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08 July 2019

Legal Alert

EU Law

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Legislation

Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No. 765/2008 and (EU) No. 305/2011

OJ publication date: 25.06.2019 ● Date of entry into force: 15.07.2019 ● Applies from: 16.07.2021

The Regulation applies to a wide range of products that fall under Union harmonisation legislation, only in so far as there are no specific provisions with the same objective.

A product may be placed on the Union market only if there is an economic operator established in a Member State. An economic operator can be a manufacturer established in the Union, an importer where the manufacturer is not established in the Union, an authorized representative who has a written mandate from the manufacturer, or a fulfilment service provider established in the Union with respect to the products it handles, where no other economic operator as mentioned prior is established in the Union. The economic operator performs the following tasks:

- Verifies that the EU declaration of conformity or declaration of performance and technical documentation have been drawn up and provides them to the market surveillance authorities;
- Provides the authority with all information and documentation necessary to demonstrate the conformity of the product in a language which can be easily understood by that authority;
- Informs the market surveillance authorities if a product in question presents a risk;
- Cooperates with the market surveillance authorities to make sure that action is taken to remedy any case of non-compliance with the set requirements.

Each Member State shall designate one or more market surveillance authorities for its territory. The Regulation provides for the necessity of a mutual assistance within the Union by which a national authority may access information or request measures to be taken in order to correctly apply conformity provisions in another Member State.

Customs and surveillance authorities perform controls on products entering the Union market. If the product is not accompanied by the documentation required by the Union law applicable to it or there is a reasonable doubt as to the authenticity, accuracy or completeness of such documentation, if it is not marked or labelled in accordance with the Union law applicable to it, or it contains false or incomplete information, its release can be suspended or denied.

Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816

OJ publication date: 22.05.2019 ● Date of entry into force: 09.06.2019 ● Applies from: 09/11.06.2019

The Regulation provides for an interoperability between EU information systems, namely the Entry/Exit System (EES), the Visa Information System (VIS), the European Travel Information and Authorisation System (ETIAS), Eurodac, the Schengen Information System (SIS), and the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN) should be established in order for these EU information systems and their data to supplement each other while respecting the fundamental rights of individuals, in particular the right to protection of personal data. To achieve this, a European search portal (ESP), a shared biometric matching service (shared BMS), a common identity repository (CIR) and a multiple-identity detector (MID) should be established as interoperability components.

Access to these information databases is only given to Member State authorities which on the grounds of article 40 are mandated as data controllers in accordance with point (7) of Article 4 of Regulation (EU) 2016/679.

The purpose of the Regulation is to improve the effectiveness and efficiency of checks at the external borders, combat illegal immigration, improve common policies for visas, preventing, detecting and investigating terrorist offenses and other serious crimes, as well as maintaining public trust in the Union security measures.

Member States shall connect to the ESP and CIR communication infrastructures and must integrate existing national infrastructures in ESP, CIR and MID, and also pass new legislation to facilitate this process.

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)

OJ publication date: 26.06.2019 ● Date of entry into force: 10.07.2019 ● Transposition deadline: 17.07.2021

The Directive provides a legal framework for:

- Preventive restructuring frameworks available for debtors in financial difficulties when there is a likelihood of insolvency, with a view to preventing the insolvency and ensuring the viability of the debtor;
- Procedures leading to a discharge of debt incurred by insolvent entrepreneurs;
- Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

The term 'restructuring' means measures aimed at restructuring the debtor's business that include changing the composition, conditions or structure of a debtor's assets and liabilities or any other part of the debtor's capital structure, such as sales of assets or parts of the business and, where so provided under national law, the sale of the business as a going concern, as well as any necessary operational changes, or a combination of those elements.

This Directive does not apply to debtors that are insurance or reinsurance undertakings, credit institutions, investment firms, central counter parties or securities depositories, financial institutions, public bodies under national law, or natural persons who are not entrepreneurs.

Member States shall guarantee that debtors are able to access one or more clear and transparent early warning instruments which allow for detecting circumstances which might lead to insolvency.

Debtors should be able to access a preventive restructuring framework without prejudice towards other solutions for avoiding insolvency.

