of consumer protection. There must be a conformity between the digital content or digital service and the stipulations of the contract signed between the parties. The Directive provides for requirements for conformity, specific rights of the parties and third persons, trader liability, and remedies.

The trader shall be held liable for any lack of conformity found at the time the services were provided. The traders are liable for not less than two years from the time of supply.

The burden of proof with regard to the supply of individual services shall be on the trader if the lack of conformity was noticed within a year from the date of delivery, and for the duration of the contract if the services are provided continuously over a period of time.

If the trader does not provide the contracted services to the consumer without delay, the latter may grant the former an additional term to fulfil their obligation. Should the trader be unable to provide the service, or refuse to do so, the consumer may terminate the contract.

If there is a lack of conformity, the consumer may request that the service is brought to conformity, receive a reduction of the price or terminate the contract.

## Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC

OJ publication date: 22.05.2019 ● Date of entry into force: 11.06.2019 ● Transposition deadline: 01.07.2021 ● Provisions apply starting from: 01.01.2022

The Directive establishes conformity criteria of the goods with the contract, provides for remedies in cases of lack of conformity, application of measures and instituting commercial guarantees.

The Directive applies to sales contracts between a consumer and a seller, including to digital content or digital services which are incorporated in or inter-connected with goods.

The goods must meet certain provisions for conformity and must correspond to contract stipulations, the purpose of the sales, and must contain the necessary accessories, including installation and use instructions.

The seller is liable towards the consumer for any lack of conformity at the time of delivery and which is discovered within two years. The Member States may provide for a longer term.

Any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered, unless proved otherwise. Member States may maintain or introduce a period of two years from the time when the goods were delivered. Member States may maintain or introduce provisions stipulating that, in order to benefit from the consumer's rights, the consumer must inform the seller of a lack of conformity within a period of at least 2 months of the date on which the consumer detected such lack of conformity.

The consumer may request the goods be brought to conformity, may seek remedies, demand the goods be repaired or replaced, obtain a reduction of the price, or terminate the contract.

Member States may provide for means of return and reimbursement.

# Case Law

## Judgment of the Court (First Chamber) of 8 May 2019. Brian Andrew Kerr v Pavlo Postnov and Natalia Postnova (Case C-25/18)

Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EU) No. 1215/2012 — Article 7(1)(a) — Special jurisdiction in matters relating to contract — Concept of 'matters relating to a contract' — Decision of the general meeting of the owners of property in a building — Obligation of the owners to pay annual financial contributions to the budget of the association of property owners as determined by that decision — Legal action seeking enforcement of that decision — Law applicable to contractual obligations — Regulation (EC) No. 593/2008 — Article 4(1)(b) and (c) — Concepts of 'contract for the provision of services' and 'a contract relating to a right in rem in immovable property' — Decision of the general meeting of the owners of property in a building relating to maintenance costs for communal areas.

*Article 7(1)(a) 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 payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, — where that decision has been taken by a majority of members, but binds all members — must be regarded as falling within the concept of 'matters relating to a contract' within the meaning of that provision.*

*Article 4(1)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a dispute, such as that at issue in the main proceedings, concerning a payment obligation resulting from a decision of a general meeting of the owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of that provision.*

## Judgment of the Court (Ninth Chamber) of 2 May 2019. Lavorgna Srl v Comune di Montelanico and Others (Case C-309/18)

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio.

*The principles of legal security, equality and transparency, as well as those provided by DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, must be interpreted as not precluding national legislation, as discussed in the main case, according to which the act of not separately indicating workforce costs in an economical offer presented in the process of awarding a public procurement contract leads to the repeal of this offer, without the possibility of assistance in drafting the file, including the case in which the obligation to indicate these costs separately was not specified in the call for tender documentation, if this condition and exclusion possibility are clearly stipulated in national regulations regarding public procurement procedures to which specific reference was made.*

*That being said, if the stipulations of the call for tender do not allow the tenderers to indicate these costs in their bids, the principles of transparency and proportionality must be interpreted as not precluding the tenderers to mend the situation and fulfil their*

*obligations provided by relevant national regulations within the time limit established by the contracting authority.*

---

## Judgment of the Court (Tenth Chamber) of 2 May 2019. Proceedings brought by Oulun Sähkönmyynti Oy (Case C-294/18)

Reference for a preliminary ruling — Energy efficiency — Directive 2012/27/EU — Article 11(1) — Cost of access to metering and billing information — Right of final customers to receive all their bills and billing information relating to their energy consumption free of charge — Electricity network charges — Discount on electricity network charges granted by an electricity retail sales company to customers who have chosen electronic billing.

