08
DECEMBER 2024

CRUZ VILAÇA ADVOGADOS

IN THIS EDITION

FOREWORD

Cruz Vilaça Advogados will cease to exist on 31 December 2024. This is a farewell, a memory and a see you soon.

It is with some emotion that I sign these words, which serve as a preface to the eighth newsletter of Cruz Vilaça Advogados (CVA), which will also be the last, with some emotion.

As we say goodbye to a firm that bears my name, I can't help but think back to the short but very intense (almost) six years that have passed since this project saw the light of day. And I remember, in a kind of flash full of colour, sound and success, how it was conceived, how it was developed and how we decided to bring it to an end.

Returning to Portugal once again after another mission in Luxembourg, where I spent another six years serving the cause of European justice as a judge at the Court of Justice of the European Union, it was hard for me to imagine of ending my already long career by taking a well-deserved, but for me still premature, retirement.

A bold but tempting project was brewing in my mind: to set up my own law firm. My 17 years of experience in one of Portugal's largest law firms, the knowledge I had acquired in areas crucial to the practice of European Union law, which is sometimes overlooked in Portugal but is so important for companies and citizens, competition law, a pillar of any well-ordered and wealth-generating market, and the many skills I had acquired through contact with professionals of excellence in various subjects and fields, convinced me that I could do it. My aim was never to compete directly with large or medium-sized, well-established and prestigious firms, but to add value to the practice of law in Portugal in the areas of my (and our) specialisation.

With some of these professionals, ‘compagnons’ of this brief but intense ‘route’, men and women, young and not so young, whom I met at different stages of my life and who trusted me and took the hundred steps of a challenging and stimulating journey with me, it was possible, in a short and difficult period, with a pandemic in between, to create and grow a law firm that very quickly became, if I may be so bold, a reference in the business and legal world in Portugal and Europe.

After a few years, our client portfolio speaks for itself and testifies to the success of a practice that combines in-depth legal analysis with practical, day-to-day intervention with public administrations, companies, institutions and the courts. We now work with people and companies from all over the world, from the far reaches of Asia to the Middle East, from the heart of Europe to North and South America.

Of course, in a period of so much change, with so many clients and difficult challenges, managing such a firm with a small group of lawyers, very much based on talented young people, became an increasingly demanding task. The growing number of requests in areas related to our competences, which could not be refused due to the nature of the cases, forced us to turn to external consultants, friendly professionals of enormous quality, making it difficult to reconcile objectives and growth

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targets.

Our willingness to take on challenges eventually attracted the interest of some of the biggest names in our market and we spent more than a year discussing alternatives.

Just over three months ago, we accepted an offer to join a young law firm with a significant international presence, a dynamic and experienced team and an exciting project for the future. I am referring, as the market already knows, to Antas da Cunha Ecija, of which almost the entire CVA team will become part on 1 January 2025, joining the team created and led by Fernando Antas da Cunha.

I firmly believe that this was a happy and successful choice.

I am also convinced that the brand I have created - CVA - and the culture we have developed in such a short time will now remain in the genes of the new firm we are joining.

Finally, I am convinced that the long journey I started so many decades ago will continue in a new office, in a new firm, with many more kilometres to go, now with the help and cooperation of young colleagues and lawyers.

For my part, I thank all those who have honoured CVA with their trust, and I welcome those who will continue with us into this new future with the same confidence.

José Luís da Cruz Vilaça
Managing Partner

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EUROPEAN COMMISSION CONSIDERS HUNGARY'S LAW ON DEFENCE OF SOVEREIGNTY TO BE INCOMPATIBLE WITH EU FUNDAMENTAL RIGHTS AND FREEDOMS, AND DATA PROTECTION RULES

The European Commission has referred Hungary to the Court of Justice of the EU because it considers its national law on the 'Defence of Sovereignty' to be in breach of EU law. This national law establishes an 'Office for the Defence of Sovereignty', tasked with investigating specific activities said to be carried out in the interest of another State or a foreign body, organisation or natural person, allegedly liable to violate or jeopardise the sovereignty of Hungary, and organisations whose activities using foreign funding allegedly influence the outcome of elections or the will of voters. The grievances identified by the Commission concern several fundamental rights enshrined in the EU Charter of Fundamental Rights: the right to respect for private and family life, the freedom of expression and information, the freedom of association, the right to legal professional privilege, as well as the presumption of innocence, which implies the right not to incriminate oneself. The Commission also considers that the law violates several fundamental freedoms of the internal market, the e-Commerce Directive, the Services Directive, as well as EU Data protection legislation.

