COURT OF JUSTICE
OF THE EUROPEAN UNION

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MONTHLY CASE-LAW DIGEST
February 2022

I. VALUES OF THE UNION

Judgment of the Court (Full Court) of 16 February 2022, Hungary v Parliament and Council, C-156/21

Link to the complete text of the judgment

Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the European Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU and of the principles of legal certainty, proportionality and equality of Member States before the Treaties

On 16 December 2020, the Parliament and the Council adopted a regulation [1] which establishes a general regime of conditionality for the protection of the Union budget in the case of breaches of the principles of the rule of law in a Member State. In order to attain that objective, the regulation allows the Council, on a proposal from the Commission, to adopt protective measures such as the suspension of payments to be made from the Union budget or the suspension of the approval of one or more programmes to be paid from that budget. [2]

Hungary and Poland each brought an action before the Court of Justice for the annulment of that regulation. They base their respective actions inter alia on the absence of an appropriate legal basis in the TEU and TFEU, the circumvention of the procedure laid down in Article 7 TEU, [3] the European Union having exceeded its powers and on a breach of the principle of legal certainty. In support of their arguments, Hungary and Poland referred to a confidential opinion of the Council Legal Service concerning the initial proposal which led to the regulation, which the Court allowed, despite the Council's objections, on the basis of the overriding public interest in the transparency of the legislative procedure.

In both cases, Hungary and Poland supported each other's action, while Belgium, Denmark, Germany, Ireland, Spain, France, Luxembourg, the Netherlands, Finland, Sweden and the Commission intervened in support of the Parliament and the Council. At the Parliament's request, the Court dealt with the cases pursuant to the expedited procedure. Furthermore, the cases were allocated to the full Court in view of the fundamental importance of the issue they raise regarding the options available under the Treaties to enable the European Union to protect its budget and financial interests in the face of breaches of the principles of the rule of law in the Member States.

The Court finds, in the first place, as regards the legal basis for the regulation, that the procedure laid down by the regulation can be initiated only where there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. In addition, the measures that may be adopted under the regulation relate exclusively to the

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1 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1).

2 The regulation nevertheless safeguards, in such cases, the legitimate interests of final recipients and beneficiaries.

3 Article 7 TEU provides for the possibility of instituting a procedure against a Member State in the event of a serious breach of the Union values or where there is a clear risk of such a breach.

implementation of the Union budget and are all such as to limit the financing from that budget according to the impact on the budget of such an effect or serious risk. Accordingly, the regulation is intended to protect the Union budget from effects resulting, in a sufficiently direct way, from breaches of the principles of the rule of law and not to penalise those breaches as such.

In that regard, the Court points out that compliance by the Member States with the common values on which the European Union is founded – which have been identified and are shared by the Member States and which define the very identity of the European Union as a legal order common to those States – [4] such as the rule of law and solidarity, justifies the mutual trust between those States. Since that compliance is a condition for the enjoyment of all the rights deriving from the application of the Treaties to a Member State, the European Union must be able to defend those values, within the limits of its powers.

On that point, the Court specifies, first, that compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after accession. Secondly, the Court states that the Union budget is one of the principal instruments for giving practical effect, in the European Union's policies and activities, to the fundamental principle of solidarity between Member States and that the implementation of that principle, through the Union budget, is based on the Member States' mutual trust in the responsible use of the common resources included in that budget.

The sound financial management of the Union budget and the financial interests of the Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State. Those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure.

Accordingly, a horizontal "conditionality mechanism", such as that established by the regulation, which makes receipt of financing from the Union budget subject to the respect by a Member State for the principles of the rule of law, is capable of falling within the power conferred by the Treaties on the European Union to establish "financial rules" relating to the implementation of the Union budget.

In the second place, the Court finds that the procedure established by the regulation does not circumvent the procedure laid down in Article 7 TEU and respects the limits of the powers conferred on the European Union.

The purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalise serious and persistent breaches of each of the common values on which the European Union is founded and which define its identity, in particular with a view to compelling the Member State concerned to put an end to those breaches. By contrast, the regulation is intended to protect the Union budget, and applies only in the event of a breach of the principles of the rule of law in a Member State which affects or seriously risks affecting the proper implementation of that budget. Consequently, the procedure under Article 7 TEU and the procedure established by the regulation pursue different aims and each has a clearly distinct subject matter.

Furthermore, since the regulation allows the Commission and the Council to examine only situations or conduct attributable to the authorities of a Member State and which appear relevant to the sound financial management of the Union budget, the powers granted to those institutions by that regulation do not go beyond the limits of the powers conferred on the European Union.

In the third place, as regards Hungary and Poland's argument alleging a breach of the principle of legal certainty, in particular in so far as the regulation does not define the concept of 'the rule of law'

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4 The founding values of the European Union, common to the Member States, contained in Article 2 TEU, include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which, inter alia, non-discrimination, justice, solidarity and equality between women and men prevail.

or its principles, the Court states that the principles set out in the regulation, as constituent elements of that concept, [5] have been developed extensively in its case-law, that those principles have their source in common values which are also recognised and applied by the Member States in their own legal systems and that they stem from a concept of 'the rule of law' which the Member States share and to which they adhere, as a value common to their constitutional traditions. Consequently, the Court finds that the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles.

Furthermore, the Court specifies that the regulation requires, for the adoption of the protective measures which it lays down, that a genuine link be established between a breach of a principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a situation or conduct that is attributable to an authority of a Member State and relevant to the proper implementation of the Union budget. The Court notes that the concept of 'serious risk' is clarified in the EU financial legislation and states that the protective measures that may be adopted must be strictly proportionate to the impact of the breach found on the Union budget. In particular, according to the Court, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of protecting the Union budget as a whole. Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with strict procedural requirements involving inter alia several consultations with the Member State concerned, and concludes that the regulation meets the requirements of the principle of legal certainty.

In those circumstances, the Court dismisses the actions brought by Hungary and Poland in their entirety.

Judgment of the Court (Full Court) of 16 February 2022, Poland v Parliament and Council, C-157/21

Link to the complete text of the judgment

Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the European Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Article 311 TFEU – Article 312 TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU, of the second paragraph of Article 296 TFEU, of Protocol (No 2) on the application of the principles of subsidiarity and proportionality and of the principles of conferral, legal certainty, proportionality and equality of the Member States before the Treaties – Alleged misuse of powers

Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 [6] established a 'horizontal conditionality mechanism' designed to protect the budget of the European Union in the case of breaches of the principles of the rule of law in a Member State. To that end, that regulation allows the Council of the European Union, on a proposal from the European Commission,

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5 Under the regulation, that concept includes the principle of legality implying a transparent, accountable, democratic and pluralistic law-making process, and the principles of legal certainty, prohibition of arbitrariness of the executive powers, effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights, separation of powers, non-discrimination and equality before the law.

