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EUROPEAN COURT OF JUSTICE

Case-law in private law matters from 1st Julyl 2014 – 30 September 2014

Unfair Contract Terms

Judgments and Opinions

	Case-number	Parties	Outcome
OPINION OF ADVOCATE GENERAL WAHL delivered on 16 October 2014	Joined Cases C-482/13, C-484/13, C-485/13 and C-487/13	Unicaja Banco SA v José Hidalgo Rueda et al, Caixabank SA v Manuel María Rueda Ledesma et al	(1) Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts requires national courts to exclude the application of an unfair contractual term so that it does not produce binding effects with regard to the consumer, but does not authorise them to revise the content of that term. The consumer contract must continue to exist, in principle, without any amendment other than that resulting from the deletion of the unfair terms, in so far as such continuity of the contract is possible under national law. (2) A provision of national law, such as the Second Transitional Provision of Law No 1/2013 of 14 May 2013 laying down measures for the strengthening of the protection of mortgagors, the restructuring of debt and social rent (Ley 1/2013 de medidas para reforzar la protección a los deudores hipotecarios, reestructuración de deuda y alquiler social), under which a creditor seeking enforcement, on the basis of a mortgage agreement containing a clause setting default interest at a rate higher than three times the statutory interest rate, may adjust the amount of default interest recoverable through the enforcement of a mortgage so that it does not exceed that threshold, is compatible with Directive 93/13 and, in particular, with Article 6(1) thereof,

			in so far as the application of such a provision is without prejudice to the obligation of national courts under that directive to exclude the application of an unfair contractual term in consumer contracts so that it does not produce binding effects with regard to the consumer, but without revising its content. It is for the referring court to determine whether that is the case, taking the whole body of national law into consideration and applying the interpretative methods recognised by that law.

Pending Cases

	Case-number	Parties	Outcome
Request for a preliminary ruling from the Krajský súd v Prešove	C-328/14	CD Consulting s.r.o. v Anna Pančurová and Others	Must Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and Article 4 of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit be interpreted as precluding legislation of a Member State, such as the legislation at issue in the main proceedings, which in principle does not allow the national court deciding on rights under an endorsed bill of exchange at any stage of the proceedings to examine of its own motion the agreement and the basis of the legal relationship and the possible unfair nature of a contractual term and any breach of the law regulating the consequences of the failure to state the APR in the consumer credit agreement from which the bill of exchange arose?
Request for a preliminary ruling from the Judecătoria Câmpulung (Romania) lodged on 21 July 2014	C-348/14	Maria Bucura v SC Bancpost SA	1) For the purposes of Directive 93/13/EEC, where authorisation for enforcement has been given in the absence of the consumer, is a national court seised of an objection to enforcement of a credit agreement relating to the issue of a credit card such as an American Express Gold card required, as soon as it has at its disposal the fact and points of laws necessary to that end, to evaluate, including of its own motion, whether the commission provided for in the agreement in question is unfair, namely: (a) — commission for issuing the card; (b) — commission for annual management of the card; (c) — commission for annual management of the additional card; (d) — commission for renewing the card; (e) — commission for replacing the card; (f) — commission for changing the PIN; (g) — commission for withdrawing cash from cash machines and over the counter (the bank's own or those of other banks in Romania or abroad); (h) — commission for payment of goods and/or services supplied by traders abroad or in Romania; (i) — commission for printing and sending statements of account; (j) — commission for viewing balances on cash machines; (k) — commission for late payment; (l) — commission for exceeding the credit limit; (m) — commission for unjustified refusal to pay — notwithstanding the fact that the amount of such commission is not specified in the agreement? 2) Is the following statement concerning annual interest: 'Interest on credit shall be calculated by reference to the daily balance, broken down by item (payments, cash withdrawals, charges and

			commission) and the daily rate of interest for the calculation period. Interest shall calculated on a daily basis in accordance with the following formula: the sum achieved by multiplying the amount of each item on the daily balance by the daily rate of interest applicable on the relevant day; the daily rate of interest shall be calculated as the ratio between the annual rate and 360 days' — which is of essential importance in the context of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998, which has similar wording — drafted in plain intelligible language within the meaning of Articles 3 and 4 of Directive 93/13/EEC? 3) Does the failure to indicate the amount of commission due under the agreement and the mere inclusion therein of the method of calculating interest, without any indication of the actual amount, allow the national court — pursuant to Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (2), as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 (3), and to Council Directive 93/13/EEC — to find that the failure to provide such information in the consumer credit agreement has the effect of rendering the credit granted commission and interest-free? 4) Does the co-debtor under a credit agreement fall within the definition of 'consumer' in Article 2(a) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and Article 1(2)(a) of Directive 87/102/EEC? 5) If the answer to the preceding question is in the affirmative, is the principle of the effectiveness of the rights conferred by directives satisfied where the amount of interest, commission and charges is made known only to the principal debtor by means of the monthly statement of account or the posting of a notice at the bank's headquarters? 6) Is Directive 87/102/EEC to be interpreted as meaning that the bank is required to inform in writing both the debtor and the co-debtor of the maximum credit limit, annual interest and costs applicable from the date on which the credit agreement is concluded, and of the circumstances under which those terms may be altered, the procedure for terminating the credit agreement, and any change made during the term of the credit agreement relating to annual interest or costs incurred after the credit agreement is signed, at the time those changes are made, by registered post with acknowlegment of receipt or by means of a statement of account provided free of charge?
Request for a preliminary ruling from the Krajský soud v Praze (Czech Republic) lodged on 7 August	C-377/14	Ernst Georg Radlinger, Helena Radlingerová v Finway a.s.	1. Do Article 7(1) of Council Directive 93/13/EEC (1) of 5 April 1993 on unfair terms in consumer contracts ('the Directive on Unfair Terms') and Article 22(2) of Directive 2008/48/EC (2) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive

2014			87/102/EEC (‘the Directive on Consumer Credit Agreements’) or other provisions of EU law on consumer protection preclude: —the concept of Law No 182/2006 on bankruptcy and the modes of its resolution (zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení) (the Law on Insolvency), as amended by Law No 185/2013 (‘the Law on Insolvency’), which enables the court to examine the authenticity, amount or ranking of claims stemming from consumer relations only on the basis of an incidental application lodged by the administrator in bankruptcy, a creditor or (under the abovementioned restrictions) the debtor (consumer)? —provisions which, in the context of the national legislation governing insolvency proceedings, restrict the right of the debtor (consumer) to request review by the court of the registered claims of creditors (suppliers of goods or services) solely to cases in which the resolution of the consumer’s bankruptcy in the form of a discharge is approved, and in this context only in relation to creditors’ unsecured claims, with the objections of the debtor being further limited, in the case of enforceable claims acknowledged by a decision of the competent authority, solely to the possibility of asserting that the claim has lapsed or is time-barred, as laid down in the provisions of Paragraph 192(3) and Paragraph 410(2) and (3) of the Law on Insolvency? 2. If Question 1 is answered in the affirmative: is the court in proceedings concerning the examination of claims under a consumer credit agreement required to have regard ex officio, even in the absence of an objection on the part of the consumer, to the credit supplier’s failure to fulfil the information requirements under Article 10(2) of the Directive on Consumer Credit Agreements and to infer the consequences provided for in national law in the form of the invalidity of the contractual arrangements? If Question 1 or 2 is answered in the affirmative: 3. Do the provisions of the directives applied above have direct effect and is their direct application precluded by the fact that the initiation of an incidental action by the court ex officio (or, from the point of view of national law, the inadmissible review of a claim on the basis of an ineffective contestation by the debtor-consumer) encroaches on the horizontal relationship between the consumer and the supplier of goods or services? 4. What amount is represented by ‘the total amount of credit’ in accordance with Article 10(2)(d) of the Directive on Consumer Credit Agreements and what amounts are included as ‘the amounts of drawdown’ in the calculation of the annual percentage rate (APR) according to the formula set out in Annex I to the Directive on Consumer Credit Agreements, if the credit agreement formally promises the payment of a specific financial amount but at the same time it is agreed that, as soon as the credit is paid out, the claims of the credit supplier in terms of a fee for the provision of the credit and in terms of the first credit repayment instalment (or subsequent instalments) will to a certain extent be offset against that amount, so that the amounts thus offset are never in reality paid out to the consumer, or to his

			account, and remain at the creditor's disposal throughout? Does the inclusion of those amounts which are in reality not paid out affect the amount of the APR calculated? Regardless of the answer to the preceding questions: 5.In the assessment of whether the above agreed compensation is disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, is it necessary to evaluate the cumulative effect of all the penalty clauses, as concluded, regardless of whether the creditor actually insists that they be satisfied in full and regardless of whether some of them may from the point of view of the rules of national law be considered to have been concluded invalidly, or is it necessary to take into consideration only the total amount of the penalties actually demanded and capable of being demanded? 6. In the event that the contractual penalties are found to be abusive, is it necessary to disapply all of those partial penalties which, only when considered together, led the court to conclude that the amount of compensation was disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, or only some of them (and in that case by what criteria is this to be judged)?
Request for a preliminary ruling from the Juzgado de lo Mercantil No 9 de Barcelona (Spain) lodged on 11 and 12 August 2014	C-385/14, C-381/14	Youssouf Drame Ba v Catalunya Caixa SA, Jorge Sales Sinués v Caixabank, S.A.	Given that the Spanish system provides in Article 43 of the LEC (1) that, where an individual action is brought concurrently by a consumer, the effect is that that action must be stayed and treated as a preliminary issue pending final judgment in collective proceedings, and that the consumer is bound by the decision in those proceedings without having had the opportunity to put forward the appropriate pleas or adduce evidence with full equality of arms: 1. Can it be considered [that the Spanish legal system provides for] an effective means or mechanism pursuant to Article 7(1) of Directive 93/13? (2) 2. To what extent does the effect of a stay of proceedings preclude a consumer from complaining that the unfair terms included in the contract concluded with him are void, and, therefore, infringe Article 7(1) of the directive? 3. Does the fact that a consumer is unable to dissociate himself from collective proceedings constitute an infringement of Article 7(3) of Directive 93/13? 4. Or, on the other hand, is the effect of a stay of proceedings provided for in Article 43 of the LEC compatible with Directive 93/13 on the grounds that the rights of consumers are fully safeguarded by a collective action, because the Spanish legal system provides for other equally effective procedural mechanisms for the protection of consumers' rights and by the principle of legal certainty?
Request for a preliminary ruling from the Juzgado de Primera	C-421/14	Banco Primus, S.A. v Jesús Gutiérrez García	First question: 1. Must the Fourth Transitional Provision of Law No 1/2013 be