COMMISSION APPROVES €1 BILLION PORTUGUESE STATE AID SCHEME TO SUPPORT INVESTMENTS IN STRATEGIC SECTORS NECESSARY TO FOSTER THE TRANSITION TO A NET-ZERO ECONOMY

The European Commission has approved a €1 billion Portuguese scheme to support investments for the production of equipment necessary to foster the transition towards a net-zero economy, in line with the Green Deal Industrial Plan. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 and amended on 20 November 2023 and on 2 May 2024. Under this measure, the aid will take the form of direct grants. The measure will be open to companies producing relevant equipment, namely batteries, solar panels, wind turbines, heat-pumps, electrolysers, equipment for carbon capture usage and storage, as well as key components designed and primarily used as direct input for the production of such equipment or related critical raw materials necessary for their production.

EUROPEAN COMMISSION AND THE UK FINALISE THE TECHNICAL DISCUSSIONS ON A COMPETITION COOPERATION AGREEMENT

The European Commission and the United Kingdom finalised the technical discussions on a competition cooperation agreement between the EU and the UK, which will supplement the EU-UK Trade and Cooperation Agreement. When approved and in force, the competition cooperation agreement is set to allow the Commission, the national competition authorities of the EU Member States enforcing EU competition law, and the UK Competition and Markets Authority to cooperate directly in competition investigations. This agreement will serve as a landmark treaty, as it will be the first EU competition cooperation agreement that enables for national competition authorities to cooperate directly with a third country competition authority. The cooperation agreement will also regulate the exchange of information pertaining to important antitrust and merger investigations. It will also allow the coordination of investigations between the jurisdictions involved when necessary and set out clear principles of cooperation aimed at avoiding any conflicts between jurisdictions.

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COUNCIL DECISION ON THE SIGNING OF THE COUNCIL OF EUROPE FRAMEWORK CONVENTION ON ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW

On 28 August, Council Decision (EU) 2024/2218 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence ("AI") and Human Rights, Democracy and the Rule of Law, was officially published in the Official Journal of the EU. The Convention lays down general principles and obligations that the parties should observe to ensure the protection of human rights, democracy and the rule of law in relation to the activities within AI systems. The Convention will be implemented exclusively through Regulation (EU) 2024/1689 (the AI act) and other relevant Union acquis, such as legal acts which aim to implement fundamental rights enshrined in the Charter of Fundamental Rights. The Commission will invite Member States to send one representative to accompany the Commission representation as part of the Union delegation to the meetings of the Conference of the Parties.

REPUBLIC OF MOLDOVA AND ITS CONSTITUTIONAL REFERENDUM

On 20 October, the citizens of the Republic of Moldova exercised their democratic right to vote in the first round of the presidential elections and the referendum on enshrining EU accession in their constitution. The citizens of the Republic of Moldova made a historic choice to anchor their future within the European Union, despite massive interference and a hybrid campaign by Russia and its proxies to undermine the democratic vote in Moldova. This vote reflects their aspirations for a peaceful, independent, stable, democratic, and prosperous Moldova.

COMMISSION REFERS UK TO COURT OF JUSTICE FOR VIOLATIONS OF EU LAW ON BITS AND FREE MOVEMENT

The European Commission has referred the United Kingdom to the Court of Justice, under the Withdrawal Agreement, over two separate issues: its failure to terminate Bilateral Investment Treaties (BITs) with six EU Member States and its non-compliance with EU free movement laws affecting the Withdrawal Agreement. The first case involves the UK's continued enforcement of BITs with Bulgaria, Czechia, Croatia, Lithuania, Poland, and Slovenia. BITs are agreements that protect foreign investments by ensuring fair treatment and protection against expropriation. The Commission has maintained that intra-EU BITs conflict with EU law, a stance upheld in the Achmea judgment (C-284/16). This ruling deemed investor-to-state arbitration under these treaties incompatible with EU law, as it undermines mutual trust between Member States. While the UK agreed in 2019 to terminate such treaties, it failed to either sign the plurilateral termination treaty of May 2020 or terminate these BITs bilaterally. The second case pertains to the UK's non-compliance with EU free movement laws, specifically regarding EU citizens' rights under the Withdrawal Agreement. The Commission identified several violations, including restrictions on the rights of workers, extended family members, and beneficiaries of the Free Movement Directive (2004/38/EC).