---

*Article 11(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 preluding, in circumstances such as those at issue in the main proceedings, a discount on electricity network charges granted by an electricity retail sales company exclusively to final customers who have chosen electronic billing.*

---

## Judgment of the Court (Third Chamber) of 8 May 2019. Violeta Villar Láiz v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS) (Case C-161/18)

Reference for a preliminary ruling — Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Article 4 — Prohibition of any discrimination on the ground of sex — Indirect discrimination — Part-time work — Calculation of retirement pension.

---

*Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that the amount of retirement pension based on contributions of a part-time worker is to be calculated by multiplying a basic amount, established from the remuneration actually received and contributions actually paid, by a percentage which relates to the length of the period of contribution, that period being itself modified, by a reduction factor equal to the ratio of the time of part-time work actually carried out to the time of work carried out by a comparable full-time worker, and increased by the application of a factor of 1.5, to the extent that that legislation places at a particular disadvantage workers who are women as compared with workers who are men.*

---

## Judgment of the Court (First Chamber) of 8 May 2019. A-PACK CZ s.r.o. v Odvolací finanční ředitelství (Case C-127/18)

Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Articles 90 and 273 — Total or partial non-payment, by the debtor, of a sum due to the taxable person in respect of a transaction subject to VAT — Taxable amount — Reduction — Principles of fiscal neutrality and proportionality.

---

*Article 90 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that a taxable person cannot correct the value added tax (VAT) taxable amount, in the case of total or partial non-payment, by its debtor, of a sum due in respect of a transaction subject to that tax, if the debtor is no longer a taxable person for the purposes of VAT.*

---

## Judgment of the Court (First Chamber) of 8 May 2019. RE v Praxair MRC (Case C-486/18)

Reference for a preliminary ruling — Social policy — Directive 96/34/EC — Framework agreement on parental leave — Clause 2.6 — Worker employed full-time and for indefinite duration on part-time parental leave — Dismissal — Compensation payment for dismissal and redeployment leave allowance — Method of calculation — Article 157 TFEU — Equal pay for male and female workers — Part-time parental leave taken primarily by female workers — Indirect discrimination — Objective factors unrelated to any sex discrimination — None.

---

*Clause 2.6 of the framework agreement on parental leave concluded on 14 December 1995, which is annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, must be interpreted as precluding, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, the compensation payment for dismissal and the redeployment leave allowance to be paid to that worker being determined at least in part on the basis of the reduced salary which he receives when the dismissal takes place.*

*Article 157 TFEU must be interpreted as precluding legislation such as that in the main proceedings which provides that, where a worker employed full-time and for an indefinite duration is dismissed at the time he is on part-time parental leave, that worker receives a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary being received when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave and when that difference in treatment which results therefrom cannot be explained by objective factors unrelated to any sex discrimination.*

---

## Judgment of the Court (First Chamber) of 8 May 2019. Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR v Fabio Rossato and Conservatorio di Musica F.A. Bonporti (Case C-494/17)

Reference for a preliminary ruling — Social policy — Fixed-term work — Contracts concluded with a public sector employer — Measures to penalise misuse of fixed-term employment contracts — Conversion of the employment relationship into a relationship of indefinite duration — Limitation on the retroactive effect of the conversion –No financial remedies.

---

*Clause 5(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, is to be interpreted as not precluding legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on account of the misuse of successive fixed-term employment contracts for public-sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect, if such conversion is neither uncertain nor unpredictable or fortuitous and the limited account taken of the period of service completed under those successive fixed-term employment contracts constitutes a measure that is proportionate for the purpose of punishing that misuse, which is a matter for the national court to determine.*

---

## Judgment of the Court (First Chamber) of 8 May 2019. EN.SA. Srl v Agenzia delle Entrate – Direzione Regionale Lombardia Ufficio Contenzioso. (Case C-712/17)

Request for a preliminary ruling from the Commissione Tributaria Regionale per la Lombardia. Reference for a preliminary ruling — Value added tax (VAT) — Fictitious transactions — Impossibility of deducting the tax — Obligation on the issuer of an invoice to pay the VAT indicated thereon — Fine in an amount equal to the amount of the improperly deducted VAT — Whether compatible with the principles of VAT neutrality and proportionality.

