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Legal Alert

EU Law

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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 the exemption laid down by it in respect of transactions concerning the granting, negotiation or management of credit does not apply to a transaction which, for the taxable person, consists in assigning, to a third party, for consideration all the rights and obligations deriving from the taxable person's position in enforcement proceedings for recovery of a debt recognised by a judgment, a debt the payment of which was secured by a right over immovable property awarded to that taxable person and made the subject of attachment.

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1) Article 2 (3) and (5) 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 national legislation such as that at issue in the main proceedings, which provides that the transformation of the voltage to enable the transition from high to medium voltage falls within the remit of the activities of an electricity transmission system;

– precluding, by contrast, such a legislation which defines the concepts of electricity transmission system and electricity distribution system based on criteria relating not only to the voltage but also to the ownership of the assets used to exercise transmission and distribution activities, respectively.

That interpretation is without prejudice, however, first, to the application of Article 17 (1) (a) of the directive, according to which the transmission system must be owned by an independent transmission operator and, secondly, to the Member States' right to require that the distribution system operator own that system, in so far as that requirement does not jeopardise the achievement of the objectives sought by the directive, in particular by making such a system fall outside the scope of the obligation to comply with the rules applicable to it under the directive — which is a matter for the referring court to determine.

2) Directive 2009/72, in particular Article 2 (3) to (6) and Article 32 (1) thereof, must be interpreted as meaning that a user connected to the electricity network at a medium-voltage plant must not necessarily be considered to be a customer of the electricity distribution system operator holding an exclusive licence for electricity distribution for the area concerned, irrespective of the contractual relations between that user and the electricity transmission system operator, since such a user may be considered to be a customer of the electricity transmission system when it is connected to a medium-voltage plant forming part of an electrical substation whose activity of transforming the voltage to enable the transition from high to medium voltage falls within the remit of the activities of that system — which is a matter for the referring court to determine.

Judgment of the Court (Eighth Chamber) of 17 October 2019. Südzucker AG v Hauptzollamt Karlsruhe. (Case C-423/18)

Reference for a preliminary ruling - Agriculture - Common organization of the markets - Regulation (EC) No 967/2006 - Article 3 (2) - Sugar - Surplus levy - Deadline for communication of the total levy payable - Maximum time for post-clearance correction - Principles of proportionality, legal certainty and the protection of legitimate expectations.

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1) The first sentence under Article 3 (2) of Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards out-of-quota production in the sugar sector should be interpreted as meaning that, when a communication concerning a levy on the surplus of sugar is sent by the competent authority of a Member State to the sugar manufacturer concerned in compliance with the time limit provided for under this provision, said time limit shall, in principle, also apply to the rectification of such communication resulting from a check carried out pursuant to Article 10 of Regulation (EC) No 952/2006 of the Commission of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the national sugar market and the applicable quota, as amended by Regulation (EC) No 707/2008 of the Commission, of 24 July 2008. Exceeding such time limit may, however, be admissible where the competent national authority, except for its negligence, was unaware of the details of the sugar production of the undertaking concerned and that such ignorance could reasonably be attributed to that undertaking, the latter having failed to act in good faith and having failed to comply with all relevant provisions. It is for the referring court to determine whether this is the case in the main proceedings, having regard to all the circumstances of the case.

2) In the absence of provisions under the Union law regarding the time limit for Member States to submit to the sugar manufacturers a rectifying communication on the surplus sugar produced, after the expiry of the period laid down in Article 3 (2), first sentence, of Regulation No 967/2006, it is for the national court to ascertain, in each specific case and in light of all circumstances of the case in the main proceedings, whether that period complies with the principles of equivalence and effectiveness as well as the principle of legal certainty.

