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THE IMPACT OF THE CJEU'S CASE LAW ON UNFAIR CONTRACT TERMS AND RESPONSIBLE LENDING ON THE *RES JUDICATA* PRINCIPLE IN ESTONIAN LAW[1]

Key words: unfair contract terms, principle of responsible lending, *res judicata* principle, consumer law

Summary

The CJEU has consistently held that, while *res judicata* serves legal certainty and the proper administration of justice, national procedural rules must nevertheless comply with the principles of equivalence and effectiveness. Accordingly, the CJEU requires national courts to examine *ex officio* both the unfairness of standard contract terms under Directive 93/13/EEC and compliance with the creditor's creditworthiness assessment obligations under Directive 2008/48/EC. Where such a review has not been conducted prior to the finality of a judgment, EU law requires that it be possible to carry it out in subsequent proceedings, a requirement that Estonian law does not always satisfy.

The authors of this paper analyse the effect of the CJEU practice on Estonian civil, bankruptcy and enforcement procedures. It demonstrates that the review of final judgments – the only mechanism in Estonian law capable of retroactively removing the effects of *res judicata* – is unavailable where the relevant circumstances existed at the time of the original decision. As EU law does not oblige national courts to interpret domestic law *contra legem*, effective consumer-protection review must instead be ensured in enforcement proceedings or other subsequent and separate procedures.

Although Estonian enforcement law does not expressly permit deviation from *res judicata*, such deviation is possible through interpretation, particularly under § 221 of the Code of Enforcement Procedure. By contrast, bankruptcy proceedings reveal a direct conflict: Estonian law mandates the unconditional recognition of claims based on final judgments, thereby excluding any review for consumer protection. This approach is incompatible with CJEU case law and calls for legislative amendment.

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Introduction

The CJEU has frequently emphasised the importance of the principle of *res judicata* in maintaining the stability of the law and legal relations, as well as ensuring the proper administration of justice.[2] Member States' procedural rules must, however, respect the principles of equivalence and effectiveness, including not making the exercise of subjective rights granted under the European Union legal order impossible or excessively difficult in practice.[3] Therefore, the CJEU has stated that a national court is required to assess, of its own motion (*ex officio*), whether a contractual term falling within the scope of Directive 93/13/EEC[4] (hereinafter the UCTD) is unfair[5] and also whether there has been a failure to comply with the creditor's pre-contractual obligation to assess the consumer's creditworthiness[6] under Directive 2008/48/EC[7] (hereinafter – CCD). An effective review of the possible unfairness of contractual terms cannot be guaranteed if the force of *res judicata* extends to judicial decisions that do not indicate such a review.[8] The rights of the consumers are, however, protected if, in the course of the first set of judicial proceedings, the competent court has evaluated the possible unfair nature of the contractual terms.[9] The CJEU has expressed its views on the principle of *res judicata* in relation to the validity of standard terms and conditions and has not explicitly stated that the same principles apply to the assessment of the adequacy of creditworthiness checks. Given the similar objectives of the UCTD and the CCD – to ensure a high level of consumer protection,[10] in order to contribute to the development of a well-functioning internal market, the authors of this article are of the opinion that the relevant principles are also transferable to the assessment of the adequacy of consumer creditworthiness

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2 CJEU judgment of 18 December 2025 in case No. C-320/24 Soledil Srl, p. 32; 9 April 2024 in case No. C-582/21 Profi Credit Polska S.A., pp. 35–37; 17 May 2022 in case No. C-600/19 Ibercaja Banco, p. 41; 7 November 2024 in case No. C-178/23 ERB New Europe Funding II, p. 32.

3 CJEU C-320/24 Soledil Srl, p. 26; 24 October 2018 in case No. C-234/17 XC, p. 22; 5 March 2020 in case No. C-679/18 OPR-Finance, p. 32; C-582/21 Profi Credit Polska S.A., p. 40.