6 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1, and corrigendum OJ 2021 L 373, p. 94; 'the contested regulation').

to adopt, subject to the conditions defined by it, appropriate protective measures such as the suspension of payments to be made from the Union budget or the suspension of the approval of one or more programmes to be paid from that budget. The contested regulation makes the adoption of such measures subject to the production of evidence relevant to establishing not only the existence of a breach of the principles of the rule of law, but also the impact of that breach on the implementation of the Union budget.

The contested regulation is part of the continuance of a series of initiatives covering, more generally, the protection of the rule of law in Member States [7] which are designed to provide a response, at EU level, to growing concerns regarding respect by a number of Member States for the common values of the Union as set out in Article 2 TEU. [8]

The Republic of Poland, supported by Hungary, [9] brought an action seeking the annulment of the contested regulation. In support of its claim, it argued, in essence, that that regulation, whilst formally presented as an act forming part of the financial rules referred to in Article 322(1)(a) TFEU in actual fact seeks to penalise any interference by a Member State with the principles of the rule of law, the requirements of which are in any event, insufficiently precise. Poland therefore founded its action, inter alia, on the European Union lacking competence to adopt such a regulation, on account of an absence of legal basis and circumvention of the procedure laid down in Article 7 TEU, together with disregard for the limits inherent in the competences of the European Union and disregard for the principle of legal certainty.

Having been called upon to give a ruling on the competences of the European Union to protect its budget and its financial interests against effects which may result from breaches of the values set out in Article 2 TEU, the Court found that the present case is of fundamental importance, justifying it being attributed to the full formation of the Court. For the same reasons, the European Parliament's request for the case to be dealt with pursuant to the expedited procedure was granted. In those circumstances, the Court dismisses in its entirety the action for annulment brought by Poland.

Findings of the Court

Prior to examining the substance of the action, the Court gives a ruling on the request by the Council for various extracts from Poland's application to be disregarded, in so far as they are based on material taken from a confidential opinion of the legal service of the Council, thereby disclosed without the necessary authorisation. In that regard, the Court confirms that it is, in principle, permissible for the institution concerned to make production for use in legal proceedings of such an internal document subject to prior authorisation. Nonetheless, in the situation where the legal opinion in question relates to a legislative procedure, as in the present case, consideration must be given to the principle of transparency, since the disclosure of such an opinion increases the transparency and openness of the legislative process. Accordingly, the overriding public interest in the transparency and openness of the legislative process prevails, as a rule, over the interest of the institutions in relation to the disclosure of an internal legal opinion. In the present case, given that the Council did not establish that the opinion concerned was particularly sensitive in nature or particularly wide in scope, going beyond the context of the legislative process at issue, the Court accordingly rejects the Council's request.

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7 See, in particular, the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 July 2019, 'Strengthening the rule of law within the Union – A blueprint for action', COM (2019) 343 final, following from the Communication from the Commission to the European Parliament and the Council of 11 March 2014, 'A new EU framework to strengthen the Rule of Law', COM (2014) 158 final.

8 The founding values of the European Union, common to the Member States, set out in Article 2 TEU, include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

9 Hungary also brought an action seeking the annulment of Regulation 2020/2092 (Case C-156/21).

As regards the substance of the matter, in the first place, the Court examines together the pleas alleging that the European Union lacked competence to adopt the contested regulation.

So far as concerns, first of all, the legal basis of the contested regulation, the Court finds that the procedure laid down by that regulation can be initiated only where there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect, or seriously risk affecting, in a sufficiently direct way, the sound financial management of the Union or the protection of its financial interests. In addition, the measures which may be adopted under the contested regulation relate exclusively to the implementation of the Union budget and are all such as to limit the financing from that budget according to the impact on the budget of such an effect or serious risk. Accordingly, the regulation is intended to protect the Union budget from effects resulting, in a sufficiently direct way, from breaches of the principles of the rule of law and not to penalise those breaches as such.

In response to Poland's line of argument that the purpose of a financial rule cannot be to clarify the extent of the requirements inherent in the values referred to in Article 2 TEU, the Court points out that compliance by the Member States with the common values on which the European Union in founded – which have been identified and are shared by the Member States and which define the very identity of the European Union as a legal order common to those States – such as the rule of law and solidarity, justifies the mutual trust between those States. Since that compliance is a condition for the enjoyment of all the rights deriving from the application of the Treaties to the Member State concerned, the European Union must be able to defend those values, within the limits of its powers.

On that point, the Court specifies, first, that compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession. Secondly, the Court states that the Union budget is one of the principal instruments for giving practical effect, in the European Union's policies and activities, to the fundamental principle of solidarity between Member States and that the implementation of that principle, through the Union budget, is based on the Member States' mutual trust in the responsible use of the common resources included in that budget.

The sound financial management of the Union budget and the financial interests of the Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State. Those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure.

Accordingly, a 'horizontal conditionality mechanism', such as that established by the contested regulation, which makes receipt of financing from the Union budget subject to the respect by a Member State for the principles of the rule of law, is capable of falling within the power conferred by the Treaties on the European Union to establish 'financial rules' relating to the implementation of the Union budget. The Court clarifies that the provisions of the contested regulation which identify those principles, which set out situations which may be indicative of a breach of those principles, which clarify the situations or conduct which must be concerned by such breaches and which define the nature and scope of protective measures are constituent elements forming an integral part of such a mechanism which may, where necessary, be adopted.

Next, as regards the complaint alleging circumvention of the procedure laid down in Article 7 TEU, the Court rejects Poland's line of argument that only the procedure laid down in Article 7 TEU grants the institutions of the Union the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU in a Member State. Indeed, in addition to the procedure laid down in Article 7 TEU, numerous provisions of the Treaties, frequently implemented by various acts of secondary legislation, grant the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State.

Furthermore, the Court finds that the purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalise serious and persistent breaches of each of the common values on which the European Union is founded and which define its identity, in particular with a view to compelling the Member States concerned to put an end to those breaches. By contrast, the regulation is intended to protect the Union budget, and applies only in the event of a breach of the principles of the rule of law

in a Member State which affects or seriously risks affecting the proper implementation of that budget. In addition, the procedure laid down in Article 7 TEU and the procedure established by the contested regulation differ as regards their purpose, conditions for initiation, conditions for adoption and for lifting of the measures envisaged and the nature of those measures. Therefore, those two procedures pursue different aims and each has a clearly distinct subject matter. It follows, moreover, that the procedure established by the contested regulation cannot be regarded as seeking to circumvent the limitation on the general jurisdiction of the Court laid down in Article 269 TFEU, since its wording concerns only the review of the legality of an act adopted by the European Council or by the Council under Article 7 TEU.

In the second place, the Court examines the other substantive complaints put forward by Poland against the contested regulation.