Directive provisions can be applied even if the debtors have been sentenced for serious breaches of accounting or bookkeeping obligations under national law. Total, or at least partial control of assets and day-to-day business operations is kept in the case of accessing preventive restructuring procedures. Individual enforcement actions can be stayed for an initial period of 4 months which can be extended to a maximum of 12 months.

Restructuring plans which affect the claims or interests of dissenting affected parties, provide for new financing and those which involve the loss of more than 25% of the workforce, if such loss is permitted under national law are binding to parties only if they are confirmed by a judicial or administrative authority. Individual and collective worker's rights are not affected by the preventive restructuring framework.

The judicial or administrative authority shall take a decision on the valuation of the debtor's business only where a restructuring plan is challenged by a dissenting affected party, and any appeal provided for under national law against a decision to confirm or reject a restructuring plan taken by a judicial authority is brought before a higher judicial authority.

Member States shall ensure that insolvent entrepreneurs have access to at least one procedure that can lead to a full discharge of debt, and that they may benefit from existing national frameworks providing for business support. Member States shall ensure that the period after which insolvent entrepreneurs are able to be fully discharged from their debts is no longer than three years starting at the latest from the date of either he decision by a judicial or administrative authority to confirm the plan or the start of the implementation of the plan, or the decision by the judicial or administrative authority to open the procedure, or the establishment of the entrepreneur's insolvency estate.

Any disqualifications from taking up or pursuing a trade, business, craft or profession on the sole ground that the entrepreneur is insolvent, shall cease to have effect, at the latest, at the end of the three-year period mentioned above. The disqualifications cease to have effect without the need to apply to a judicial or administrative authority to open an additional procedure.

Filing of claims, submission of restructuring or repayment plans, notifications of creditors and lodging of challenges and appeals can be performed by use of electronic means of communication, including in cross-border situations.

Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

OJ publication date: 14.06.2019 ● Date of entry into force: 04.07.2019 ● Transposition deadline: 31.12.2020

In the interest of clarity and making amendments which are best suited for the current needs of electricity markets, Directive 2009/72/CE of the European Parliament and of the Council shall be abolished on 01.01.2021.

The purpose of the directive is to foster competition and ensure the supply of electricity at the most competitive price. Member States and regulatory authorities should facilitate cross-border access for new suppliers.

Member States should ensure that no undue barriers exist within the internal market for electricity as regards market entry, operation and exit. At the same time, it should be clarified that that obligation is without prejudice to the competence that Member States retain in relation to third countries.

The Directive lays down key rules relating to the organisation and functioning of the Union electricity sector, in particular rules on consumer empowerment and protection, on open access to the integrated market, on third-party access to transmission and distribution infrastructure,

unbundling requirements, and rules on the independence of regulatory authorities in the Member States.

Last but not least, the Directive sets out modes for Member States, regulatory authorities and transmission system operators to cooperate towards the creation of a fully interconnected internal market for electricity that increases the integration of electricity from renewable sources, free competition and security of supply.

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

OJ publication date: 17.05.2019 ● Date of entry into force: 06.07.2019 ● Transposition deadline: 07.06.2021

The directive lays down rules which apply to copyright and related rights on the digital market.

Firstly, the Directive provides for exceptions from copyright protection of text and data when they are extracted for scientific, academic and cross-border purposes, or for the conservation of cultural heritage.

Press publications are protected by allowing the editors to authorize or forbid an online content-sharing service provider to use their work in the online environment.

Among the most important provisions of this Directive are those who provide for regulations which improve upon licencing practices on the digital market, guaranteeing access to creative content and clarifying the legal basis for the activity of an online content-sharing service provider (such as YouTube) who must obtain correct and adequate licences in order to prevent the exploitation of those who use their services.

Case Law

Judgment of the Court (Seventh Chamber) of 5 June 2019. GT v HS. (Case C-38/17)

Reference for a preliminary ruling — Consumer protection — Unfair terms in consumer contracts — Directive 93/13/EEC — Article 3(1) — Article 4(2) — Article 6(1) — Loan agreement denominated in foreign currency — The exchange rate applicable to the sum made available in domestic currency communicated to the consumer after the agreement has been concluded.