Instancia No 2 de Santander (Spain) lodged on 10 September 2014			interpreted so as not to constitute an obstacle to the protection of the consumer? 2. Under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (1), and in particular Articles 6(1) and 7(1) thereof, and in order to ensure the protection of consumers and users in accordance with the principles of equivalence and effectiveness, is a consumer permitted to raise a complaint regarding the presence of unfair terms outside the period specified under national legislation for raising such a complaint, and is the national court required to examine such terms? 3. Under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and in particular Articles 6(1) and 7(1) thereof, and in order to ensure the protection of consumers and users in accordance with the principles of equivalence and effectiveness, is a national court required to assess, of its own motion, whether a term is unfair and to determine the appropriate consequences, even where an earlier decision of that court reached the opposite conclusion or declined to make such an assessment and that decision was final under national procedural law? Second question: 4. In what way may the quality/price ratio affect the review of the unfairness of non-essential terms of a contract? When conducting an indirect review of such factors, is it relevant to have regard to the limits imposed on prices under national legislation? Is it possible that terms that are valid when viewed in abstract cease to be so where it is found that the price of the transaction is very high by comparison with the market standard? Third question: 5. For the purposes of Article 4 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, can circumstances arising after the conclusion of the contract be taken into account if an examination of the national legislation suggests that this is required? Fourth question: 6. Must Article 693(2) of the LEC [Ley de Enjuiciamiento Civil (Law on Civil Procedure)], as amended by Law 1/2013, be interpreted so as not to constitute an obstacle to the protection of consumer interests? 7. Under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and in particular Articles 6(1) and 7(1) thereof, and in order to ensure the protection of consumers and users in accordance with the principles of equivalence and effectiveness, must a national court, when it finds there to be an unfair term concerning accelerated repayment, declare that that term does not form part of the contract and determine the consequences inherent in such a finding, even where the seller or

			supplier has waited the minimum time provided for in the national provision?

Unfair commercial practices

Pending Cases

	Case-number	Parties	Outcome
Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 1 August 2014	C-372/14	Provident Financial s.r.o. v Zdeněk Sobotka	1.Must Directive 2005/29/EC (1) 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 ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22) be interpreted as meaning that conduct of the provider of the consumer credit consisting in presenting contractual terms to the consumer so as to create the formal impression that it is possible to choose an additional service of ensuring repayment instalments of the credit, and in reality exerting unreasonable influence on the consumer to accept the additional service, is to be regarded as an unfair commercial practice? 2. Must the Unfair Commercial Practices Directive be interpreted as meaning that conduct of the creditor consisting in presenting contractual terms to the consumer in such a way as to provide the consumer with a statement of the annual percentage rate of charge (APR) which does not include the costs of an additional service is to be regarded as an unfair commercial practice? 3. Must the Unfair Commercial Practices Directive be interpreted as meaning that conduct of the creditor consisting, in the consumer credit market, in requiring from consumers a substantially higher price for an ancillary service than the actual costs of such an ancillary service is to be regarded as an unfair commercial practice, and is the requirement of transparency of the total cost of a consumer credit thus circumvented if the costs of the ancillary service are not part of the APR? 4.Must Council Directive 93/13/EEC (2) of 5 April 1993 on unfair terms in consumer contracts ('Directive 93/13/EEC') be interpreted as meaning that a service of ensuring the repayment of a consumer credit, the object of which is the cash acceptance of repayment instalments of the credit by the consumer, constitutes the main object of performance in the case of a consumer credit? 5.Must Council Directive 87/102/EEC (3) of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended and supplemented by Directive 98/7/EC (4) of the European Parliament and of the Council of 16 February 1998, be interpreted as meaning that the APR includes also a payment for cash acceptance of repayment instalments of the credit, or part of

			it, if the payment substantially exceeds the unavoidable costs of that ancillary service, and must Article 14 of that directive be interpreted as meaning that it is a circumvention of the concept of APR if the payment for an ancillary service substantially exceeds the costs of the ancillary service and the payment is not included in the APR? 6.Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that it suffices, to satisfy the requirement of transparency of an ancillary service for which an administrative charge is paid, that the price of that administrative service (the administrative charge) is clear and comprehensible, even if the object of performance of that administrative service is not defined? 7. Must Article 4(1) and (2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that the mere fact that an administrative charge is included in the calculation of the APR precludes the court from exercising a power of review of such an administrative charge for the purposes of that directive? 8. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that the mere amount of the administrative charge precludes review by the court for the purposes of that directive? 9.If the answer to Question 6 is that the object of the administrative service for which the administrative charge is to be paid is sufficiently transparent, in such a case does the administration, with all possible administrative work and functions coming into consideration, constitute the principal object of the consumer credit? 10. Must Article 4(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts be interpreted as meaning that, for the purpose of that directive, it is relevant inter alia that in return for the charge for the ancillary service the consumer receives performance which is predominantly not in his interest but in the interest of the creditor of the consumer credit?

Passenger Rghts

Pending Cases

	Case-number	Parties	Outcome
Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas lodged on 18	C-429/14	Air Baltic Corporation AS v Lietuvos Respublikos specialiųjų tyrimų tarnyba	1. Are Articles 19, 22 and 29 of the Montreal Convention to be understood and interpreted as meaning that an air carrier is liable to third parties, inter alia to the passengers' employer, a legal person with which a transaction for the international carriage of passengers was entered into, for damage occasioned by a flight's

September 2014			delay, on account of which the applicant (the employer) incurred additional expenditure connected with the delay (for example, the payment of travel expenses)? 2. If the first question is answered in the negative, is Article 29 of the Montreal Convention to be understood and interpreted as meaning that those third parties have the right to bring claims against the air carrier on other bases, for example, in reliance upon national law?

Public Service Contracts

Judgements and Opinions

	Case-number	Parties	Questions
JUDGMENT OF THE COURT (Fifth Chamber) 11 December 2014	C-440/13	Croce Amica One Italia Srl v Azienda Regionale Emergenza Urgenza (AREU)	1) Articles 41(1), 43 and 45 of Directive 2004/18/EC must be interpreted as meaning that, where the conditions for the application of the grounds for exclusion set out in Article 45 are not fulfilled, that article does not preclude the adoption by a contracting authority of a decision not to award a contract for which a procurement procedure has been held and not to proceed with the definitive award of the contract to the sole tenderer remaining in contention to whom the contract had been provisionally awarded. 2) European Union public procurement law, in particular the third subparagraph of Article 1(1) of Council Directive 89/665/EEC must be interpreted as meaning that the review referred to in that provision constitutes a review of the lawfulness of decisions adopted by contracting authorities, the purpose of which is to ensure that the relevant rules of EU law or national provisions transposing those rules are complied with. It is not possible for such review to be confined to a simple examination of whether the decisions adopted by contracting authorities are arbitrary. On the other hand, that does not mean that it is not open to the national legislature to grant the competent national courts and tribunals the power to review whether a measure was expedient.