In that context, the Court finds, first of all, that Poland's claims alleging breach of the principle of conferral and of the duty to respect the essential functions of the Member States are without foundation. The Court points out that the Member States' free exercise of the competences available to them in their reserved areas is conceivable only in compliance with EU law. For that reason, by requiring that the Member States thus comply with their obligations deriving from EU law, the European Union is not in any way claiming to exercise those competences itself nor is it, therefore, arrogating them.

Next, in the examination of the pleas alleging failure to respect the national identity of Member States, on the one hand, and breach of the principle of legal certainty, on the other, the Court rules that there is no substantive basis for Poland's line of argument regarding the lack of precision vitiating the contested regulation, both as regards the conditions for initiating the procedure and the choice and scope of the measures to be adopted. In that regard, the Court observes at the outset that the principles set out in the contested regulation, as constituent elements of the concept of the 'rule of law', [10] have been developed extensively in its case-law, that those principles have their source in common values which are also recognised and applied by the Member States in their own legal systems and that they stem from a concept of the 'rule of law' which the Member States share and to which they adhere, as a value common to their constitutional traditions. Consequently, the Court finds that the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles.

As regards, specifically, the conditions for initiating the procedure and the choice and scope of the measures to be adopted, the Court clarifies that the contested regulation requires, for the adoption of the protective measures which it lays down, that a genuine link be established between a breach of a principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a situation or conduct that is attributable to an authority of a Member States and relevant to the proper implementation of the Union budget. In addition, the Court notes that the concept of 'serious risk' is clarified in the EU financial legislation and states that the protective measures which may be adopted must be strictly proportionate to the impact of the breach found on the Union budget. In particular, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of protecting the Union budget as a whole. Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with strict procedural requirements involving, inter alia, several consultations with the Member State concerned, and concludes that the contested regulation meets the requirements arising from respect for the national identity of Member States and the principle of legal certainty.

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[10] According to Article 2(a) of the contested regulation, the concept of 'the rule of law' covers 'the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law'.

Finally, in so far as Poland disputes the very need to adopt the contested regulation, in the light of the requirements of the principle of proportionality, the Court finds that Poland has not put forward any evidence capable of demonstrating that the EU legislature exceeded the broad discretion available to it in that regard. The Court rejects that final complaint and is, accordingly, entitled to dismiss the action in its entirety.

II. EU LAW AND NATIONAL LAW

Judgment of the Court (Grand Chamber) of 22 February 2022, RS (Effet des arrêts d'une cour constitutionnelle), C-430/21

Link to the complete text of the judgment

Reference for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Primacy of EU law – Lack of jurisdiction of a national court to examine the conformity with EU law of national legislation found to be constitutional by the constitutional court of the Member State concerned – Disciplinary proceedings

The Court of Justice is called upon to rule on the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU, read in conjunction with the principle of the primacy of EU law in particular, in a context in which an ordinary court of a Member State has no jurisdiction, under national law, to examine the conformity with EU law of national legislation that has been held to be constitutional by the constitutional court of that Member State, and the national judges adjudicating are exposed to disciplinary proceedings and penalties if they decide to carry out such an examination.

In the present case, RS was convicted on foot of criminal proceedings in Romania. His wife then lodged a complaint concerning, inter alia, several judges in respect of offences allegedly committed during those criminal proceedings. Subsequently, RS brought an action before the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania) seeking to challenge the excessive duration of the criminal proceedings instituted in response to that complaint.

In order to rule on that action, the Court of Appeal, Craiova, considers that it must assess the compatibility with EU law [11] of the national legislation establishing a specialised section of the Public Prosecutor's Office responsible for investigations of offences committed within the judicial system, such as that commenced in the present case. However, in the light of the judgment of the Curtea Constituțională (Constitutional Court, Romania), [12] delivered after the Court's judgment in *Asociaţia 'Forumul Judecătorilor din România' and Others*, [13] the Court of Appeal, Craiova, would not have jurisdiction, under national law, to carry out such an examination of compatibility. By its judgment,

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11 Specifically, the compatibility with the second subparagraph of Article 19(1) TEU and the annex to Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354. p. 56).

12 Judgment No 390/2021 of 8 June 2021.

13 Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393; 'judgment in *Asociația "Forumul Judecătorilor din România" and Others*'), in which the Court held, inter alia, that the legislation at issue is contrary to EU law where the creation of such a specialised section is not justified by objective and verifiable requirements relating to the sound administration of justice and is not accompanied by specific guarantees identified by the Court (see point 5 of the operative part of that judgment).

the Romanian Constitutional Court rejected as unfounded the plea of unconstitutionality raised in respect of several provisions of the abovementioned legislation, while emphasising that, when that court declares national legislation consistent with the provision of the Constitution which requires compliance with the principle of the primacy of EU law, [14] an ordinary court has no jurisdiction to examine the conformity of that national legislation with EU law.

In that context, the Court of Appeal, Craiova, decided to refer the matter to the Court of Justice in order to clarify, in essence, whether EU law precludes a national judge of the ordinary courts from having no jurisdiction to examine whether legislation is consistent with EU law, in circumstances such as those of the present case, and disciplinary penalties from being imposed on that judge on the ground that he or she has decided to carry out such an examination.

The Court, sitting as the Grand Chamber, finds such national rules or practices to be contrary to EU law. [15]

Findings of the Court

First of all, the Court finds that the second subparagraph of Article 19(1) TEU does not preclude national rules or a national practice under which the ordinary courts of a Member State, under national constitutional law, are bound by a decision of the constitutional court of that Member State finding that national legislation is consistent with that Member State's constitution, provided that national law guarantees the independence of that constitutional court from, in particular, the legislature and the executive. However, the same cannot be said where the application of such national rules or a national practice entails excluding any jurisdiction of those ordinary courts to assess the compatibility with EU law of national legislation which such a constitutional court has found to be consistent with a national constitutional provision providing for the primacy of EU law.

Next, the Court points out that compliance with the obligation of national courts to apply in full any provision of EU law having direct effect is necessary, in particular, in order to ensure respect for the equality of Member States before the Treaties – which precludes the possibility of relying on, as against the EU legal order, a unilateral measure, whatever its nature – and constitutes an expression of the principle of sincere cooperation set out in Article 4(3) TEU, which requires any provision of national law which may be to the contrary to be disapplied, whether the latter is prior to or subsequent to the EU legal rule having direct effect.

In that context, the Court recalls that it has already held, first, that the legislation at issue falls within the scope of Decision 2006/928 [16] and that it must, therefore, comply with the requirements arising from EU law, in particular from Article 2 and Article 19(1) TEU. [17]

Secondly, both the second subparagraph of Article 19(1) TEU and the specific benchmarks in the areas of judicial reform and the fight against corruption set out in the annex to Decision 2006/928 are formulated in clear and precise terms and are not subject to any conditions, and they therefore have direct effect. [18] It follows that if it is not possible to interpret the national provisions in a manner consistent with the second subparagraph of Article 19(1) TEU or those benchmarks, the ordinary Romanian courts must disapply those national provisions of their own motion.

