# Judgments of the Court of Justice of the European Union on Consumer Rights – 2020

1. **Judgment of 30 January 2020, Dr. Willmar Schwabe GmbH & Co. KG** v **Queisser Pharma GmbH & Co. KG, Case C-524/18**

In this case the Court of Justice was asked toclarify if a general, non-specific claim included on the front of the outer packaging was "accompanied" by a specific health claim within the meaning of Article 10(3) of the Regulation 1924/2006 (NHC Regulation), if the non-specific claim was included on the front of the packaging and the specific health claim on the back, without an apparent link between the two. In its judgment the Court sets out the test for the meaning of "accompanied" under Article 10(3) of the NHC Regulation. The Court considered that the word had to be interpreted taking into account both a "*substantive and a visual dimension*" and that it was for the national court to determine whether the product in question met the test[2].

Link to the judgment

- **Judgment of 3 March 2020, Marc Gómez del Moral Guasch** v **Bankia SA, Case C-125/18**

The Court held that a contractual term in a mortgage loan agreement concluded between a consumer and a seller or supplier, pursuant to which the interest rate to be paid by the consumer varies according to the reference index based on the mortgage loans granted by the Spanish savings banks ('the reference index') – that index being provided for by Spanish law – falls within the scope of the Unfair Terms Directive. Indeed, that term does not reflect mandatory statutory or regulatory provisions within the meaning of Article 1(2) of that directive. The Court also stated that the Spanish courts must verify that the term is plain and intelligible, irrespective of whether or not Spanish law has implemented the option open to Member States, under Article 4(2) of the directive, of providing that the assessment of the unfairness of a term is not to relate, inter alia, to the definition of the main subject matter of the contract. If those courts find that such a term is unfair, they may, in order to protect the consumer from particularly unfavorable consequences liable to arise from the annulment of the loan agreement, replace that index with a supplementary index provided for by Spanish law.

Link to the judgment

- **Judgment of 5 March 2020, OPR-Finance s. r. o. v GK, Case C-679/18**

In April 2017 the consumer concluded a revolving credit agreement with OPR Finance for 192 EUR. After defaulting on payment of due installments, the creditor started enforcement action in front of the District Court of Ostrava (Czech Republic), claiming 307 EUR plus statutory interest. It appeared to be clear for the referring court that OPR Finance did not claim they have assessed the consumer's creditworthiness prior to granting the loan, and it was also clear that the consumer did not raise the objection of nullity of the contract, the applicable penalty for failing to assess creditworthiness under Czech law. The Court ruled that there is an *ex officio* obligation of national courts to examine whether creditors have complied with their obligation to assess consumers' creditworthiness. Not only that national courts must assess *ex officio* whether the duty of creditworthiness assessment has been complied with but they should also apply the appropriate penalties *ex officio,* provided they are compliant with Article 23 of Directive 2008/48/EC on Consumer Credit[3].

Link to the judgment

- **Judgment of 11 March 2020, Györgyné Lintner v UniCredit Bank Hungary Zrt, C-511/17**

In December 2007, Mrs Györgyné Lintner concluded with UniCredit Bank Hungary a mortgage loan contract denominated in a foreign currency. That contract contains certain terms according UniCredit Bank the right to make unilateral amendments to its content at a later stage. Subsequently, Mrs Lintner brought an action before the Hungarian courts seeking a declaration of invalidity of those terms, with retroactive effect, on the basis of the Unfair Contract Terms Directive. By its judgment, the Court clarifies that the court before which a consumer brings a claim that certain terms in a contract that it entered into with a professional are unfair is not required to examine, of its own motion and individually, all the other contractual terms, which were not challenged by the consumer, in order to ascertain whether they are unfair. That court must, however, examine the terms which are connected to the subject matter of the dispute, as delimited by the parties, where it has available to it the legal and factual elements necessary for that task, even if those terms were not challenged by the consumer.

Link to the judgment

- **Judgment of 12 March 2020, Others v Finnair Oyj, C-832/18**

A number of travelers brought an action against Finnair seeking to have the airline ordered to pay them, under the air passenger regulation No 261/2004, the sum of €600 each, together with interest, on account of the cancellation of the original Helsinki-Singapore flight. In addition, they requested that Finnair should also be ordered to pay them the sum of €600 each, together with interest, on account of the delay of more than three hours in the arrival of the Helsinki-Chongqing-Singapore re-routing flight. Finnair awarded compensation of €600 in respect of the cancellation of the original Helsinki-Singapore flight. However, the company refused to grant their second claim on the ground, first, that they were not eligible

