

EU Contract Case Law of the CJEU: What Is New?

July 2023 – March 2024

whatnext.law



The Team

Project leaders



Lucila de Almeida, PhD
NOVA School of Law -
European University Institute



Fabrizio Esposito, PhD
NOVA School of Law



Carolina Paulesu
European University
Institute



Elisa Valletta
Ferrara University -
Bocconi University

- Data source: curia.eu
- Method: Manual screening of all the judgments
- Steps:
 - 1 Identification of the contract law cases
 - 2 Division in subcategories
 - 3 Selection of the 8-9 most relevant cases

EU Contract Law case in numbers

EU Contract Law Cases by Subject Matter
(July 2023 - March 2024)



Judgments with Contract Law Dimension 94

Total Number of Judgements 343

Rate 27.40%

- 2 or 3 issues a year, since 2017

Open Access | Article | October 7, 2022

European Union Litigation
European Review of Contract Law
Fabrizio Esposito, Lucila de Almeida

... This article provides an overview of the most relevant consumer and data protection laws can find con... EU law that theories of contract law in the Europ...

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European Union Litigation
European Review of Contract Law
Fabrizio Esposito, Lucila de Almeida

... This article provides an overview of the most relevant... European Review of Contract Law, 87–106. ... 'Litigation' (2021) 17(3) European Review of Con...

Requires Authentication | Article | September 10, 2022

European Union Litigation
European Review of Contract Law
Fabrizio Esposito, Lucila de Almeida

... This article provides an overview of cases deci... Journal of European Law 491. ... Union. ... Un...

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EU Contract Case Law, July–December 2023
European Review of Contract Law
Fabrizio Esposito, Lucila de Almeida, Carolina Paulesu

... This article provides an overview of the most relevant dimension. ... The case was referred to the Court of Jus... movement ... the CJEU added to the case law on Directi...

Requires Authentication | Article | October 5, 2023

EU Contract Case Law, April–June 2023
European Review of Contract Law
Fabrizio Esposito, Lucila Gabriel de Almeida, Arthur Win...

... This article provides an overview of the most relevant dimension. ... 2.1 Compensating the Damage Incurred b... the contract)', at https://portal.ieu-monitoring.com/e...

Requires Authentication | Article | June 2, 2023

EU Contract Case Law, January–March 2023
European Review of Contract Law
Fabrizio Esposito, Lucila Gabriel de Almeida, Roger Bara...

... This article provides an overview of the most relevant dimension. ... Esposito and L. de Almeida, 'EU Case Law Persistent Deficiencies as Precluded by EU Law: Judgmen...



1. C-333/21: Transparency, Objectivity, Non-Discrimination and Proportionality as General Requirements of Private Ordering
2. C-86/22: Stricter Technical Specifications Incompatible with EU Law as Ground for Compensation
3. C-598/21: Proportionality Between the Exercise of the Acceleration Clause and the Consumer's Breach as Pivotal to Assess the Clause's Fairness
4. C-645/22: Examining the Consequences of Annulling the Entire Contract as a Necessary Step Prior to the Renegotiation of an Unfair Agreement
5. C-27/22: Administrative Fine Imposed for Unfair Commercial Practices as Subject to the Application of the Principle of *Ne Bis in Idem*
6. C-238/22: Pre-emptively Denied Boarding as Indistinguishable from Denied Boarding
7. C-252/21: Processing of off-Facebook Data as Not Essential for the Performance of the Social-media Contract
8. C-331/21: Non-compete Clause Longer than and Non-Proportional to the Sale Agreement as Not Ancillary
9. C-821/21: Predictability as Paramount Value for the Determination of the *Forum* and *Lex Consumatoris*

