

4. Article 7(4) of Directive 2005/29 must be interpreted as meaning that it contains an exhaustive list of the material information that must be included in an invitation to purchase. It is for the national court to determine whether the trader at issue has satisfied its duty to provide information, taking into account the nature and characteristics of the product but also the communication medium used for the invitation to purchase and additional information possibly provided by that trader. The fact that a trader provides, in an invitation to purchase, all the information listed in Article 7(4) of that directive does not preclude that invitation from being regarded as a misleading commercial practice within the meaning of Article 6(1) or Article 7(2) of that directive.

<sup>(1)</sup> OJ C 73, 2.3.2015.

**Judgment of the Court (Third Chamber) of 27 October 2016 (request for a preliminary ruling from the Supreme Court — Ireland) — James Elliott Construction Limited v Irish Asphalt Limited**

(Case C-613/14) <sup>(1)</sup>

*(Reference for a preliminary ruling — Article 267 TFEU — Jurisdiction of the Court — Concept of ‘provision of EU law’ — Directive 89/106/EEC — Approximation of laws, regulations and administrative provisions of the Member States relating to construction products — Standard approved by the European Committee for Standardisation (CEN) pursuant to a mandate given by the European Commission — Publication of the standard in the Official Journal of the European Union — Harmonised standard EN 13242:2002 — National standard incorporating harmonised standard EN 13242:2002 — Contractual dispute between individuals — Method used to establish (non — ) compliance of a product with a national standard transposing a harmonised standard — Date of establishing (non — ) compliance of a product with that standard — Directive 98/34/EC — Procedure for the provision of information in the field of technical standards and regulations — Scope)*

(2017/C 006/10)

Language of the case: English

**Referring court**

Supreme Court

**Parties to the main proceedings**

Applicant: James Elliott Construction Limited

Defendant: Irish Asphalt Limited

**Operative part of the judgment**

1. The first paragraph of Article 267 TFEU must be interpreted as meaning that the Court of Justice of the European Union has jurisdiction to give a preliminary ruling concerning the interpretation of a harmonised standard within the meaning of Article 4(1) of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Council Directive 93/68/EEC of 22 July 1993, references to that standard having been published by the Commission in the ‘C’ series of the Official Journal of the European Union.
2. Harmonised standard EN 13242:2002, entitled ‘Aggregates for unbound and hydraulically bound materials for use in civil engineering work and road construction’, must be interpreted as not binding a national court seised of a dispute concerning a contract governed by private law requiring a party to supply a product compliant with a national standard transposing that harmonised standard, either as regards the method of establishing the conformity of such a construction product with the contractual specifications or the time at which its conformity must be established.

3. Article 4(2) of Directive 89/106, as amended by Directive 93/68, read in the light of the twelfth recital of that directive, must be interpreted as meaning that the national court is not obliged to apply the presumption of fitness for use of a construction product manufactured pursuant to a harmonised standard for the purposes of establishing that such a product is of merchantable quality or fit for its purpose where a national law of a general nature governing the sale of goods, such as that at issue in the case in the main proceedings, requires that a construction product have such characteristics.
4. Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as last amended, by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that national provisions such as those at issue in the case in the main proceedings, specifying, unless the parties agree otherwise, implied contractual terms concerning merchantable quality and fitness for purpose of the products sold are not 'technical regulations', within the meaning of that provision, drafts of which must be communicated in advance, as provided for in the first subparagraph of Article 8(1) of Directive 98/34, as amended by Directive 2006/96.

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<sup>(1)</sup> OJ C 96, 23.3.2015.

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**Judgment of the Court (Grand Chamber) of 8 November 2016 (request for a preliminary ruling from the High Court — Ireland) — Gerard Dowling and Others v Minister for Finance**

(Case C-41/15) <sup>(1)</sup>

**(Regulation (EU) No 407/2010 — European Financial Stabilisation Mechanism — Implementing Decision 2011/77/EU — European Union financial assistance to Ireland — Recapitalisation of national banks — Company law — Second Directive 77/91/EEC — Articles 8, 25 and 29 — Recapitalisation of a bank by means of judicial direction order — Increase in share capital without general meeting decision and without the shares issued being offered on a pre-emptive basis to existing shareholders — Issue of new shares at a price lower than their nominal value)**

(2017/C 006/11)

Language of the case: English

**Referring court**

High Court (Ireland)

**Parties to the main proceedings**

Applicants: Gerard Dowling, Padraig McManus, Piotr Skoczylas, Scotchstone Capital Fund Limited

Defendant: Minister for Finance

Intervening parties: Permanent TSB Group Holdings plc, formerly Irish Life and Permanent Group Holdings plc, Permanent TSB plc, formerly Irish Life and Permanent plc

**Operative part of the judgment**

Article 8(1) and Articles 25 and 29 of the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of [the second paragraph of Article 54 TFEU], in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, must be interpreted as not precluding a measure, such as the Direction Order at issue in the main proceedings, adopted in a situation where there is a serious disturbance of the economy and the financial system of a Member State threatening the financial stability of the European Union, the effect of that measure being to increase the share capital of a public limited liability company, without the agreement of the general meeting of that company, new shares being issued at a price lower than their nominal value and the existing shareholders being denied any pre-emptive subscription right.

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<sup>(1)</sup> OJ C 138, 27.4.2015