for a second compensation payment under the regulation and, secondly, that the re-routing flight had been delayed due to 'extraordinary circumstances' within the meaning of that regulation. It contends that one of the three rudder steering servos used to control the aircraft on that flight had failed, stating in this regard that the aircraft manufacturer had indicated that several aircraft of this type had a hidden manufacturing or planning defect that affected the rudder steering servos. In addition, the rudder steering servo is a so-called 'on condition' part, which is only replaced by a new part when it becomes defective. Under the case-law of the Court, an air passenger who, having accepted the rerouting flight offered by the air carrier following the cancellation of his flight, reaches his final destination three hours or more after the arrival time originally scheduled by that air carrier for the re-routing flight, is entitled to compensation. The Court notes that the failure of a so-called 'on condition' part, which the air carrier has prepared to replace by permanently stocking a spare part, constitutes an event which, by its nature or origin, is inherent in the normal exercise of the activity of the air carrier concerned and is not outside its actual control, unless such a failure is not intrinsically linked to the operating system of the aircraft. An air carrier may not rely, therefore, for the purposes of being released from its obligation to pay compensation, on 'extraordinary circumstances' arising from the failure of a so-called 'on condition' part.

Link to the judgment

- **Judgment of 26 March 2020, Libuše Králová v Primera Air Scandinavia, Case C-215/18**

Ms Libuše Králová entered into a package travel contract with a Czech travel agency consisting of, first, carriage by air between Prague (Czech Republic) and Keflavík (Iceland), operated by the Danish air carrier Primera Air Scandinavia, and, second, accommodation in Iceland. Ms Libuše Králová's Prague-Keflavík flight, of 25 April 2013 was delayed by four hours. She subsequently brought an action for compensation for an amount of €400 against Primera Air Scandinavia before District Court, Prague 8. That court has doubts as to its jurisdiction to rule on that dispute since the actions against undertakings established in a given Member State must, in principle, be brought in that Member State. The Court ruled that an action for compensation for a long flight delay, brought by a passenger against the operating air carrier which is not the contractual partner of the passenger must be regarded as covering matters relating to a contract. Consequently, in such a situation, the passenger may bring an action for compensation against the carrier before the courts of the place of departure of the flight, in accordance with the case-law.

Link to the judgment

- **Judgment of 26 March 2020, Mikrokasa S.A, Revenue Niestandaryzowany Sekurytyzacyjny Fundusz Inwestycyjny Zamknięty v XO, Case C-779/18**

The case concerns a contractual clause on the calculation of the total costs of a credit agreement under the regimes of the Consumer Credit Directive and of the Unfair Terms Directive. The Court stated that the 'cost of the credit excluding interest' is a subcategory of 'total cost of the credit'. Furthermore the Court of Justice reminds that the Unfair Terms Directive is not applicable to contractual terms that are imposed by national legislation (or

regulation), as long as such a provision is mandatory, that is, that it applies regardless of the contractual parties' choice or as a default rule. This exclusion from the scope of the Unfair Terms Directive is to be interpreted in a strict way, so as to provide consumers with a high level of protection[4].

Link to the judgment

- **Judgment of 26 March 2020, JC v Kreissparkasse Saarlouis, Case C-66/19**

In 2012 a consumer concluded with a credit institution, a credit agreement secured by mortgages for a sum of €100 000, at an annual borrowing rate of 3.61% fixed until 30 November 2021. The credit agreement provides that the borrower has a period of 14 days to withdraw, that period running from the date of conclusion of the agreement but not starting to run until the borrower has received all the mandatory information referred to in a certain provision of the German Civil Code. The agreement does not include that information, though the communication of that information to the consumer determines when the withdrawal period starts to run. The agreement merely refers to a provision of German law that itself refers to other provisions of German law. In early 2016 the consumer informed the Kreissparkasse that he was withdrawing from the agreement. The Kreissparkasse considered that it had properly informed the consumer of his right to withdraw and that the period for doing so had already expired. The Court concluded that the consumer credit agreements must specify clearly and concisely how the withdrawal period is to be calculated. Furthermore, it is not sufficient for an agreement to refer, with respect to mandatory information the communication of which to the consumer determines when the withdrawal period starts to run, to a provision of national law that itself refers to other provisions of national law.

Link to the judgment

- **Judgment of 2 April 2020, AU v Reliantco Investments LTD, Reliantco Investments LTD Limassol Sucursala Bucureşti, Case C-500/18**

Reliantco is a company incorporated in Cyprus offering financial products and services through an online trading platform under the 'UFX' trade name. Claimant AU is an individual. The litigation concerns limit orders speculating on a fall in the price of petrol, placed by AU on an online platform owned by the defendants in the main proceedings, following which AU lost the entire sum being held in the frozen trading account, that is, 1 919 720 US dollars (USD) (around EUR 1 804 345). The case brings to the fore the relationship between secondary EU consumer law such as in particular the unfair terms Directive 93/13 and, the Directive 2004/39 on markets in financial instruments (particularly viz the notion of 'retail client' and 'consumer')[5].