1. C-604/22: Qualification of User's Consent to the Processing of Personal Data as 'Personal Data' under Article 4 GDPR
2. C-371/22: Transparency, Access Justice and Proportionality of a Penalty as Means for the Interpretation of General Provisions of Contract Law in a Supply Agreement
3. C-536/22: Unpaid Interest as Part of the Compensation for Early Termination of a Consumer Credit Agreement Related to Residential Immovable Property
4. C-76/23: Filled Out Online Form as a 'Signed Agreement' for Reimbursement of a Cancelled Flight Ticket
5. C-299/22: Average Traveller as Well-Informed, Reasonably Observant and Circumspect Considering Personal Factors of Vulnerability
6. C-715/20: Dismissal Without Reason of Employees with Fixed-Term Contracts When Those with Indefinite Contracts Are Entitled to Them as Discrimination Receiving Protection Under Article 47 of the Charter
7. C-558/22: Mandatory Purchase of Green Certificates on Importers from Italian Renewable Energy Producers as Compatible with EU Law
8. C-90/22: The Violation of an Agreement Conferring Jurisdiction as a Reason to Refuse to Recognise the Judgment of a Different Member State Court

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Superleague (C-333/21): Transparency, Objectivity, Non-Discrimination and Proportionality as General Requirements of Private Ordering

- Can FIFA and UEFA block the Superleague project? **Not now**
- Steps
 - 1 Regulatory powers to ensure ‘openness, merit and solidarity’
BUT
 - 2 ‘genuine, quantifiable efficiency gains’ of the restrictions
 - 3 substantive criteria and procedures to ensure that private ordering rules are transparent, objective, precise, and non-discriminatory

*Volkswagen (C-27/22): Administrative Fine Imposed for Unfair Commercial Practices as Subject to the Application of the Principle of *Ne Bis in Idem**

- Can a UCPD violation that received a 1 bln fine in Germany receive a 5 mln fine in Italy? Not without coordination
- Steps:
 - 1 Criminal nature ✓
 - 2 *Ne bis in idem* ✓
 - 3 Derogation to *ne bis in idem*: no excessive burden; ‘precise’ rules of conduct; *de facto* coordination

EDP (C-331/21): Non-compete Clause Longer than and Non-Proportional to the Sale Agreement as Not Ancillary

- Can the non-competition agreement between EDP and Contiente last longer than the EDP Contiente Scheme it is part of? No
- Steps
 - 1 Not a vertical agreement
 - 2 A restraint longer than the main agreement is not ancillary

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Tez Tour (C-299/22): Average Traveller as Well-Informed, Reasonably Observant and Circumspect Considering Personal Factors of Vulnerability

- Can a traveller be average and vulnerable for the application for the same provision in the same case? Yes
- Steps:
 1. Article 12 Directive 2015/2022: ‘significantly affecting’
 2. Recital 25: foreseeable physical vulnerability
 3. Average consumer extended to traveller
- Norbert Reich’s theory solves the puzzle

G Frais de résiliation anticipée (C-371/22): Transparency, Access Justice and Proportionality of a Penalty as Means for the Interpretation of General Provisions of Contract Law in a Supply Agreement

- Retail supply energy agreement - SME and Utility company – excessive penalty fee - Art 484(1) of the Polish Civil Code;
- Consumer as energy household
- Articles 3(5) and (7) require that such a contractual stipulation must be clear, understandable, and freely agreed upon, as well as provide for a possibility of appeal, administrative or jurisdictional.

Cobult (C-76/23): Filled Out Online Form as a ‘Signed Agreement’ for Reimbursement of a Cancelled Flight Ticket

Can an online form meet the form requirement under Article 7(3) Regulation 261/2004? YES

- Linguistic divergence
- *Signed agreement* \neq *Written agreement*
- No distinction between “passenger” and “consumer”

Can a FORM REQUIREMENT be objectively waived by the Court in the light of a linguistic divergence between the versions of the same Regulation?

IAB (C-604/22): Qualification of User's Consent to the Processing of Personal Data as 'Personal Data' under Article 4 GDPR

IAB



Framework of protocols and contractual obligations that ensure conformity with the GDPR

- Can a string containing information on user's consent be considered as **personal data** ? YES
- Can IAB Europe be qualified as a **data controller** in respect of the processing of the same string ? YES
- Not necessary that information autonomously identifies the data subject
- Joint controllers mutually determine the terms and purposes of the processing
- Different levels of liability

IAB (C-604/22): Qualification of User's Consent to the Processing of Personal Data as 'Personal Data' under Article 4 GDPR

CONTRACT LAW



DATA PROTECTION LAW

- Processing of personal data within contractual models that require the identification of natural persons
- Business as Data Controller and Consumer as Data Subject
- Is a privacy clause in a standard form GDPR compliant?