EU Case Law

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Abstract: This article provides an overview of cases decided by the Court of Justice of the European Union concerning contract law. The present issue covers the period between the beginning of February and the end of June 2019.

General Law of Contract and Obligations

Place and cost of repair or replacement as well as rescission in sales contracts: Judgment in Case C-52/18 *Fülla*

In this case, the CJEU decided on a number of important questions concerning Directive 1999/44 on certain aspects of the sale of consumer goods (Sales Directive). Unfortunately, the judgment is at times puzzling and even contradictory concerning different language versions. The facts are as follows: Mr Fülla bought a tent measuring 5 x 6 m from Toolport GmbH, a company incorporated in Germany. The tent was delivered to the buyer's residence. However, he soon found the tent to be lacking conformity and asked the seller to bring it into conformity at his place of residence. He did not offer to return it to the seller himself. The seller, in turn, denied the lack of conformity, and did not ask the buyer to return the tent to his place of business, nor did it offer to advance the cost for that return. The contract said nothing about where the tent, in case of lack of conformity, had to be brought into conformity. The buyer then opted for rescission and sued for reimbursement of the purchase price (against the return of the tent). Only during those proceedings, the seller claimed that the correct place for the tent to be brought into conformity was its place of business.

Indeed, the place where the tent must be brought into conformity is crucial: the right to rescission, in this case, depends on whether the seller has not com-

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pleted the remedy within a reasonable time, second indent of Art. 3(5) of the Sales Directive. The referring German court argued that it is important for the determination of the elapse of a reasonable time period whether the good is located at the right place. Under German law, however, that question is answered by § 269 BGB [German Civil Code], which holds that the place where an obligation must be met has to be determined, first, by the agreement of the parties, inexistent in the present case; second, by the nature of the obligation and the specific circumstances of the case, which, according to the referring court, are also inconclusive in the present case; and finally, by the commercial establishment of the debtor. Hence, the referring court reasoned that, as a matter of § 269 BGB, the tent should be brought into conformity at the place of business of the seller.[1] However, given the large dimensions of the sold good, the court wondered if a different interpretation of § 269 BGB was suggested by Art. 3(3) of the Sales Directive, which holds that bringing the good into conformity must not cause any significant inconvenience to the buyer.

The CJEU, in its answer, broke the case down into three distinct but interlinked questions: first, the determination of the place where the sold product must be brought into conformity; second, the cost for transporting the good to that place; and third, the right to rescission.

The CJEU, addressing the first question, started by noting that Art. 3(3) of the Sales Directive does not directly specify where goods not in conformity must be made available to the seller. However, it contains (in its first and third subparagraph) a triple requirement which conditions the repair or replacement exercised by the seller: the act of bringing the goods into conformity must be (i) free of charge for the consumer, (ii) made within a reasonable time and (iii) without significant inconvenience to the consumer. Any place determined by the law for replacement or repair must therefore respect these three conditions, which are essential for the effective protection of the consumer, according to the Court.

The first requirement, holding that the repair or replacement must be free of charge to the consumer, does not, however, directly extend to the choice of the place, according to its wording. Concerning the second requirement, the 'reasonable time' condition, the Court notes that if the buyer is located far away from the seller, it may take the seller considerable time to inspect and repair the goods at the consumer's location. The Court, however, does not contemplate whether sending the goods to the seller would cause an equal or even greater delay.

1 It is doubtful whether this is correct as a matter of German law, see BGH NJW 2011, 2278, para. 29 et seqq.

Rather, the CJEU chiefly considers the third condition, that the goods must be brought into conformity without any significant inconvenience to the consumer. The Court specifies that a significant inconvenience must, in general, be understood as a burden which is likely to deter the average consumer from asserting his rights. This follows from the balancing exercise inherent in Art. 3 of the Sales Directive which seeks, on the one hand, complete and effective protection of the consumer as the weaker party, but also, on the other hand, a recognition of the costs imposed on the seller. With respect to the place of repair or replacement in particular, the Court points to the nature of the goods and the purpose for which they were bought. Hence, a significant inconvenience may arise if the goods are "very heavy, large, particularly fragile or where there are particularly complex requirements for the dispatch" (para. 43). In all other cases, the Court reasons, sending the goods to the seller's place of business is not likely to impose a significant inconvenience on the consumer. Hence, the place where the goods must be brought into conformity must be chosen depending on the specific circumstances of each individual case – a requirement that, in fact, matches the second criterion of § 269 BGB.

Importantly, the specification of the place where the goods must be brought into conformity therefore remains a matter of national law. The Court explicitly states that Member State law may determine the place of repair or replacement, subject to the above constraint. Beyond that, given mere minimum harmonization through the Sales Directive (Art. 1(1)), Member State law may opt for even more stringent provisions with respect to consumer protection. This must be taken to mean that provisions causing even less direct inconvenience to the consumer are compatible with EU law (irrespective of the well-known question whether such rules lead to higher costs for consumers in equilibrium[2]). National law must, in the end, be interpreted in conformity with EU law, as the CJEU reiterates by pointing to its jurisprudence on that topic. Intriguingly, for German law, the *Bundesgerichtshof* had already established almost identical criteria, by interpreting § 269 BGB in the light of Art. 3(3) of the Sales Directive (in a more detailed manner than the CJEU itself), in the year 2011.[3]

The second question concerns the costs for transporting the goods to the seller's place of business in order to enable repair or replacement. Here, however, a notable difference between the language versions of the judgment surfaces. The English version mostly speaks of the costs of transport in general (in particular in

2 Cf. Craswell, 'Passing on the Costs of Legal Rules: Efficiency and Distribution in Buyer-Seller Relationships' (1991) 43 Stanford Law Review 361.

3 See, again, BGH NJW 2011, 2278, para. 29 et seqq.

the decisive para. 49 and 56 and in the holding: 'pay the cost of transporting those goods'). The German version, which is written in the language of the case, by contrast deals with the more specific question of whether the seller owes the consumer an *advance* payment ('Vorschuss', same paras; equally: the French version, 'avancer'; Spanish: 'pagar [...] por anticipado'; Portuguese: 'adiantar'; Italian: 'anticipare'). It seems convincing that the latter version constitutes the correct interpretation of the judgment: this not only matches the question asked by the referring court (para. 23, question 4), but it is also more in line with the reasoning of the Court in the judgment itself.