Link to the judgment

- **Judgment of 2 April 2020, Condominio di Milano, via Meda v Eurothermo SpA, Case C-329/19**

The case concerned the concept of consumer under the Unfair Terms Directive, regarding a contract between Condominio Meda (a commonhold association) and Eurothermo SpA (an energy supplier). The dispute originated in the duty to pay interest for late payment in a contract for the supply of thermal energy. Article 6.3 of the terms and conditions of Eurothermo stated that, in the event of late payment, the debtor must pay 'default interest at the rate of 9.25% from the expiry of the period for payment of the balance'. Condominio Meda claimed that it is a consumer in the sense of the Unfair Terms Directive and that Article 6.3 of the terms and conditions is unfair. The Court stated that 'a person other than a natural person who concludes a contract with a seller or supplier' cannot be considered a consumer. Therefore, the contract concluded between the commonhold and the energy supplier is excluded from the scope of the Unfair Terms Directive[6].

Link to the judgment

- **Judgment of 14 May 2020, NK v MS and AS, Case C-208/19**

MS and AS, consumers within the meaning of Directive 2011/83, concluded a contract with NK, an architect and trader within the meaning of that Directive, concerning the realization of an individual housing project with a view to its construction. NK transmitted to MS and AS the construction plan drawn up, a summary of the costs and an invoice of 3 780 euros for the service provided. MS and AS communicated to NK their dissatisfaction with the quality of the service, informing them that they would immediately terminate the professional relationship and desist from the planning work entrusted to them. NK filed a complaint with the District Court of Graz-East, Austria, requesting that MS and AS be ordered to pay him fees for the planning services provided. In its judgment, the Court stated that Directive 2011/83/EU, on consumer rights, must be interpreted as meaning that a contract concluded between an architect and a consumer, by virtue of which the former undertakes only to carry out, for the latter, an individual housing project with a view to its construction and, in this context, to draw up plans, does not constitute a contract for the construction of new buildings, within the meaning of that provision. Furthermore, a contract concluded between an architect and a consumer, under which the former undertakes to carry out for the latter, according to the latter's requirements and wishes, a project for the construction of individual housing and, in this context, to draw up plans, does not constitute a contract for the supply of goods made to the consumer's specifications or clearly personalized.

Link to the judgment (in French)

- **Judgment of 4 June, 2020, Kancelaria Medius SA v RN, C-495/19**

In this case the Polish procedural law was examined, as it mandates national courts to issue default judgments also in cases brought by traders against consumers (in the given case, the claim was for debt collection based on a concluded by the consumer credit agreement). This means that if the defendant-consumer fails to appear at court and defend their rights, after they have been duly notified of the claim, default judgments for traders should be issued based solely on the documents disclosed by traders. The court may not contest the validity of the presented documents of its own motion, unless there are 'reasonable doubts' or a risk of 'circumventing the law', which normally will not occur if the presented information is succinct. This would prevent national court to *ex officio* examine unfairness of contract

terms. In its judgment the Court suggests to Polish courts specifically to use the principle of harmonious interpretation in interpreting Polish procedural rules on default judgments, namely to broadly interpret the exceptions of 'reasonable doubts' and 'circumventing the law' to accommodate *ex officio* assessment of unfairness. As long as such a broad interpretation would not be *contra legem*, it would allow Polish law to be perceived in conformity with the UCTD. If that is impossible, Polish procedural rules standing in the way of *ex officio* unfairness test should be disapplied[7].

Link to the judgment

- **Judgment of 11 June 2020, LE v Transportes Aéreos Portugueses SA, C-74/19**

In its judgment, the Court defined the concepts of 'extraordinary circumstances' and 'reasonable measures' within the meaning of Regulation No 261/2004 ('the regulation on the rights of air passengers'). Accordingly, it held that, under certain conditions, the unruly behavior of a passenger which led to the re-routing of the aircraft, which caused the delay to the flight, constitutes an 'extraordinary circumstance', and that an operating air carrier may rely on that 'extraordinary circumstance' which affected not the cancelled or delayed flight but an earlier flight operated by that air carrier using the same aircraft. The Court also held that the re-routing of a passenger by the air carrier by means of the next flight operated by that air carrier and leading that passenger to arrive the day after the day initially envisaged constitutes a 'reasonable measure' releasing that carrier from its obligation to pay compensation only if certain conditions are met.

Link to the judgment

- **Judgment of 19 June 2020, KH v Sparkasse Südholstein, Case C-639/18**

KH concluded three contracts with her regional Sparkasse. These contracts were with a fixed interest rate for a fixed period of time after which they would switch to a variable rate in the absence of an agreement between the parties on a new fixed rate (for a newly fixed period). The original contracts were concluded at a branch, but the renegotiated agreement on the interest rates were concluded at a distance, thus KH claimed that Directive 2002/65/EC was applicable giving her a right of withdrawal, which KH intended to use. The Court in its judgment concluded that the present agreements on the alteration of the interest rates are not separate contracts; they are not 'contracts concerning financial services' within the meaning of the Art. 2(a) of the Directive because they do no more than to alter the originally agreed rate of interest without changing the duration or the amount of the loan[8].