Judgment of the Court (Seventh Chamber) of 17 October 2019. Argenta Spaarbank NV v Belgische Staat. (Case C-459/18)

Reference for a preliminary ruling — Tax legislation — Corporation tax — Deduction for risk capital — Reduction of the amount deductible by companies with a permanent establishment in another Member State which generates exempt income under a double taxation convention — Article 49 TFEU — Freedom of establishment — Unfavourable treatment — No such treatment.

Article 49 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which, for the calculation of a deduction granted to a company subject to full tax liability in a Member State and having a permanent establishment in another Member State the income from which is exempt in the first Member State under a double taxation convention, the net value of the assets of such a permanent establishment is taken into account, initially, in the calculation of the deduction for risk capital granted to the resident company, but, subsequently, the amount of the deduction is reduced by the lesser of the following amounts, namely the part of the deduction for risk capital which relates to the permanent establishment or the positive result generated by that permanent establishment, whereas such a reduction is not applied in the case of a permanent establishment situated in the first Member State.

Judgment of the Court (Tenth Chamber) of 17 October 2019. Unitel Sp. z o.o. w Warszawie v Dyrektor Izby Skarbowej w Warszawie. (Case C-653/18)

Reference for a preliminary ruling — Taxation — Value added tax (VAT) — Directive 2006/112/EC — Article 146 — Exemptions on exportation — Concept of 'supply of goods' — Article 131 — Conditions laid down by the Member States — Principle of proportionality — Principle of fiscal neutrality — Evidence — Tax evasion — Practice of a Member State consisting in refusing the right to exemption where the person acquiring the goods exported is not identified.

1) Article 146 (1) (a) and (b) and Article 131 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principles of fiscal neutrality and proportionality must be interpreted as precluding a national practice, such as that at issue in the main proceedings, which consists in considering in all cases that there is no supply of goods, within the meaning of that former provision, and in refusing as a result the value added tax (VAT) exemption, where the goods concerned were exported to a destination outside the European Union and where, following their exportation, the tax authorities found that the person acquiring those goods was not the person stated on the invoice issued by the taxable person but another entity which has not been identified. In such circumstances, the VAT exemption provided for in Article 146 (1) (a) and (b) of that directive must be refused if the failure to identify the person actually acquiring the goods prevents it from being proved that the transaction at issue constitutes a supply of goods within the meaning of that provision or if it is established that that taxable person knew or ought to have known that that transaction was part of a fraud committed to the detriment of the common system of VAT.

2) Directive 2006/112 must be interpreted as meaning that where, in those circumstances, there is a refusal to grant the value added tax (VAT) exemption provided for in Article 146 (1) (a) and (b) of Directive 2006/112, the transaction in question should

be considered not to constitute a taxable transaction and, accordingly, not to confer entitlement to the deduction of input VAT.

Judgment of the Court (Ninth Chamber) of 17 October 2019. Public Prosecutor and Minister of Finance of the Kingdom of Belgium against QC and Comida parallela 12. (Case C-579/18)

Reference for a preliminary ruling - Excise duties - Directive 2008/118 / EC - Articles 8 and 38 - Debtor of excise duties following the irregular introduction of products into the territory of a Member State - Concept - Company civilly responsible for the actions committed by its manager.

Article 38 of Council Directive 2008/118 / EC of 16 December 2008 on the general scheme of excise duty repealing Directive 92/12 / EEC, read in conjunction with Article 8 (2) of this directive, must be interpreted as not precluding any national legislation such as that at issue in the main proceedings, under which, in the event of irregular introduction in a Member State of products subject to excise and put into consumption in another Member State, provides that a legal person civilly liable for the criminal offenses committed by its manager is a joint co-debtor in the payment of the excises.

Judgment of the Court (Eighth Chamber) of 17 October 2019. Alcogroup and Alcodis v European Commission. (Case C-403/18 P)

Appeal - Competition - Agreements - Ethanol Market - Regulation (EC) No 1/2003 - Article 20 (4) - Inspection decision - Conduct of the inspection - Confidentiality of the correspondence between the lawyer and his client - Refusal to suspend investigation measures - Action for annulment - Admissibility - Preparatory decision.