Source: website of the European Commission

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EU AND MERCOSUR REACH POLITICAL AGREEMENT ON GROUNDBREAKING PARTNERSHIP

The President of the European Commission Ursula von der Leyen and her counterparts from four Mercosur countries (Brazilian President Lula, Argentinian President Milei, Paraguayan President Peña, and Uruguayan President Lacalle Pou) finalised negotiations for a groundbreaking EU-Mercosur partnership agreement. This agreement comes at a critical time for both sides, presenting opportunities for major mutual gains through strengthened geopolitical, economic, sustainability and security cooperation. The proposed EU-Mercosur agreement is composed of a political and cooperation pillar, and a trade pillar. The end of negotiations constitutes the first step in the process towards conclusion of the agreement.

SCHENGEN: COUNCIL DECIDES TO LIFT LAND BORDER CONTROLS WITH BULGARIA AND ROMANIA

EU member states have decided to remove checks on persons at the internal land borders with and between Bulgaria and Romania from 1 January 2025. Since their accession to the EU, Bulgaria and Romania have applied parts of the Schengen legal framework (the Schengen acquis), including those relating to external border controls, police cooperation and the use of the Schengen Information System. On 30 December 2023 the Council adopted a decision to apply, from 31 March 2024, the remaining parts of the Schengen acquis and to abolish checks on persons at internal air and sea borders.

TERESA ANJINHO ELECTED AS NEW EUROPEAN OMBUDSMAN

The European Parliament backed Teresa Anjinho as the European Ombudsman for a five-year mandate, with the support of 344 MEPs in a secret plenary vote. After two rounds of voting, Teresa Anjinho secured the necessary majority of votes cast. Six candidates participated in the first and second ballots: Teresa Anjinho (Portugal), Emilio De Capitani (Italy), Marino Fardelli (Italy), Julia Laffranque (Estonia), Claudia Mahler (Austria), and Reinier van Zutphen (the Netherlands).

Source: website of the European Commission

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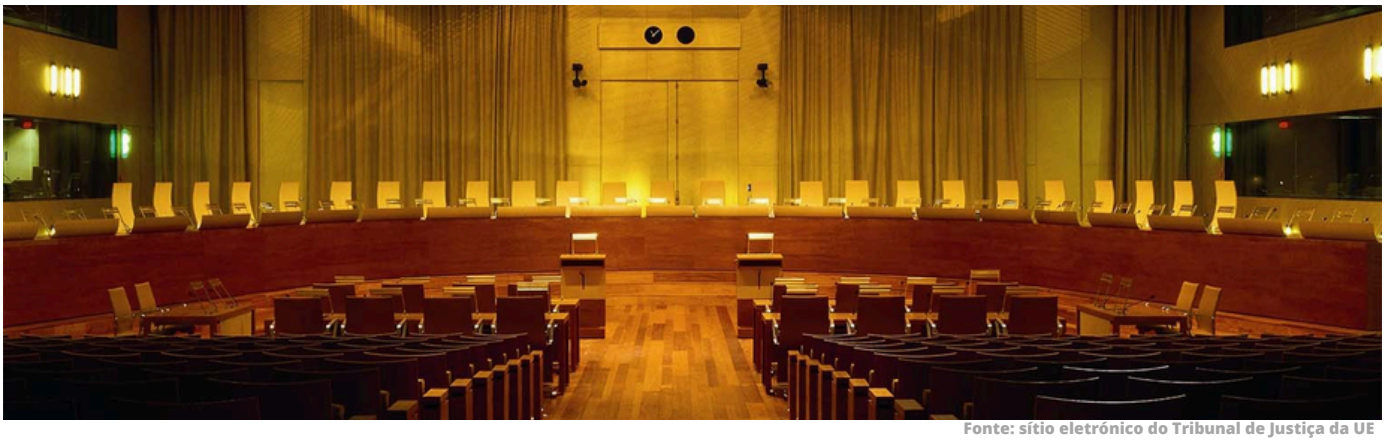
FIRST ACTION BROUGHT UNDER THE SUBSIDIARITY PROTOCOL BY THE FRENCH NATIONAL ASSEMBLY, CONTESTING REGULATION ON ASYLUM AND MIGRANT MANAGEMENT

On 14 August, the Assemblée nationale de la République française brought an action (C-553/24) against the European Parliament and the Council of the European Union, the first action under Protocol (No 2) of the TEU on the application of the principles of subsidiarity and proportionality. In essence, the applicant claims that Regulation (EU) 2024/1351 exceeds the competences of the institutions of the European Union and is in breach of the principle of subsidiarity as defined and guaranteed by Articles 4 and 5 TEU. In the applicant's view, the 'relocation' mechanism established by the contested regulation will prevent the Member States from performing their essential functions within the meaning of Article 4 TEU, in particular maintaining law and order and safeguarding national security. Member States are likely to find themselves de facto in a situation which will prevent them from effectively relying on the 'national security clause'.