Link to the judgment

- **Judgment of 25 June, 2020, Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v Deutsche Apotheker- und Ärztebank eG, C-380/19**

This case concerns DAÄB – a German cooperative bank – and the way that it provides mandatory information to consumers. The problem in this case revolved around the fact that DAÄB's terms and conditions (available on its website) do not include information on its

willingness or obligation to take part in a dispute resolution procedure. That information appears, however, in another tab on DAÄB's website, as well as in another document that is sent to the consumer when a contract is concluded. The CJEU stated that the terms used by the legislator are unambiguous: if the trader has a website, the information must be provided on that website. Besides, the information must not only be provided on the website but specifically in the terms and conditions when they are available[9].

Link to the judgment

- **Judgment of 9 July 2020, SC Raiffeisen Bank SA v JB (698) and BRD Groupe Société Générale SA v KC (699), joined Cases C-698/18 and C-699/18**

JB and KC concluded credit agreements for the grant of personal loans with Raiffeisen Bank and BRD Groupe Société Générale respectively. After those loans had been repaid in full, each of them brought an action before the Judecătoria Târgu Mureş (Court of First Instance, Târgu Mureş, Romania), seeking a declaration that a number of terms in those contracts were unfair as regards the payment of processing and monthly administration fees as well as the bank's power to alter interest rates. The Court concludes that the Directive 93/13 on unfair terms in consumer contracts does not preclude a national rule which, while providing that an action seeking a finding of nullity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit, subjects the action seeking to enforce the restitutory effects of that finding to a limitation period. However, that time limit must neither be less favorable than that concerning similar domestic actions nor render practically impossible or excessively difficult the exercise of rights conferred by the EU legal order.

Link to the judgment

- **Judgement of 9 July 2020, XZ v Ibercaja Banco SA, C-452/18**

XZ acquired a property from a developer for the sum of EUR 148 813.04 and, in so doing, took the place of that developer as debtor of the mortgage loan relating to that property granted by the credit institution Ibercaja Banco. XZ thus accepted all the agreements and conditions relating to that mortgage loan as defined between the original debtor and the credit institution. The mortgage loan agreement included a term relating to the maximum and minimum interest rates applicable to that loan, namely an annual interest rate 'cap' of 9.75% and an annual interest rate 'floor' of 3.25%. That mortgage loan agreement was the subject of an amending document of 4 March 2014 ('the novation agreement'), relating, inter alia, to the interest rate stipulated in the 'floor' term, that rate being reduced to an annual nominal rate of 2.35%. The novation agreement also contained a term worded as follows: 'The parties confirm the validity and application of the loan, consider its conditions to be appropriate and, consequently, expressly and mutually waive the right to bring any action against the other party in relation to the agreement entered into, its terms or any settlements or payments made to date, which the parties acknowledge as being compatible with that agreement'. In addition, XZ stated, by way of a handwritten note, that she was aware and understood that 'the interest rate on the loan [would] never fall below an annual nominal rate of 2.35%'. In its judgment, the Court of Justice established the bases of the validity of an agreement between a professional and a consumer under the Unfair Terms

Directive, in the context where the consumer has waived the right to rely on the unfairness of a contractual term.

Link to the judgment

- **Judgment of 9 July 2020, NG, OH v SC Banca Transilvania SA, Case C-81/19**

In 2006, NG and OH concluded a loan agreement with Banca Transilvania under which the bank loaned them the sum of RON 90 000 (Romanian lei) (approximately €18,930). In 2008, they concluded a second loan agreement, denominated in Swiss francs, in order to refinance the first agreement. As a result of the sharp fall in the value of the Romanian lei, the amount to be repaid almost doubled in the years that followed. In this case, the Court ruled that a contractual term which has not been negotiated but which reflects a rule that, under national law, applies between parties provided that no other arrangements have been established in that respect, falls outside the scope of EU law on unfair terms in consumer contracts. It also concludes that the directive on unfair terms in consumer contracts does not apply to a contractual term which has not been individually negotiated but which reflects a rule that, under national law, applies between contracting parties provided that no other arrangements have been established in that respect.

Link to the judgment

- **Judgment of 16 July 2020, CY and Others v Caixabank SA and Banco Bilbao Vizcaya Argentaria SA, joined Cases C-224/19 and C-259/19**

These cases are related to mortgage costs. In its judgment the Court stated that if the cost clause at issue is found to be unfair, the consumer is entitled to reimbursement of the costs paid on the basis of that clause. As well that the mere fact that the costs involved are part of the total price of a mortgage loan does not mean that they must be considered as relating to the main subject matter of the contract. In respect of opening costs – a fixed fee for setting up the mortgage – the Court concludes that the clause may cause a significant imbalance to the detriment of consumers when the bank cannot prove those costs reflect actual services or expenses[10].