Indeed, the right to protection of the confidentiality of correspondence between a lawyer and his client is one of the rights of the defence that must be observed since the stage of the preliminary investigation (please see the judgments of 18 May 1982, AM & S Europe / Commission, 155/79, EU: C: 1982: 157, points 18 to 23; of 21 September 1989, Hoechst v Commission, 46/87 and 227/88, EU: C: 1989: 337, paragraph 16, and 14 September 2010, Akzo Nobel Chemicals and Akcros Chemicals v Commission, C-550/07 P, EU: C: 2010: 512, paragraphs 40 and 41). Therefore, in principle, the Commission and its inspectors must observe this right, regardless of the scope of the mandate conferred upon them by the inspection decision.

Judgment of the Court (Fifth Chamber) of 16 October 2019. Glencore Agriculture Hungary Kft. V. Nemzeti Adó- is Vámhivatal Fellebbviteli Igazgatósága. (Case C-189/18)

Reference for a preliminary ruling - Value Added Tax (VAT) - Directive 2006/112 / EC - Articles 167 and 168 - Right to deduct VAT - Refusal - Fraud – Production of evidence - Principle of observing the defendant's rights – Defendant's right to be heard - Access to the file - Article 47 of the Charter of Fundamental Rights of the European Union - Effective judicial control - Principle of equality of arms – Adversarial principle - National regulation or practice according to which, when a taxpayer checks their right to VAT deduction, the tax administration is bound by the factual findings and legal qualifications made by it under related administrative procedures to which the taxpayer was not a party.

Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax, the principle of observing the rights of the defence and Article 47 of the Charter of Fundamental Rights of the European Union should be interpreted as meaning that they do not, in principle, preclude a regulation or practice of a Member State whereby a verification of the right to deduct value added tax (VAT) exercised by a taxpayer, the tax administration is bound by the factual findings and legal qualifications, already made by it in related administrative procedures against suppliers of that taxpayer, on which definitive decisions are based which uphold the existence of VAT fraud committed by these suppliers, provided, first, that it does not exempt the tax administration from making known to the taxpayer the pieces of evidence, including those arising out of these related administrative procedures, on the basis of which it intends to make a decision, and that the taxpayer is thus not deprived of the right to usefully challenge it during the procedure under consideration, such findings of fact and such legal qualifications, secondly, that said subject may have access during that procedure to all the elements collected during said related administrative procedures or any other procedure in which the relevant administration intends to base its decision or which may be useful in the exercise of the rights of the defence, unless the general interest justifies restricting that access and, thirdly, that the court seizing an appeal against this decision may verify the legality of the collection and of the use of these items as well as the findings made in the administrative decisions made with respect to such suppliers, which are decisive for the outcome of the appeal.

Judgment of the Court (Grand Chamber) of 15 October 2019. Dumitru-Tudor Dorobantu v Generalstaatsanwaltschaft Hamburg. (Case C-128/18)

Reference for a preliminary ruling — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Grounds for refusal of execution — Article 4 of the Charter of Fundamental Rights of the European Union — Prohibition of inhuman or degrading treatment — Conditions of detention in the issuing Member State — Assessment by the executing judicial authority — Criteria.

Article 1 (3) 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, read in conjunction with Article 4 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that when the executing judicial authority has objective, reliable, specific and properly updated information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, it must, for the purpose of assessing whether there are substantial grounds for believing that, following the surrender to the issuing Member State of the person subject to a European arrest warrant, that person will run a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, take account of all the relevant physical aspects of the conditions of detention in the prison in which it is actually intended that that person will be detained, such as the personal space available to each detainee in a cell in that prison, sanitary conditions and the extent of the detainee's freedom of movement within the prison. That assessment is not limited to the review of obvious inadequacies. For the purposes of that assessment, the executing judicial authority must request from the issuing judicial authority the information that it deems necessary and must rely, in principle, on the assurances given by the issuing judicial authority, in the absence of any specific indications that the conditions of detention infringe Article 4 of the Charter of Fundamental Rights.