4 Council Directive 93/13/EEC, 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 21.4.1993, pp. 29–34.

5 CJEU C-320/24 Soledil Srl, p. 24; 4 June 2009 in case No. C-243/08 Pannon, p. 35; 30 May 2013 in case No. C-488/11 Asbeek Brusse, pp. 45, 46,

6 CJEU C-679/18 OPR-Finance, p. 23.

7 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. OJ L 133, 22.05.2008, pp. 66–92.

8 CJEU C-600/19 Ibercaja Banco, p. 50; C-178/23, ERB New Europe Funding II, p. 38.

9 CJEU C-320/24, Soledil Srl, p. 34; C-178/23, ERB New Europe Funding II, p. 38.

10 With regard to the UCTD see Schulte-Nolke H. The Objectives of Directive 93/13/EEC on Unfair Contract Terms: An Overview after 30 Years of Case Law. European Review of Private Law, No. 3, 2023, pp. 317, 319. With regard to the CCD – Morello F. From Consumer Credit to Consumer Credits? Merits and Flaws of the 2008/48/EC Directive's Reform Proposal. European Review of Private Law, No. 4, 2023, p. 847 and CJEU judgment of 11 January 2024 in case No. C-755/22 Narokuj s.r.o., p. 33 and the case law referred to therein.

checks.[11] It is up to Member States to introduce national procedural principles that allow effective judicial protection of consumers in these matters.

In Estonian law, the principle of *res judicata* is an integral part of the principle of legal certainty,[12] which requires that court decisions be reliable and remain in force. This means that once a court decision has resolved a legal dispute, it is generally not permitted to reopen the same dispute.[13] The CJEU has also interpreted the principle of *res judicata* in a similar manner.[14] However, in certain limited cases, reopening a case is permitted under the Estonian Code of Civil Procedure[15] (hereinafter CCP), primarily through review.[16]

The mandatory consumer protection provisions of the UCTD and CCD have been transposed into Estonian law through the relevant provisions of the Law of Obligations Act[17] (hereinafter – LOA). Pursuant to § 403^4(1) LOA, a creditor must adhere to the principle of responsible lending during the pre-contractual negotiation phase, in particular by properly assessing the consumer's creditworthiness. In the event of a breach of this obligation, the creditor may not charge the consumer a higher interest rate for the use of credit than the statutory interest rate provided for in § 94 of the LOA[18] (i.e., the interest agreement and agreements for other fees contained in the contract are void). Art. 6(1) of the UCTD has been implemented into Estonian law by § 42(1)–(3) of LOA, which states that unfair standard terms (e.g., excessive late payment interest, grounds for termination of the contract) are void. It is the duty of the Member States' courts to apply EU law in court proceedings. The Estonian Supreme Court has stressed that in doing so, the court must review the transaction's validity *ex officio*.[19]

This article examines the impact of the CJEU's case law on the operation of the *res judicata* principle in Estonian civil, enforcement, and bankruptcy proceedings. It assesses whether the existing procedural framework ensures

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[11] The similarity of the objectives of the UCTD and the CCD is also referred by the CJEU in its judgment of 21 April 2016 in case No. C-377/14 Radlinger and Radlingerova, pp. 62–63.

[12] Eesti Vabariigi pohiseadus. Kommenteeritud valjaanne [Constitution of the Republic of Estonia. Annotated edition]. Iuridicum 2020, § 10 comm. 46.

[13] Eesti Vabariigi pohiseadus. Kommenteeritud valjaanne, § 10 comm. 54.

[14] CJEU C-320/24 Soledil Srl, p. 32; C-582/21 Profi Credit Polska S.A., pp. 35–37; C-600/19 Ibercaja Banco, p. 41; C-178/23 ERB New Europe Funding II, p. 32.

[15] Code of Civil Procedure. Available: https://www.riigiteataja.ee/en/eli/510042025001/consolide [last viewed 12.01.2026].

[16] See, e.g. CJEU judgment of 17 May 2022 in case No. C-869/19 Unicaja Banco and 17 May 2022 in case No. C-725/19 Impuls Leasing Romania.