The Court reiterates that the first requirement of Art. 3(3) of the Sales Directive, the provision of repair or replacement free of charge, is supposed to protect consumers from financial burdens which could deter them from asserting their rights. However, Art. 3(4) of the Sales Directive specifies that the term 'free of charge' denotes the "necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials." The German transposition of the Sales Directive even speaks directly of the 'Transportkosten' (costs of transport, § 439(2) BGB). Hence, what is not addressed in Art. 3(4) is whether the seller needs to *advance* these costs to the seller.

To answer the question of an advance of transportation costs, the Court resorts to a general balancing exercise. As noted in the answer to the first question, Art. 3 of the Sales Directive seeks to strike a balance between the protection of the consumer and the recognition of economic interests of the seller. Therefore, the Court reasons, there is no general obligation for the seller to advance (now even in the English version) the cost of transport of goods, for the purpose of bringing them into conformity, to his place of business. This would be unbalanced for two reasons. First, an advance payment would possibly delay the completion of the repair or replacement, working against the 'reasonable time' condition. Second, the seller may pay for the transport even if, upon inspection, the goods turn out to be in conformity. He is therefore forced to cover the insolvency risk of the consumer.

However, the Court notes that there may be cases where the cost of transport deters the average consumer from asserting his rights. In that case, the seller indeed must pay those costs in advance. This depends, inter alia, on the amount of the costs, the value of the goods and the 'possibility, in law or fact, that the consumer is entitled to assert his rights in the event of non-reimbursement by the seller of the transport costs paid by the consumer' (para. 55). Again, the formulation is unfortunate: what is (probably) meant is the risk that the consumer will not assert his rights if the seller does not reimburse the transportation costs (cf. the German version).

In sum, the consumer has a right to an advance payment only in exceptional cases. This does differ from the prevailing interpretation of the Sales Directive by

German courts, particularly the *BGH*.[4] However, as in the case of the place of performance, legislation which is more favorable to the consumer should still be possible in national law (cf. again Art. 1(1) of the Sales Directive).

Finally, the last question addresses the right to rescission in cases in which the good is not located at the seller's place of business.[5] The referring court asked if the second indent of Art. 3(5) of the Sales Directive, combined with Art. 3(3), could provide for a right to rescission in the present case if the seller does not repair or replace the good within a reasonable time. Clearly, if the other conditions of Art. 3(3) and (5) are met, this will depend on where the place of performance of the obligation to bring the goods into conformity is located. More to the point, it will matter if that place is identical with the current location of the good or not. The Court does not address this issue in sufficient clarity. However, it notes that, in the present case, the buyer informed the seller of the lack of conformity and requested to bring the good into conformity. Furthermore, due to the "characteristics of the item at issue" (i.e., its bulkiness), the transport of the tents to the seller's place of business was likely to cause significant inconvenience to the consumer. Hence, the Court assumes that the repair or replacement duty was to be performed at the buyer's residence where the tent was located. In this case, prolonged inaction of the seller should give rise to a right of rescission.

The Court, however, goes on to explain that the buyer has the right to rescission if 'the seller does not take any appropriate steps, at the very least, to inspect the goods not in conformity, including the obligation to inform the consumer, within a reasonable time, of the place where the goods not in conformity ought to be made available to him to be brought into conformity' (para. 66). Since the seller only claimed that the good must be made available to him at his own place of business in the court proceedings, the right to rescission most likely exists in the present case. One has to wonder, however, what would have happened if the seller had claimed immediately that the good must be transported to his place of business. If, as it seems, the buyer was not under an obligation to do so, it should be irrelevant whether the seller makes such a claim. Therefore, it is puzzling that the CJEU even mentions this criterion.

Furthermore, the present case must be distinguished, more clearly than the Court does, from the case in which the place of performance of the repair or replacement duty is *not* identical with the location of the good, but rather is at the

4 In BGH NJW 2011, 2278, para. 37, 44, and NJW 2017, 2758, para. 29, the BGH did generally affirm a right to an advance payment based on the German transposition of Art. 3(3) of the Sales Directive; this has now been codified in § 475 para. 6 BGB.

5 The judgment speaks of distance contracts. However, whether the contract was concluded by means of distance communication or not seems rather irrelevant.

seller's place of business. In that case, one could argue that the buyer, by not offering to transport the goods to the seller, against a reimbursement or even a possible advance payment of the costs, has not met his obligations under Art. 3 of the Sales Directive and cannot, therefore, rescind the contract. While para. 65 of the judgment could be interpreted in this way, the Court does not address this general concern. On the other hand, one could deduce from the mentioning of the seller's information requirement concerning the place of performance that even if, according to national law interpreted in conformity with Art. 3(3) of the Sales Directive, the place of performance is at the seller's place of business, the consumer has a right to rescission if the seller does not *inform* the buyer that the seller will only bring the goods into conformity at its own place of business. Under this understanding of the judgment, the violation of this information requirement triggers a right to rescission under the second indent of Art. 3(5) of the Sales Directive. The Court has only decided this matter for a situation in which the transport to the place of business is likely to cause significant inconvenience to the buyer. However, if the underlying reason for the right to rescission really is the breach of an information duty, it should not matter whether the transport is easy or inconvenient for the buyer. In the end, however, it is probably more convincing to stick with the interpretation offered at the beginning of this paragraph, under which the failure of the consumer to meet his obligations under the directive excludes the right to rescission. Nevertheless, the CJEU may have to refine its jurisprudence in further cases.

No exception to the right to withdraw for mattresses in distance contracts: Judgment in Case C-681/17 *slewo*

The second case of interest concerns mattresses, and more specifically the question to what extent they can be subject to a right of withdrawal under the Consumer Rights Directive 2011/83 (CRD). In November 2014, Mr Ledowski ordered a mattress from slewo, an online retailer, for private purposes via the seller's website. The mattress arrived sealed in a protective cover, which the buyer removed. In December 2014, the buyer informed the seller of his wish to return the mattress. In the following litigation, it needed to be decided if the mattress falls under Art. 16(e) CRD, which excludes the right to withdraw for 'the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery'.