As regards, in particular, the personal space available to each detainee, the executing judicial authority must, in the absence, currently, of minimum standards in that respect under EU law, take account of the minimum requirements under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as interpreted by the European Court of Human Rights. Although, in calculating that available space, the area occupied by sanitary facilities should not be taken into account, the calculation should include space occupied by furniture. Detainees must, however, still have the possibility of moving around normally within the cell.

The executing judicial authority cannot rule out the existence of a real risk of inhuman or degrading treatment merely because the person concerned has, in the issuing Member State, a legal remedy enabling that person to challenge the conditions of his detention or because there are, in the issuing Member State, legislative or structural measures that are intended to reinforce the monitoring of detention conditions.

A finding, by the executing judicial authority, that there are substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person will run such a risk, because of the conditions of detention prevailing in the prison in which it is actually intended that he will be detained, cannot be weighed,

for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

Judgment of the Court (Second Chamber) of 9 October 2019. NJ v Generalstaatsanwaltschaft Berlin. (Case C-489/19 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 1 (1) — Concept of 'European arrest warrant' — Minimum requirements on which validity depends — Article 6 (1) — Concept of 'issuing judicial authority' — European arrest warrant issued by the public prosecutor's office of a Member State — Status — Whether subordinate to a body of the executive — Power of a Minister for Justice to issue instructions in a specific case — Certification of the European arrest warrant by a court before its transmission.

The concept of a 'European arrest warrant' referred to in Article 1 (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 meaning that European arrest warrants issued by the public prosecutor's offices of a Member State fall within that concept, despite the fact that those public prosecutor's offices 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 the context of the issue of those arrest warrants, provided that those arrest warrants are subject, in order to be transmitted by those public prosecutor's offices, to endorsement by a court which reviews independently and objectively, having access to the entire criminal file to which any specific directions or instructions from the executive are added, the conditions of issue and the proportionality of those arrest warrants, thus adopting an autonomous decision which gives them their final form.

Judgment of the Court (First Chamber) of 9 October 2019. BGL BNP Paribas SA v TeamBank AG Nürnberg. (Case C-548/18)

Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 593/2008 — Law applicable to contractual obligations — Article 14 — Assignment of claims — Third-party effects.

Article 14 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 not designating, directly or by analogy, the applicable law concerning the

third-party effects of the assignment of a claim in the event of multiple assignments of the claim by the same creditor to successive assignees.

Judgment of the Court (Grand Chamber) of 7 October 2019. Safeway Ltd v Andrew Richard Newton and Safeway Pension Trustees Ltd. (Case C-171/18)

Reference for a preliminary ruling — Social policy — Article 119 of the EC Treaty (now, after amendment, Article 141 EC) — Male and female workers — Equal pay — Private occupational retirement pension scheme — Normal pension age differentiated by gender — Date of adoption of measures reinstating equal treatment — Retroactive equalisation of that age to the normal pension age of the persons previously disadvantaged.

Article 119 of the EC Treaty (now, after amendment, Article 141 EC) must be interpreted as precluding, in the absence of an objective justification, a pension scheme from adopting, in order to end discrimination contrary to that provision resulting from the fixing of a normal pension age differentiated by gender, a measure which equalises, with retroactive effect, the normal pension age of members of that scheme to that of the persons within the previously disadvantaged category, in respect of the period between the announcement of that measure and its adoption, even where such a measure is authorised under national law and under the Trust Deed governing that pension scheme.

