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**CV CRUZ
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ADVOGADOS

IN THIS EDITION

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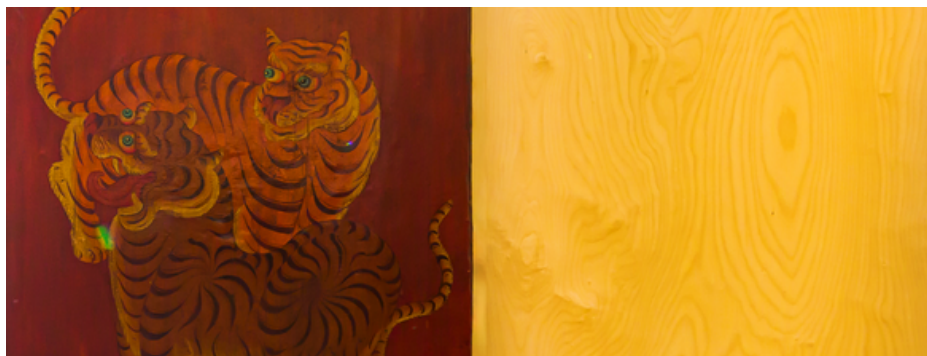
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FOREWORD

As we enter the new year, Cruz Vilaça Advogados ('CVA') is launching its first "Quarterly Newsletter" - a new format compared to the contents it has been publishing on its website so far.

CVA was created approximately four years ago, as a result of the diverse experiences of its founding partners at the Court of Justice of the European Union ('CJEU'), in the legal practice and in academia.

The first newsletter was published in August 2019, concerning the adoption of the *Poplawski* judgment, an important jurisprudential development: the CJEU clarified the articulation between two basic principles of the European Union ('EU') legal order - the principles of primacy and direct effect - and the circumstances in which, when facing a disconformity between national law and EU law, the national judge is obliged to disapply the former.

Since then, CVA published informative and impactful newsletters, sometimes including an opinion component. A wide variety of subjects have been covered, such as the impact of the Covid-19 pandemic on free movement in the Schengen area, the German elections and their consequences for the EU, the adoption of constitutional court rulings on the relationship between constitutional law and EU law, the transposition of directives into national law and their impact on citizens' lives, and the relationship between sports law and EU law.

Our newsletters have always been enthusiastically received by both the legal community and by our clients. For this reason, we will continue to publish them, maintaining the format followed until now.

Thus, the Quarterly Newsletters will not replace the content that we already produce. Rather, they add to our robust newsletter system and are intended to contribute jointly to better dissemination of EU law. The new format now launched has two essential features: on the one hand, it comprises a terse concentration of information, highlighting a legislative or case-law development in EU law; on the other, it will be launched quarterly.

As an innovative project in the Portuguese market, CVA's mission, in addition to providing specialised legal services, is to contribute to the uniform interpretation and application of EU law in all Member States. This design involves raising the awareness across the legal community and society in general of EU law's crucial characteristics (on which social well-being, the equitable treatment of European citizens and the vitality of its economy depend), as well as to its importance and enormous impact on national law and, thus, on the daily lives of citizens and the protection of their legitimate rights.

José Luís da Cruz Vilaça
Founding and Managing Partner



Source: Court of Justice's website

CONTRACTS FOR PROVISION OF LEGAL SERVICES BETWEEN A LAWYER AND A CONSUMER BASED ON HOURLY RATES MAY NOT SATISFY TRANSPARENCY TEST

The Court of Justice ruled, in the case of *D.V.* (Case C-395/21), that a term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price on the basis of an hourly rate, without including any further details, does not satisfy the requirement of being drafted in plain intelligible language.

ABUSE OF A DOMINANT POSITION MAY BE ESTABLISHED WHERE THE CONDUCT COMPLAINED OF HAS PRODUCED EXCLUSIONARY EFFECTS IN RESPECT OF COMPETITORS THAT ARE AS EFFICIENT AS THE PERPETRATOR OF THAT CONDUCT

The Court of Justice delivered, on 19 January 2023, its judgment in Case C-680/20, *Unilever Italia Mkt. Operations*, setting out the detailed rules for the implementation of the prohibition of abuse of a dominant position referred to in Article 102 TFEU in relation to a dominant undertaking whose distribution network is organised exclusively on a contractual basis and clarifying, in that context, the burden of proof borne by the national competition authority.