Pending cases

	Case-number	Parties	Questions
Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 7 July 2014	C-324/14	PARTNER Apelski Dariusz v Zarząd Oczyszczania Miasta	1. Can Article 48(3) of 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 (1) ('Directive 2004/18/EC'), in conjunction with Article 2 thereof, be interpreted, where it states that 'where appropriate' an economic operator may rely on the capacities of other entities, as

			covering any situation where a particular economic operator does not have the skills required by the contracting authority and wishes to rely on the capacities of other entities? Or must the indication that an economic operator may rely on the resources of other entities only 'where appropriate' be regarded as a restriction indicating that such reliance may be had only exceptionally and not as a rule when providing evidence of the skills of economic operators in procedures for the award of public contracts? 2. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that reliance by an economic operator on the capacities of other entities in terms of their knowledge and experience 'regardless of the legal nature of the links which it has with them' and 'having at its disposal the resources' of those entities denote that during performance of the contract an economic operator need not have links with those entities or can have very loose and vague links, that is to say, it can perform the contract independently (without the involvement of another entity) or such participation can consist of 'advice', 'consultation', 'training' and the like? Or must Article 48(3) be interpreted as meaning that the entity on whose capacities the economic operator relies must actually and personally perform the contract in so far as its capacities were declared? 3. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that an economic operator which has its own experience but to a lesser degree than it would like to indicate to the contracting authority (for example, insufficient experience to submit a tender for the whole contract) may rely additionally on the capacities of other entities to improve its situation in the procedure? 4. Can Article 48(3) of Directive 2004/18/EC, in conjunction with Article 2 thereof, be interpreted as meaning that in the contract notice or the tendering specifications the contracting authority can (or even must) lay down the rules under which the economic operator may rely on the capacities of other entities, for example in what way the economic operators must participate in the performance of the contract, in what way the capacity of the economic operator and another entity can be combined, and whether the other entity will bear joint and several liability with the economic operator for the due performance of the contract in so far as the economic operator has relied on its capacities? 5. Does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow reliance on the capacities of another entity under Article 48(3) where the capacities of two or more entities which do not have the capacities in terms of knowledge and experience required by the contracting authority are combined? 6. Therefore, does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow an interpretation of Articles 44 and 48(3) of Directive 2004/18/EC to the effect that the conditions for participation in the procedure that are laid down by the contracting authority may be fulfilled just formally for the

			purposes of participating in the procedure and regardless of the actual skills of the economic operator? 7. Where it is permitted to submit a tender for lots, does the principle of equal and non-discriminatory treatment of economic operators set out in Article 2 of Directive 2004/18/EC allow an economic operator, after the submission of tenders, to state — for example in the context of the supplementing or explaining of documents — to which lot the resources specified by it in order to prove that the conditions for participation in the procedure have been fulfilled are to be assigned? 8. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 2 of Directive 2004/18/EC allow an auction which has been carried out to be annulled and an electronic auction to be repeated where it was carried out improperly in an essential respect, for example where not all economic operators which submitted admissible tenders were invited to participate? 9. Do the principle of equal and non-discriminatory treatment of economic operators and the principle of transparency set out in Article 2 of Directive 2004/18/EC allow a contract to be awarded to an economic operator whose tender was selected as result of such an auction without it being repeated, where it is not possible to determine whether or not the participation of the economic operator which was not taken into consideration would have altered the result of the auction? 10. In interpreting the provisions of Directive 2004/18/EC, is it permitted to use as a guide to interpretation the content of the provisions 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, and of the preamble thereto, even though the period for implementing it has not expired, in so far as it explains certain assumptions and intentions of the EU legislature and is not contrary to Directive 2004/18/EC?
Request for a preliminary ruling from the Krajowa Izba Odwoławcza (Poland) lodged on 14 August 2014	C-387/14	Esaprojekt sp. z o.o. v Województwo Łódzkie	1) Does Article 51 of Directive 2004/18/EC, in conjunction with the principle of equal and non discriminatory treatment of economic operators and the principle of transparency set out in Article 2 thereof, allow an economic operator, when clarifying or supplementing documents, to refer to the performance of contracts (that is to say, supplies provided) other than those which it referred to in the list of supplies attached to the tender, and in particular can it refer to the performance of contracts by another entity the use of whose resources it did not refer to in the tender? 2) In the light of the judgment of the Court of Justice in Case C-336/12 Manova [2013] ECR, according to which 'the principle of equal treatment must be interpreted as not precluding a contracting authority from asking a candidate, after the deadline for applying to take part in a tendering procedure, to provide documents describing that candidate's situation — such as a copy of its published balance sheet — which can be objectively shown to pre-date that deadline, so long as it was not expressly laid

			down in the contract documents that, unless such documents were provided, the application would be rejected', must Article 51 of Directive 2004/18/EC be interpreted as meaning that the supplementing of documents is possible only when it involves documents which can be objectively shown to pre-date the deadline for submitting tenders or requests to participate in the procedure, or that the Court of Justice stated only one of the possibilities and the supplementing of documents is possible also in other cases, for example by attaching documents which did not pre-date the deadline but which objectively confirm fulfilment of a condition? 3) If the answer to Question 2 is to the effect that the supplementing of documents other than as stated in the judgment in Case C-336/12 Manova is possible, is it possible to supplement by adding documents drawn up by the economic operator, subcontractors or other entities on whose capacities the economic operator relies, if they were not submitted together with the tender? 4) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators set out in Article 2, allow reliance on the resources of another entity, as referred to in Article 48(3), by combining the knowledge and experience of two entities, which, individually, do not have the knowledge and experience required by the contracting authority, where that experience cannot be divided (that is to say, the condition for participation in the procedure must be fulfilled in its entirety by the economic operator) and performance of the contract cannot be divided (constitutes a single whole)? 5) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2, allow reliance on the experience of a group of economic operators in such a way that an economic operator which performed a contract as one of a group of economic operators can rely on the performance by that group, regardless of what its participation in the performance of that contract was, or can it rely only on the experience it itself has actually acquired in performing the relevant part of the contract which was assigned to it within that group? 6) Can Article 45(2)(g) of Directive 2004/18/EC, which states that any economic operator which is guilty of serious misrepresentation in supplying or not supplying information can be excluded from the procedure, be interpreted as excluding from the procedure an economic operator which submitted incorrect information which affected, or could affect, the result of the procedure, in that the guilt for misrepresentation lies in the very supply to the contracting authority of the factually inaccurate information which affects the decision of the contracting authority concerning exclusion of the economic operator (and rejection of its tender), regardless of whether the economic operator did so knowingly and wilfully, or unknowingly, through recklessness, negligence or failure to exercise due diligence? It is possible to regard as 'guilty of

			serious misrepresentation in supplying the information required […] or not having supplied such information' only an economic operator which has submitted incorrect (factually inaccurate) information,or also one which has submitted information which is correct, but has done so in such a way as to satisfy the contracting authority that it fulfils the requirements laid down by the contracting authority it, even though it does not? 7) Does Article 44 of Directive 2004/18/EC, in conjunction with Article 48(2)(a) thereof and the principle of equal treatment of economic operators in Article 2, allow reliance by an economic operator on experience in such a way that it relies jointly on two or more contractual agreements as a single public contract, despite the fact that the contracting authority did not refer to such a possibility in the contract notice or the tender specifications?
Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie (Poland) lodged on 27 August 2014	C-406/14	Wrocław — Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju	1. In the light of Article 25 of 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 is the contracting authority allowed to stipulate in the tender specifications that the economic operator is required to perform at least 25 % of the works covered by the contract using its own resources? 2. If the answer to the first question is in the negative, does the application of the requirement described in that question in a procedure for the award of a public contract result in an infringement of provisions of EU law which justifies the necessity to make a financial correction pursuant to Article 98 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999?
Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy lodged on 18 September 2014	C-426/14	Heart Life Croce Amica Srl v Regione Piemonte	1. Does European Union public procurement law — in the case under examination, concerning excluded contracts and the general principles of free competition, equal treatment, transparency and proportionality — preclude national legislation under which contracts for the provision of ambulance and health-related transport services may be awarded directly to voluntary organisations organised predominantly on the basis of unpaid work and in return for genuine reimbursement of costs? 2. If such an award is regarded as compatible with Community law, can 'the genuine reimbursement of costs' also cover the 'indirect and general' costs relating to the activities carried out on a regular basis by the voluntary organisation, such as the special maintenance of the vehicles used to provide the service, meals for personnel, remuneration for the administrative staff and the services coordinator, and the necessary telephonic and radio links between the ambulance despatch centre and the voluntary organisation's communications points?

Energy

Judgments and Opinions

	Case-number	Parties	Outcome
JUDGMENT OF THE COURT (Fourth Chamber) 23 October 2014	Joined Cases C-359/11 and C-400/11	Alexandra Schulz v Technische Werke Schussental GmbH und Co. KG, and Josef Egbringhoff v Stadtwerke Ahaus GmbH	On the one hand, Article 3(5) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, read in conjunction with Annex A thereto, and, on the other, Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, read in conjunction with Annex A thereto, are to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which determines the content of consumer contracts for the supply of electricity and gas covered by a universal supply obligation and allows the price of that supply to be adjusted, but which does not ensure that customers are to be given adequate notice, before that adjustment comes into effect, of the reasons and preconditions for the adjustment, and its scope.
OPINION OF ADVOCATE GENERAL KOKOTT delivered on 11 December 2014	C-596/13 P	European Commission v Moravia Gas Storage a.s.	The appeal proceedings deal with the temporal applicability of the Gas Directives. AG Kokott proposed that the Court should: (1) set aside the judgment of the General Court of the European Union of 6 September 2013 in *Globula* v *Commission* (T-465/11, EU:T:2013:406); (2) refer the case back to the General Court so that it may decide on the second and third pleas in law advanced in the action for annulment of Commission Decision C(2011) 4509 of 27 June 2011; (3) reserve the costs.

Telecoms

Judgments and Opinions

	Case-number	Parties	Outcome
JUDGMENT OF THE COURT (Third Chamber) 9 October 2014	C-222/13	TDC A/S v Erhvervsstyrelsen	The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the Teleklagenævnet (Denmark) in its decision of 22 April 2013.