Judgment of the Court (Eighth Chamber) of 3 October 2019. Landwirtschaftskammer Niedersachsen v Reinhard Westphal. (Case C-378/18)

Reference for a preliminary ruling - Regulation (EC, Euratom) No 2988/95 - Protection of the European Union's financial interests - Article 3 (1) - Limitation period - Regulations (EEC) No 3887/92 and (EC) No 2419/2001 - Integrated management and control system for certain community aid schemes – Recovery of undue payments - Applying the softer limitation rule.

Article 49 (6) of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for the application of the integrated management and control system for certain Community aid schemes established by the Regulation (EEC) No 3508/92 as amended by Commission Regulation (EC) No 118/2004 of 23 January 2004 is to be interpreted as meaning that the starting point of the limitation period provided for therein is determined in accordance with Article 3 (1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests and corresponds, for continuous or repeated irregularities, to the day on which the irregularity ended.

Judgment of the Court (Third Chamber) of October 3, 2019. Gyula Kiss v. CIB Bank Zrt. et. al. (Case C-621/17)

Reference for a preliminary ruling – Consumer protection – Unfair clauses in contracts concluded with consumers – Directive 93/13/EEC – Article 3 (1) – Assessment of the abusive nature of contractual clauses – Article 4 (2) – Article 5 – Clear and understandable drafting of contractual clauses – Clauses requiring payment of costs for unspecified services.

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1) Article 4 (2) and Article 5 of Council Directive 93/13 / EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the requirement for a contractual clause to be drafted in a clear and understandable manner does not require that contractual clauses which have not been the subject of an individual negotiation and which are contained in a loan agreement with consumers, such as those at issue in the main proceedings, which determine precisely the amount of the management fee and of a disbursement fee charged to the consumer, their method of calculation and their due date, should also detail all the services provided in return for the amounts concerned.

2) Article 3 (1) of Directive 93/13 must be interpreted as meaning a contractual clause such as the one at issue in the main proceedings, relating to the costs of managing a loan agreement, which does not allow unambiguous identification of the specific services provided in return, does not, in principle, create a significant imbalance between the rights and obligations of the parties arising from the contract to the detriment of the consumer, despite the requirement of good faith.

Judgment of the Court (Fourth Chamber) of 3 October 2019. Delta Antrepriză de Construcţii şi Montaj 93 SA v Compania Naţională de Administrare a Infrastructurii Rutiere SA. (Case C-267/18)

Reference for a preliminary ruling — Public Procurement — Public procurement procedure — Directive 2014/24/EU — Article 57 (4) — Optional grounds for exclusion — Exclusion of an economic operator from participating in a public procurement procedure — Early termination of a prior contract on account of partial subcontracting — Concept of 'significant or persistent deficiencies' — Scope.

Article 57 (4) (g) of 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 meaning that the subcontracting, by an economic operator, of part of the works under a prior public contract, decided upon without the contracting authority's authorisation and which led to the early termination of that contract, constitutes a significant or persistent deficiency shown in the performance of a substantive requirement under that public contract, within the meaning of that provision, and is therefore capable of justifying that economic operator being excluded from participation in a subsequent public procurement procedure if, after conducting its own evaluation of the integrity and reliability of the economic operator concerned by the early termination

of the prior public contract, the contracting authority which organises that subsequent procurement procedure considers that such subcontracting entails breaking the relationship of trust with the economic operator in question. Before deciding such an exclusion, the contracting authority must however, in accordance with Article 57 (6) of that directive, read in conjunction with recital 102 thereof, allow that economic operator the opportunity to set out the corrective measures adopted by it further to the early termination of the prior public contract.

Judgment of the Court (Fourth Chamber) of 3 October 2019. Proceedings brought by Kauno miesto savivaldybė and Kauno miesto savivaldybės administracija. (Case C-285/18)

Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 12 (1) — Temporal application — Freedom of the Member States as to choice of how services are provided — Limits — Public contracts subject to so-called 'in house' awards — In-house transaction — Overlapping of a public contract and an in-house transaction).