[17] Law of Obligations Act. Available: https://www.riigiteataja.ee/en/eli/525112025001/consolide [last viewed 12.01.2026].

[18] Since 01.07.2025 the statutory interest rate is 2.15%, see https://www.eestipank.ee/volasuhete-intressimaar [last viewed 12.01.2026].

[19] Order of the Civil Chamber of the Supreme Court 24 November 2023 in case No. 2-21-13098, p. 13. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-21-13098/50 [last viewed 12.01.2026]; Judgment of the Civil Chamber of the Supreme Court 28 January 2015 in case No. 3-2-1-141-14, p. 18. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-141-14 [last viewed 12.01.2026].

the level of consumer protection required by EU law against unfair standard terms and irresponsible lending.[20] The analysis is confined to the interaction between EU law and Estonian statutory provisions and does not address issues of constitutional review or the compatibility of EU law with the fundamental principles of the Estonian Constitution.

1. Review of judgments that have entered into effect

Under Estonian law, the principal mechanism allowing a final court judgment to be challenged is review of judgments that have entered into effect (§§ 702-710 CCP). Review permits the retroactive removal of the binding force of a final judgment,[21] but is available only on the exceptional grounds exhaustively listed in § 702(2) CCP. These grounds do not include the court's failure, in the original proceedings, to assess *ex officio* either the unfairness of standard contract terms or compliance with the creditor's obligation to assess the consumer's creditworthiness.

In its judgment in Profi Credit Polska, the CJEU held that where a national court has failed to carry out an *ex officio* review of unfair contract terms in the initial proceedings, it must be examined whether national provisions governing review can be interpreted broadly so as to permit such assessment at a later stage.[22] Where necessary, national courts are required to depart from established case law if it is based on an interpretation incompatible with the objectives of EU directives.[23] Therefore, it must be assessed whether the provisions of Estonian law governing the grounds for review can be interpreted in such a way that a review would also be permitted in cases where the unfair nature of the standard terms or the adequacy of the creditworthiness assessment has not been assessed in the previous court proceedings.

Pursuant to § 702(2)(9) CCP, review is permitted only where a material circumstance existed at the time of the judgment but was unknown and could not have been known to the party. Neither the existence of potentially unfair standard terms nor deficiencies in the creditor's creditworthiness assessment can, as a rule, satisfy this condition, as these circumstances predate the judgment and are not unknown to the consumer. Nor does Estonian review procedure allow reopening a case on the basis of an alleged misapplication of the law.[24] Therefore, it must be

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[20] The limitations applicable to the principle of res judicata in disputes concerning consumer contracts have also been analysed in more detail in Kalamees P., Saare K. Kohtulahendi oigusjou piirangud tarbija(krediidi) lepingute naitel: Euroopa Liidu oiguse moju Eesti menetlusoiguse normidele [Res judicata principle in the case of consumer (credit) agreements: the impact of European Union law on Estonian procedural law norms]. Juridica, No. 8–9, 2025, pp. 533–552.

[21] Kove V. et al. (eds.). Tsiviilkohtumenetluse seadustik III. Kommenteeritud valjaanne [Code of Civil Procedure III. Annotated edition]. Juura, 2018, Chapter 68, introduction, p. 1308.

[22] CJEU C-582/21 Profi Credit Polska S.A., p. 84.

[23] CJEU C-582/21 Profi Credit Polska S.A., pp. 65 and 84.

[24] Kove V., et al. (eds.). 2018, § 702 comm. 3.2.10.e.

concluded that the rules of the CCP generally do not permit a case to be reviewed if the court has not, *ex officio,* assessed the potentially unfair nature of the standard terms in the previous proceedings and has not verified whether the creditor has properly assessed the consumer's creditworthiness.