Link to the judgment (in French)

- **Judgment of 16 July, 2020, SIA «Soho Group» v Patērētāju tiesību aizsardzības centrs, C-686/19**

This case involved the interpretation of Art. 3(g) of Directive 2008/48/EC and the question whether the term ‘total cost of credit’ includes loan extension fees. Soho Group is a Latvian high cost short term credit provider, specializing in loans between 70-425 EUR for the duration of 30 days to 12 months. In performing its supervisory function the Latvian Consumer Protection Authority discovered that the firm charged high fees for extending the duration of the loan, breaching the relevant Latvian law that capped the total cost of credit. Consequently, the authority imposed a 25000 EUR fine on the firm that triggered the relevant national court process for the preliminary reference. In its judgement the Court ruled in favor of the Consumer Protection Authority finding that “the term ‘total cost of

credit' needs to be interpreted to include fees for the extension of the duration of the loan provided: the conditions for the possibility of the extension are laid down clearly and precisely in the relevant standard terms and conditions of the contract and that the costs are known to the creditor"[11].

Link to the judgment (in French)

- **Judgment of 3 September 2020, Delfly sp. z o.o. v Smartwings Poland sp. z o. o., formerly Travel Service Polska sp. z o.o., C-356/19**

Ms X, who was entitled to compensation amounting to EUR 400 under the Air Passenger Rights Regulation N ° 261/2004, assigned her claim to Delfly, a company established in Warsaw. Delfly brought an action before the District Court for the Capital City of Warsaw (15th Commercial Division), Poland, requesting that Smartwings Poland, formerly Travel Service be ordered to pay it the sum of 1 698.64 polish zlotys (PLN), which, applying the exchange rate set by the National Bank of Poland on the date on which the claim for compensation was brought, was the equivalent of EUR 400. Smartwings Poland, formerly Travel Service contended that the claim for compensation should be rejected on the ground, inter alia, that that claim had been expressed, contrary to the provisions of national law, in an incorrect currency, namely in PLN and not in euros. The Court stated that passengers whose flights have been cancelled or subject to a long delay may demand payment of the compensation provided for under EU law in the national currency of their place of residence The refusal to allow such a payment would be incompatible with the requirement to interpret broadly the rights of air passengers and with the principle of equal treatment of aggrieved passengers.

Link to the judgment

- **Judgment of 3 September 2020, Profi Credit Polska SA v QJ (84) and BW v DR (222) and QL v CG (252), joined Cases C-84/19, C-222/19 and C-252/19**

All three cases involved contracts between credit institutions and consumers, particularly the recovery of sums claimed by those credit institutions under consumer credit agreements. In all three cases, the total cost of the credit was between 2000-2500 euros. However, in all three cases there were high non-interest related costs, such as costs contractually designated as 'commission fee', 'initial payment', 'fees for the grant of the loan', 'management fee' and 'administrative fees'. In general, while these costs were mentioned in several contractual clauses, they were not defined or explained. Additionally, all three cases concern a Polish law provision whereby there is a maximum amount of non-interest related credit costs that can be claimed from the consumer. The Court's decision mainly interpreted the Unfair Terms Directive and covers all central aspects of the regime imposed by this Directive: its scope of applicability (including the exclusion of terms derived from mandatory legislation, present in Article 1(2)), its unfairness assessment (including its requirements, present in Article 3(1)) and the obligation to draft contract terms in plain, intelligible language (present in Article 4(2))[12].

Link to the judgment

- **Judgment of 10 September, 2020, A v B, C; C-738/19**

By a contract, A, a foundation responsible for the leasing of social housing, granted a lease to B in respect of a social housing dwelling located in Amsterdam. The contract at issue is, inter alia, subject to the General terms and conditions of social housing of 1 November 2016; (the 'terms and conditions'). Those terms and conditions include a number of penalty clauses concerning, inter alia, the prohibition on subletting the dwelling, the requirement for the tenant to occupy the dwelling personally and to vacate it fully upon termination of the contract. According to clause 7.14 of the terms and conditions, in the event of breach of the prohibition on subletting the dwelling, the tenant will be required to pay a penalty of EUR 5 000, due immediately to the landlord, without prejudice to the landlord's right to seek full compensation for the damage suffered. The terms and conditions also include a general 'residual' penalty clause, which applies in the event of breach by the tenant of one of his contractual obligations, where no special penalty clause is applicable. A brought an action before the District Court, Amsterdam. In this case the Court of Justice ruled that the Council Directive 93/13/EEC on unfair terms in consumer contracts must be interpreted as meaning that, where a national court examines whether a term in a consumer contract is unfair, within the meaning of those provisions, it must take account, among the terms which fall within the scope of that directive, of the degree of interaction between the term at issue and other terms, having regard, inter alia, to their respective scope. In order to assess whether the amount of the penalty imposed on the consumer is disproportionately high, within the meaning of point 1(e) of the annex to that directive, significant weight must be attached to those terms which relate to the same breach.