Articles 3(1), 4(2) and 6(1) of Council Directive 91/13/EEC of 5 April 1993 on unfair terms in consumer contracts are to be interpreted as not precluding the legislation of a Member State, as interpreted by the Supreme Court of that Member State, under which a loan agreement is not invalid if it is denominated in foreign currency and, although it specifies the sum corresponding to that set out in the consumer's application for finance in domestic currency, does not indicate the exchange rate applicable to that sum for the purpose of determining the definitive amount of the loan in foreign currency, but at the same time stipulates, in one of its terms, that that rate will be set by the lender in a separate document after the agreement has been concluded,

- *where that term is in plain intelligible language, within the meaning of Article 4(2) of Directive 93/13, in that the mechanism for calculating the total amount lent and the exchange rate applicable are indicated transparently, so that a reasonably well-informed and reasonably observant and circumspect consumer may evaluate, on the basis of clear, intelligible criteria, the economic consequences for him of entering into the agreement, including, in particular, the total cost of the loan, or, if it is apparent that the term is not in plain intelligible language,*
- *where that term is not unfair, within the meaning of Article 3(1) of the directive, or, if it is unfair, the agreement concerned is capable of continuing in existence without the unfair term, in accordance with Article 6(1) of Directive 93/13.*

Judgment of the Court (Fourth Chamber) of 5 June 2019. Skype Communications Sàrl v Institut belge des services postaux et des télécommunications (IBPT). (Case C-142/18)

Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/21/EC — Article 2(c) — Notion of 'electronic communications service' — Transmission of signals — Voice over Internet Protocol (VoIP) service to fixed or mobile telephone numbers — SkypeOut service.

Article 2(c) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as meaning that the provision, by a software publisher, of a feature offering a Voice over Internet Protocol (VoIP) service which allows the user to call a fixed or mobile number covered by a national numbering plan from a terminal via the public switched telephone network (PSTN) of a Member State constitutes an 'electronic communications service' within the meaning of that provision, provided that, first, the software publisher is remunerated for the provision of that service and, second, the provision of that service involves the conclusion of agreements between that software publisher and telecommunications service providers that are duly authorised to send and terminate calls to the PSTN.

Judgment of the Court (Fifth Chamber) of 6 June 2019. P. M. and Others v Ministerraad. (Case C-264/18)

Request for a preliminary ruling from the Grondwettelijk Hof. Reference for a preliminary ruling — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2014/24/EU — Article 10, (c), and (d)(i), (ii) and (v) — Validity — Scope — Exclusion of arbitration and conciliation services and of certain legal services — Principles of equal treatment and subsidiarity — Articles 49 and 56 TFEU.

33 Taking their objective characteristics into account, arbitration and conciliation services, covered by Article 10(c), are not therefore comparable with other services included within the scope of application of Directive 2014/24. It follows that the EU legislature was able, in the exercise of its discretion, to exclude the services covered by Article 10(c) of Directive 2014/24 from its scope of application without infringing the principle of equal treatment.

34 In the second place, regarding services provided by lawyers, covered by Article 10(d)(i) and (ii) of Directive 2014/24, it is clear from recital 25 of that directive that the EU legislature took into account the fact that such legal services are usually provided by bodies or individuals designated or selected in a manner which cannot be governed by procurement rules in certain Member States, so that it was appropriate to exclude those legal services from the scope of that directive.

35 In that regard, it must be observed that Article 10(d)(i) and (ii) of Directive 2014/24 does not exclude all services provided by a lawyer for the benefit of a contracting authority, but only the legal representation of their client in proceedings before an international arbitration or conciliation instance, before courts or public authorities of a Member State or a third country, or in judicial proceedings before international courts

or institutions, and also legal advice given in preparation for, or in view of the probability of, such proceedings. Such services provided by a lawyer are to be conceived only in the context of a relationship intuitu personae between the lawyer and his or her client, characterised by the utmost confidentiality.

36 First, such a relationship intuitu personae between a lawyer and his or her client, which is characterised by the free choice of representative and the relationship of trust that unites the client with their lawyer, renders it difficult to provide an objective description of the quality expected of the services to be provided.