Fonte: sítio eletrónico do Tribunal de Justiça da UE

COURT OF JUSTICE SETS ASIDE JUDGMENT OF GENERAL COURT UPHOLDING REFERRAL OF EXAMINATION OF ILLUMINA'S ACQUISITION OF GRAIL TO THE COMMISSION

On 3 September, the Court of Justice of the EU delivered its judgment in Illumina v Commission and Grail v Commission (Joined cases C-611/22 P and *C-625/22 P*), setting aside the judgment of the General Court of 13 July 2022, Illumina v Commission (T-227/21). The Court of Justice conducted an extensive literal, historical, contextual, and teleological interpretation of Article 22 EU Merger Regulation. It found that the General Court erred in law in its interpretation, by holding that the Member States may, under the conditions set out in Article 22 EUMR, make a request under that provision irrespective of the scope of their national rules on the ex ante control of concentrations. In this regard, among other things, the Court of Justice noted that, '*even assuming that the developments observed in some markets, involving, in particular, innovative undertakings which play or are capable of playing an important competitive role despite the fact that they generate little or no turnover at the time of the concentration, warrant extending the sphere of transactions that merit prior examination, it is open to the Member States to revise downwards their own thresholds determining competence based on turnover, as laid down by national legislation*.' Accordingly, the Court of Justice set aside the judgment under appeal. Consequently, the Court annulled the decisions of the Commission accepting the requests of the national competition authorities to examine the concentration.

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COURT OF JUSTICE DELIVERED ITS JUDGMENT IN *NOVO BANCO AND OTHERS*

On 5 September, the Court of Justice delivered its judgment in Novo Banco and Others (Joined cases C-498/22 to C-500/22). The Spanish Supreme Court was uncertain about the obligation on the Spanish courts to recognise the effects of the reorganisation measures adopted by the Bank of Portugal, because those measures were not published as provided for in the directive. In its judgment, the Court of Justice holds that a failure, by the authorities of the home Member State (Portugal), to publish the measures does not lead them to being invalid or to their effects being unenforceable in the host Member State (Spain). Where the measures are not published, the law of the host Member State must enable the persons affected in the host Member State to lodge an appeal against the reorganisation measures within a reasonable period from the time at which they were notified of those measures or at which they became aware of or should reasonably became aware of them. The Court also hold that the recognition in Spain of the effects of the reorganisation measures adopted in Portugal, which provide that the obligation to pay sums payable as a result of pre-contractual or contractual liability is retained in the liabilities of Banco Espírito Santo SA, does not appear to infringe the principle of legal certainty, the right to property or the principle of consumer protection. In that regard, the Court notes in particular that those measures meet the general interest objective of ensuring the stability of the banking system and preventing a systemic risk, which is also pursued by the European Union.

COURT OF JUSTICE DELIVERED ITS JUDGMENT IN *GOOGLE AND ALPHABET V COMMISSION (GOOGLE SHOPPING)*

The Grand Chamber of the Court of Justice delivered its judgment in *Google and Alphabet v Commission (Google Shopping)* (*C-48/22 P*), an appeal case against the judgment of the General Court in *Google and Alphabet v Commission (Google Shopping)* (T-612/17). The Court of Justice dismissed Google's appeal, upholding the General Court's judgment and the decision of the Commission. The Court recalled that EU law does not sanction the existence per se of a dominant position, but only the abusive exploitation thereof. In particular, the conduct of undertakings in a dominant position that has the effect of hindering competition on the merits and is thus likely to cause harm to individual undertakings and consumers is prohibited. That conduct covers any practice which has the effect of hindering, through means other than competition on the merits, the maintenance or growth of competition in a market in which the degree of competition is already weakened, precisely because of the presence of one or more undertakings in a dominant position. The Court of Justice states that it is true that it cannot be considered that, as a general rule, a dominant undertaking which treats its own products or services more favourably than it treats those of its competitors is engaging in conduct which departs from competition on the merits irrespective of the circumstances of the case. However, it found that the General Court correctly established that, in the light of the characteristics of the market and the specific circumstances of the case, Google's conduct was discriminatory and did not fall within the scope of competition on the merits.