Pending cases

	Case-number	Parties	Questions
Request for a	C-326/14	Verein für	Is the right, provided for in Article 20(2) of the Universal Service

preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 7 July 2014		Konsumenteninformation v A1 Telekom Austria AG	Directive, for subscribers to withdraw from their contracts without penalty 'upon notice of … modifications in the contractual conditions' also to be provided for in the case where an adjustment to charges derives from contractual conditions which, from the time when the contract is first concluded, provide that future charges are to be adjusted (upwards or downwards) in accordance with changes in an objective consumer price index reflecting movements in the value of money?
Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 19 August 2014	C-395/14	Vodafone GmbH v Federal Republic of Germany	Is Article 7(3) of Directive 2002/21/EC (1) 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) to be interpreted as meaning that a national regulatory authority which has required an operator with significant market power to provide mobile call termination services and has made the fees charged for this subject to authorisation in compliance with the procedure laid down in the aforementioned provision of the directive is required to carry out the procedure under Article 7(3) of Directive 2002/21/EC again before each authorisation of fees specifically requested?
Request for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 20 August 2014	C-397/14	Polkomtel Sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej	1. Must Article 28 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), in its initial version, be interpreted as meaning that it is necessary to ensure that not only end-users from other Member States, but also end-users from the Member State of a particular public communications network operator, have access to non-geographic numbers, with the result that the national regulatory authority's assessment of whether that obligation has been fulfilled is subject to the requirements arising from the principle of effectiveness of EU law and the principle of interpreting national law in conformity with EU law? 2. If the answer to Question 1 is in the affirmative, must Article 28 of Directive 2002/22, read in conjunction with Article 16 of the Charter of Fundamental Rights, be interpreted as meaning that, in order to fulfil the obligation referred to in the first of those provisions, it is possible to use the procedure laid down for national regulatory authorities in Article 5(1) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)? 3. Must Article 8(3) of Directive 2002/19, read in conjunction with Article 28 of Directive 2002/22 and Article 16 of the Charter of Fundamental Rights, or Article 8(3) of Directive 2002/19, read in conjunction with Article 5(1) of Directive 2002/19 and Article 16 of the Charter of Fundamental Rights, be interpreted as meaning that, in order to ensure that the end-users of a national public communications network operator have access to services using non-geographic numbers supplied on the network of another national operator, the national regulatory authority may lay down rules governing the payment of operators for call

			origination by having recourse to the call termination rates set in respect of one of those operators which are cost orientated pursuant to Article 13 of Directive 2002/19, where the operator proposed that such a rate be applied during failed negotiations held to fulfil the obligation laid down in Article 4 of Directive 2002/19?
Request for a preliminary ruling from the Commissione Tributaria Regionale di Mestre-Venezia (Italy) lodged on 3 September 2014	C-416/14	Fratelli De Pra SpA and SAIV SpA v Agenzia Entrate	1. With regard to terminal equipment for a terrestrial mobile radio communication service, are the following provisions of national legislation compatible with EU law (Directives 1999/5/EC, 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC: — Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014); — Article 160 of Legislative Decree No 259/2003; — Article 21 of the Tariff annexed to Presidential Decree No 641/1972; which, equating terminal equipment with radio stations, require a user to obtain a general authorisation and to be issued with a special licence for a radio station, and deem those activities to be chargeable events? Accordingly, with specific reference to the use of terminal equipment, is the obligation imposed by the Italian State on users to obtain a general authorisation and a licence for a radio station compatible with EU law when the placing on the market, the free movement and the putting into service of terminal equipment is already comprehensively governed by EU instruments (Directive 1999/5/EC) which do not lay down any requirement for general authorisation and/or for a licence? Additionally, are the general authorisation and the licence required under national legislation compatible with EU law despite the following facts: — a general authorisation is a measure which is not for a user of terminal equipment, but rather for businesses involved in the provision of electronic communications networks and services (Articles 1, 2 and 3 of Authorisation Directive 2002/20/EC); — a licence is intended to grant individual rights to use radio frequencies and to use numbers, which are clearly not related to the use of terminal equipment; — the EU legislation does not impose any obligation to obtain a general authorisation or to be issued with a licence for terminal equipment; — Article 8 of Directive 1999/5/EC provides that Member States 'shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking'; — a radio station is different — in substantive terms and in terms of its mode of regulation, as well as by its very nature — from terminal equipment for a terrestrial mobile radio communication service? 2. Are the following provisions of national legislation compatible with EU law (Directive 1999/5/EC and Directive 2002/ 20/EC, in particular Article 20 thereof): — Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014); — Article 160 of Legislative Decree No 259/2003; — Article 21 of the Tariff annexed to Presidential Decree No

			641/1972; — Article 3 of Ministerial Decree No 33/1990; on the basis of which — the contract referred to in Article 20 of Directive 2002/22/EC — established between a manager and a user, designed to regulate commercial relations between consumers or end users and one or more firms which provide the connection or services concerned — may 'in itself' constitute a document which is equivalent to a general authorisation and/or licence for a radio station, without any intervention, activity or supervision on the part of the public administrative authorities; — the contract must also include details of the type of terminal equipment and the corresponding certification (not provided for under Article 8 of Directive 1999/5/EC)? 3. Are Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014), Article 160 of Legislative Decree No 259/2003 and Article 21 of the Tariff annexed to Presidential Decree No 641/1972, read together, compatible with EU law in providing that only one particular category of users — namely, anyone holding a contract technically referred to as 'a subscription' — is obliged to have a general authorisation and accordingly a licence for a radio station, while no general authorisation or licence is required in the case of other persons using electronic communications services on the basis of a contract, simply because their contract is referred to by a different name (payas-you-go or top-up service)? 4. Does Article 8 of Directive 1999/5/EC preclude national legislation such as the provisions referred to in Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014), namely, Article 160 of Legislative Decree No 259/2003 and Article 21 of the Tariff annexed to Presidential Decree No 641/1972, which envisages: — administrative activity resulting in the grant of a general authorisation and licence for a radio station; — the payment of a government licence charge in connection with such activity; that being conduct which could constitute a restriction on the putting into service, use and free movement of terminal equipment?

Financial Services

Judgments and Opinions

	Case-number	Parties	Outcome
JUDGMENT OF THE COURT (Second Chamber) 12 November 2014	C-140/13	Annett Altmann et al v Bundesanstalt für Finanzdienstleistungsaufsicht,	Article 54(1) and (2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive

			93/22/EEC must be interpreted as meaning that, in administrative proceedings, a national supervisory authority may rely on the obligation to maintain professional secrecy against a person who, in a case not covered by criminal law and not in a civil or commercial proceeding, requests it to grant access to information concerning an investment firm which is in judicial liquidation, even where that firm's main business model consisted in large scale fraud and wilful harming of investors' interests and several executives of that firm have been sentenced to terms of imprisonment.concerned, the consumer has the right to require the manufacturer of the medicinal product to provide him with information on the adverse effects of that product.

Product Liability

Judgments and Opinions

	Case-number	Parties	Outcome
OPINION OF ADVOCATE GEREAL BOT delivered on 21 October 2014	Joint Cases C-503/13 et C–504/13	Boston Scientific Medizintechnik GmbH v AOK Sachsen-Anhalt – Die Gesundheitskasse (C–503/13), Betriebskrankenkasse RWE (C–504/13)	1) Un dispositif médical implanté dans le corps d'un patient doit être regardé comme défectueux, au sens de l'article 6, paragraphe 1, de la directive 85/374/CEE du Conseil, du 25 juillet 1985, relative au rapprochement des dispositions législatives, réglementaires et administratives des États membres en matière de responsabilité du fait des produits défectueux, lorsqu'il a les mêmes caractéristiques que d'autres dispositifs dont il est avéré qu'ils présentent un risque de défaillance sensiblement supérieur à la normale ou qu'ils ont déjà présenté, en nombre important, des défaillances. En effet, l'appartenance d'un produit déterminé à un groupe de produits défectueux permet de considérer qu'il recèle lui-même une potentialité de défaillance qui n'est pas conforme à l'attente légitime de sécurité des patients. 2) Constituent un dommage causé par lésions corporelles, au sens de l'article 9, première phrase, sous a), de la directive 85/374, les préjudices liés à l'opération chirurgicale préventive d'explantation d'un dispositif médical défectueux et d'implantation d'un nouveau dispositif. Le producteur du produit défectueux est responsable de ces préjudices lorsqu'ils présentent un lien de causalité avec le défaut, ce qu'il appartient au juge national de vérifier en tenant compte de toutes les circonstances pertinentes, notamment en recherchant si l'opération chirurgicale était nécessaire pour prévenir la réalisation du risque de défaillance découlant du défaut du produit.
JUDGMENT OF THE COURT (Fourth Chamber) 20 November 2014	C-310/13	Novo Nordisk Pharma GmbH v S.	Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999, must be interpreted as not precluding national legislation — such as that at issue in the main proceedings, establishing a special liability system for the purposes of Article 13 of that directive — under

			which, in consequence of an amendment to that legislation made after the directive had been notified to the Member State concerned, the consumer has the right to require the manufacturer of the medicinal product to provide him with information on the adverse effects of that product.