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14 In its judgment No 390/2021, the Romanian Constitutional Court held that the legislation at issue complied with Article 148 of the Constituția României (Romanian Constitution).

15 In the light of the second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law.

16 See footnote 1 for the full reference to Decision 2006/928.

17 Judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, paragraphs 183 and 184.

18 Judgment in *Asociația 'Forumul Judecătorilor din România' and Others*, paragraphs 249 and 250, and judgment of 21 December 2021, *Euro Box Promotion and Others*, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 253 ('judgment in *Euro Box Promotion and Others*').

In that regard, the Court points out that the ordinary Romanian courts have as a rule jurisdiction to assess the compatibility of Romanian legislative provisions with those provisions of EU law, without having to make a request to that end to the Romanian Constitutional Court. However, they are deprived of that jurisdiction where the Romanian Constitutional Court has held that those national legislative provisions are consistent with a national constitutional provision providing for the primacy of EU law, in that those ordinary courts are required to comply with that judgment of that constitutional court. However, such a national rule or practice would preclude the full effectiveness of the rules of EU law at issue, in so far as it would prevent the ordinary court called upon to ensure the application of EU law from itself assessing whether those national legislative provisions are compatible with EU law.

In addition, the application of such a national rule or practice would undermine the effectiveness of the cooperation between the Court of Justice and the national courts established by the preliminary-ruling mechanism, by deterring the ordinary court called upon to rule on the dispute from submitting a request for a preliminary ruling to the Court of Justice, in order to comply with the decisions of the constitutional court of the Member State concerned.

The Court emphasises that those findings are all the more relevant in a situation in which a judgment of the constitutional court of the Member State concerned refuses to give effect to a preliminary ruling given by the Court, on the basis, inter alia, of the constitutional identity of that Member State and of the contention that the Court has exceeded its jurisdiction. The Court points out that it may, under Article 4(2) TEU, be called upon to determine that an obligation of EU law does not undermine the national identity of a Member State. By contrast, that provision has neither the object nor the effect of authorising a constitutional court of a Member State, in disregard of its obligations under EU law, to disapply a rule of EU law, on the ground that that rule undermines the national identity of the Member State concerned as defined by the national constitutional court. Thus, if the constitutional court of a Member State considers that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, it must make a reference to the Court for a preliminary ruling, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid.

In addition, the Court emphasises that since the Court alone has exclusive jurisdiction to provide the definitive interpretation of EU law, the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, validly hold that the Court has delivered a judgment exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from the Court.

Furthermore, on the basis of its earlier case-law, [19] the Court makes clear that Article 2 and the second subparagraph of Article 19(1) TEU preclude national rules or a national practice under which a national judge may incur disciplinary liability for any failure to comply with the decisions of the national constitutional court and, in particular, for having refrained from applying a decision by which that court refused to give effect to a preliminary ruling delivered by the Court.

[19] Judgment in *Euro Box Promotion and Others*.

III. BORDER CONTROLS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court (Grand Chamber) of 22 February 2022, Commissaire général aux réfugiés et aux apatrides (Family unit – Protection already granted) , C-483/20

Link to the complete text of the judgment

Reference for a preliminary ruling – Common policy on asylum – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 33(2)(a) – Inadmissibility of an application for international protection lodged in a Member State by a third-country national who has obtained refugee status in another Member State, where the minor child of that third-country national, who is a beneficiary of subsidiary protection status, resides in the first Member State – Charter of Fundamental Rights of the European Union – Article 7 – Right to respect for family life – Article 24 – Best interests of the child – No infringement of Articles 7 and 24 of the Charter of Fundamental Rights due to the inadmissibility of the application for international protection – Directive 2011/95/EU – Article 23(2) – Obligation on the Member States to ensure the family unity of beneficiaries of international protection is maintained

After being granted refugee status in Austria in 2015, the appellant moved to Belgium at the beginning of 2016 to join his two daughters – one of whom was a minor – where the latter were granted subsidiary protection in December of that year. In 2018, the appellant submitted an application for international protection in Belgium, without having a right of residence there.

That application was declared inadmissible under the Belgian law transposing the Procedures Directive, [20] on the ground that the appellant had already been granted international protection by another Member State. [21] The appellant challenged the decision refusing his application before the Belgian courts, claiming that respect for family life and the need to take into account the best interests of the child, enshrined in Article 7 and Article 24(2) of the Charter of Fundamental Rights of the European Union ('the Charter') respectively prevent Belgium from exercising its option to declare the application for international protection inadmissible.

In that context, the Conseil d'État (Council of State, Belgium) decided to refer questions to the Court of Justice asking whether there were any exceptions to that option.

The Court, sitting as a Grand Chamber, found that the Procedures Directive, [22] read in the light of Article 7 and Article 24(2) of the Charter, does not preclude a Member State from exercising that option on the ground that the applicant has already been granted refugee status by another Member State, where that applicant is the father of a child who is an unaccompanied minor who has been

20 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60; 'the Procedures Directive').

21 Under Article 33(2)(a) of the Procedures Directive, Member States may consider an application for international protection as inadmissible if, inter alia, another Member State has granted international protection.

22 Article 33(2)(a) of the Procedures Directive.

granted subsidiary protection in the first Member State, without prejudice, nevertheless, to the application of Article 23(2) of the Qualification Directive, [23] which concerns maintaining family unity.

Findings of the Court

In that regard, the Court notes that Member States are not obliged to verify whether the applicant fulfils the conditions to be satisfied in order to claim international protection under the Qualification Directive where such protection is already provided in another Member State. In such circumstances, they must refrain from exercising the option provided for in the Procedures Directive [24] to declare an application for international protection inadmissible only if, due to deficiencies, which may be systematic or generalised, or which may affect certain groups of people in that other Member State, the living conditions that that applicant could be expected to encounter there as the beneficiary of international protection would expose him or her to a substantial risk of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

In the light of the importance of the principle of mutual trust for the Common European Asylum System, infringement of a provision of EU law conferring a substantive right on beneficiaries of international protection which does not result in an infringement of Article 4 of the Charter does not prevent the Member States from exercising that option. Unlike the right to protection against any inhuman or degrading treatment, the rights guaranteed by Article 7 and Article 24 of the Charter are not absolute in nature and may therefore be subject to restrictions under the conditions set out in the Charter. [25]

Moreover, the Court specifies that the Qualification Directive [26] requires Member States to ensure that family unity is maintained, by establishing a certain number of benefits in favour of family members of a beneficiary of international protection. The grant of those benefits, [27] which include, inter alia, a right of residence, nevertheless requires three conditions to be satisfied, namely, first, that the person is a family member within the meaning of that directive, [28] second, that that family member does not individually qualify for international protection and, third, that it is compatible with the personal legal status of the family member concerned.