37 Second, the confidentiality of the relationship between the lawyer and their client, the purpose of which is, particularly in the circumstances described in paragraph 35 above, both to safeguard the full exercise by individuals of their rights of the defence and to protect the requirement that all persons must have the possibility of consulting their lawyer without constraint (see, to that effect, judgment of 18 May 1982, AM & S Europe v Commission, 155/79, EU:C:1982:157, paragraph 18), could be threatened by a requirement for the contracting authority to provide details of the conditions for the award of such a contract and the publicity that must be given to such conditions.

Judgment of the Court (Fifth Chamber) of 12 June 2019. Patent-och registreringsverket v Mats Hansson. (Case C-705/17)

Request for a preliminary ruling from the Svea hovrätt, Patent- och marknadsöverdomstolen. Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 4(1)(b) — Likelihood of confusion — Overall impression — Earlier trade mark registered with a disclaimer — Effects of such a disclaimer on the extent of protection of the earlier trade mark.

Article 4(1)(b) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as precluding national legislation making provision for a disclaimer whose effect would be to exclude an element of a complex trade mark, referred to in that disclaimer, from the global analysis of the relevant factors for showing the existence of a likelihood of confusion within the meaning of that provision, or to attribute to such an element, in advance and permanently, limited importance in that analysis.

Judgment of the Court (Sixth Chamber) of 12 June 2019. Oro Efectivo SL v Diputación Foral de Bizkaia. (Case C-185/18)

Reference for a preliminary ruling - Value added tax (VAT) - Directive 2006/112 / EC - Article 401 - Principle of fiscal neutrality - Acquisition by private individuals of objects with a high content of gold or other precious metals resale - Tax on patrimonial transfers.

Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax and the principle of fiscal neutrality must be interpreted as meaning that they do not preclude national law, such as that at issue in the main proceedings, which imposes an indirect tax on assets transmissions, distinct from value added tax, on the acquisition by an undertaking from private individuals of objects with a high gold content or other precious metals, when the goods are intended for the economic activity of the said enterprise, which, for the purpose of processing them and subsequently reintroducing them into the commercial circuit, resells them to firms specialized in the manufacture of ingots or miscellaneous precious metal parts.

Judgment of the Court (Fifth Chamber) of 12 June 2019. Prezes Urzędu Ochrony Konkurencji i Konsumentów v Orange Polska S.A. (Case C-628/17)

Request for a preliminary ruling from the Sąd Najwyższy. Reference for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Unfair business-to-consumer commercial practices — Concept of an aggressive commercial practice — Consumer required to take a final transactional decision in the presence of the courier handing over the general terms and conditions of the contract.

Article 2(j) and Articles 8 and 9 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 must be interpreted as meaning that the application by a trader of a model for concluding or amending contracts for the supply of telecommunications services, such as that at issue in the main proceedings, under which the consumer must take the final transactional decision in the presence of a courier who delivers the standard-form contract, without being able freely to take cognisance of the content of that contract while the courier is present:

- *does not constitute an aggressive commercial practice in all circumstances;*
- *does not constitute an aggressive commercial practice through the exertion of undue influence solely on the ground that not all the standard-form contracts were sent to the consumer individually beforehand, for example by email or to his home address, where that consumer had the opportunity, prior to the courier's visit, to take cognisance of their content; and*
- *constitutes an aggressive commercial practice through the exertion of undue influence where the trader or its courier adopt unfair conduct, the effect of which is to put pressure on the consumer such that his freedom of choice is significantly*

impaired, such as conduct that makes that consumer feel uncomfortable or confuses his thinking concerning the transactional decision to be taken.

Judgment of the Court (First Chamber) of 13 June 2019. Criminal proceedings against Gianluca Moro. (Case C-646/17)

Reference for a preliminary ruling - Judicial cooperation in criminal matters - Directive 2012/13 / EU - Right to information in criminal proceedings - Article 6 (4) - Right to information on the accusation - Information on any changes to the information provided there where necessary to ensure the fairness of the proceedings - Modification of the legal classification of the facts which are the subject of the charge - Failure of the person suspected or accused to request, during the oral procedure, the application of the negotiated penalty provided for by national law - Difference in the event of a change in the facts on which the indictment is based.