---

*In a situation, such as that at issue in the main proceedings, in which fictitious circular sales of electricity made between the same traders and for the same amounts did not cause tax losses, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in the light of the principles of neutrality and proportionality, must be interpreted as not precluding national legislation which excludes the right to deduct value added tax (VAT) relating to fictitious transactions while requiring the persons who enter VAT on an invoice to pay that tax, including for a fictitious transaction, provided that national law allows the tax liability arising from that obligation to be adjusted when the issuer of that invoice, who was not acting in good faith, has, in sufficient time, wholly eliminated the risk of any loss of tax revenue, this being a matter for the referring court to ascertain.*

*The principles of proportionality and neutrality of value added tax (VAT) must be interpreted as precluding, in a situation such as that at issue in the main proceedings, a rule of national law under which the unlawful deduction of VAT is penalised by a fine equal to the amount of the deduction made.*

---

## Judgment of the Court (Second Chamber) of 8 May 2019. Związek Gmin Zagłębia Miedziowego w Polkowicach v Szef Krajowej Administracji Skarbowej (Case C-566/17)

Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny we Wrocławiu

---

*Article 168 (a) of Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a national practice authorizing the taxable person to deduct all the value-added tax (VAT) on the upstream acquisition of goods and services by the latter for the purpose of carrying out both economic activities, subject to VAT, and non-economic activities, which do not fall within the scope of VAT, due to the absence, in the applicable tax regulations, of specific rules on the criteria and methods of ventilation. that would allow the taxable person to determine the share of that input VAT that should be considered to be related, respectively, its economic activities and non-economic activities.*

---

## Judgment of the Court (Grand Chamber) of 14 May 2019. Federación de Servicios de Comisiones Obreras (CCOO) v Deutsche Bank SAE (Case C-55/18)

Reference for a preliminary ruling — Social policy — Protection of the safety and health of workers — Organisation of working time — Article 31(2) of the Charter of Fundamental Rights of the European Union — Directive 2003/88/EC — Articles 3 and 5 — Daily and weekly rest — Article 6 — Maximum weekly working time — Directive 89/391/EEC — Safety and health of workers at work — Requirement to set up a system enabling the duration of time worked each day by each worker to be measured.

---

*Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, and Article 4(1), Article 11(3) and Article 16(3) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, must be interpreted as precluding a law of a Member State that, according to the interpretation given to it in national case-law, does not require*

*employers to set up a system enabling the duration of time worked each day by each worker to be measured.*

---

## Judgment of the Court (Fourth Chamber) of 15 May 2019. Achema AB and Others v Valstybinė kainų ir energetikos kontrolės komisija (VKEKK) (Case C-706/17)

Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas.

Reference for a preliminary ruling — State aid — Concept of 'aid granted by a Member State or through State resources' — Measures intended to compensate providers of public interest services in the electricity sector — Concept of aid 'affecting trade between Member States' and 'distorting or threatening to distort competition' — Concept of 'selective advantage' — Service of general economic interest — Offsetting of costs involved in the discharging of public service obligations.

---

*Article 107(1) TFEU must be interpreted as meaning that the funds earmarked for financing a public interest service scheme, such as the public interest services in the electricity sector, constitute State resources within the meaning of that provision.*

*Article 107(1) TFEU must be interpreted as meaning that, when distribution and transport system operators receive monies intended to finance public interest services in the electricity sector in order to offset the losses sustained by reason of the obligation to purchase electricity at a fixed rate from certain electricity producers and to balance it out, that compensation constitutes an advantage, within the meaning of that provision, granted to the electricity producers.*