Link to the judgment

- **Judgment of 10 September 2020, Konsumentombudsmannen (KO) v Mezina AB, Case C-363/19**

Mezina is active in the production and marketing of natural remedies and food supplements, including Movizin complex; Macoform,; and Vistavital. In the marketing of these products, which fall within the category of 'foodstuffs' within the meaning of Regulation No 1924/2006, Mezina uses health claims for this products. The KO brought an action before the Patents and Market Court, District Court, Stockholm, Sweden, seeking an order from that court prohibiting Mezina from using health claims in marketing the products at issue in the main proceedings. The Court in its judgment ruled that the burden of proof and standard of proof in respect of the health claims referred in the Regulation to in Article 13(1)(a) of the Regulation No 107/2008 are governed by Regulation No 1924/2006, which requires the food business operator concerned to be able to justify, by means of generally accepted scientific evidence, the claims which it uses. Those claims must be based on objective evidence which has sufficient scientific agreement.

Link to the judgment

- **Judgment of 15 September 2020, Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke, joined Cases C-807/18 and C-39/19**

In its judgement theCourt interprets, for the first time, the EU regulation enshrining 'internet neutrality'. The Court stated that the requirements to protect internet users' rights and to treat traffic in a non-discriminatory manner preclude an internet access provider from favoring certain applications and services by means of packages enabling those applications and services to benefit from a 'zero tariff' and making the use of the other applications and services subject to measures blocking or slowing down traffic.

Link to the judgment

- **Judgment of 1st October 2020, A v Daniel B, UD, AFP, B, L, Case-649/18**

The case concerns a dispute between, on the one hand, A, a company incorporated under Netherlands law which operates a dispensing pharmacy established in the Netherlands and a website specifically targeting French customers and, on the other, Daniel B, UD, AFP, B and L ('Daniel B and Others'), which are operators of dispensing pharmacies and associations representing the professional interests of pharmacists established in France. The subject matter of the dispute is A's promotion of its website to French customers by means of a wide-ranging and multifaceted advertising campaign. The medicinal products marketed via that site have been granted a marketing authorization in France and are not subject to compulsory medical prescription. Daniel B and Others brought an action before the tribunal de commerce de Paris (Commercial Court, Paris, France), seeking, in particular, compensation for the damage they consider they have suffered as a result of the unfair competition in which A allegedly engaged by unduly obtaining an advantage from failing to comply with the rules of French law on the online advertising and sale of medicinal products. In its judgment the Court holds that a Member State of destination of an online sales service relating to medicinal products not subject to medical prescription may not prohibit pharmacies that sell such products from using paid referencing on search engines and price comparison websites. Such a prohibition would be permissible only if it were established before the referring court that that legislation is appropriate to ensure the attainment of the objective of protecting public health and does not go beyond what is necessary in order to attain that objective.

Link to the judgment

- **Judgment of 1st October 2020, Staatssecretaris van Financiën v X, C-331/19**

X, a trader subject to VAT, sells items in his sex shop which include capsules, drops, powders and sprays presented as aphrodisiacs that stimulate libido. Those products, which are composed essentially of elements of animal or vegetable origin, are intended for human consumption and are to be taken orally. Between 2009 and 2013, the taxable person applied the reduced VAT rate for foodstuffs to those products. The tax authorities challenged the application of that rate, taking the view that the products in question did not constitute 'foodstuffs' within the meaning of the relevant provisions of VAT legislation, and decided to issue additional assessments. The taxable person contested that decision of the tax authorities before the District Court and court of first instance, The Hague, Netherlands. In its judgment the Court of Justice ruled that the concepts of 'foodstuffs for human consumption' and 'products normally used to supplement foodstuffs or as a substitute for foodstuffs', set out in point 1 of Annex III to Council Directive 2006/112/EC on the common

system of value added tax, must be interpreted as meaning that they refer to all products containing nutrients which serve as building blocks, generate energy and regulate its functions, which are necessary to keep the human body alive and enable it to function and develop, and which are consumed in order to provide it with those nutrients.

Link to the judgment

- **Judgment of 6 October, 2020, Privacy International, C-623/17 and in Joined Cases C-511/18, La Quadrature du Net and Others, C-512/18, French Data Network and Others, and C-520/18, Ordre des barreaux francophones et germanophone and Others**

In its judgment, the Court confirmed that EU law precludes national legislation requiring a provider of electronic communications services to carry out the general and indiscriminate transmission or retention of traffic data and location data for the purpose of combating crime in general or of safeguarding national security. However, in situations where a Member State is facing a serious threat to national security that proves to be genuine and present or foreseeable, that Member State may derogate from the obligation to ensure the confidentiality of data relating to electronic communications by requiring, by way of legislative measures, the general and indiscriminate retention of that data for a period that is limited in time to what is strictly necessary, but which may be extended if the threat persists. As regards combating serious crime and preventing serious threats to public security, a Member State may also provide for the targeted retention of that data as well as its expedited retention. Such an interference with fundamental rights must be accompanied by effective safeguards and be reviewed by a court or by an independent administrative authority. Likewise, it is open to a Member State to carry out a general and indiscriminate retention of IP addresses assigned to the source of a communication where the retention period is limited to what is strictly necessary, or even to carry out a general and indiscriminate retention of data relating to the civil identity of users of means of electronic communication, and in the latter case the retention is not subject to a specific time limit.