Competition Law

Judgments and Opinions

	Case-number	Parties	Outcome
OPINION OF ADVOCATE GENERAL WATHELET delivered on 20 November 2014	C-170/13	Huawei Technologies Co. Ltd v ZTE Corp., ZTE Deutschland GmbH	11) The fact that a holder of a standard-essential patent (SEP) which has given a commitment to a standardisation body to grant third parties a licence on FRAND (Fair, Reasonable and Non-Discriminatory) terms makes a request for corrective measures or brings an action for a prohibitory injunction against an infringer, in accordance with Article 10 and Article 11, respectively, of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, which may lead to the exclusion from the markets covered by the standard of the products and services supplied by the infringer of an SEP, constitutes an abuse of its dominant position under Article 102 TFEU where it is shown that the SEP-holder has not honoured its commitment even though the infringer has shown itself to be objectively ready, willing and able to conclude such a licensing agreement. 2) Compliance with that commitment means that, prior to seeking corrective measures or bringing an action for a prohibitory injunction, the SEP-holder, if it is not to be deemed to be abusing its dominant position, must — unless it has been established that the alleged infringer is fully aware of the infringement — alert the alleged infringer to that fact in writing, giving reasons, and specifying the SEP concerned and the manner in which it has been infringed by the infringer. The SEP-holder must, in any event, present to the alleged infringer a written offer of a licence on FRAND terms which contains all the terms normally included in a licence in the sector in question, in particular the precise amount of the royalty and the way in which that amount is calculated. 3) The infringer must respond to that offer in a diligent and serious manner. If it does not accept the SEP-holder's offer, it must promptly present to the latter, in writing, a reasonable counter-offer relating to the clauses with which it disagrees. The making of a request for corrective measures or the bringing of an action for a prohibitory injunction does not constitute an abuse of a dominant position if the infringer's conduct is purely tactical and/or dilatory and/or not serious. 4) If negotiations are not commenced or are unsuccessful, the conduct of the alleged infringer cannot be regarded as dilatory or as not serious if it requests that FRAND terms be fixed either by a

			court or by an arbitration tribunal. In that event, it is legitimate for the SEP-holder to ask the infringer either to provide a bank guarantee for the payment of royalties or to deposit a provisional sum at the court or arbitration tribunal in respect of its past and future use of the patent. 5) Nor can an infringer's conduct be regarded as dilatory or as not serious during the negotiations for a FRAND licence if it reserves the right, after concluding an agreement for such a licence, to challenge before a court or arbitration tribunal the validity of that patent, its supposed use of the teaching of the patent and the essential nature of the SEP in question. 6) The fact that the SEP-holder takes legal action to secure the rendering of accounts does not constitute an abuse of a dominant position. It is for the national court in question to ensure that the measure is reasonable and proportionate. 7) The fact that the SEP-holder brings a claim for damages for past acts of use for the sole purpose of obtaining compensation for previous infringements of its patent does not constitute an abuse of a dominant position.
JUDGMENT OF THE COURT (First Chamber) 4 December 2014	C-413/13	FNV Kunsten Informatie en Media v Staat der Nederlanden	On a proper construction of EU law, it is only when self-employed service providers who are members of one of the contracting employees' organisations and perform for an employer, under a works or service contract, the same activity as that employer's employed workers, are 'false self-employed', in other words, service providers in a situation comparable to that of those workers, that a provision of a collective labour agreement, such as that at issue in the main proceedings, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) TFEU. It is for the national court to ascertain whether that is so.

Private International Law

Judgments and Opinions

	Case-number	Parties	Outcome
JUDGMENT OF THE COURT (Third Chamber) 23 October 2014	C-302/13	flyLAL-Lithuanian Airlines AS, in liquidation,v Starptautiskā lidosta Rīga VAS, Air Baltic Corporation AS	1. Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the notion of 'civil and commercial matters' within the meaning of that provision and, therefore, falls within the scope of that regulation. 2. Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action such as that in the main proceedings,

			seeking legal redress for damage resulting from alleged infringements of European Union competition law, does not constitute proceedings having as their object the validity of the decisions of organs of companies within the meaning of that provision. 3. Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that neither the detailed rules for determining the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, in the case where it is possible to follow the line of reasoning which led to the determination of the amount of those sums, and even where legal remedies were available which were used to challenge such methods of calculation, nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.
JUDGMENT OF THE COURT (Third Chamber) 23 October 2014	C-305/13	Haeger & Schmidt GmbH v Mutuelles du Mans assurances IARD (MMA IARD) et al	1. The last sentence of Article 4(4) of the Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, must be interpreted as applying to a commission contract for the carriage of goods solely when the main purpose of the contract consists in the actual transport of the goods concerned, which it is for the referring court to verify. 2. Article 4(4) of the Convention must be interpreted as meaning that, where the law applicable to a contract for the carriage of goods cannot be fixed under the second sentence of that provision, it must be determined in accordance with the general rule laid down in Article 4(1), that is to say, the law governing that contract is that of the country with which it is most closely connected. 3. Article 4(2) of the Convention must be interpreted as meaning that, where it is argued that a contract has a closer connection with a country other than that the law of which is designated by the presumption laid down therein, the national court must compare the connections existing between that contract and, on the one hand, the country whose law is designated by the presumption and, on the other, the other country concerned. In so doing, the national court must take account of the circumstances as a whole, including the existence of other contracts connected with the contract in question.
OPINION OF ADVOCATE GENERAL Sharpston delivered on 27 November 2014	C-497/13	Froukje Faber v Autobedrijf Hazet Ochten BV	In circumstances where a purchaser initiated proceedings for damages against a seller based on provisions of national law which apply, inter alia, to consumer contracts but has not specifically claimed to be a consumer, a rule of national procedural law cannot preclude a national court from examining whether that person is indeed a consumer within the meaning of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees and consequently applying national consumer protection law as interpreted in

			conformity with Directive 1999/44. However, that requirement is subject to the condition that the legal and factual elements necessary for that task must be available to the national court, either because those elements already form part of the file or because the national court can obtain them in accordance with national procedural law. The national court may not go beyond the ambit of the dispute as defined by the parties. The same obligation of ex officio examination and the same conditions apply to an appeal where (i) at least one party has invoked provisions of national law which (at least partly) implement Directive 1999/44 and (ii) depending on whether one party is (or is not) a consumer, he (or she) can (or cannot) benefit from the enhanced protection that these provisions afford. The fact that a consumer was assisted by a lawyer does not alter this conclusion. The principle of effectiveness requires the ex officio examination of Article 5(3) provided that the national court has the necessary legal and factual elements available and does not change the ambit of the dispute as defined by the parties. In so far as Article 5(3) contains similar features to those that characterise a rule of public policy under national law, the principle of equivalence may also require that a national court such as that in the main dispute applies of its own motion the provision of national law which transposes Article 5(3). Directive 1999/44 does not limit Member States' competence to set and apply evidentiary rules as regards the requirement, pursuant to Article 5(2) of Directive 1999/44, that the consumer inform the seller of the lack of conformity as long as national law (i) provides for a period no shorter than two months, (ii) does not prescribe rules that modify the content of the obligations under Article 5 of Directive 1999/44 and (iii) the applicable rules are not otherwise less favourable that those governing domestic actions and are not framed in such a manner as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law. Article 5(3) of Directive 1999/44 partly reverses the burden of proof in favour of the consumer who, subject to a time limit, need not demonstrate that the lack of conformity already existed at the time of delivery of the good. Thus, it still falls on the consumer to identify that the good delivered does not correspond with that which he reasonably could have expected to receive pursuant to the contract and the information listed in Article 2(2). However, the consumer need not prove that the lack of correspondence is attributable to the seller.
OPINION OF ADVOCATE GENERAL WATHELET delivered on 4 December 2014	C-536/13	'Gazprom' OAO	(1) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not requiring the court of a Member State to refuse to recognise and enforce an anti-suit injunction issued by an arbitral tribunal. (2) The fact that an arbitral award contains an anti-suit injunction, such as that at issue in the main proceedings, is not a sufficient ground for refusing to recognise and enforce it on the basis of Article V(2)(b) of the Convention on the Recognition and

			Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958.
OPINION OF ADVOCATE GENERAL Jääskinen delivered on 11 December 2014	C-352/13	CDC Cartel Damage Claims Hydrogen Peroxide SA v Evonik Degussa GmbH, Akzo Nobel NV, Solvay SA, Kemira Oyj, Arkema France SA, FMC Foret SA, Chemoxal SA, Edison SpA	1) a) L'article 6, point 1, du règlement (CE) n° 44/2001 du Conseil, du 22 décembre 2000, concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, doit être interprété en ce sens que, lorsqu'un défendeur dont le domicile est situé dans le ressort d'une juridiction d'un État membre et des défendeurs établis dans d'autres États membres se voient réclamer devant cette juridiction des renseignements et des dommages et intérêts, à titre solidaire, en raison d'une infraction unique et continue à l'article 81 CE (article 101 TFUE) constatée par la Commission européenne, à laquelle ils ont participé dans divers États membres et à des moments différents, il y a intérêt à instruire et à juger ces demandes en même temps afin d'éviter des solutions qui pourraient être inconciliables si les causes étaient jugées séparément. b) L'article 6, point 1, du règlement n° 44/2001 doit être interprété en ce sens que le fait que l'action exercée à l'encontre du seul des codéfendeurs qui soit domicilié dans le ressort de la juridiction saisie ait fait l'objet d'un désistement n'affecte pas l'application de cette disposition, sous réserve, d'une part, qu'un tel désistement soit intervenu postérieurement à la date à laquelle la juridiction a été valablement saisie et, d'autre part, qu'il ne soit pas corrélatif à une transaction ayant été conclue de façon contraignante entre le demandeur et ledit défendeur antérieurement à cette date mais ayant été dissimulée à la seule fin de soustraire l'un des autres défendeurs aux tribunaux de l'État membre où son domicile est situé. 2) L'article 5, point 3, du règlement n° 44/2001 doit être interprété en ce sens que, lorsque des défendeurs établis dans des États membres différents se voient réclamer en justice des dommages et intérêts au sujet d'une entente, déclarée constitutive d'une infraction unique et continue à l'article 81 CE (article 101 TFUE) par une décision de la Commission européenne, à laquelle ils ont participé dans plusieurs États membres à divers endroits et moments, le fait dommageable ne saurait être réputé s'être produit, à l'égard de chaque défendeur et pour l'ensemble des dommages invoqués ou le dommage total, dans chacun des États membres sur le territoire desquels l'entente illicite a été conclue et/ou mise en œuvre. 3) L'article 101 TFUE doit être interprété en ce sens que, dans le cadre d'une action en réparation des préjudices causés par une infraction à cet article, le principe de la pleine efficacité de l'interdiction des ententes en droit de l'Union ne s'oppose pas à la mise en œuvre de clauses attributives de juridiction conformes à l'article 23 du règlement n° 44/2001, tandis que ce principe s'oppose à la mise en œuvre de clauses compromissoires et/ou de clauses attributives de juridiction ne relevant pas dudit article 23 lorsque le droit national applicable permet que la compétence relative à ce litige soit attribuée en vertu d'une clause figurant dans un contrat dont le contenu a été convenu alors que la partie à laquelle cette clause est opposée n'avait pas connaissance de l'entente en question et de son caractère illicite.