Although the CJEU has referred to the need to interpret the grounds for review in national law broadly as a primary solution, it is not possible to interpret the aforementioned provisions of the CCP in accordance with the directive, because their purpose is clearly to prevent a situation where proceedings would be opened on grounds that already existed at the time of the initial proceedings and which the party could have relied on earlier. The CJEU does not oblige national courts to interpret the possibilities for review *contra legem* if an expansive interpretation is not possible due to the limits set by general principles of law. In this case, the principle of effectiveness requires that the protection of consumers' rights be ensured in the enforcement proceedings or in subsequent separate proceedings.[25] The decision on whether it is possible to interpret the rules of a Member State without giving a *contra legem* interpretation must be made by a national court.[26] Since, under Estonian law, it is problematic to consider the court's failure to check the validity of the standard term and the consumer's creditworthiness assessment as grounds for reviewing the court decision, the possibilities for protecting consumer rights in the enforcement proceedings of the relevant court decision must be assessed below.

2. Claim for declaring compulsory enforcement impermissible

According to the case law of the CJEU, the principle of effective judicial protection requires that the court involved in enforcement proceedings be able to assess, including for the first time, whether contractual terms underlying an enforceable claim are unfair.[27] In assessing compliance with the principle of effectiveness, national procedural rules must be considered as a whole, while EU law does not require courts to compensate entirely for a consumer's complete inaction in earlier proceedings.[28]

It can be concluded that if the court that made the decision in a consumer contract claim has not provided a summary of the reasons for the decision or warned of the negative consequences of failing to submit an objection within the time limit, the court handling the enforcement of the enforcement document must be able to exercise *ex officio* control.

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[25] CJEU C-582/21, Profi Credit Polska S.A., p. 78.

[26] CJEU C-582/21, Profi Credit Polska S.A., p. 64.

[27] CJEU judgment of 17 May 2022 in joined cases No. C-693/19 and C-831/19 SVP Projekt 1503 Srl, p. 66; 29 February 2024 in case No. C-724/22 Investcapital, p. 52; C-582/21, Profi Credit Polska S.A., p. 84; C-600/19 Ibercaja Banco, pp. 49 and 52.

[28] CJEU C-600/19 Ibercaja Banco, p. 44.

It needs to be clarified in which cases an Estonian court may exercise such control. One option for the consumer is to lodge a complaint with the bailiff under § 217(1) of the Estonian Code of Enforcement Procedure[29] (hereinafter – CEP). If the bailiff does not satisfy the complaint, the consumer may appeal to the district court. If the debtor does not submit a complaint to the bailiff within the prescribed period (10 days), they lose the right to subsequently rely on circumstances that they could have presented in the complaint (§ 217(6) CEP).

An alternative option for the consumer is to file a claim for declaring compulsory enforcement to be impermissible (§ 221 CEP). This is because enforcement proceedings are formal proceedings, and there is no competence to assess the substance of the claim arising from the enforcement document. In accordance with the principle of formalisation, the enforcement officer must mainly verify the authenticity of the enforcement document submitted for enforcement.[30] If the enforcement document is a court decision, then, as a rule, an action for declaring enforcement inadmissible can only be based on objections that have arisen after the court decision has entered into force (§ 221(2) CEP).[31]

The Estonian Supreme Court has repeatedly emphasised that it is not possible to challenge the facts established in an earlier decision with an action for declaring enforcement inadmissible.[32] The purpose of § 221(2) CEP is to prevent situations where a dispute that has been resolved by a final court decision is reopened in enforcement proceedings, and therefore, only factual events that have occurred after the entry into force of the decision that is the basis for enforcement can be taken into account.[33] Since the standard terms were included in the contract before the commencement of court proceedings, and if they are unfair, this circumstance also existed before the initial court decision entered into force. The creditor must also verify the consumer's creditworthiness before concluding the credit agreement with them. Therefore, this circumstance also occurred before the payment order or default judgment, which is the enforcement document, was issued.

However, the Estonian Supreme Court has taken the position that it is possible to file an action for declaring compulsory enforcement inadmissible based on

[29] Code of Enforcement Procedure. Available: https://www.riigiteataja.ee/en/eli/517122025006/consolide [last viewed 12.01.2026].