Source: website of the CJEU

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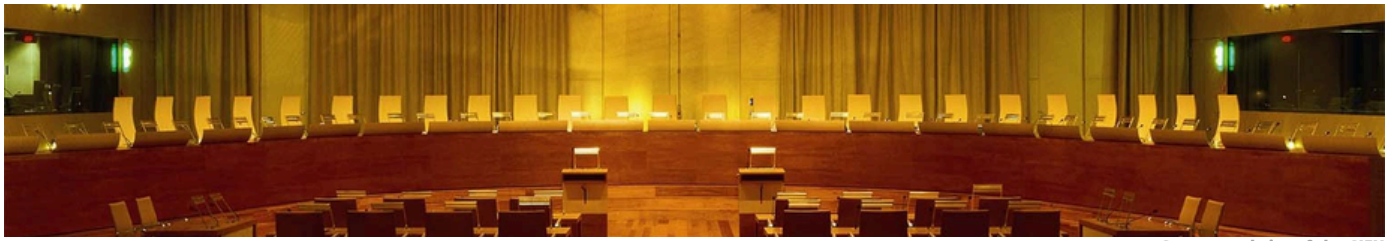
COURT OF JUSTICE DELIVERED ITS JUDGMENT IN *BOOKING.COM AND BOOKING.COM (DEUTSCHLAND)*

On 19 September, the Court of Justice delivered its judgment in Booking.com and Booking.com (Deutschland) (C-264/23), a case concerning a prohibition imposed by Booking.com on hotel establishments from offering overnight stays at prices lower than those offered on Booking.com. The Court emphasised that the provision of online hotel reservation services by platforms such as Booking.com has had a neutral, or even positive, effect on competition. Those services enable consumers, on the one hand, to have access to a wide range of accommodation offers and to compare those offers simply and quickly according to various criteria and accommodation providers, on the other hand, to acquire greater visibility. However, it has not been established that price parity clauses, whether wide or narrow, first, are objectively necessary for the implementation of that main operation and, second, are proportionate to the objective pursued by it. In that regard, so far as concerns wide parity clauses, it must be stated that such clauses, in addition to the fact that they are liable to reduce competition between the various hotel reservation platforms, carry the risk of ousting small platforms and new entrants. The same is true of narrow parity clauses. Although those give rise, prima facie, to a less restrictive effect on competition and are intended to address the risk of free-riding, they do not appear to be objectively necessary to ensure the economic viability of the hotel reservation platform. Since parity clauses in agreements between online hotel reservation platforms and providers of accommodation services online are not ancillary to those agreements, they do not fall outside the scope of Article 101 TFEU.

COURT OF JUSTICE DELIVERED ITS JUDGMENT IN *FIFA*

On 4 October, the Court of Justice delivered its judgment in *FIFA* (C-650/22), clarifying that certain FIFA transfer rules governing contractual relations between football players and clubs in situations of termination 'without just cause' of the employment with the former club constitute a restriction of the free movement of workers under Article 45 TFEU. The rules in question are such as to impede the free movement of professional footballers wishing to develop their activity by going to work for a new club, established in the territory of another Member State of the European Union. Those rules impose considerable legal risks, unforeseeable and potentially very high financial risks as well as major sporting risks on those players and clubs wishing to employ them which, taken together, are such as to impede international transfers of those players. Although restrictions on the free movement of professional players may be justified by overriding reasons in the public interest consisting in ensuring the regularity of interclub football competitions, by maintaining a certain degree of stability in the player rosters of professional football clubs, in the present case the rules in question nevertheless seem, subject to verification by the referring court, in a number of respects, to go beyond what is necessary to pursue that objective. The Court also found these rules to restrict competition by object under Article 101(1) TFEU. As regards a justification under Article 101(3), the Court noted that, subject to verification by the referring court, these rules do not appear to be indispensable or necessary.



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COURT OF JUSTICE DELIVERS ITS JUDGMENT IN *KUBERA*

On 15 October, the Court of Justice delivered its judgment in *KUBERA* (C-144/23), a case concerning the obligation to refer questions to the Court of Justice for a preliminary ruling, under Article 267(3) TFEU, read in the light of Article 47 of the Charter of Fundamental Rights. The Court of Justice held that proceedings for leave to appeal for a preliminary ruling to the national supreme court do not relieve that court of its obligation to examine, in the context of those proceedings, whether a question of Union law raised in support of the application for leave to appeal should be referred to the Court for a preliminary ruling. In doing so, the Court highlighted that the concerned Slovenian legislation may lead to a situation in which a question concerning the interpretation or validity of a provision of Union law, although raised before the Supreme Court, is not referred to the Court, in breach of Article 267 TFEU. Such a situation, according to the Court, is liable to undermine the effectiveness of the system of cooperation between the national courts and the Court of Justice and, in particular, the attainment of the objective of preventing the establishment, in any Member State, of national case law, which does not comply with Union law.

Source: website of the CJEU

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