Article 6 (4) of Directive 2012/13 / EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings and Article 48 of the Charter fundamental rights of the European Union must be interpreted as not precluding national rules under which the accused person may, during the oral proceedings, apply a penalty negotiated in the event of a change in the facts on which the charge is based, and not in the case of a change in the legal characterization of the facts that are the subject of the charge.

Judgment of the Court (First Chamber) of 19 June 2019. Skatteverket v Holmen AB. (Case C-608/17)

Request for a preliminary ruling from the Högsta förvaltningsdomstolen. Reference for a preliminary ruling — Corporation tax — Group of companies — Freedom of establishment — Deduction of losses of a non-resident subsidiary — Concept of 'final losses' — Application to a sub-subsidiary — Legislation of the State of establishment of the parent company requiring direct ownership of the subsidiary — Legislation of the State of establishment of the subsidiary restricting the set-off of losses and prohibiting them from being set off in the year of liquidation.

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1. *The concept of final losses of a non-resident subsidiary, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), does not apply to a sub-subsidiary unless all the intermediate companies between the parent company applying for group relief and the sub-subsidiary sustaining losses that could be regarded as final are not established in the same Member State.*
2. *For the purposes of the assessment of the finality of a non-resident subsidiary's losses, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), the fact that the subsidiary's Member*

State of establishment does not allow the losses of one company to be transferred to another company in the year of liquidation is not decisive, unless the parent company demonstrates that it is impossible for it to deduct those losses by ensuring, in particular by means of a sale, that they are taken into account by a third party for future periods.

3. *If the fact referred to in paragraph 2 of the operative part of the present judgment becomes relevant, the extent to which the legislation of the State of establishment of the subsidiary sustaining the losses that could be regarded as final results in it not being possible to set off part of them against the current profits of the loss-making subsidiary or against those profits of another company in the same group is irrelevant.*

Judgment of the Court (First Chamber) of 19 June 2019. Skatteverket v Memira Holding AB. (Case C-607/17)

Request for a preliminary ruling from the Högsta förvaltningsdomstolen. Reference for a preliminary ruling — Corporation tax — Group of companies — Freedom of establishment — Deduction of losses of a non-resident subsidiary — Concept of 'final losses' — Merger-absorption of the subsidiary by the parent company — Legislation of the State of establishment of the subsidiary granting the deduction of losses in the context of a merger solely to the entity sustaining those losses.

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1. *For the purposes of the assessment of the finality of the losses of a non-resident subsidiary, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), the fact that the subsidiary's Member State of establishment does not does not allow the losses of one company to be transferred, in the event of a merger, to another company liable for corporation tax, whereas such a transfer is provided for by the Member State in which the parent company is established in the event of a merger between resident companies, is not decisive, unless the parent company demonstrates that it is impossible for it to deduct those losses by ensuring, in particular by means of a sale, that they are fiscally taken into account by a third party for future tax periods.*

2. *If the fact referred to in the first question becomes relevant, the fact that there is, in the State of establishment of the subsidiary, no other entity which could have deducted those losses in the event of a merger if such a deduction had been authorised is irrelevant.*

Judgment of the Court (Fourth Chamber) of 19 June 2019. Meca Srl v Comune di Napoli. (Case C-41/18)

Reference for a preliminary ruling - Public procurement - Directive 2014/24 / EU - Article 57 (4) (c) and (g) - Award of public service contracts - Exclusionary reasons for participation in a public procurement procedure - Serious professional misconduct calling into question the integrity of the economic operator - Termination of a previous contract as a result of deficiencies in its execution - Legal action which prevents the contracting authority from assessing the non-fulfilment of the contractual obligations until the judicial procedure has been resolved.

Article 57 (4) (c) and (g) of Directive 2014/24 / EU of the European Parliament and of the Council of 26 February 2014 on the award of public contracts and repealing Directive 2004/18 / EC , must be interpreted as precluding national rules under which the lodging of a judicial appeal against the decision to terminate a public procurement contract by a contracting authority on the grounds of significant deficiencies when it is executed, it prevents the contracting authority issuing a new call for tenders from making any assessment, at the stage of the selection of tenderers, of the reliability of the operator concerned by such termination.