EUROPEAN COMMISSION

DG COMPETITION

Mergers: Commission opens in-depth investigation into Orange's proposed acquisition of Jazztel

The European Commission has opened an in-depth investigation to assess whether the proposed acquisition of Jazztel p.l.c., a telecommunications company registered in the United Kingdom but mainly active in Spain, by rival Orange S.A. of France is in line with the EU Merger Regulation. In Spain, Orange operates mobile and fixed telecommunications networks while Jazztel operates a fixed telecommunications network and offers mobile telecommunications services on Orange's network. The proposed transaction would reduce the number of nationwide providers of fixed telecommunications services in Spain from four to three. While the merged entity would not be in a dominant position, the Commission has concerns that the proposed transaction may lead to a significant loss of competitive pressure for fixed Internet access services and fixed-mobile multiple play offers. The loss of Jazztel as an important competitive force could lead to price increases for these services for customers in Spain. The opening of an in-depth investigation does not prejudge the outcome of the investigation. The Commission now has 90 working days, until 24 April 2015, to take a decision.

http://europa.eu/rapid/press-release_IP-14-2367_en.htm

Mergers: Commission approves aerospace and defence joint venture between Airbus and Safran, subject to conditions

The European Commission has concluded that the proposed creation of a joint venture for space launchers, satellite subsystems and missile propulsion between Airbus Group N.V. of The Netherlands and Safran S.A. of France is in line with the EU Merger Regulation. Both Airbus and Safran are active in the aerospace and defence industries. The decision is conditional upon the exclusion of Safran's activities in electric satellite thrusters from the joint venture, as well as on certain supply assurance commitments. The Commission had concerns that the joint venture could have shut out Airbus' competitors or limited their access to certain supplies, as well as transmitted strategic information to Airbus. The commitments offered by Airbus and Safran address these concerns.

http://europa.eu/rapid/press-release_IP-14-2164_en.htm

Antitrust: Commission welcomes General Court judgment confirming its inspection powers in the area of electronic searches

The European Commission welcomes the judgment of the EU General Court (case T-272/12), dismissing an appeal by Energetický a průmyslový holding (EPH) and its subsidiary EP Investment Advisors (EPIA) against a €2.5 million fine the Commission imposed on them in 2012. EPH and EPIA were fined for obstructing a Commission inspection in an antitrust investigation, by failing to block an email account and diverting incoming emails. The judgment

sends a clear message to companies that any steps that undermine the integrity and effectiveness of inspections, including tampering with data stored electronically, are illegal and will be sanctioned.

http://europa.eu/rapid/press-release_MEMO-14-2181_en.htm

Antitrust: Commission welcomes Council adoption of Directive on antitrust damages actions

On 10 November, The European Commission welcomed the formal adoption by the EU Council of Ministers of a Commission proposal for a Directive on antitrust damages actions. The Directive will help citizens and companies claim damages if they are victims of infringements of EU antitrust rules, such as cartels or abuses of dominant market positions. Among other things, it will give victims easier access to evidence they need to prove the damage suffered and more time to make their claims. The Directive is designed to achieve a more effective enforcement of the EU antitrust rules overall: it will fine-tune the interplay between private damages claims and public enforcement, and preserve the attractiveness of tools used by European and national competition authorities, in particular leniency and settlement programmes. In April, the European Parliament had already approved a compromise text of the Commission's initial proposal (see IP/14/455 and MEMO/14/310). The Directive is expected to be formally signed during the Parliament's plenary session at the end of November. Member States will have two years to implement it.

http://europa.eu/rapid/press-release_IP-14-1580_en.htm

Speech by Joaquim Almunia: Antitrust litigation – The way ahead

(…)

It is only fitting that I have the opportunity to speak here about the private enforcement of competition rules, because I consider the Directive on Antitrust Damages Actions as the most important legal initiative I launched during my term.

The Directive, which is to be formally adopted in the coming days, is the first binding piece of EU legislation in this area.

(…)

http://europa.eu/rapid/press-release_SPEECH-14-713_en.htm

Antitrust: Commission seeks feedback on commitments from Skyteam airline alliance members Air France/KLM, Alitalia and Delta concerning transatlantic cooperation

The European Commission has invited interested third parties to comment on commitments proposed by Air France/KLM, Alitalia and Delta to address concerns that their transatlantic cooperation may harm competition for premium passengers on the Paris-New York route and for all passengers on the Amsterdam-New York and Rome-New York routes, in breach of EU antitrust rules. The three airlines have offered to make landing and take-off slots available at both ends of the Amsterdam-New York and Rome-New York routes to facilitate the market entry of competitors. They are also prepared to enter into agreements which would enable competitors to offer tickets on their flights and facilitate access to connecting traffic, as well as to provide access to their frequent flyer programmes on all three routes. If the market test confirms that the proposed commitments remedy the competition concerns, the Commission

may make them legally binding on the companies.

http://europa.eu/rapid/press-release_IP-14-1184_en.htm

Antitrust: Commission fines Slovak Telekom and its parent, Deutsche Telekom, for abusive conduct in Slovak broadband market

After an in-depth investigation the European Commission has imposed a fine of € 38 838 000 on Slovak Telekom a.s. and its parent company, Deutsche Telekom AG, for having pursued during more than five years an abusive strategy to shut out competitors from the Slovak market for broadband services, in breach of EU antitrust rules. In particular, the Commission concluded that Slovak Telekom refused to supply unbundled access to its local loops to competitors, and imposed a margin squeeze on alternative operators. Deutsche Telekom as parent company with decisive influence is also responsible for the conduct of its subsidiary; it is therefore jointly and severally liable for Slovak Telekom's fine. Deutsche Telekom also received an additional fine of € 31 070 000 to ensure sufficient deterrence as well as to sanction its repeated abusive behaviour (recidivism) as it had already been fined in 2003 for a margin squeeze in broadband markets in Germany (see IP/03/717).

http://europa.eu/rapid/press-release_IP-14-1140_en.htm

DG ECONOMIC AND FINANCIAL AFFAIRS

European Commission adopts first equivalence decision for the purposes of credit risk weighting Regulation (EU) No 575/2013

On 12 December, the Commission adopted its first 'equivalence' decision for the purposes of credit risk weighting under Regulation (EU) No 575/2013 ('Capital Requirements Regulation'). It establishes a list of third countries whose supervisory and regulatory arrangements the EU considers equivalent.

http://europa.eu/rapid/press-release_IP-14-2601_en.htm?locale=en

Statement on Basel Regulatory Consistency Assessment of Basel III implementation

The European Commission endorses the efforts of international financial standards setters that seek to ensure coherent implementation across member jurisdictions. In this context, the Basel Committee's Regulatory Consistency Assessment Programme (RCAP) is a welcome contribution.

In the implementation of international banking standards, the EU has taken a particularly ambitious approach, unique in the world, opting to apply a single rule book, based on standards designed for large internationally active banks, to all of its 8000 banks. This is very important from the point of view of international financial stability as these banks account for about EUR 45 trillion in total assets or 52% of global banking assets. Needless to say that the diversity of these 8000 banks in terms of size, complexity and legal form requires some adaptations in the law and a degree of additional flexibility for supervisors to reflect local specificities.

http://europa.eu/rapid/press-release_STATEMENT-14-2403_en.htm?locale=en

DG EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION

Working Time Directive: have your say!