The Court first noted that, according to settled case law, not only the wording but also the context and the objective of the norm must be considered for its interpretation. In the present case, recitals three, four and seven of the CRD, as well as

Art. 169 TFEU and Art. 38 of the Charter of Fundamental Rights of the EU, stress the aim of a high level of consumer protection. The right of withdrawal in the case of distance contracts is based on the impossibility to inspect the goods before purchase (experience goods in economic terms). Therefore, Art. 16(e) CRD must, as an exception to that principle, be interpreted strictly, according to the Court.

Concerning that exception specifically, the CJEU points to recital 49 of the CRD, which holds that exceptions to the right of withdrawal may be justified by the nature of particular goods. Therefore, the nature of the goods falling under Art. 16(e) CRD must be such that, once they are unsealed, the goods are deprived of the guarantee in terms of health protection or hygiene. This means that the goods may not be used subsequently by a third party and may therefore not be resold by the trader. A right to withdraw in these cases would inappropriately hurt the competitiveness of enterprises, which, according to the court, must be balanced against the high-level consumer protection pursuant to recital four of the CRD. Therefore, the mentioned exception only applies if, after the seal is broken, the goods cannot be resold 'due to genuine health protection or hygiene reasons, because the very nature of the goods makes it impossible or excessively difficult, for the trader to take the necessary measures allowing for resale' (para. 40).

The CJEU specifically excludes mattresses from the exception for two reasons. First, used mattresses can be reused and resold, as hotel mattresses, the existence of a second-hand market for mattresses and specific deep-cleaning practices show. Second, the mattress is comparable to a piece of clothing in that it comes into contact with the human body. However, recital 47 of the CRD shows that a right to withdraw should exist for garments. The consumer, the CJEU recalls, is in turn liable according to Art. 14(2) CRD for a diminished value of the good resulting from the handling of the good other than what is necessary to establish the nature, characteristics and functioning of the good.

Specific Consumer Protection Law

Unfair Commercial Practices

Practice of requiring consumers to take final transactional decision in the presence of a courier handing over the general terms and conditions of the contract: Judgment in Case C-628/17 *Orange Polska*

The Unfair Commercial Practices Directive 2005/29/EC (UCPD) sets out a system for the protection against unfair business-to-consumer commercial practices. The directive prohibits "misleading commercial practices" and "aggressive commer-

cial practices". The judgment of the Court in *Orange Polska* is of great significance since it is the first one clarifying the concept "aggressive commercial practices" in the light of an alleged situation of "undue influence".

At stake in the case at hand is the process set up by a Polish telecommunications service provider with regard to the conclusion and amendment of consumer contracts using its online shop. Specifically, the online shop allows consumers to place an order, which is subsequently completed by using the services of a courier, who delivers to the consumer a draft of the contract or amendment, together with all the documents that are part thereof. The contract or amendment is concluded at the moment it is signed by the consumer in the presence of the courier. The consumer thereby declares that he has taken cognisance of the documents delivered and that he accepts the content thereof. The Polish Office of Competition and Consumer Protection took the view that this practice qualified as an unlawful 'aggressive commercial practice' since the consumers would be required to make a decision concerning the contract and the standard-form provisions in the presence of the courier, without allowing them freely to take cognisance of their content. As a result, the authority ordered the cessation of that practice.

The court of first instance annulled the authority's decision and the authority's appeal was rejected by the court of appeal. Upon the subsequent appeal on a point of law by the authority, the Polish Supreme Court decided to ask the CJEU for clarification whether and under which conditions the practice at hand constitutes an aggressive commercial practice under Article 8 of the UCPD, in conjunction with Articles 9 and 2(j) thereof.

The CJEU clarified first of all the general scheme of the UCPD. Chapter 2 of the directive, entitled 'Unfair commercial practices', is subdivided in two sections, namely Section 1, relating to misleading commercial practices, and Section 2, relating to aggressive commercial practices (para. 20). Article 5 prohibits unfair commercial practices and establishes the criteria for determining whether a commercial practice is unfair. It is specified, in its paragraph 4, that, in particular, commercial practices that are 'misleading' within the meaning of Articles 6 and 7 are unfair, as are those that are 'aggressive' within the meaning of Articles 8 and 9 (paras. 21, 22). In addition, its paragraph 5 provides that Annex I to the directive contains the list of those commercial practices which are in all circumstances to be regarded as unfair. According to the directive's recital 17, the list is full and exhaustive (paras. 23, 24). Accordingly, the Court held that the practice at stake cannot be classified as an aggressive commercial practice in all circumstances as it corresponds to none of the blacklisted situations of that annex (paras. 25–27).

The CJEU turned subsequently to the factual and case-specific assessment of commercial practices required by the criteria set out under Articles 8 and 9 of the UCPD. According to the directive's recital 18, the Court pointed out that it is of

utmost importance for the purpose of interpreting the directive's provisions to take as "a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors" (para. 30). In the present case, the specific factor to be taken into consideration is "undue influence" (para. 32). With reference to the opinion of Advocate General Sánchez-Bordona, the Court explained that undue influence is not necessarily impermissible influence but influence which, without prejudice to its lawfulness, actively entails, through the application of a certain degree of pressure, the forced conditioning of the consumer's will (para. 33). In addition, the Court stressed the importance of the consumer's free choice for the assessment of an alleged 'aggressive commercial practice', which requires that the information provided by the trader to the consumer, before the conclusion of the contract, is clear and adequate (paras. 34, 35).

After clarifying those general criteria of assessment, the Court provided the referring national court with more specific considerations for classifying the practice at stake. The Court took the view that the practice cannot be considered to be an aggressive practice when the consumer has had the opportunity, prior to the courier's visit, to take cognisance of the content of the standard-form contracts (para. 40). For this assessment, it must be ascertained whether the information which a consumer making use of a specific sales channel (in this case being either the information on the trader's website or provided in the telephone call between the consumer and the trader) was able to access is sufficient to guarantee freedom of choice on his part (para. 42).