[30] Judgment of the Civil Chamber of the Supreme Court of Estonia 20 September 2018 in case No. 2-17-14364, p. 10.2. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-17-14364/20 [last viewed 12.01.2026].

[31] For more details on the compliance of this regulation with the UCTD, see Kalamees P., Sein K. Case Law of the Court of Justice of European Union on Unfair Contract Terms Directive: Implications on Estonian Domestic Law. International Comparative Jurisprudence, Vol. 3, No. 1, 2017, pp. 122-124.

[32] Order of the Civil Chamber of the Supreme Court 17 June 2009 in case No. 3-2-1-64-09, p. 9. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-64-09 [last viewed 12.01.2026]; Judgment of the Civil Chamber of the Supreme Court of Estonia 21 June 2017 in case No. 3-2-1-64-17, p. 10. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-64-17 [last viewed 12.01.2026].

[33] Order of the Civil Chamber of the Supreme Court of Estonia 4 May 2021 in case No. 2-19-13236, p. 10.1. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-19-13236/44 [last viewed 12.01.2026].

§ 221(1) CEP even if the basis for such an action arose during the court proceedings, but it was not possible for reasons independent of the party to the proceedings to enforce it in such a way that the court could have taken a position based on the claim in its judgment.[34] In some instances, applying the restriction on raising objections to the inadmissibility of enforcement may also be contrary to the principle of good faith. This is the case, for example, when a claim arising from an enforceable court decision is enforced, which was fulfilled before the enforcement document became enforceable, but the debtor does not rely on its fulfilment in court proceedings, even though this would have been possible. Additionally, the creditor had acted inconsistently before the court decision took effect.[35] Thus, in certain exceptional cases, the claimant may also raise objections to a court judgment that were already present before the court judgment entered into force.

Based on the aforementioned rulings of the CJEU, such an exceptional case should also include a situation where the enforceable claim is based on a consumer contract, the validity of which cannot be verified from the enforceable ruling.[36] This interpretation is also supported by the fact that, in situations where *ex officio* control is not apparent from the decision itself, it is difficult for the consumer to assess whether they need to challenge the decision consciously. If the court has exercised proper control in making the initial decision (and this is also reflected in the court decision), the consumer is not permitted to file an action for declaring the enforcement inadmissible. If the court has performed an effective review of whether contractual terms are unfair (and it is also reflected in the judgment), the consumer is not permitted to file an action for declaring the enforcement impermissible. This interpretation aligns with the principle that a result unfavourable to the consumer cannot constitute a circumstance that could call into question the principle of *res judicata*.[37]

Accordingly, where a consumer brings an action for declaring enforcement inadmissible, or challenges the bailiff's actions, and the enforceable decision does not demonstrate that the required consumer-protection review was conducted, the Estonian court must verify these circumstances *ex officio*. Interpreted in this manner, Estonian enforcement law can ensure the effectiveness of the rights conferred on consumers by the UCTD and the CCD. Nevertheless, the consumer's ability to invoke these safeguards does not follow clearly from the current wording

[34] Judgment of the Civil Chamber of the Supreme Court of Estonia 15 November 2023 in case No. 2-22-9401, p. 14.2. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-22-9401/29 [last viewed 12.01.2026]; Order of the Civil Chamber of the Supreme Court of Estonia 4 May 2021 in case No. 2-19-13236, p. 11.2. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-19-13236/44 [last viewed 12.01.2026].

[35] Order of the Civil Chamber of the Supreme Court of Estonia 4 May 2021 in case No. 2-19-13236, p. 11.2. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-19-13236/44 [last viewed 12.01.2026].

[36] CJEU C-600/19 Ibercaja Banco, p. 52; C-582/21 Profi Credit Polska S.A., pp. 80-81.

[37] CJEU C-178/23 ERB New Europe Funding II, p. 40.

of the law. For reasons of legal certainty, an amendment of § 221 CEP would therefore be desirable.