The European Commission has launched today an online public consultation on the review of the Working Time Directive. The consultation will run until 15 March 2015.

http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2160&furtherNews=yes

DG ENERGY

Speech by Miguel Arias Cañete: Conference on EU Energy Policy and Competitiveness

In concrete terms, completing the internal energy market means that we have to work on two fronts: We need to complete the common set of rules for the internal market to ensure remaining regulatory barriers to a well-integrated market are removed. This means engaging with regulators and stakeholders at national and EU level to fully implement and expand the existing legal framework where needed, including rapid adoption of the key network codes. We also need to promote common and market based approaches both for support schemes for renewables as well as, where needed, for capacity remuneration mechanisms, thus ensuring a fair market. Increasing competition should help drive down the costs for citizens and businesses and boost growth. We will also look into the possibility to further promote regional approaches in this context.

http://europa.eu/rapid/press-release_SPEECH-14-1920_en.htm

Speech by Maroš Šefčovič: Conference on EU Energy Policy and Competitiveness

I already emphasized my vision of the Energy Union in front of the European Parliament. I defined five pillars which I am sure will contribute to our competitiveness and economic growth:

- The first pillar would be built around security, solidarity and trust.
- The second pillar would be dedicated to the completion of a competitive internal market.
- Moderation of demand would be the third pillar.
- The decarbonisation of the EU energy mix would be my fourth pillar.
- This brings me to my fifth point: Technologies.

http://europa.eu/rapid/press-release_SPEECH-14-1883_en.htm

DG ENTERPRISE AND INDUSTRY

Commission gathers proposals for single market and digitalising business

The expert group meetings will enable the Commission to discuss with Member States their views on how they think the development and deepening of the Single Market should be taken forward in the areas of both products and services. The European Single Market has been a huge driver of growth over the last twenty years. In the face of a challenging economic environment for the EU, developing and deepening this market is needed to drive competitiveness across the Union and support growth and jobs.

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7927&lang=en&title=Commission%2Dgathers%2Dproposals%2Dfor%2Dsingle%2Dmarket%2Dand%2Ddigitalising%2Dbusiness%2D

Access to finance: still a barrier for EU companies' growth

EU's small businesses are increasingly optimistic about their growth prospects but many are still concerned about the lack of access to finance, according to a survey published today by the European Commission. Between April and September 2014, SMEs demands for financing were not always fulfilled - especially for smaller and younger companies.

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7893&lang=en&title=Access%2Dto%2Dfinance%3A%2Dstill%2Da%2Dbarrier%2Dfor%2DEU%2Dcompanies'%2Dgrowth

Survey on implementation of the Construction Products Regulation

Risk & Policy Analysts is carrying out, on behalf of the "DG Enterprise and Industry", an online survey on the implementation of the Construction Products Regulation (EU) No 305/2011. This consultation is aimed at obtaining information for an implementation report to be produced by the Commission by April 2016.

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7886&lang=en&title=Survey%2Don%2Dimplementation%2Dof%2Dthe%2DConstruction%2DProducts%2DRegulation

European Court of Justice rules favourably for the Commission over the German barriers to trade in construction products

German requirements that construction products must have additional national marks or approvals, despite the fact that they already have a CE-mark and are legally marketed in other Member States are breaching the European rules of free movement of goods.
This was confirmed by the European Court of Justice on 16/10/2014. Such an outcome represents a significant step forwards for the consolidation of the Internal Market for construction products and the Commission services will work closely with the German authorities to effectively address the needs brought about by the Court judgement.

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7860&lang=en&title=European%2DCourt%2Dof%2DJustice%2Drules%2Dfavourably%2Dfor%2Dthe%2DCommission%2Dover%2Dthe%2DGerman%2Dbarriers%2Dto%2Dtrade%2Din%2Dconstruction%2Dproducts

Standards help businesses and protect consumers – World Standards Day

Standards improve compatibility, interoperability, safety or quality of products and services. Standards were never as important as today with mobile phone or software companies publicly battling for the domination of their respective technical specifications.

http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7834&lang=en&title=Standards%2Dhelp%2Dbusinesses%2Dand%2Dprotect%2Dconsumers%2D–%2DWorld%2DStandards%2DDay

DG HEALTH AND CONSUMERS

Food: EU consumers to benefit from better labelling as of 13 December 2014

As of 13 December 2014, new EU food labelling[1] rules, adopted by the European Parliament and the Council in 2011, will ensure that consumers receive clearer, more comprehensive and accurate information on food content, and help them make informed choices about what they eat.

http://europa.eu/rapid/press-release_IP-14-2560_en.htm

DG INTERNAL MARKET AND SERVICES

Insurance stress test: European Commission emphasises need for full and rapid implementation of the "Solvency II" insurance regulatory regime

On 30 Novemeber the European Insurance and Occupational Pensions Authority (EIOPA) released the results of its 2014 stress tests of insurers. These were carried out against the background of the implementation of Solvency II, the new risk-based regulatory regime for insurance and reinsurance, which will be fully applied in the EU from 1 January 2016.

http://europa.eu/rapid/press-release_STATEMENT-14-2261_en.htm?locale=en

Commissioner Jonathan Hill welcomes the European Central Bank's new role as Single Supervisor in the Banking Union

Commenting, Commissioner Jonathan Hill said:

"Today marks the next step towards a fully operational banking union. Building on last week's stress test results which highlighted the credibility of the ECB, the Single Supervisor will now ensure the day-to-day surveillance of banks in the eurozone, helping to keep the European banking sector safe and remaining alert to new risks emerging. Greater confidence in European banks will encourage affordable lending to the wider economy, to households and SMEs.

We also need to complete the Banking Union with the Single Resolution Mechanism: the Commission has made proposals for the Single Resolution Fund and the Single Resolution Board is being set up. The success of the SRM is vital so that insolvent banks can be resolved in an orderly fashion, without taxpayers' having to foot the bill."

http://europa.eu/rapid/press-release_STATEMENT-14-1360_en.htm?locale=en

Commission welcomes improved situation for clients of car rental companies

On 8 August, the European Commission made public a letter sent to the CEOs of six international car rental companies, asking them to end practices preventing consumers from accessing best available prices on the basis of their country of residence (IP/14/917).

Three car rental companies were considered not to have responded sufficiently to the concerns raised by the Commission (EUROPCAR, HERTZ and AVIS). Following the publication of the press release, these three car rental companies engaged in constructive dialogue with the Commission. They reaffirmed their commitment to respect the principle of non-discrimination in the EU Single Market and provided detailed explanations for their pricing policies.

http://europa.eu/rapid/press-release_IP-14-1209_en.htm

Commission adopts detailed prudential rules for banks and insurers to stimulate investment in the economy

On 10 October, the European Commission has adopted delegated acts under the Solvency II Directive and the Capital Requirements Regulation which will help promote high quality securitisation, ensure that banks have sufficient liquid assets in testing circumstances and introduce international comparability to leverage ratios.

http://europa.eu/rapid/press-release_IP-14-1119_en.htm?locale=en

DG JUSTICE

Standard forms make cross-border successions simpler

Citizens will soon be able to use one set of forms for their inheritance rights when a family member with property in another EU Member State passes away. Among these forms is the European Certificate of Succession,which will make it much easier for heirs to assert their rights in other Member States. These forms complete the set of tools available under the Regulation on Successions

http://ec.europa.eu/justice/newsroom/civil/news/20141210_en.htm

EUROPEAN AGENCIES

ACER (Agency For The Cooperation Of Energy Regulator)

ACER and ENTSO-E launch a public consultation to create Stakeholder Committees on Network Codes

ACER organises a public consultation together with ENTSO-E on on the Role of stakeholders in the implementation of network codes and related guidelines, and in particular on the establishment of European Network Code Stakeholder Committees. Deadline for providing comments and responses to the consultation's questions is 23 January 2015.

http://www.acer.europa.eu/Media/News/Pages/ACER-and-ENTSO-E-launch-a-public-consultation-to-create-Stakeholder-Committees-on-Network-Codes.aspx

ACER calls for comments on the revised Network Code on Electricity Balancing

Following the Agency's Opinion on the Network Code on Electricity Balancing of 21 March 2014, ENTSO-E has submitted to the Agency a revised version of the Network Code. Stakeholders are invited to provide the Agency with their comments on the revised Network Code. Please submit them to the following email address NC-Electricity-Balancing@acer.europa.eu no later than 9 January 2015.

http://www.acer.europa.eu/Electricity/FG_and_network_codes/Pages/NC-Electricity-Balancing.aspx

ACER Market Monitoring Report 2014 - Why is the decrease in wholesale energy prices not reflected in retail prices?