However, the mere fact that the consumer has not actually had access to that information is not, per se, sufficient to classify the process for concluding contracts as an aggressive practice as it is still necessary to identify conduct by the trader that may be regarded as undue influence (para. 43). The conduct at stake where the courier asks the consumer to take his final transactional decision without having time to study, at his convenience, the documents delivered to him by that courier, cannot constitute as such an aggressive commercial practice (paras. 44, 45). The existence of a prohibited practice requires certain additional conduct that puts pressure on the consumer so that his freedom of choice is significantly impaired (para. 46). That could be an attitude, which makes the consumer feel uncomfortable and thus results in a confusion of his thinking in relation to the transactional decision to be taken (para. 47). The Court provides some specific examples: "the announcement that any delay in signing the contract or amendment would mean that the subsequent conclusion thereof would be possible only under less favourable conditions, or the fact that the consumer would risk having to pay contractual penalties or, in the event of the contract being amended, would risk the trader suspending the service". Another example would be "the courier

informing the consumer that, if he refuses to sign or delays in signing the contract or amendment that has been delivered to him, he could receive an unfavourable assessment from his employer" (para. 48).

Passenger rights and package holiday

Foreign object lying on an airport runway as extraordinary circumstances: Judgment in Case C-501/17 *Pauels*

The notion of 'extraordinary circumstances' is one of the most important, but also one of the least clear ones in compensation claims concerning Regulation 261/2004 on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. In the present decision, the CJEU has added another piece to the mosaic.

In the underlying case, Mr Pauels booked a flight with Germanwings from Dublin to Düsseldorf. The flight was delayed, on arrival, by almost 3 ½ hours. The carrier rejected the passenger's claim to compensation by arguing that the delay was due to extraordinary circumstances which, according to Art. 5(3) of the Regulation, extinguish the obligation to pay compensation under Art. 5(1) of the Regulation. The carrier submitted that the extraordinary circumstances consisted in a screw found during the preparations for take-off of the flight in the tire of the aircraft. As a result, the tire needed to be changed. That screw apparently had laid on the runway of the airport before the tire picked it up. This raised the question whether foreign objects lying on an airport runway may constitute extraordinary circumstances in the sense of the Regulation.

The Court started by reiterating that a carrier is indeed released from its obligation to pay compensation for cancellation or long delay of the flight, pursuant to Art. 5(3) of the Regulation, 'if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.' Furthermore, it recalled that, according to settled case law (see, e.g., judgment of 4 May 2017, *Pešková and Peška*, C-315/15, EU:C:2017:342, para. 27–30 and 34), if extraordinary circumstances arise, the carrier must adopt all reasonable measures to avoid compensation. For example, it must deploy all its resources in terms of staff or equipment at its disposal, as well as financial means, to avoid that the circumstances result in a cancellation or long delay of the flight. However, the carrier need not make intolerable sacrifices in the light of the capacities of its undertaking at that moment.

Turning first to the question of whether foreign objects on an airport runway do constitute extraordinary circumstances at all, the Court further recalled that

those obtain if, by their nature or origin, they are not inherent in the normal exercise of the activity of the air carrier concerned and are outside the carrier's actual control. Generally, the malfunctioning of certain aircraft components is an event which, even if unexpected, is intrinsically linked to the operating system of the aircraft. Therefore, damage to the tires of the aircraft is not generally an extraordinary circumstance. However, where the damage is the sole result of the impact of a foreign object, the Court reasoned, the malfunctioning is not intrinsically linked to the operating system of the aircraft anymore. Hence, it does not fall within the normal exercise of the activity of the carrier. Such extraordinary damage by foreign objects includes not only damage by birds, but also by loose debris lying on the airport runway. Furthermore, since the carrier is not responsible for clearing the runway, and since take-off and landing are conducted at great speed, objects on the runway are outside the carrier's actual control. Hence, foreign objects, such as loose debris, on an airport runway do constitute extraordinary circumstances if they cause damage to an aircraft. The carrier, however, has to prove that the loose debris is the sole cause of damage.

The Court went on to distinguish the present case from the case of the collision of an aircraft with an airport's set of mobile boarding stairs. The CJEU had held that this event does not constitute an extraordinary circumstance (order of 14 November 2014, *Siewert*, C-394/14, EU:C:2014:2377, para. 19). Such mobile stairs or gangways form part of the standard operation of an airport and, therefore, according to the Court, a collision with these comes within the normal exercise of the activity of the carrier. It is not quite clear, however, why the collision with gangways is any more normal than the collision with loose debris on the runway. Furthermore, the Court held that mobile stairs or gangways are indispensable for allowing the passengers to board and leave the airplane, and its operation is conducted in collaboration with the crew of the aircraft. Hence, according to the Court, it is also not entirely outside of the carrier's actual control. Again, however, it is unclear whether the crew can really prevent a collision with a gangway or mobile stairs if, for example, the brakes of that device fail. In fact, it seems almost impossible for the crew of the carrier to prevent the collision in such cases. The differentiation between the *Siewert* and the present case therefore lacks a rigorous basis.

Finally, the Court stressed that the carrier must prove that it did take all reasonable measures at its disposal to change the tire so as to avoid the long delay of the flight. The Court referred the answer to this factual question to the national court. All in all, the case shows again that the interpretation of the term 'extraordinary circumstances' is difficult to predict and subject to significant legal uncertainty.

Consumer credit

Responsible lending obligations not precluded by the Consumer Credit Directive: Judgment in Case C-58/18 *Schyns*

In the wake of the financial crisis, responsible lending has become an increasingly urgent desideratum both at the European and at the Member State level. At the European level, Art. 18(5)(a) of Directive 2014/17 introduced the duty of responsible lending for consumer credit agreements relating to residential immovable property. Some Member States have/had gone beyond this provision and installed responsible lending obligations for other types of consumer credits, too. In the present case, the CJEU had to rule on the conformity of such a widely applicable duty of responsible lending under Belgian law with the general rules of the Consumer Credit Directive 2008/48 (CCD), which does not include a specific obligation of responsible lending.

The dispute arose against the background of the following facts: Mr Schyns concluded a credit agreement over EUR 40.000 with the Belfius Banque to finance photovoltaic panels which a third company, Home Vision, was supposed to fit onto the roof of Mr Schyns' house. Monthly installments of the credit repayment obligation amounted to around EUR 420. Home vision, however, never mounted the panels onto the roof of the house and was later declared bankrupt. Mr Schyns eventually sought to rescind the credit agreement, arguing that the bank should not have lent him such a high amount given his limited monthly income. At the moment of the conclusion of the credit agreement, his monthly income amounted to EUR 1.900 and he had monthly repayment obligations for two other loans adding up to around EUR 420.