It should be noted that if the consumer does not file an action to declare the enforcement inadmissible or lodge a complaint against the bailiff's actions or decision, Estonian law does not grant the level of protection to the consumers as deemed by the aforementioned directives. Based on the principle of formalisation of enforcement proceedings, the bailiff must first and foremost verify the authenticity of the document submitted for enforcement,[38] and Estonian law does not provide for a separate enforcement judge who would supervise the compulsory enforcement of enforcement documents as part of their official duties.

3. Bankruptcy proceedings

The most acute tension between the principle of *res judicata* and EU consumer-protection law arises in Estonian bankruptcy proceedings. Pursuant to the Estonian Bankruptcy Act[39] (hereinafter BA) § 100^3(4)(1), claims arising from final court judgments must be recognised unconditionally, thereby precluding the bankruptcy court from examining *ex officio* either the validity of standard contract terms or compliance with the creditor's obligation to assess the consumer's creditworthiness.

The CJEU has taken the position that national legislation which provides that, in insolvency proceedings related to natural persons, once the list of claims has been approved by a judicial authority, which has not examined the possible unfair nature of the standard terms, and proceedings have been commenced before the bankruptcy court, the latter is bound by that list, are contrary to the UCTD. The CJEU has also noted that in such cases, the bankruptcy court must, *ex officio,* assess whether the standard terms are unfair.[40]

Although § 100^3(4)(1) BA provides for the unconditional recognition of a claim arising from a final court judgment, and the Estonian Supreme Court has taken the same approach in its earlier case law,[41] it is questionable whether this applies where a final judgment rendered in respect of a claim arising from a consumer credit agreement does not reveal that the court, in issuing the judgment, examined the validity of standard contract terms or compliance with the principle

[38] Judgment of the Civil Chamber of the Supreme Court of Estonia 20 September 2018 in case No. 2-17-14364, p. 10.2.

[39] Bankruptcy Act. Available: https://www.riigiteataja.ee/en/eli/501122025004/consolide [last viewed 12.01.2026].

[40] CJEU judgment of 3 July 2025 in case No. C-582/23 Wiszkier, pp. 56-58.

[41] Order of the Civil Chamber of the Supreme Court of Estonia 23 March 2023 in case No. 2-21-5718, p. 16. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-21-5718/35 [last viewed 12.01.2026]; Order of the Civil Chamber of the Supreme Court of Estonia 24 May 2023 in case No. 2-20-7904, p. 16. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-20-7904/99 [last viewed 12.01.2026].

of responsible lending.[42] If the creditor's claim were not based on an enforceable court judgment, the substantiation of the claim – including the validity of standard terms and compliance with the principle of responsible lending – would first have to be reviewed by the bankruptcy trustee when compiling the list of creditors.

In more recent case law of Estonian lower courts, the position has been adopted that an interpretation of § 100^3(4)(1) BA according to which a court may, without any additional review, deem a claim to be recognised without defence based on that provision – where the claim has been satisfied by a prior final court decision and is based on a legal relationship bearing the characteristics of a consumer credit agreement – is not compatible with the case law of the CJEU, the CCD, or the UCTD, if the earlier court decision does not demonstrate that the court examined the absence of grounds for invalidity of the underlying transaction. Read in conjunction with § 100^3(1) BA, this means that the court must verify, both *ex officio* and based on submissions by other parties to the proceedings, whether the court decision submitted in respect of a consumer-credit-type claim contains sufficient reasoning, at least in summary form, demonstrating that the required review was carried out. Where such reasoning is not apparent from the court's decision, the court must conduct the requisite review itself.[43]

One may agree with the view that the above interpretation is, in principle, consistent with the spirit of EU law as well as with the relevant case law;[44] however, it is questionable whether interpretation can be used to overcome a conflict with the applicable national law (i.e. § 100^3(4)(1) BA). The situation constitutes a rather clear case of *contra legem* interpretation. While it is indeed the task of the courts to interpret the relevant provisions of national law in conformity with applicable EU law, such an obligation cannot serve as a basis for interpreting national law *contra legem*.[45]