First, the fact that a parent and his or her minor child have had different migration paths before reuniting in the Member State in which the child has international protection does not prevent the parent from being regarded as a member of the family of that beneficiary, provided that that parent was present in the territory of that Member State before a decision was taken on the application for international protection of his or her child.

Second, a third-country national whose application for international protection is inadmissible and has been refused in the Member State in which his or her minor child benefits from international protection owing to that national's refugee status in another Member State does not individually qualify for international protection in the first Member State.

Third, as concerns the compatibility of a grant of benefits as provided for in the Qualification Directive with the legal status of the national concerned, it is appropriate to verify whether he or she already has a right, in the Member State which granted international protection to a member of his or her

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23 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9; 'the Qualification Directive').

24 Article 33(2)(a) of the Procedures Directive.

25 Article 52(1) of the Charter.

26 Article 23(2) of the Qualification Directive.

27 Those benefits are provided for in Articles 24 to 35 of the Qualification Directive.

28 Article 2(j) of the Qualification Directive.

family, to better treatment than that resulting from those benefits. Subject to verification by the referring court, that does not appear to be the case in the present instance since the grant of refugee status in a Member State does not result in the person benefiting from that international protection receiving better treatment, in another Member State, than the treatment resulting from such benefits in that other Member State.

IV. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN ARREST WARRANT

Judgment of the Court (Grand Chamber) of 22 February 2022, Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission), C-562/21 PPU and C-563/21 PPU

Link to the complete text of the judgment

Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Surrender procedures between Member States – Conditions for execution – Charter of Fundamental Rights of the European Union – Second paragraph of Article 47 – Fundamental right to a fair trial before an independent and impartial tribunal previously established by law – Systemic or generalised deficiencies – Two-step examination – Criteria for application – Obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law

Two European arrest warrants ('EAWs') [29] were issued in April 2021 by Polish courts against two Polish nationals for the purposes, respectively, of executing a custodial sentence and of conducting a criminal prosecution. Since the persons concerned are in the Netherlands and did not consent to their surrender, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) received requests to execute those EAWs.

That court has doubts concerning its obligation to uphold those requests. In that respect, it notes that since 2017 there have been in Poland systemic or generalised deficiencies affecting the fundamental right to a fair trial, [30] and in particular the right to a tribunal previously established by law, resulting, inter alia, from the fact that Polish judges are appointed on application of the Krajowa Rada Sądownictwa (the Polish National Council of the Judiciary; 'the KRS'). According to the resolution adopted in 2020 by the Sąd Najwyższy (Supreme Court, Poland), the KRS, since the entry into force of a law on judicial reform on 17 January 2018, is no longer an independent body. [31] In so far as the judges appointed on application of the KRS may have participated in the criminal proceedings that led to the conviction of one of the persons concerned or may be called upon to hear the criminal case of

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29 Within the meaning of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

30 Guaranteed in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

31 The referring court refers also to the judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraphs 108 and 110).

the other person concerned, the referring court considers that there is a real risk that those persons, if surrendered, would suffer a breach of their right to a tribunal previously established by law.

In those circumstances, that court asks the Court of Justice whether the two-step examination, [32] enshrined by the Court in the context of a surrender on the basis of the EAWs, under the guarantees of independence and impartiality inherent in the fundamental right to a fair trial, is applicable where the guarantee, also inherent in that fundamental right, of a tribunal previously established by law is at issue.

The Court, sitting as the Grand Chamber and ruling under the urgent preliminary ruling procedure, answers in the affirmative and specifies the detailed rules for applying that examination.

Findings of the Court

The Court holds that, where the executing judicial authority called upon to decide on the surrender of a person in respect of whom an EAW has been issued has evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, it may refuse that surrender, under Framework Decision 2002/584, [33] only if it finds that, in the particular circumstances of the case, there are substantial grounds for believing that there has been a breach – or, in the event of surrender, there is a real risk of breach – of the fundamental right of the person concerned to a fair trial before an independent and impartial tribunal previously established by law.

In that regard, the Court states that the right to be judged by a tribunal 'established by law' encompasses, by its very nature, the judicial appointment procedure. Thus, as a first step in the examination seeking to assess whether there is a real risk of breach of the fundamental right to a fair trial, connected in particular with a failure to comply with the requirement for a tribunal previously established by law, the executing judicial authority must carry out an overall assessment, on the basis of any factor that is objective, reliable, specific and properly updated concerning the operation of the judicial system in the issuing Member State and, in particular the general context of judicial appointment in that Member State. The information contained in a reasoned proposal addressed by the European Commission to the Council on the basis of Article 7(1) TEU, the abovementioned resolution of the Sąd Najwyższy (Supreme Court) and the relevant case-law of the Court [34] and of the European Court of Human Rights [35] are such factors. By contrast, the fact that a body, such as the KRS, which is involved in the judicial appointment procedure, is made up, for the most part, of members representing or chosen by the legislature or the executive, is not sufficient to justify a refusal to surrender.

As a second step in that examination, it is for the person in respect of whom an EAW has been issued to adduce specific evidence to suggest that systemic or generalised deficiencies in the judicial system had a tangible influence on the handling of his or her criminal case or are liable, in the event of

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32 As a first step in that examination, the executing judicial authority must assess whether there is a real risk of breach of the fundamental rights in the light of the general situation of the issuing Member State; as a second step, that authority must determine, specifically and precisely, whether there is a real risk that the requested person's fundamental right will be undermined, having regard to the circumstances of the case. See judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), and of 17 December 2020, *Openbaar Ministerie (Independence of the issuing judicial authority)* (C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033).

33 See, to that effect, Article 1(2) and (3) of Framework Decision 2002/584, under which, first, the Member States are to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of that framework decision and, second, the framework decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

34 Judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982); of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)* (C-824/18, EU:C:2021:153); of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596); and of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798).

35 ECtHR, 22 July 2021, *Reczkowicz v. Poland*, CE:ECHR:2021:0722JUD004344719.

surrender, to have such an influence. Such evidence can be supplemented, as appropriate, by information provided by the issuing judicial authority.

In that respect, as regards, first, an EAW issued for the purposes of executing a custodial sentence or detention order, the executing judicial authority must take account of the information relating to the composition of the panel of judges who heard the criminal case or any other circumstance relevant to the assessment of the independence and impartiality of that panel. It is not sufficient, in order to refuse surrender, that one or more judges who participated in those proceedings were appointed on application of a body such as the KRS. The person concerned must, in addition, provide information relating to, inter alia, the procedure for the appointment of the judges concerned and their possible secondment, which would lead to a finding that the composition of that panel of judges was such as to affect that person's fundamental right to a fair trial. Furthermore, account must be taken of the fact that it may be possible, for the person concerned, to request the recusal of the members of the panel of judges for breach of his or her fundamental right to a fair trial, the fact that that person may exercise that option as well as the outcome of the request for recusal.