The Belgian law in effect at the time of the conclusion of the credit agreement, in 2012, held that creditors must seek to establish, within the framework of the credit agreements they usually offer, the type and amount of credit most suitable for the consumer, taking into account the consumer's financial situation and the purpose of the credit (suitability requirement). Furthermore, it specified that the creditor may only conclude a credit agreement if, on the basis of financial information which they consumer must supply, the creditor may reasonably assume that the consumer will be able to fulfill the obligations arising from the agreement (repayment expectation requirement). The referring court wanted to know if these provisions of Belgian law were precluded by Art. 5(6) CCD. That paragraph contains a provision on pre-contractual information which must be made available to the consumer; it specifies that, in general, the consumer himself should assess the suitability of the credit offer. More specifically, Art. 5(6) CCD holds:

> "Member States shall ensure that creditors [...] provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with [Art. 5(1) CCD] , the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer. Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered."

Hence, the CJEU in essence needed to clarify if Art. 5(6) CCD, and other provisions of the CCD, preclude switching the suitability and repayment assessment from the consumer to the creditor. In doing so, the Court addressed the Belgian provisions in turn, starting with the suitability requirement. The CJEU first noted that the Commission Proposal of the CCD (COM(2002) 443 final) contained a clause (Art. 6) which provided, in its third paragraph, precisely for the type of suitability test which the Belgian law implemented. However, that part of the Commission Proposal was left out of the final version of the CCD. In combination with the principle of full harmonization contained in Art. 22(1) CCD, one might have thought that the introduction of a suitability requirement is precluded by the CCD. The CJEU did not reach this conclusion, however. Rather, it interpreted in an extensive matter the second sentence of Art. 5(6) CCD which, departing from the principle of full harmonization, yields some leeway to Member States to adapt the information obligations contained in the first sentence of Art. 5(6) CCD.

The Court first recalled that the objectives of the CCD, apparent in recitals seven and nine, are the safeguarding of a high and equivalent level of protection of consumer interests as well as the facilitation of the emergence of a well-functioning internal credit market. Importantly, the wording of Art. 5(6) CCD and recital 27 suggests that the consumer may need additional assistance before taking the credit decision. The CJEU maintained that the suitability requirement does constitute such assistance, for three reasons. First, under the suitability requirement, the creditor must offer several options to the consumer and recommend the most suitable one. The provision of information on further options, however, is essential for the credit decision by the consumer, according to the Court. Second, the recommendation of the most suitable offer by the creditor improves the consumer's information and helps the consumer to take a well-informed final decision. Third, the recommendation does not deprive the consumer of the power and responsibility to take the final decision concerning the credit option he considers most favorable. Hence, the CJEU construes the suitability requirement as a requirement of information provision which gives meaningful assistance to the con-

sumer in reaching a final and well-informed decision. Therefore, it falls within the ambit of the flexibility clause of the second sentence of Art. 5(6) CCD, and is not precluded.

In a second step, to address the validity of the repayment expectation requirement, the Court turned not to Art. 5(6) CCD, as the referring court had suggested, but rather to Art. 8(1) CCD, which deals with the obligation of the creditor to assess the consumer's creditworthiness. According to that provision, the creditor must perform a creditworthiness check "on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database". The objective of that requirement, according to the Court, is to protect consumers from over-indebtedness and insolvency, an aim in line with the aspiration to a high level of consumer protection. However, as the CJEU notes, the CCD remains silent concerning the consequences of creditors' doubts concerning the creditworthiness of the consumer. Therefore, the determination of such legal consequences falls within the ambit of Member State law.

The CJEU thus maintains that the CCD's silence may not be construed as an implicit rejection of any legal consequences, for the creditor, of a negative outcome of the creditworthiness check. It advances three reasons for this conclusion. First, recital 44 of the CCD holds that Member States must adopt appropriate measures for the regulation of creditors to ensure market transparency and stability, pending further harmonization. This points to the necessity of further regulation, beyond the CCD, in areas not fully harmonized. Second, recital 26 of the CCD stresses that creditors should be made accountable and deterred from engaging in irresponsible lending. Finally, in a methodologically controversial move, the Court points to Directive 2014/17. It acknowledges that this directive is inapplicable both from a temporal and a substantive point of view. However, the Court notes that according to recital three of this directive, irresponsible market behavior contributed to the financial crisis and undermined the foundations of the financial system. This recital, and the responsible lending obligation contained in Art. 18(5)(a) of that directive, show, according to the Court, that the EU legislature wanted to make creditors accountable. Indeed, Art. 18(5)(a) quite precisely mirrors the responsible expectation requirement under review in the case at issue. Nevertheless, it seems quite far-fetched to interpret the provisions of the CCD by reference to a directive passed six years after the CCD, and after the financial crisis. Hence, the CJEU should have confined its observations to the first two arguments, which are already convincing enough. In the end, the CJEU therefore rightly concludes that the repayment expectation requirement does not impair the objective of Art. 8(1) CCD, and does not call into question the fundamental responsibility of the consumer to protect his own interests. Hence, in essence, the

CJEU denies both a direct and an indirect collision between Member State law and EU law, which would have given rise to the primacy of EU law and precluded the repayment expectation requirement.

Unfair contract terms

Personal scope of the Unfair Terms Directive in the situation of a mortgage loan granted by an employer to its employee and to his spouse: Judgment in Case C-590/17 *Pouvin and Dijoux*

While the personal scope of the Unfair Terms Directive 93/13/EEC (UTD) has been interpreted by the CJEU on a number of occasions, the present case raises a novel question, namely whether an undertaking, when providing loans to its employees which are not related to its main professional activity, is acting as a 'seller or supplier', and whether its employees can be considered to be 'consumers' in such a situation. In line with the opinion that was delivered by Advocate General Bobek, the Court confirmed a broad interpretation of the personal scope of the directive.