Link to the judgment

- **Judgment of 8 October, 2020, EU v PE Digital GmbH, C-641/19**

PE Digital, operates the dating website 'Parship' It offers its users two forms of membership, namely a free, basic membership and a paid 'premium' membership. The 'Premium' membership includes the 'contact' guarantee, which guarantees the materialization of a certain number of contacts with other users. An average of 31.3 messages are sent and received in the first week of the period of 'premium' membership, 8.9 in the second week, 6.1 in the third week, 5.1 in the fourth week and fewer than five from the fifth week. On 4 November 2018, EU, as a consumer, concluded a contract with PE Digital for a 12-month 'premium' membership for a price of EUR 523.95. That price was more than twice as high as that which PE Digital charged some of its other users for a contract for the same term concluded in the same year. After EU had withdrawn from the contract at issue on 8 November 2018, PE Digital charged her a total amount of EUR 392.96 by way of compensation for the service used. By an action brought before the Local Court, Hamburg, Germany, EU sought the repayment of all the payments made to PE Digital. In this case the

Court ruled that the Directive 2011/83/EU on consumer rights, must be interpreted in order to determine the proportionate amount to be paid by the consumer to the trader where that consumer has expressly requested that the performance of the contract concluded begin during the withdrawal period and withdraws from that contract, it is appropriate, in principle, to take account of the price agreed in the contract for the full coverage of the contract and to calculate the amount owed *pro rata temporis*. It is only where the contract concluded expressly provides that one or more of the services are to be provided in full from the beginning of the performance of the contract and separately, for a price which must be paid separately, that the full price for such a service should be taken into account in the calculation of the amount owed to the trader. In order to assess whether the total price is excessive, account should be taken of the price of the service offered by the trader concerned to other consumers under the same conditions and that of the equivalent service supplied by other traders at the time of the conclusion of the contract.

Link to the judgment

- **Judgment of 15 October, 2020, Association française des usagers de banques v Ministre de l'Économie et des Finances, C-778/18**

On 9 August 2017, the AFUB lodged an application before the Council of State, France, seeking the annulment of Decree No 2017-1099 on grounds of misuse of power. The AFUB submitted, first, that Order No 2017-1090, for the implementation of which Decree No 2017-1099 was adopted, disregards the objective of facilitating banking mobility pursued by Directives 2007/64, 2014/17, 2014/92 and 2015/2366, in that it authorizes credit institutions to require consumers to deposit their salaries or similar income with them and, second, that the decree disregards that same objective in that it fixes at 10 years the maximum period during which credit institutions may make the grant of individual advantages to consumers conditional on such deposit. In this case the Court ruled that Article 12(2)(a) of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, must be interpreted as precluding national legislation which authorizes a lender to require a borrower, when concluding a credit agreement relating to immovable property for residential use, as consideration for an individual advantage, to deposit all his or her salary or similar income on a payment account opened with that lender, irrespective of the amount, maturities and duration of the loan. However, that provision must be interpreted as not precluding national legislation under which the duration of the deposit required, where it does not relate to the borrower's entire income from employment, may be of up to 10 years or, if it is shorter, the duration of the credit agreement concerned.

Link to the judgment

- **Judgment of 15 October, 2020, Deza v European Commission, C-813/18**

Deza, a public limited company incorporated under Czech law, manufactures anthraquinone by the method of air oxidation of anthracene in the gaseous phase and markets it on the market of the European Union, in particular for use in the paper industry. On 30 June 2015, the competent authority of the Federal Republic of Germany submitted to ECHA, in accordance with Article 37(1) of Regulation 1272/2008, a dossier proposing the classification

of anthraquinone as a category 1B carcinogen. This proposal was mainly based on two bioassays, carried out over a period of two years and completed in 1996 for the National Toxicology Program, which were published in the report « NTP TR 494 », dated September 2005. This report found that the anthraquinone used in the NTP study was carcinogenic in the rats and mice used in the study. On May 4, 2017, the Commission adopted the Regulation (EU) 2017/776. By that regulation, anthraquinone was included in the regulation, and classified in category 1B, which includes substances suspected of having carcinogenic potential for humans, and in the labelling of hazard statements, indicating that it is a substance which may cause cancer. In the present case Deza makes an appeal which seeks the annulment of the judgment of the Court of First Instance of the European Union of 24 October 2018 in Case T-400/17, by which the Court dismissed its action for annulment of the Commission Regulation (EU) 2017/776. In its judgment of 15th October, 2020 the Court (Seventh Chamber) declared dismiss the appeal.