LABELLING A CHILDREN'S BOOK OF FAIRY TALES AS HARMFUL FOR CONTAINING REFERENCES TO MARRIAGES BETWEEN PERSONS OF THE SAME SEX BREACHED THE ECHR

In the case of *Macatė v. Lithuania* (application no. 61435/19), the European Court of Human Rights has ruled that there was a violation of Article 10 of the European Convention on Human Rights (freedom of expression) due to the suspension and labelling a book of fairy tales as harmful to children solely because of LGBTI content.

REFERENCE FOR PRELIMINARY RULING ON CILFIT CRITERIA

On 30 January 2023, it was published on the Official Journal a request for a preliminary ruling from the *Consiglio di Stato's* (State Council, Italy) in case of *GC and Others v Croce Rossa Italiana and Others* (Case C-389/22), on the scope of the *Cilfit* doctrine and the duty of national courts of last instance to make a reference for a preliminary ruling under Article 267 TFEU. In the questions referred to the CJEU, the *Consiglio di Stato* inquires as to the criteria of the *Cilfit* doctrine, in particular the duty to take into account the position of other courts of other Member States, as well as the scope of the "reasonable doubt" that a referring court must hold. The *Consiglio di Stato* also inquires as to the compatibility of disciplinary liability against a national court for not referring a question for a preliminary ruling, with the principle of judicial independence.



Source: European Commission's website

FINANCIAL SANCTIONS IN INFRINGEMENT PROCEEDINGS

The European Commission adopted a Communication on financial sanctions in infringement proceedings (2023/C 2/01) regarding Member States referred to the Court of Justice for failing to fulfill an obligation under the Treaties. The financial sanctions can be proposed to the Court in two situations: (i) where the Member State has not taken the necessary measures to comply with an earlier judgment of the Court finding an infringement of Union law (Article 260(2) TFEU); and (ii) where the Member State has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure (Article 260(3) TFEU).

WHISTLEBLOWER COMMUNICATION TOOLS TO COVER MERGERS AND STATE AID MATTERS

The European Commission has extended the scope of its anonymous antitrust whistleblower tool to include mergers and State Aid issues. As a result, individuals will now be able to alert the Commission about all types of possible breaches of EU competition rules while maintaining their anonymity.

ACTIONS BROUGHT BEFORE THE GENERAL COURT AGAINST COMMISSION'S DECISION ON AID SCHEME IMPLEMENTED BY PORTUGAL FOR MADEIRA FREE ZONE

On 30 January 2023, twelve more actions seeking the annulment of the Commission Decision which declared Portugal's tax reductions and exemptions granted in Madeira Free Zone as incompatible aid and ordered its recovery (SA.21259) were brought before the General Court. In its decision, the Commission concluded that in Madeira the tax reductions were applied to companies that have made no real contribution to the development of the region, for example by not creating or maintaining jobs in the region. As such, the aid was declared incompatible with the internal market on the basis of Article 107(3)(a) TFEU.



Source: European Commission's website

COMMISSION PUBLISHES NON-BINDING GUIDANCE HELPING ONLINE PLATFORMS AND SEARCH ENGINES WITHIN THE SCOPE OF THE DIGITAL SERVICES ACT

The European Commission has released non-binding guidance to online platforms and search engines on the requirement to report user numbers in the EU under the Digital Services Act. The guidance is intended to help these companies comply with the reporting requirement at the latest by 17 February 2023 and at least once every six months afterwards.

LATEST NEWS ON OUR WEBSITE

PLATFORM'S LIABILITY FOR USING TRADEMARK RIGHTS

On 22 December 2022, the CJEU delivered its judgment in joined cases C-148/21 and C-184/21, *Louboutin (Usage d'un signe contrefaisant sur un marché en ligne)*, clarifying the circumstances in which a platform such as Amazon may be held liable for infringements of trademark rights protected by the Trademark Regulation 2017/1001, concerning goods of thirdparty sellers for sale on the operator's marketplace.

See the full Article [here](#).

OPEN LETTER TO THE INTERNATIONAL COMMUNITY URGES ACTION TO STOP MASS EXECUTIONS IN IRAN

José Luís da Cruz Vilaça, managing partner at CVA, is one of the first signatories of an open letter urging action to stop mass executions in Iran. The open letter was sent to leaders of the European Union, Canada, the United Kingdom and the USA, and the United Nations High Commissioner for Human Rights has also been informed. Among the 238 signatories are ex-prime ministers, current or former UN high officials, human rights experts, NGOs or Nobel Prize winners. The open letter has had a huge impact on the International Community and some of its addressees have confirmed it is currently under analysis.

See the open letter [here](#).



Source: European Commission's website