In the case at hand, a married couple entered into a mortgage loan agreement with the husband's employer in order to finance the purchase of their main residence. The loan agreement contained an automatic termination clause that provided that if the borrower ceased to be an employee of that company, the loan became immediately repayable. After the employee left the company, the latter sued to obtain repayment of the loan. The court of first instance held that in view of the French rules transposing the UTD, the automatic termination clause was unfair. However, the court of appeal considered the national implementation to be not applicable since the company had concluded the loan contract in its capacity as an employer and could not be considered as a 'seller or supplier'. The borrowers brought an appeal against that judgment before the Court of Cassation, which decided to stay the proceedings to refer the matter to the CJEU.

The CJEU noted that according to the directive's recital 10, the directive applies to 'all contracts' concluded between 'sellers or suppliers' and 'consumers', while contracts relating to employment are excluded from its scope (paras. 19, 20). Therefore, the Court considered it necessary to determine whether the fact that the parties to a loan contract are also bound by an employment contract has an impact on their respective statuses as 'consumer' and 'seller or supplier' with regard to that loan contract (para. 21).

As has been clarified in the Court's case-law, the directive defines the contracts to which it applies by reference to the capacity of the contracting parties, that means according to whether or not they are acting for purposes relating to

their trade, business or profession (para. 23). The Court restated the broad definition of the concept of 'consumer' that it developed in its judgment in case C-110/14 *Costea*, which grants the protection of the directive to all natural persons finding themselves in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge (paras. 24–28). On that basis, the Court draws the conclusion that the fact that a natural person concludes a contract, which is not an employment contract, with his employer, does not, in itself, prevent that person from being classified as a 'consumer'. The status as 'consumer' also cannot be deprived by the fact that the type of contract has been reserved for certain groups of consumers (para. 30). Most importantly, the Court held that since a loan contract such as that at stake does not regulate an employment relationship or employment conditions, it cannot be classified as an 'employment contract' (para. 32).

As regards the concept of 'sellers or supplier', the Court restated the broad definition of that concept developed in its judgment in case C-147/16 *Karel de Grote*, which includes every natural or legal person when performing a professional activity, whether it is 'publicly owned or privately owned' (paras. 33–35). According to the Court, it constitutes a functional concept, which requires the determination of whether the specific contractual relationship is amongst the activities that a person provides in the course of his trade (para. 36). In a case such as that at stake, in which an employer, a legal person, concludes with one of its employees, a natural person, a loan contract with a view to financing the purchase of real estate for private purposes, the former has to be regarded as a 'seller or supplier'. The employer has technical information and expertise, and human and material resources that a natural person, namely the other party to the contract, is not deemed to have. Owing to the asymmetry of information and expertise between the contracting parties, their relationship is characterized by inequality (paras. 39–40). Due to the objective nature of the concept of 'sellers or supplier', it is irrelevant whether the employer acts in the context of its main activity or a secondary and ancillary one (para. 41).

Modification or replacement of unfair terms in consumer contracts: Judgment in Joined Cases C-70/17 and C-179/17 *Abanca Corporación Bancaria*

Abanca Corporación Bancaria belongs to the numerous preliminary references on the UTD requested by Spanish courts after the CJEU's judgment rendered in case C-415/11 *Aziz*. The joined requests by the Supreme Court and the court of first instance of Barcelona raise the central question whether the case law of the Supreme Court on the interpretation of accelerated repayment terms is compatible

with the system of consumer protection established by the UTD. Accelerated repayment terms constitute clauses that contain an advanced expiration date, i.e. they set out that in case the debtor fails to meet his payment obligations, the creditor can claim repayment of the entire loan after the expiration of a stipulated time period and initiate mortgage enforcement proceedings.

Since 2013, the Spanish Code of Civil Procedure provides for a minimum time period of three month that the parties may agree on in an accelerated repayment term (Article 693.2 LEC). However, many contracts predating that provision stipulate a shorter time period. The Supreme Court's case law at stake authorizes the national courts to cure the invalidity of an unfair accelerated repayment term by amending that term and by substituting the amended part of that term by reference to Article 693.2 LEC, in order to enable financial institutions to continue mortgage enforcement proceedings. The Supreme Court considers the mortgage enforcement procedure to be more beneficial for consumers. Since the parties would not have to resort to ordinary proceedings, consumers would avoid the risk of having to pay high legal costs and an increase in default interest because of the duration of the procedure.

The Grand Chamber of the Court held that the UTD precludes the accelerated repayment clause from being maintained in part, with the elements which make it unfair removed, where the removal of those elements would result in the revision of the content of that clause by altering its substance. To reach that conclusion, the Court relied on its previous case law. Accordingly, under Article 6(1) of the UTD, it is for the national courts to exclude the application of the unfair terms so that they do not produce binding effects with regard to the consumer (para. 52). The national court may not modify that contract by revising the content of that term (para. 53). Such a power would be liable to compromise the attainment of the long-term objective of Article 7, being the dissuasive effect on sellers or suppliers through the straightforward non-application (para. 54). Regarding the case at hand, the Court pointed out that the mere removal of the ground for termination making the terms at stake unfair would ultimately be tantamount to revising the content of those terms by altering their substance (para. 55). Therefore, the national court must in principle exclude the application of the term, unless the consumer objects, for example if that consumer were to consider that enforcement of the mortgage carried out on the basis of such a term would be more favourable to him than the ordinary enforcement procedure (para. 63).

However, in a situation where a contract concluded between a seller or supplier and a consumer is not capable of continuing in existence following the removal of an unfair term, Article 6(1) does not preclude the national court from removing an unfair term and replacing it with a supplementary provision of national law in cases where the invalidity of the unfair term would require the court

to annul the contract in its entirety, thereby exposing the consumer to particularly unfavourable consequences (para. 59). That assessment has to be conducted by the national court. A possible deterioration of the procedural position of the consumer concerned is also relevant in the context of assessing the consequences of annulling the contract; such deterioration could result from the use of an ordinary enforcement procedure rather than the special mortgage enforcement procedure. As the features of those enforcement procedures are, however, exclusively a matter of national law, the Court considered it solely for the referring courts to carry out the necessary checks and comparisons in that regard (paras. 61, 62).