Link to the judgment (in French)

- **Judgment of 15 October, 2020, Deza v European Commission, C-813/18**

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Link to the judgment (in French)

- **Judgment of 18 November, 2020, Ryanair DAC v DelayFix, formerly Passenger Rights sp. z o.o, C-519/19**

Passenger Rights, a company specialised in the recovery of air passengers' claims, now DelayFix, has requested the District Court for the Capital city of Warsaw, Poland, to order the airline Ryanair, on the basis of Regulation No 261/2004, to pay a sum of EUR 250 in compensation for the cancellation of a flight between Milan (Italy) and Warsaw (Poland), a passenger of that flight having assigned that company their claim with respect to that airline. Ryanair raised a plea alleging that the Polish courts do not have jurisdiction, on the

grounds that Section 2.4 of its general terms and conditions of carriage, to which that passenger agreed when he purchased his ticket online, provides that those terms and conditions are subject to the jurisdiction of the Irish courts. According to Ryanair, DelayFix, as the assignee of that passenger's claim, is bound by that clause. By an order of 15 February 2019, the District Court for the Capital city of Warsaw) rejected that plea of lack of jurisdiction, considering that, first, the clause attributing jurisdiction in the contract of transport between that passenger and the airline was unfair, within the meaning of Directive 93/13, and second, DelayFix, as the assignee of the passenger's claim following the cancellation of the flight, could not be bound by such a clause. In this case the Court ruled that Article 25 of Regulation (EU) No 1215/2012 must be interpreted as meaning that, in order to contest the jurisdiction of a court to hear and determine an action brought for compensation under Regulation (EC) No 261/2004 and against an airline, a jurisdiction clause incorporated in a contract of carriage concluded between a passenger and that airline cannot be enforced by the airline against a collection agency to which the passenger has assigned the claim, unless, under the legislation of the Member State whose courts are designated in that clause, that collection agency is the successor to all the initial contracting party's rights and obligations, which it is for the referring court to determine. Where appropriate, such a clause, incorporated, without having been subject to an individual negotiation, in a contract concluded between a consumer, that is to say, the air passenger, and a seller or supplier, that is to say, the airline, and which confers exclusive jurisdiction on the courts which have jurisdiction over the territory in which that airline is based, must be considered as being unfair within the meaning of Article 3(1) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

Link to the judgment

- **Judgment of 25 November, 2020, Banca B. SA v A.A.A., C-269/19**

On 5 June 2007, A.A.A. entered into a credit agreement relating to the grant of a personal loan with Banca B. That agreement was secured by a first-ranking mortgage, in the amount of EUR 182 222, of which EUR 179 000 corresponded to the personal loan known as 'Maxicredit' at a fixed rate for a year and EUR 3 222 corresponded to the award fee for that loan, for a period of 300 months. On 9 June 2017, A.A.A. brought an action against Banca B. before the Specialist Court, Cluj, Romania, requesting that court to declare that the terms of the loan agreement at issue concerning the variable interest rate were unfair and therefore void and, in consequence, to annul the schedule established under those terms. It also asked that court to order the defendant to amend those terms and to repay the amounts overpaid as a result of those terms being declared unfair. Before that court, A.A.A. claimed, inter alia, that the terms at issue allowed Banca B. to arbitrarily change the level of that rate, thus undermining A.A.A.'s legitimate interests as a consumer. By judgment of 23 January 2018, the Specialist Court, Cluj, upheld A.A.A.'s action in part. In particular, it declared void in part the term set out in Article 5 of the credit agreement, as regards the mechanism for determining the variable interest rate, and it found the term contained in Article 2.10b of the credit agreement to be void in so far as the bank had only an option, and not an obligation, to revise the variable interest rate in accordance with the benchmark rates stipulated in the agreement, that is to say, the LIBOR or Euribor. On 15 October 2018, Banca B. brought an appeal against that judgment. According to the referring court, it is necessary,

in order to resolve the dispute before it, to determine the consequences that should follow from the finding that a term defining the mechanism for setting the variable interest rate is unfair. In this case the Court ruled that article 6(1) of Council Directive 93/13/EEC must be interpreted as meaning that, after terms establishing the mechanism for determining the variable interest rate in a loan agreement such as that at issue in the main proceedings have been found to be unfair, and when that contract cannot continue to exist following the removal of the unfair terms in question, annulment of the contract would have particularly unfavorable consequences for the consumer and there are no supplementary provisions under national law, the national court must, while taking into account all of its national law, take all the measures necessary to protect the consumer from the particularly unfavorable consequences which could result from annulment of the loan agreement in question. In circumstances such as those in question in the main proceedings, nothing precludes the national court from, inter alia, inviting the parties to negotiate with the aim of establishing the method for calculating the interest rate, provided that that court sets out the framework for those negotiations and that those negotiations seek to establish an effective balance between the rights and obligations of the parties taking into account in particular the objective of consumer protection underlying Directive 93/13.

Link to the judgment

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22nd January 2021

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