Second, where an EAW has been issued for the purposes of conducting a criminal prosecution, the executing judicial authority must take account of the information relating to the personal situation of the person concerned, the nature of the offence for which that person is prosecuted, the factual context surrounding that EAW or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person. Such information may also relate to statements made by public authorities which could have an influence on the specific case. By contrast, the fact that the identity of the judges who will be called upon eventually to hear the case of the person concerned is not known at the time of the decision on surrender or, when their identity is known, that those judges were appointed on application of a body such as the KRS is not sufficient to refuse that surrender.

V. COMPETITION

1. PROCEDURES IMPLEMENTING COMPETITION RULES

Judgment of the General Court (Eighth Chamber, Extended Composition) of 2 February 2022, Polskie Górnictwo Naftowe i Gazownictwo v Commission (Engagements de Gazprom), T-616/18

Competition – Abuse of a dominant position – Gas markets of central and eastern Europe – Decision to make binding the individual commitments proposed by an undertaking – Article 9 of Regulation (EC) No 1/2003 – Whether the commitments are adequate in the light of the competition concerns initially identified in the statement of objections – Commission decision not to require commitments in relation to some of the initial concerns – Principle of sound administration – Transparency – Obligation to state reasons – Energy-policy objectives of the European Union – Principle of energy solidarity – Misuse of powers

Between 2011 and 2015, the European Commission took several measures in order to investigate the functioning of the gas markets in central and eastern Europe. In that context, it launched an investigation into Gazprom PJSC and Gazprom export LLC (together, 'Gazprom') in relation to the

supply of gas in eight Member States, namely Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia ('the countries concerned').

On 22 April 2015, the Commission sent a statement of objections [36] to Gazprom, claiming that it was abusing its dominant position on the national markets for the upstream wholesale supply of gas in the countries concerned for the purpose of preventing the free flow of gas there in breach of Article 102 TFEU, which prohibits such abuse.

In the statement of objections, the Commission, more specifically, considered that Gazprom's strategy involved three sets of potentially anticompetitive practices:

- first, Gazprom had imposed territorial restrictions in its gas supply contracts with wholesalers and certain industrial clients in the countries concerned ('the objections concerning territorial restrictions');
- second, those territorial restrictions had made it possible for Gazprom to pursue an unfair pricing policy whereby it charged excessive prices in five of the countries concerned, namely Bulgaria, Estonia, Latvia, Lithuania and Poland ('the objections concerning pricing practices');
- third, Gazprom had made its supplies of gas in Bulgaria and Poland conditional on its obtaining certain commitments from wholesalers in relation to gas transport infrastructure. Those commitments, in particular, concerned acceptance by the applicant, the Polish wholesaler Polskie Górnictwo Naftowe i Gazownictwo S.A., of Gazprom having increased control over the management of investments regarding the Polish section of the Yamal pipeline, one of the main gas transit pipelines in Poland ('the Yamal objections').

In order to resolve those competition issues, Gazprom submitted formal proposed commitments to the Commission and, after receiving observations from interested parties, submitted revised proposed commitments ('the final commitments').

In parallel with those proceedings, the applicant lodged a complaint on 9 March 2017, alleging abusive practices by Gazprom, which overlapped to a great extent with the concerns already expressed in the statement of objections. However, the Commission rejected that complaint. [37]

By decision of 24 May 2018 ('the contested decision'), [38] the Commission approved and made binding the final commitments proposed by Gazprom and closed the administrative proceedings, in accordance with Article 9 of Regulation No 1/2003. [39]

The applicant brought an action for annulment of that decision before the General Court, arguing that the Commission, in particular, had in a number of respects infringed Article 9 of Regulation No 1/2003 and the principle of proportionality, inasmuch as the commitments were incomplete and insufficient, and also that it had infringed several provisions of the FEU Treaty, in particular inasmuch as the decision was contrary to Article 194 TFEU and the energy-policy objectives of the European Union. [40]

That action has been dismissed by the Eighth Chamber (Extended Composition) of the General Court.

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36 In accordance with Article 10 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18).

37 Commission Decision C(2019) 3003 final of 17 April 2019 rejecting the complaint (Case AT.40497 – Polish gas prices). The action for annulment of that decision has been upheld by the General Court in its judgment of 2 February 2022, *Polskie Górnictwo Naftowe i Gazownictwo* v *Commission (Rejection of a complaint)*, T-399/19.

38 Decision C(2018) 3106 final of the European Commission of 24 May 2018 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.39816 – Upstream Gas Supplies in Central and Eastern Europe) (OJ 2018 C 258, p. 6).

39 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1).

40 The Republic of Poland and the Republic of Lithuania, inter alia, intervened in these proceedings in support of the form of order sought by the applicant.

Findings of the General Court

The General Court finds that the contested decision is not vitiated by any of the procedural or substantive errors raised by the applicant in its six pleas in law.

In particular, first, the General Court rejects the plea alleging that the Commission accepted the final commitments even though they do not address the Yamal objections.

In that respect, the General Court notes that obligations related to observing the principle of proportionality, in the context of the commitments procedure provided for by Article 9 of Regulation No 1/2003, cannot mean that all the competition concerns set out in a preliminary assessment, including when, as in the present case, that assessment takes the form of a statement of objections, must necessarily be addressed in the commitments proposed by the undertakings concerned. Nevertheless, the Commission was required to justify the absence of commitments addressing the Yamal objections in the present case.

Thus, in accordance with its obligation in that regard, the Commission provided reasons why it had not required such commitments. In that respect, the Commission referred, in particular, to a decision of the Urząd Regulacji Energetyki (the Polish Energy Regulatory Office) adopted in May 2015, which, within the framework of the EU legislation relating to the gas sector, [41] certified the operator of the Polish section of the Yamal pipeline, Gaz-System S.A., as an independent system operator ('the certification decision'). Consequently, even if Gazprom had attempted to increase its control over the management of investments regarding the Polish section of the Yamal pipeline, the fact remains that, at the stage of approving the final commitments and in accordance with the certification decision, it was Gaz-System that exercised decisive control over those investments and that, in addition, certain large-scale investments relating to that section had been implemented.

Accordingly, the certification decision was capable of dispelling the concerns on which the Yamal objections were based. Therefore, having regard to the discretion enjoyed by the Commission in the context of accepting commitments under Article 9 of Regulation No 1/2003, that institution was entitled to accept the final commitments, even though they do not include any measure addressing the Yamal objections.