Despite a general decrease in wholesale energy prices, gas and electricity retail prices continued to grow in 2013, although at a slower pace than in previous years. On average, the electricity bill for households increased by 4.4% while gas prices rose by 2.7%. The latest Market Monitoring Report presented today in Brussels by the EU Agency for the Cooperation of Energy Regulators (ACER) and the Council of European Energy Regulators (CEER) identifies a vicious circle in many Member States wherein a lack of competition results in low switching rates, which is sometimes used to justify regulated tariffs which, in turn, can hamper competition.

http://www.acer.europa.eu/Media/News/Pages/ACER-Market-Monitoring-Report-2014---Why-is-the-decrease-in-wholesale-energy-prices-not-reflected-in-retail-prices.aspx

EBA (European Banking Authority)

EBA consults on treatment of mortgage borrowers in arrears

On 12 December, the European Banking Authority (EBA) published a consultation paper on draft Guidelines on arrears and foreclosure under the Mortgage Credit Directive (MCD). As foreclosure can have significant consequences for consumers, creditors should implement measures to attempt to resolve with the borrower any payment difficulties before initiating foreclosure proceedings. These draft Guidelines will ensure that such measures are developed and adopted consistently across the European Union. The public consultation will run until 12 February 2015.

http://www.eba.europa.eu/-/eba-consults-on-treatment-of-mortgage-borrowers-in-arrears

EBA issues final technical advice on criteria and factors for intervention on structured deposits under MiFIR

On 11 December, the European Banking Authority (EBA) published its final technical advice to the Commission laying out criteria and factors for exercising intervention powers on structured deposits. This final technical advice, which has been developed in accordance with the Markets in Financial Instruments Regulation (MiFIR) requiring the EBA to monitor the market for structured deposits, takes into consideration, where appropriate, comments received during a public consultation earlier this year.

http://www.eba.europa.eu/-/eba-issues-final-technical-advice-on-criteria-and-factors-for-intervention-on-structured-deposits-under-mifir

EBA consults on criteria for determining the minimum requirement for own funds and eligible liabilities (MREL)

On 28 November, the European Banking Authority (EBA) launched a public consultation on draft Regulatory Technical Standards (RTS) further specifying the criteria to set the minimum requirement for own funds and eligible liabilities (MREL) laid down in the Bank Recovery and Resolution Directive (BRRD). The aim of these standards is to achieve an appropriate degree of convergence in how these criteria are interpreted and applied across the EU to ensure a level

playing field. Institutions with similar risk profiles, resolvability and other characteristics in any Member State should have similar levels of MREL. The consultation runs until 27 February 2015.

http://www.eba.europa.eu/-/eba-consults-on-criteria-for-determining-the-minimum-requirement-for-own-funds-and-eligible-liabilities-mrel-

ESAs share initial views on consumer-friendly Key Information Documents on investment products across the EU

On 17 November, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) published a Discussion Paper on Key Information Documents (KIDs) designed to help retail investors in the EU better understand and compare packaged retail and insurance-based investment products (PRIIPs) across the EU. The ESAs are looking for feedback from all concerned stakeholders by 17 February 2015.

http://www.eba.europa.eu/-/esas-share-initial-views-on-consumer-friendly-key-information-documents-on-investment-products-across-the-eu

EBA consults on guidelines on product oversight and governance arrangements for retail banking products

On 10 November, the European Banking Authority (EBA) published a consultation paper on draft Guidelines on product oversight and governance arrangements for retail banking products. The guidelines, which apply to both manufacturers and distributors of retail banking products, aim at ensuring that the interests, objectives and characteristics of consumers are taken into account when such products are designed and brought to market. The consultation will run until 10 February 2015.

http://www.eba.europa.eu/-/eba-consults-on-guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products

ESMA (European Securities and Market Authority)

ESMA reviews supervisory practices on MiFID investor information

The European Securities and Markets Authority (ESMA) has conducted a peer review of how national regulators (national competent authorities or NCAs) supervise MiFID conduct of business rules on providing fair, clear and not misleading information to clients.

http://www.esma.europa.eu/news/Press-Release-ESMA-reviews-supervisory-practices-MiFID-investor-information?t=326&o=home

COUNCIL OF THE EU AND EUROPEAN COUNCIL

Training of legal practitioners: an essential tool to consolidate the EU acquis

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/146044.pdf

Insolvency proceedings: new rules to promote economic recovery

The Council approved a political agreement reached with the European Parliament on new EU-wide rules on insolvency proceedings (15414/14 + ADD 1).
The new rules are aimed at making cross-border insolvency proceedings more efficient and effective, benefiting debtors and creditors, facilitating the survival of businesses and presenting a second chance for entrepreneurs. They also bring the current insolvency regulation into line with developments in national insolvency laws introduced since its entry into force in 2002.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/146041.pdf

EUROPEAN PARLIAMENT

PLENARY SESSION

MEPs zero in on internet search companies and clouds

The European Parliament called on EU member states and the European Commission to break down barriers to the growth of the EU's digital single market in a resolution voted on Thursday. MEPs also stressed the need to prevent online companies from abusing dominant positions by enforcing EU competition rules and unbundling search engines from other commercial services.

http://www.europarl.europa.eu/news/en/news-room/content/20141125IPR80501/html/MEPs-zero-in-on-internet-search-companies-and-clouds

INTERNAL MARKET AND CONSUMER PROTECTION

State of play of the Single Market Act: an in-depth analysis

This paper presents the progress made by the EU institutions on the implementation of the set of actions known as the Single Market Act I and the Single Market Act II and published by the European Commission in April 2011 and October 2012. It was prepared by Policy Department A for the information of the Internal Market and Consumer Protection Committee.

http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/536297/IPOL_IDA(2014)536297_EN.pdf

Presentation of the Impact assessment on Trade secrets

DG MARKT presented the proposal for a Directive on the protection of trade secrets against unlawful acquisition, use and disclosure, and the accompanying impact assessment. The proposal seeks to improve the protection of trade secret holders in the single market, which is currently fragmented by varied and uneven national legal regimes, by harmonising Member States' civil laws. This includes notably clarifying the basic concepts related to the definition and unlawful acquisition of trade secrets, and providing the necessary safeguards for the protection of interests of other parties, for example for avoiding abusive litigation and for guaranteeing confidentiality during litigation.

Members stressed the merits of the Commission's proposal, especially for SMEs and micro enterprises, and set out some areas for improvement that could be addressed, such as introducing explicit language on the principle of minimum harmonisation. They also underlined the need to balance the protection of trade secrets with the protection of whistle-blowers and workers working in R&D intensive industries; the importance of ensuring confidentiality during litigation; as well as the need to extend the prescription period.

OTHERS

MEPs Schwab and Tremosa on separating internet search engines from commercial activities

Online companies should not be allowed to abuse their dominant position even if this means unbundling search engines from other commercial services, Parliament said with a non-binding resolution it voted on last week. We discussed it with two MEPs who are behind the resolution: German EPP member Andreas Schwab and Ramon Tremosa, an ALDE member from Spain.

http://www.europarl.europa.eu/news/en/news-room/content/20141130STO81503/html/Schwab-Tremosa-on-separating-internet-search-engines-from-commercial-activities

MEPs to discuss the future of copyright in Europe

Copyright laws need to keep up with technological developments in order for the online single market to deliver new services and easy access to content as well as create new growth opportunities. The legal affairs and culture committees discuss the future development of copyright at a hearing on 11 November with academics, representatives of content creators and distributors and European Commission experts.

http://www.europarl.europa.eu/news/en/news-room/content/20141110STO78134/html/MEPs-to-discuss-the-future-of-copyright-in-Europe

EUROPEAN RESEARCH COUNCIL

Call For Proposals for ERC Consolidator Grant

ERC Consolidator Grants are designed to support excellent Principal Investigators at the career stage at which they may still be consolidating their own independent research team or programme. This action is open to researchers of any nationality who intend to conduct their research activity in any Member State or Associated Country.
The European Commission adopted on 22 July the ERC Work Programme 2015, as established by the ERC Scientific Council. It includes the budget and timeframes of ERC 2015 competitions for Starting, Consolidator and Advanced Grants. Funding for the top-up scheme Proof of Concept, open only to ERC grant holders, is also announced. (See overview for all these calls on p. 4 in the Work Programme.)

http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/h2020/calls/erc-2015-cog.html

Call For Proposals for ERC Starting Grant

ERC Starting Grants are designed to support excellent Principal Investigators at the career stage at which they are starting their own independent research team or programme. This action is open to researchers of any nationality who intend to conduct their research activity in any Member State or Associated Country.

http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/h2020/calls/erc-2015-stg.html

OTHERS

BEUC

Conference 'Towards Sustainable Consumption'

On Friday 14 November, BEUC organised a conference entitled 'Towards sustainable consumption: Durable goods and legal guarantees'. The conference brought together consumer representatives, product manufacturers, innovative producers and EU policy-makers to discuss product durability, planned obsolescence and EU policies such as legal guarantees and Ecodesign.

http://ec.europa.eu/energy/gas_electricity/consumer/doc/20140617_consumer_rights_en.pdf

Regulators guide: responding to consumer vulnerability

The Legal Services Consumer Panel has launched a practical guide to help regulators in the legal sector recognise and respond to consumer vulnerability. The guide is based on the British Standard BS18477 on Inclusive Service Provision, which the Panel has translated into a legal services setting. It forms a companion piece to the Panel's toolkit on the Consumer Principles, and has read across to sectors other than legal services.

http://www.beuc.org/press-media/news-events/regulators-guide-responding-consumer-vulnerability

ECN BRIEF

Denmark: Nets Holding commits to reducing Prices on Payment Card Processing Services

The Danish Competition and Consumer Authority accepted binding commitments in a case of a possible abuse of a dominant position in the Danish market for payment cards. It considers that the commitments will mean lower prices for acquiring processing services by acquiring banks when handling international payments for retailers in Denmark.

United Kingdom: Competition and Markets Authority accepts Commitments on Platform Services for Automotive Sector

On 9 September 2014, the Authority accepted commitments offered by Epyx Limited relating to service, maintenance and repair platform services. They will in particular make it easier for Epyx's current customers to switch to rivals.

Italy: The Italian Competition Authority accepts Commitments in Energy Converters Case

On 2 July 2014, the Italian Competition Authority (ICA) adopted a commitment decision in relation to an alleged violation of Article 101 TFEU by Power-One Italy Spa (Power-One), an Italian undertaking selling renewable energy converters (i.e. systems to convert solar or, to a much lesser extent, wind energy into useable grid-connected power).

http://ec.europa.eu/competition/ecn/brief/04_2014/brief_04_2014.pdf