It must therefore be concluded that the Estonian bankruptcy regime requires legislative amendment. Claims arising from final court judgments rendered in proceedings in which the validity of a consumer contract was not reviewed must be excluded from the category of claims deemed to be recognised without defence. Pending such amendment, Estonian courts face the unresolved question whether § 100^3(4)(1) BA should be disapplied due to its incompatibility with EU law – a question that ultimately depends on the limits imposed by the Estonian Constitution and its fundamental principles.

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[42] See Order of the Civil Chamber of the Supreme Court of Estonia 18 November 2025 in case No. 2-24-12833. Available in Estonian: https://www.riigikohus.ee/et/lahendid?asjaNr=2-24-12833/27 [last viewed 12.01.2026].

[43] Order of Tallinn Circuit Court 28 March 2025 in case No. 2-24-1214, p. 7.5. Available in Estonian: https://www.riigiteataja.ee/kohtulahendid/detailid.html?id=400325247 [last viewed 12.01.2026].

[44] CJEU C-582/23 Wiszkier, pp. 57-58.

[45] CJEU C-582/21 Profi Credit Polska S.A., p. 63; C-679/18 OPR-Finance, p. 45.

Conclusions

The case law of the Court of Justice of the European Union has significantly reshaped the relationship between the principle of *res judicata* and the requirements of effective consumer protection under EU law. While national procedural autonomy permits Member States to structure their judicial systems, that autonomy is constrained by the principles of equivalence and effectiveness, which require courts to examine *ex officio* both the unfairness of standard contract terms and compliance with creditworthiness assessment obligations. Where such review has not been carried out before a judgment becomes final, EU law requires that it be possible to conduct it in subsequent proceedings.

In Estonian law, review of judgments that have entered into effect does not generally provide an avenue for remedying the failure to conduct the required consumer-protection review, as it is limited to circumstances unknown at the time of the original decision and does not permit *contra legem* interpretation. The effectiveness of EU consumer law is therefore safeguarded primarily through enforcement proceedings, where existing procedural rules can be interpreted so as to allow *ex officio* judicial review in cases involving consumer contracts.

Although the rules governing enforcement proceedings in Estonia do not expressly provide the court with the possibility of departing from the principle of *res judicata*, such a departure is nevertheless possible through interpretation of the relevant provisions. In particular, § 221 of CEP should be interpreted as allowing an action seeking a declaration of inadmissibility of enforcement also in cases where the enforceable claim is based on a consumer contract and the enforceable decision does not disclose that the validity of that contract was reviewed. Such an interpretation is also supported by the Estonian Supreme Court's case law. Accordingly, the rights afforded to consumers under the UCTD and the CCD are ensured in Estonian law in enforcement proceedings, provided that the consumer actively seeks judicial protection of those rights, either by challenging the actions of the enforcement agent or by bringing an action for a declaration of inadmissibility of enforcement. It must nevertheless be acknowledged that the consumer's right, in the situation described above, to bring such an action does not follow clearly or unambiguously from the current wording of the law. Greater legal clarity would therefore require an amendment to § 221 CEP.

By contrast, Estonian bankruptcy proceedings reveal a structural incompatibility with EU law. The unconditional recognition of claims arising from final court judgments under § $100^3(4)(1)$ of the BA precludes any consumer-protection review and cannot be reconciled with CJEU case law through interpretation alone. As EU law does not require national courts to engage in *contra legem* interpretation, legislative intervention is necessary. Claims based on final judgments rendered without an assessment of the validity of consumer contracts must be excluded from the category of claims deemed to be recognised without defence. Pending such reform, Estonian courts must confront the unresolved question whether the conflicting provision should be disapplied, a determination

that ultimately turns on the constraints imposed by the Estonian Constitution and its fundamental principles.

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