Nor did the Commission, in accepting the final commitments, despite the absence of commitments relating to the Yamal objections, infringe the principle of sincere cooperation. In that regard, the General Court rejects the claim that the Commission has prevented the national competition authorities and the national courts from taking action against the practices covered by those objections. While those bodies may not take decisions that would run counter to the contested decision, the Commission did not find that no infringement of EU competition law had taken place. Consequently, that decision is without prejudice to the power of the national competition authorities and the national courts to take steps as regards Gazprom's conduct in relation to the Yamal objections and their power to apply Articles 101 and 102 TFEU.

Second, the General Court rejects the plea calling into question the fact that the Commission accepted the final commitments although those commitments did not adequately address the objections concerning pricing practices. In that regard, Gazprom undertook to introduce, in gas supply contracts of at least three years' duration entered into with its clients in the five countries concerned, a new procedure for revising the price formulas that determine contractual rates. That new procedure stipulates in particular that those formulas are to be in line with the pricing guidelines included in those commitments and provides for the possibility to refer possible disputes on that issue to an arbitration tribunal established within the European Union. According to the General Court, the Commission did not commit a manifest error of assessment in that regard, including in so far as it

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41 Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

accepted a commitment that provided for that new revision procedure rather than imposing an immediate change to the pricing formulas in the contracts concerned.

Nor did the Commission err in law in finding in the contested decision that an arbitration tribunal established within the European Union would be obliged to respect and apply EU competition law. In its judgment in Eco Swiss, [42] the Court of Justice confirmed that Articles 101 and 102 TFEU are public policy provisions which must be applied by national courts of their own motion, those courts being required to grant an application for annulment of an arbitration award if they consider that that award is contrary to those articles. In the light of those considerations and since Regulation No 1/2003 concerns the implementation of Articles 101 and 102 TFEU, the General Court rules that national courts may also grant an application for annulment of an arbitration award if they consider that that award is contrary to a commitments decision adopted under Article 9 of Regulation No 1/2003.

Third, the General Court rejects the plea calling into question the fact that the Commission accepted the final commitments although those commitments did not adequately address the objections concerning territorial restrictions. According to the General Court, the Commission did not commit a manifest error of assessment in that regard, including in so far as concerns the commitment to establish a mechanism to change gas delivery points.

Fourth, the General Court rejects the plea that the Commission disregarded the energy-policy objectives of the European Union, as set out in Article 194(1) TFEU.

In that connection, the General Court notes that as regards the commitments procedure, the Commission may, in its preliminary assessment, take account of objectives pursued by other provisions of the Treaty, in particular in order to find, on a preliminary basis, that there has been no infringement of the competition rules. However, with regard to the examination of proposed commitments, the Commission is to confine itself to determining, first, whether those commitments address the concerns it has expressed to the undertaking in question and, second, whether that undertaking has proposed less onerous commitments that equally adequately address those concerns, even if the procedure may not lead to a result which is contrary to the specific provisions of the Treaties.

In addition and in any event, the applicant has failed to demonstrate that the final commitments would, as such, be contrary to the energy-policy objectives or the principle of energy solidarity.

Fifth, as regards purported breaches of procedure connected with the handling of the Yamal objections, the Commission, according to the General Court, committed no such breach during its consultation with the Advisory Committee on Restrictive Practices and Dominant Positions provided for by Article 14 of Regulation No 1/2003. While consultation with the Advisory Committee is an essential procedural requirement, there can be no question in the present case of conduct on the part of the Commission that prevented that committee from delivering its opinion in full awareness of the facts nor, therefore, of an infringement affecting the legality of the contested decision. In that respect, the General Court also rejects the applicant's argument that the Commission misled the interested parties during the market consultation.

Sixth, the General Court rejects the applicant's arguments alleging infringement of various procedural rights in the handling of its complaint of 9 March 2017 reporting various purportedly abusive practices by Gazprom which overlapped to a large extent with the concerns set out in the statement of objections.

As regards the Commission's decision not to deal with that complaint as part of the administrative proceedings that were closed by the contested decision, the General Court finds that the opening in the present case of separate proceedings to handle the complaint was not in itself improper, taking account of the legitimate grounds put forward by the Commission, which concerned procedural

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42 Judgment of 1 June 1999, *Eco Swiss* (C-126/97, EU:C:1999:269).

economy and its wish not to delay the investigation of a case that was at an advanced stage by widening its scope.

Nevertheless, the General Court states that the opening of separate proceedings to deal with the complaint cannot deprive the applicant of the enjoyment of its right as a complainant to receive a copy of the non-confidential version of the statement of objections and to make known its views in writing in the context of the commitments procedure. In that respect, while the Commission, in conducting the two procedures in parallel, displayed some ambiguity with regard to the applicant's participation in the commitments procedure and also with regard to its right to receive a copy of the statement of objections and to submit observations relating to that document in the context of that procedure, those circumstances stopped short of affecting the effective exercise of its rights in the procedure in question, which was brought to an end by the contested decision.

Judgment of the General Court (Eighth Chamber, Extended Composition) of 2 February 2022, Polskie Górnictwo Naftowe i Gazownictwo v Commission (Rejet de plainte), T-399/19

Competition – Abuse of a dominant position – Gas markets of central and eastern Europe – Decision rejecting a complaint – No EU interest – State action defence – Obligation to conduct a diligent examination – Procedural rights under Regulation (EC) No 773/2004

Between 2011 and 2015, the European Commission took several measures in order to investigate the functioning of the gas markets in central and eastern Europe. In that context, it launched an investigation into Gazprom PJSC and Gazprom export LLC (together, 'Gazprom') in relation to the supply of gas in eight Member States, namely Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia ('the countries concerned').

On 22 April 2015, the Commission sent a statement of objections [43] to Gazprom, claiming that it was abusing its dominant position on the national markets for the upstream wholesale supply of gas in the countries concerned for the purpose of preventing the free flow of gas there in breach of Article 102 TFEU, which prohibits such abuse.

In the statement of objections, the Commission considered, among other things, that Gazprom had made its supplies of gas in Poland conditional on its obtaining certain commitments relating to gas transport infrastructure. Those commitments concerned acceptance by the applicant, the Polish wholesaler Polskie Górnictwo Naftowe i Gazownictwo S.A., of Gazprom having increased control over the management of investments regarding the Polish section of the Yamal pipeline, one of the main gas transit pipelines in Poland ('the Yamal objections').

By decision of 24 May 2018, [44] the Commission approved and made binding the commitments proposed by Gazprom in response to the former's competition concerns and closed the administrative proceedings in that case.

In parallel with those proceedings, the applicant lodged a complaint on 9 March 2017, alleging abusive practices by Gazprom, which overlapped to a great extent with the concerns expressed by the Commission in the statement of objections. The complaint included claims that Gazprom, amid a supply shortfall that the applicant faced in 2009 and 2010, had made the conclusion of a contract for

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43 In accordance with Article 10 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101] and [102 TFEU] (OJ 2004 L 123, p. 18).