*Article 107(1) TFEU must be interpreted as meaning that, in circumstances such as those in the main proceedings, funds, such as the monies intended for certain providers of public interest services in the electricity sector, must be regarded as conferring a selective advantage, within the meaning of that provision, on those providers and must be regarded as liable to affect trade between Member States.*

*Article 107(1) TFEU must be interpreted as meaning that a State measure, such as the regime of public interest services in the electricity sector, must not regarded as compensation for services provided by the recipient undertakings in order to discharge public service obligations, within the meaning of the judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg (C-280/00, EU:C:2003:415), unless the referring court establishes that any one of the public interest services in the electricity sector does in fact meet the four conditions set out in paragraphs 88 to 93 of the present judgment.*

*Article 107(1) TFEU must be interpreted as meaning that a State measure, such as the regime relating to the provision of public interest services in the electricity sector, must be regarded as distorting or liable to distort competition.*

---

## Judgment of the Court (Eighth Chamber) of 15 May 2019. Hellenic Republic v European Commission (Case C-341/17 P)

Appeal — Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), European Agricultural Guarantee Fund (EAGF) and European Agricultural Fund for Rural Development (EAFRD) — Expenditure excluded from EU financing — Expenditure incurred by the Hellenic Republic — Regulation (EC) No 1782/2003 — Regulation (EC) No 796/2004 — Area-related aid scheme — Concept of 'permanent pasture' — Flat-rate financial corrections — Deduction of earlier correction.

---

*Sets aside points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 30 March 2017, Greece v Commission (T-112/15, EU:T:2017:239) in so far as, first, the General Court dismissed the Hellenic Republic's action while limiting its examination to the correction for claim year 2008 that was imputed to the 2009 financial year as regards the financial correction of 5% applied to aid under the second pillar of the common agricultural policy (CAP), which is dedicated to rural development, and not examining the correction for claim year 2008 that was imputed to the 2010 financial year in the sum of EUR 5 496 524.54 as regards the financial correction of 5% applied to aid under the CAP's second pillar, dedicated to rural development, and, second, it made a decision as to costs.*

*Annuls Commission Implementing Decision 2014/950/EU of 19 December 2014 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) in so far as it concerns the taking into account of Commission Implementing Decision 2013/214/EU of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) when calculating the amount of the correction of EUR 5 496 524.54, of the deduction of EUR 270 175.45 and of the financial impact of EUR 5 226 349.09, which related to expenditure incurred by the Hellenic Republic in the sector of Rural Development EAFRD Axis 2 (2007-2013, area-related measures) and were imposed in respect of the 2010 financial year, on account of*

*weaknesses in the Land Parcel Identification System (LPIS) and the on-the-spot checks (second pillar, claim year 2008).*

---

## Judgment of the Court (Eighth Chamber) of 15 May 2019. Vega International Car Transport and Logistic – Trading GmbH v Dyrektor Izby Skarbowej w Warszawie (Case C-235/18)

Request for a preliminary ruling from the Naczelny Sąd Administracyjny. Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 135(1)(b) — Supply of goods — Exemptions for other activities — Granting and negotiation of credit — Fuel cards.

---

*Article 135(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, the provision of fuel cards by a parent company to its subsidiaries, enabling those subsidiaries to refuel the vehicles they transport, may be classified as a service granting credit which is exempt from value added tax as referred to in that provision.*

---

## Judgment of the Court (Third Chamber) of 16 May 2019. Christa Plessers v PREFACO NV and Belgische Staat (Case C-509/17)

Request for a preliminary ruling from the Arbeidshof te Antwerpen. Reference for a preliminary ruling –Transfers of undertakings — Directive 2001/23/EC — Articles 3 to 5 — Safeguarding of employees' rights — Exceptions — Insolvency proceedings — Proceedings for judicial restructuring by transfer under judicial supervision — Total or partial safeguard of the undertaking — National legislation authorising the transferee, after the transfer, to choose which employees to keep on.

---

*Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, in particular Articles 3 to 5 thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, in the event of the transfer of an undertaking which has taken place in the context of proceedings for judicial restructuring by transfer under judicial supervision applied with a view to maintaining all or part of the transferor or its activity, entitles the transferee to choose the employees which it wishes to keep on.*

---

## Judgment of the Court (Grand Chamber) of 21 May 2019. European Commission v Hungary (Case C-235/17)

Failure of a Member State to fulfil obligations — Article 63 TFEU — Free movement of capital — Article 17 of the Charter of Fundamental Rights of the European Union — Right to property — National legislation extinguishing, without compensation, the rights of usufruct over agricultural and forestry land acquired by legal persons or by natural persons who cannot demonstrate a close family tie with the owner of the land.