Judgment of the Court (Second Chamber) of 20 June 2019. Línea Directa Aseguradora SA v Segurcaixa Sociedad Anónima de Seguros y Reaseguros. (Case C-100/18)

Request for a preliminary ruling from the Tribunal Supremo. Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 2009/103/EC — Article 3, first paragraph - Concept of 'use of vehicles' — Damage to property as a result of a fire in a vehicle parked in the private garage of the property — Compulsory insurance cover.

Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, must be interpreted as meaning that a situation such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of 'use of vehicles' referred to in that provision.

Judgment of the Court (Grand Chamber) of 24 June 2019. European Commission v Republic of Poland. (Case C-619/18)

Failure of a Member State to fulfil obligations — Second subparagraph of Article 19(1) TEU — Rule of law — Effective judicial protection in the fields covered by Union law — Principles of the irremovability of judges and judicial independence — Lowering of the retirement age of Supreme Court judges — Application to judges in post — Possibility of continuing to carry out the duties of judge beyond that age subject to obtaining authorisation granted by discretionary decision of the President of the Republic.

Declares that, first, by providing that the measure consisting in lowering the retirement age of the judges of the Sąd Najwyższy (Supreme Court, Poland) is to apply to judges in post who were appointed to that court before 3 April 2018 and, secondly, by granting the President of the Republic the discretion to extend the period of judicial activity of judges of that court beyond the newly fixed retirement age, the Republic of Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

Judgment of the Court (Grand Chamber) of 24 June 2019. Criminal proceedings against Daniel Adam Popławski. (Case C-573/17)

Request for a preliminary ruling from the Rechtbank Amsterdam.

Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decisions — No direct effect — Primacy of EU law — Consequences — Framework Decision 2002/584/JHA — Article 4(6) — Framework Decision 2008/909/JHA — Article 28(2) — Declaration by a Member State allowing it to continue to apply existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011 — Late declaration — Consequences.

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1. *Article 28(2) of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union must be interpreted as meaning that a declaration made pursuant to that provision by a Member State, after that framework decision was adopted, is not capable of producing legal effects.*

2. *The principle of the primacy of EU law must be interpreted as meaning that it does not require a national court to disapply a provision of national law which is incompatible with the provisions of a framework decision, such as the framework decisions at issue in the main proceedings, the legal effects of which are preserved in accordance with Article 9 of Protocol (No. 36) on transitional provisions, annexed to the treaties, since those provisions do not have direct effect. The authorities of the Member States, including the courts, are nevertheless required to interpret their national law, to the greatest extent possible, in conformity with EU law, which*

enables them to ensure an outcome that is compatible with the objective pursued by the framework decision concerned.

Judgment of the Court (Eighth Chamber) of 26 June 2019. Aleš Kuhar and Jožef Kuhar v Addiko Bank d.d. (Case C-407/18)

Reference for a preliminary ruling - Abusive clauses in contracts concluded with consumers - Directive 93/13 / EEC - Enforcement of a mortgage - Direct notarial act - Judicial review of unfair terms - Suspension of forced execution - Lack of jurisdiction of the court seised of enforcement - Consumer protection - Effectiveness principle - Compliance with the rules.

Council Directive 93/13 / EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted in the light of the principle of effectiveness in that it precludes national legislation, such as that at issue in the main proceedings, under which the national court seised of an application for enforcement of a mortgage credit agreement concluded between a trader and a consumer in the form of a notarial deed directly enforceable, does not have, either at the request of the consumer or ex officio, the possibility of examining whether the clauses contained in such an act are not abusive, within the meaning of that directive, and on this basis, to suspend the forced execution sought.

Judgment of the Court (Sixth Chamber) of 27 June 2019. RD v SC. (Case C-518/18)

Request for a preliminary ruling from the Okresní soud v Českých Budějovicích.

Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No. 805/2004 — European Enforcement Order for uncontested claims — Certification of a judicial decision as a European Enforcement Order — Minimum standards applicable to uncontested claims procedures — Defendant without a known address who did not appear at the hearing.

Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that, where a court is unable to obtain the defendant's address, it does not allow a judicial decision relating to a debt, made following a hearing attended by neither the defendant nor the guardian ad litem appointed for the purpose of the proceedings, to be certified as a European Enforcement Order.

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