

2. Must Article 2 and Article 19(1) TEU, read in conjunction with Article 47 of the CFR, be interpreted as meaning that, where a court includes in its composition a person appointed in the circumstances described in point 1 above:
 - (a) those provisions preclude the application of provisions of national law which place the review of the lawfulness of the appointment of such a person to a judicial post within the exclusive jurisdiction of a chamber of the Sąd Najwyższy (Supreme Court, Poland) which is composed exclusively of persons appointed to judicial posts in the circumstances described in point 1 above and which provisions of national law also require that any objections concerning the appointment to a judicial post be disregarded, having regard to the institutional and systemic context;
 - (b) those provisions require, in order to ensure the effectiveness of European Union law, provisions of national law to be interpreted in a manner that allows a court to exclude, of its own motion, such a person from hearing the case on the basis of the rules, applicable by analogy, which govern the exclusion of a judge who is incapable of deciding cases (*iudex inhabilis*).

**Request for a preliminary ruling from the Sąd Rejonowy dla Warszawy-Woli w Warszawie (Poland)
lodged on 23 March 2021 — K.D. v Towarzystwo Ubezpieczeń Ż S.A.**

(Case C-208/21)

(2021/C 289/32)

Language of the case: Polish

Referring court

Sąd Rejonowy dla Warszawy-Woli w Warszawie

Parties to the main proceedings

Applicant: K.D.

Defendant: Towarzystwo Ubezpieczeń Ż S.A.

Questions referred

1. Must Article 3(1) of Directive 2005/29/EC, ⁽¹⁾ in conjunction with Article 2(d) thereof, be interpreted as concentrating the meaning of the term ‘unfair commercial practice’ only around the circumstances relating to the conclusion of a contract and the presentation of the product to the consumer, or must the formulation, by the trader who is creator of the product, of the misleading standard contract which underlies the functioning of the sales offering prepared by another trader, and is therefore not directly related to the marketing of the product, also be understood as falling with the scope of the directive and thus the term ‘unfair commercial practice’?
2. If the first question is answered in the affirmative, must it be concluded that the trader responsible under Directive 2005/29/EC for the use of an unfair commercial practice is the trader responsible for formulating the misleading standard contract or the trader who, on the basis of that standard contract, presents the product to the consumer and is directly responsible for marketing the product, or must it be concluded that both traders bear responsibility under Directive 2005/29/EC?
3. Does Article 3(2) of Directive 2005/29/EC preclude a rule of national law (interpretation of national law), which confers on the consumer the right to apply for annulment by a national court of a contract concluded with a trader, with mutual refund of payments, where the consumer’s declaration of intent to conclude the contract was made under the influence of the trader’s unfair commercial practice?
4. If the third question is answered in the affirmative, must it be held that the appropriate legal basis for assessing the action of a trader, consisting in the use of unintelligible and unclear standard contract in relation to a consumer, will be

Directive 93/13,⁽²⁾ and consequently must the requirement that contractual terms be drafted in plain, intelligible language, laid down in Article 5 of Directive 93/13, be interpreted as meaning that in unit-linked assurance contracts concluded with consumers this requirement is met by a non-individually negotiated contractual term which does expressly define the scale of the investment risk during the term of the assurance contract and merely provides information about the possibility of the loss of part of the first premium paid and on-going premiums in the event of withdrawal from the assurance before the end of the liability period?

- ⁽¹⁾ Directive 2005/29/EC 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.
- ⁽²⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ 1993 L 95, p. 29.

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 6 April 2021 — Italy
Emergenza Cooperativa Sociale v Azienda Sanitaria Locale Barletta-Andria-Trani**

(Case C-213/21)

(2021/C 289/33)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant and appellant: Italy Emergenza Cooperativa Sociale

Defendant and respondent: Azienda Sanitaria Locale Barletta-Andria-Trani

Question referred

Does Article 10(h) of Directive 2014/24/EU ⁽¹⁾ — together with recital 28 of that directive — preclude national legislation which provides that contracts for the provision of emergency ambulance transport services may be directly awarded, on a preferential basis, solely to voluntary organisations — provided that they have been registered for at least six months in the national third sector register, belong to a network of associations and are accredited under the relevant sectoral regional legislation (if any) and on the condition that such an award ensures that the service can be provided within a framework of effective contributions to social goals, which pursues objectives of solidarity, in an economically efficient and appropriate manner and in accordance with the principles of transparency and non-discrimination — to the exclusion of other non-profit organisations, and more specifically social cooperatives, such as non-profit-making social enterprises?

- ⁽¹⁾ 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 (OJ 2014 L 94, p. 65).

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 6 April 2021 — Italy
Emergenza Cooperativa Sociale v Azienda Sanitaria Provinciale di Cosenza**

(Case C-214/21)

(2021/C 289/34)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant and appellant: Italy Emergenza Cooperativa Sociale