Advocate General Szpunar also came, in his opinion, to the conclusion that Article 6(1) precludes a national court which has found that the accelerated repayment clause is unfair from being able to maintain the partial validity of that term by simply deleting the parts which make it unfair. However, his opinion nevertheless differs from the Court's ruling as he leaves less discretion to the national court's assessment. According to the Advocate General, the general rule established by the Court in case C-26/13 *Kásler and Káslerné Rábai*, according to which the Court allows the contract to be adjusted by replacing the unfair term with a supplementary provision of national law so that the contract may continue in existence, does not apply in the present case, since the contested terms do not render the loan agreements invalid in their entirety. Therefore, according to the Advocate General, the national court which has found that the clause is unfair cannot bring or continue mortgage enforcement proceedings initiated against the debtor consumer, even if it takes the view that those proceedings are more favourable to the debtor consumer. That can be only the case if the consumer after having been duly informed by the national court that the term is not binding, gives his free and informed consent and expresses his intention not to rely on the unfair and non-binding status of that term.

Employment Law and Discrimination

Self-Employment/Leave/Working Time

Obligation of the Member States to require employers to set up a system for the measurement of daily working time: Judgment in Case C-55/18 *CCOO*

The Grand Chamber of the CJEU dealt with the question whether the right to the limitation of maximum working hours and to rest periods of workers guaranteed by Article 31(2) of the Charter and specified in the Working Time Directive 2003/88 (WTD) requires the adoption of a system for the measurement of working time.

In the case at hand, a Spanish trade union sought a court judgment declaring Deutsche Bank SAE to be under an obligation to set up a system for recording the time worked each day by its members of staff. The trade union considered such a system necessary to verify compliance with the stipulated working times and the obligation, laid down in national law, to provide union representatives with information on overtime worked each month. Deutsche Bank claimed that it follows from the case-law of the Spanish Supreme Court that national law does not lay down such an obligation of general application but requires only that a record be kept of overtime hours worked by workers. In their interventions before the CJEU, the referring court, the European Commission and the applicant trade union took the view that EU law requires an obligation on employers to measure daily working time. Deutsche Bank as well as the Spanish, UK and Czech Government claimed to the contrary that, in the absence of a specific provision in the WTD, no general obligation may be imposed on undertakings to measure working time.

The CJEU started by emphasizing the importance of the fundamental right of every worker to a limitation on the maximum number of working hours and to daily and weekly rest periods, which is enshrined in Article 31(2) of the EU Charter (paras. 30). The Court recalled the specific detail given to that fundamental right in Articles 3, 5 and 6 of the WTD, which set out minimum requirements in relation to daily and weekly rest periods, adequate breaks and the duration of the working week with the aim to improve the living and working conditions of workers and the better protection of their health and safety (paras. 31–39). The Member States are required to take the measures necessary to guarantee that the effectiveness of those rights is guaranteed in full, by ensuring that workers actually benefit from them, without the specific arrangements chosen to implement the WTD being liable to render those rights meaningless (paras. 40–43). In that regard, the Court underlined that the worker must be regarded as the weaker party in the employment relationship, which means that it is necessary to prevent the employer from being in a position to impose a restriction of his rights on him (paras. 44–45).

In light of those general considerations, the CJEU held that a national law which does not provide for an obligation to have recourse to a system enabling the measurement of the duration of time worked each day by each worker does not guarantee the effectiveness of the rights conferred by the Charter and the WTD, since it deprives both employers and workers of the possibility of verifying whether those rights are complied with. The objective and reliable determination of the number of hours worked each day and each week is essential in order to establish whether the maximum weekly working time – including overtime – and minimum daily and weekly rest periods have been complied with (paras. 47–50).

Contrary to the Spanish Government, the Court considers it irrelevant that the maximum weekly working time laid down by Spanish law may be more favour-

able to the worker than that provided for in the directive. In the absence of a system for the measurement of working time, it remains equally difficult for a worker to control compliance (para. 51). Moreover, the requirement for employers to set up, under the Spanish Workers' Statute, a system for recording the overtime hours worked by workers who have given their consent in that respect is not sufficient either (para. 52). In addition, although Spanish procedural rules allow a worker to rely on other sources of evidence (inter alia witness statements, the production of emails or the consultation of mobile telephones or computers) in order to provide indications of a breach of those rights and thus bring about a reversal of the burden of proof, the Court considers that such sources of evidence do not guarantee to the same extent the objective and reliable verification of the actual compliance with the workers' rights (paras. 53–56). Finally, national law conferring the powers to investigate and impose penalties on supervisory bodies cannot compensate for the absence of a system enabling the measurement of daily working time (para. 57).

Consequently, in line with the opinion of Advocate General Pitruzzella, the Court ruled that in order to ensure the effectiveness of the rights provided for in the WTD and the Charter, the Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. It is for the discretion of the Member States to define the specific arrangements for implementing such a system, in particular the form that it must take, having regard, as necessary, to the particular characteristics of each sector of activity concerned, or the specific characteristics of certain undertakings concerning, inter alia, their size (paras. 60, 63). As regards the emphasis put by the Spanish and UK Governments on the costs that the implementation of such a system may involve for employers, the Court stressed that the effective protection of workers cannot be subordinated to purely economic considerations (para. 66).

The CJEU left open the question whether with regard to the obligation of employers to maintain a system for measuring daily working time, Article 31(2) of the Charter unfolds direct effect in horizontal relations between private parties. Advocate General Pitruzzella confirmed that question with reference to the judgment of the CJEU in C-684/16 *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*.

Discrimination Law

No indirect age discrimination in salary reductions applicable to new entrants from a certain moment of time on: Judgment in Case C-154/18 *Horgan and Keegan*

The present case concerns the interpretation of the prohibition of indirect discrimination with respect to a particular age contained in Art. 2(2)(b) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation (the Framework Directive). Starting at the beginning of 2011, the salaries for new Irish state primary school teachers were reduced by 10 % vis-à-vis the salaries of teachers employed before that date. Furthermore, all newly recruited teachers were now classified at the first point of the applicable salary scale, while in the years before, incoming teachers were classified at the second and third point of that scale. The measures were supposed to reduce the cost of public service, contributing to the correction of a significant deficit in the public finances.