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1) A situation, such as that at issue in the main proceedings, where a public contract has been awarded by a contracting authority to a legal person over which it exercises a control similar to the control it exercises over its own departments, as part of a procedure initiated when 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 was still in force and which led to the conclusion of a contract after the date of repeal of that directive, namely 18 April 2016, falls within the scope of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18 where the contracting authority definitively resolved the question of whether it was obliged to initiate a prior competition procedure for the award of a public contract after that date.

2) Article 12 (1) of Directive 2014/24 must be interpreted as not precluding a rule of national law whereby a Member State imposes a requirement that the conclusion of an in-house transaction should be subject, inter alia, to the condition that public procurement does not ensure that the quality of the services performed, their availability or their continuity can be guaranteed, provided that the choice made in favour of one means of providing services in particular, made at a stage prior to that of public procurement, has due regard to the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

3) Article 12 (1) of Directive 2014/24, read in the light of the principle of transparency, must be interpreted as meaning that the conditions to which the Member States subject the conclusion of in-house transactions must be made known by means of precise and clear rules of the substantive law governing public procurement, which must be

sufficiently accessible, precise and predictable in their application to avoid any risk of arbitrariness, which it is, in this case, for the referring court to determine.

4) The conclusion of an in-house transaction which satisfies the conditions laid down in Article 12 (1 (a) to (c) of Directive 2014/24 is not as such compatible with EU law.

Judgment of the Court (Eighth Chamber) of 3 October 2019. Brussels-Capital Region Housing Fund SCRL v Institute of National Accounts (ICN). (Case C-632/18)

Reference for a preliminary ruling – Economic and monetary policy – European system of national and regional accounts in the European Union – Regulation (EU) No 549/2013 – General Government Sector – Captive Financial Institution – Concept – A corporation that offers mortgages under the control of a government to households with low or moderate incomes.

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1) The provisions of Annex A to Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union should be interpreted in the sense that, in order to determine whether a separate institutional unit, under the control of a public administration, falls within the scope of public administrations, within the meaning of the revised European System of National Accounts established by this Regulation, as soon as it has the features of a captive financial institution, it is necessary to examine the criterion of its exposure to economic risk in the exercise of its activity.

2) An institutional unit, such as the one at issue in the main proceedings, whose degree of independence in its relations with a public administration is limited by national law, under which said institutional unit does not have control over its assets and liabilities, to the extent that such public administration, on the one hand, exercises control over its assets and, on the other, assumes a portion of the risk associated with its liabilities, may be qualified as a "captive financial institution", within the meaning of Annex A points 2.21 to 2.23 of Regulation No 549/2013, provided that the control measures set forth by the national law can be interpreted by the national judge to have the effect that the institutional unit concerned cannot act independently of said public administration, insofar as the latter imposes the conditions under which that institutional unit is required to act, without the latter having the opportunity to substantially modify them at its own initiative.

Judgment of the Court (Third Chamber) of 3 October 2019. Kamil Dziubak and Justyna Dziubak v. Raiffeisen Bank International AG. (Case C-260/18)

Reference for a preliminary ruling – Directive 93/13/EEC – Consumer contracts – Unfair terms – Mortgage loan indexed to a foreign currency – Clause relating to the determination of the exchange rate between currencies – Effects of the finding

that a clause is abusive – Possibility for the judge to remedy the abusive clauses by resorting to general civil law clauses – Assessment of the consumer's interest – Maintaining the contract without its abusive clauses.

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1) Article 6 (1) of Council Directive 93/13 / EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it does not preclude a national court, having found that certain clauses of a loan agreement indexed in a foreign currency have been found to be abusive and have an interest rate directly linked to the interbank rate of the currency concerned, considers, in accordance with its domestic law, that said contract cannot survive without these clauses on the grounds that their cancellation would have the effect of changing the nature of the main purpose of the contract.