---

*Declares that, by adopting Paragraph 108(1) of mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény (Law No CCXII of 2013 laying down various provisions and transitional measures concerning Law No CXXII of 2013 on transactions in agricultural and forestry land) and thereby cancelling, by operation of law, the rights of usufruct over agricultural and forestry land located in Hungary that are held, directly or indirectly, by nationals of other Member States, Hungary has failed to fulfil its obligations under Article 63 TFEU in conjunction with Article 17 of the Charter of Fundamental Rights of the European Union.*

---

## Judgment of the Court (First Chamber) of 23 May 2019. Christian Fülla v Toolport GmbH. Request for a preliminary ruling from the Amtsgericht Norderstedt (Case C-52/18)

Reference for a preliminary ruling — Consumer protection — Directive 1999/44/EC — Lack of conformity of the goods delivered — Article 3 — Right of the consumer to repair or replacement of the goods free of charge, within a reasonable time and without any significant inconvenience — Determination of where the consumer must make goods acquired under a distance contract available to the seller to be brought into conformity — Concept of bringing the goods into conformity 'free of charge' — Right of the consumer to rescind the contract.

---

*Article 3(3) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that the Member States remain competent to establish the place where the consumer is required to make goods acquired under a distance contract available to the seller, for them to be brought into conformity in accordance with that provision. That place must be appropriate for ensuring that they can be brought into conformity free of charge, within a reasonable time and without significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods. In that regard, the national court is required to make an interpretation in accordance with Directive 1999/44, including, as necessary, amending established case-law if that law is based on an interpretation of national law which is incompatible with the objectives of that directive.*

*Article 3(2) to (4) of Directive 1999/44 must be interpreted as meaning that the consumer's right to the bringing of goods, acquired under a distance contract, into conformity 'free of charge' does not include the seller's obligation to pay the cost of transporting those goods, for the purposes of bringing them into conformity, to the seller's place of business, unless the fact that the consumer must advance those costs constitutes such a burden as to deter him from asserting his rights, which it is for the national court to ascertain.*

*The combined provisions of Article 3(3) and the second indent of Article 3(5) of Directive 1999/44 are to be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a consumer who has informed the vendor of the non-conformity of goods acquired under a distance contract, the transport of which to the seller's place of business was likely to cause a significant inconvenience to him, and who has made the goods available to the seller at his home for them to be brought into conformity, is entitled to rescission of the contract as a result of the failure to compensate him within a reasonable time, if the seller has failed to take any adequate steps to bring those goods into conformity, including that of informing the consumer of the place where those goods are to be made available to it for it to bring them into conformity. In that regard, it is for the national court, by means of an interpretation in conformity with Directive 1999/44, to ensure the right of that consumer to rescission of the contract.*

---

## Judgment of the Court (Grand Chamber) of 27 May 2019. Minister for Justice and Equality v OG and PI. Requests for a preliminary ruling from the Supreme Court and High Court (Irlande) (Joined Cases C-508/18 and C-82/19 PPU)

Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 6(1) — Concept of 'issuing judicial authority' — European arrest warrant issued by a public prosecutor's office of a Member State — Legal position — Whether subordinate to a body of the executive — Power of a Ministry of Justice to issue an instruction in a specific case — No guarantee of independence.

---

*The concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including public prosecutors' offices of a Member State which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant.*

---

## Judgment of the Court (Grand Chamber) of 27 May 2019. Minister for Justice and Equality v PF. Request for a preliminary ruling from the Supreme Court (Case C-509/18)

Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 6(1) — Concept of 'issuing judicial authority' — European arrest warrant issued by the Prosecutor General of a Member State — Legal position — Guarantee of independence.

---

*The concept of an 'issuing judicial authority', within the meaning of Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant.*

---

TUCA ZBARCEA
ASOCIATII

Şos. 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