Mr Hogan and Ms Keegan started to work as teachers in an Irish state primary school in the fall of 2011. They challenged the salary reduction and the classification on grounds of age discrimination. In fact, about 70 % of teachers who started their careers in 2011 were 25 years old or younger. Teachers employed in the years before were, in 2011, older on average, but better remunerated. The referring court therefore noted the coexistence of two groups of workers engaged in work of equal value but paid differently, with a clear age difference between the two groups. However, the new salary levels and classification practice applied to all new teachers from 2011 on, irrespective of their age. The age profile of teachers hired in the year 2011 was not (significantly) different from the age profile of the preceding years. The CJEU needed to determine if the present situation amounted to an issue of age discrimination.

The case is of general interest since the abstract conditions can be found in any change of remuneration which takes effect at a certain moment in time: typically, even if applied identically to all new entrants into the profession, it will create a difference between the on average older group remunerated according to the old conditions and the group of new entrants. Had the CJEU found that the present case constituted indirect discrimination, this would have placed all salary changes under an additional justification necessity arising from EU anti-discrimination law.

The CJEU, however, ruled that the circumstances of the present case do not amount to indirect discrimination. To reach this conclusion, the CJEU stressed that, to find indirect discrimination, it must first be shown that new entrants are

indeed treated differently from the beginning of 2011 on. This is evident from the 10 % salary reduction and the different classification. Second, that group of new entrants is engaged in work which is comparable to that of teachers recruited before 2011. Third, since the only relevant criterion for applying the new rules is the date of entry into teaching service, the new system does not amount to direct discrimination as the new rules apply irrespective of the age of the new entrants. Hence, the date of recruitment is an objective and neutral factor in the sense of Art. 2(2)(b) of the Framework Directive.

The decisive question, for finding indirect discrimination, therefore is whether that neutral criterion (potentially) puts persons of a particular age at a particular disadvantage. The CJEU denied this. It is not sufficient for finding indirect age discrimination that those recruited before a certain date are, on average, older than those recruited at a later date at the moment of that later recruitment. Rather, the age profile at the moment of the respective recruitment times is dispositive. Since there was no age difference in the age profiles of the entire teachers' cohort at the moment of their respective recruitment, the CJEU did not find any indirect discrimination. The judgment therefore convincingly isolates salary changes based only on the time of entry to an institution from challenges from an anti-discrimination perspective as long as the age profile of the new entrants does not significantly differ from the age profile of the previous classes of entrants.

Private International Law

Relationship between the concepts of 'consumer' in the Lugano II Convention and the Consumer Credit Directive 2008/48: Judgment in Case C-694/17 *Pillar Securitisation*

Pillar Securitisation raises the question about the scope of the objective of attaining consistency between the concepts of private international law within the EU legal system. In precise terms, it is in question whether the scope of the Consumer Credit Directive 2008/48 (CCD) is relevant to the definition of a 'consumer' within the meaning of Article 15 of the Lugano II Convention.

The preliminary reference arose out of the proceedings between Pillar Securitisation Sàrl and Ms Hildur Arnadottir for the repayment of a loan. Pillar Securitisation brought an action before the Luxembourg courts pursuant to a term of the loan agreement that conferred jurisdiction to those courts. However, the court of first instance and the court of appeal held that they lacked jurisdiction to hear the case on the ground that Ms Arnadottir should be regarded as a 'consumer' within the meaning of Article 15 of the Lugano II Convention. That means that,

under Article 16 of the Lugano II Convention, the courts of the State in which that consumer is domiciled, in the present case the Icelandic courts, would have jurisdiction.

Pillar Securitisation brought an appeal on a point of law on the ground that the court of appeal had misinterpreted the Lugano II Convention. In particular, the company claimed that in order to determine whether a loan agreement is a contract concluded by a consumer within the meaning of the Lugano II Convention, it must be determined whether that agreement is a 'consumer credit agreement' within the meaning of the CCD. Since that directive applies only to credit agreements involving a total amount of credit of more than EUR 200 and less than EUR 75 000 (Article 2 (2)(c) CCD), the loan agreement at stake that exceeds the ceiling of EUR 75 000 would not fall within the scope of the directive and, accordingly, Article 15 of the Lugano II Convention would not apply. The Court of Cassation considered it necessary to refer the matter to the CJEU.

The CJEU started by clarifying that the concept of a 'consumer' is defined in broadly identical terms in both Article 15 of the Lugano II Convention and Article 3 of the CCD, namely as referring to a person who has concluded a contract or acted for purposes 'outside his trade, business or profession' (para. 30). However, the need to ensure consistency between different instruments of EU law cannot lead to the provisions of a regulation on jurisdiction being interpreted in a manner that is unconnected to its scheme and objectives (para. 35). Therefore, for the purpose of determining whether the consumer credit agreements falling within the scope of Article 15 of the Lugano II Convention include only those agreements falling within the scope of the CCD, the Court considered it necessary to assess the purposes of the instruments in question (para. 36).

In that regard, the Court noted that the Lugano II Convention and the CCD pursue different aims (para. 37). Differently to the CCD that harmonizes certain aspects of the substantive law on consumer contracts with the twofold objective to protect consumers and to facilitate the emergence of a well-functioning internal market, the Lugano II Convention does not seek to harmonise the substantive law on consumer contracts (paras. 38–42). The Convention aims to provide for rules that determine which court has jurisdiction to hear a case in civil and commercial matters, in particular, in respect of a contract between a trader or professional and a person acting outside his trade or profession, in order to protect the latter. In pursuing that objective, the Convention does not provide for a scope limited to any particular amounts (para. 42).

On the basis of the distinct purposes of both instruments, the Court held that the fact that a credit agreement does not fall within the scope of the CCD on the ground that the total amount of credit is outside the scope of Article 2(2)(c) of that directive has no bearing on determining the scope of Article 15 of the Lugano II

Convention (para. 43). A consumer who has concluded a credit agreement for less than EUR 200 or more than EUR 75 000 is not any less deserving of the protection set out in Article 15 of the Lugano II Convention (paras. 44, 45). The reasoning and conclusion of the CJEU is in line with the opinion rendered by Advocate General Szpunar.

Note: The primary responsibility for the areas of General Law of Contract and Obligations, Passenger Rights and Package Holiday, Consumer Credit, and Discrimination Law lies with Philipp Hacker; for the areas of Unfair Commercial Practices, Unfair Contract Terms, Employment Law (other than Discrimination), and Private International Law with Betül Kas.