2) Article 6 (1) of Directive 93/13 must be interpreted as meaning that, on the one hand, the consequences on the situation of the consumer caused by the invalidation of a contract as a whole, such as referred to in the judgment of 30 April 2014, Kásler and Káslerné Rábai (C-26/13, EU: C: 2014: 282), must be assessed in the light of the circumstances existing or foreseeable at the time of the dispute, and on the other hand, for the purposes of this assessment, the consumer's will in this regard is decisive.

3) Article 6 (1) of Directive 93/13 must be interpreted as precluding the remedies for the deficiencies of a contract caused by the deletion of the unfair terms contained therein solely on the basis of national provisions of a general nature providing that the effects expressed in a legal act are supplemented, in particular, by the effects arising from the principle of equity or customs which are not supplementary provisions, nor provisions applicable in case of agreement of the parties to the contract.

4) Article 6 (1) of Directive 93/13 must be interpreted as precluding the maintaining of unfair terms contained in a contract where their deletion would lead to the invalidity of that contract and that the judge considers that such invalidation would create adverse effects for the consumer, if the consumer did not consent to such maintenance.

Judgment of the Court (Third Chamber) of 3 October 2019. Eva Glawischnig-Piesczek v Facebook Ireland Limited. (Case C-18/18)

Reference for a preliminary ruling — Information society — Free movement of services — Directive 2000/31/EC — Liability of intermediary service providers — Article 14 (1) and (3) — Hosting services provider — Possibility of requiring the service provider to terminate or prevent an infringement — Article 18 (1) — Personal, material and territorial limits on the scope of an injunction — Article 15 (1) — No general obligation to monitor.

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), in particular Article 15 (1), must be interpreted as meaning that it does not preclude a court of a Member State from:

- ordering a host provider to remove information which it stores, the content of which is identical to the content of information which was previously declared to be unlawful, or to block access to that information, irrespective of who requested the storage of that information;

- ordering a host provider to remove information which it stores, the content of which is equivalent to the content of information which was previously declared to be unlawful, or to block access to that information, provided that the monitoring of and search for the information concerned by such an injunction are limited to information conveying a message the content of which remains essentially unchanged compared with the content which gave rise to the finding of illegality and containing the elements specified in the injunction, and provided that the differences in the wording of that equivalent content, compared with the wording characterising the information which was previously declared to be illegal, are not such as to require the host provider to carry out an independent assessment of that content, and

- ordering a host provider to remove information covered by the injunction or to block access to that information worldwide within the framework of the relevant international law.

Judgment of the Court (Grand Chamber) of 1 October 2019. Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e.V. v Planet49 GmbH. (Case C-673/17)

Reference for a preliminary ruling — Directive 95/46/EC — Directive 2002/58/EC — Regulation (EU) 2016/679 — Processing of personal data and protection of privacy in the electronic communications sector — Cookies — Concept of consent of the data subject — Declaration of consent by means of a pre-ticked checkbox.

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1) Article 2 (f) and of Article 5 (3) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009, read in conjunction with Article 2 (h) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Article 4 (11) and Article 6 (1) (a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation), must be interpreted as meaning that the consent referred to in those provisions is not validly constituted if, in the form of cookies, the storage of information

or access to information already stored in a website user's terminal equipment is permitted by way of a pre-checked checkbox which the user must deselect to refuse his or her consent.

2) Article 2 (f) and Article 5 (3) of Directive 2002/58, as amended by Directive 2009/136, read in conjunction with Article 2 (h) of Directive 95/46 and Article 4 (11) and Article 6 (1) (a) of Regulation 2016/679, are not to be interpreted differently according to whether or not the information stored or accessed on a website user's terminal equipment is personal data within the meaning of Directive 95/46 and Regulation 2016/679.

3) Article 5 (3) of Directive 2002/58, as amended by Directive 2009/136, must be interpreted as meaning that the information that the service provider must give to a website user includes the duration of the operation of cookies and whether or not third parties may have access to those cookies.

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