44 Decision C(2018) 3106 final of the European Commission of 24 May 2018 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.39816 – Upstream Gas Supplies in Central and Eastern Europe) (OJ 2018 C 258, p. 6). The applicant brought an action for annulment against that decision, which has, however, been dismissed by the General Court in its judgment of 2 February 2022, *Polskie Górnictwo Naftowe i Gazownictwo* v *Commission (Commitments by Gazprom)*, T-616/18.

the supply of additional volumes of gas subject to conditions that were intended, in particular, to increase Gazprom's influence over the operation of the Polish section of the Yamal pipeline ('the claims concerning infrastructure-related conditions'). Those claims, in part, denounced practices that were similar to those concerned by the Yamal objections.

On 23 January 2018, the Commission informed the applicant in writing that it intended to reject the complaint and requested that the applicant make its views known within four weeks ('the letter concerning the intended rejection of the complaint'). By decision of 17 April 2019 ('the contested decision'), [45] the Commission rejected the applicant's complaint.

In its examination of the claims, the Commission drew a distinction between the claims in the complaint that corresponded to the competition concerns covered by Gazprom's commitments and the other claims put forward in the complaint and, with regard to that second category, rejected in particular the claims concerning infrastructure-related conditions.

The applicant brought an action for annulment against the contested decision, which has been upheld by the Eighth Chamber (Extended Composition) of the General Court.

Findings of the General Court

In the first place, the General Court examines the applicant's complaints that the Commission infringed its right to be heard and to be informed in the administrative proceedings that were opened as a result of its complaint.

In that regard, the General Court observes first of all that under Article 7(1) of Regulation No 773/2004, where the Commission considers that on the basis of the information in its possession there are insufficient grounds for acting on a complaint, it is to inform the complainant of its reasons and set a time limit within which the complainant may make known its views in writing.

In the letter concerning the intended rejection of the complaint that was sent to the applicant pursuant to that provision, the Commission, in particular, had considered that there were insufficient grounds to carry out a further investigation into the claims concerning infrastructure-related conditions owing to the limited likelihood of establishing an infringement of Article 102 TFEU as against Gazprom. That preliminary conclusion was based on two grounds, namely the decision of the Urząd Regulacji Energetyki (the Polish Energy Regulatory Office) to certify the operator of the Polish section of the Yamal pipeline, Gaz-System S.A., as an independent system operator ('the certification decision') and the 'intergovernmental context' of relations between the Republic of Poland and the Russian Federation in relation to gas.

However, although the Commission, in the contested decision, referred again to the certification decision as a ground supporting its finding that there was a limited likelihood of establishing an infringement in relation to the claims concerning infrastructure-related conditions, it also included a reference to the defence known as State action as a second ground.

Thus, the General Court observes that the State action defence, which must be applied restrictively, makes it possible to exclude anti-competitive behaviour from the scope of Articles 101 and 102 TFEU when that behaviour is imposed on the undertakings concerned by national legislation, by a legal framework created by that legislation, or by the exercise of irresistible pressures by the national authorities.

However, the General Court finds that that defence does not appear in the relevant considerations of the letter concerning the intended rejection of the complaint that preceded the contested decision. Taking account of the particular nature of the State action defence, in that it leads to exemption from liability, and the fact that the case-law has not recognised its application where State action is exercised by a non-Member State, the Commission should have specifically warned the applicant in

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45 Commission Decision C(2019) 3003 final of 17 April 2019 rejecting the complaint (Case AT.40497 – Polish gas prices).

the letter concerning the intended rejection of the complaint that its preliminary assessment was based on a possible application of that defence in order to allow the applicant to be heard in that regard. According to the General Court, the Commission could not expect the applicant to infer that implicit ground from the information given in that letter.

Consequently, by failing to provide that information in the letter concerning the intended rejection of the complaint, the Commission failed to fulfil its obligation to inform the applicant under Article 7(1) of Regulation No 773/2004. Furthermore, in the light of the information in the file, the General Court finds that in the absence of that infringement of Regulation No 773/2004, the contested decision might have been substantively different as far as concerns the ground connected with the State action defence, with the result that that infringement is capable of entailing the annulment of that decision.

However, that annulment is justified only on condition that the other ground put forward in the contested decision, connected with the certification decision, does not support the Commission's finding that there was a limited likelihood of establishing an infringement as against Gazprom in relation to the claims concerning infrastructure-related conditions.

In that regard and in the second place, the General Court finds that the Commission could not give decisive importance to the certification decision without having regard to the fact that the operative part of that decision required that the operation of compression and metering stations located on the Polish section of the Yamal pipeline, carried out by a joint venture owned by the applicant and Gazprom, be transferred to Gaz-System and without having regard to the circumstances surrounding that transfer not taking place.

In addition, the General Court notes that, in relying on the findings and assessments in the certification decision relating to investments regarding the Polish section of the Yamal pipeline, the Commission reduced the claims set out in the complaint solely to the scope of the Yamal objections set out in the statement of objections, whereas the practices in question were different in nature and went beyond the lone issue of investments.

Consequently, the General Court finds that the Commission committed a manifest error of assessment in referring to the certification decision in support of its finding that there was a limited likelihood of establishing an infringement by Gazprom of Article 102 TFEU in relation to the claims concerning infrastructure-related conditions.

As a consequence of that manifest error of assessment and the prior finding of an infringement of Article 7(1) of Regulation No 773/2004, inasmuch as the Commission failed to fulfil its obligation to provide the applicant with information about the ground based on the State action defence, the General Court annuls the contested decision.

Judgment of the General Court (Tenth Chamber, Extended Composition) of 9 February 2022, Sped-Pro v Commission, T-791/19

Competition – Abuse of dominant position – Market for rail freight transport services – Decision rejecting a complaint – Article 7 of Regulation (EC) No 773/2004 – Reasonable time – EU interest in pursuing the examination of a complaint – Determination of the authority that is best placed to examine a complaint – Criteria – Manifest error of assessment – Systemic or generalised deficiencies as regards respect for the rule of law – Risk of a breach of a complainant's rights where a complaint is rejected – Obligation to state reasons

In the context of the exercise of activities in the forwarding services sector, the company established under Polish law Sped-Pro S.A. ('the applicant') used rail freight transport services supplied by PKP Cargo S.A., a company controlled by the Polish State.

On 4 November 2016, the applicant lodged a complaint against PKP Cargo with the European Commission. In that complaint, it submitted that PKP Cargo had abused its dominant position on the market for rail freight transport services in Poland on account of its alleged refusal to conclude with the applicant a multi-annual cooperation agreement on market conditions.

On 12 August 2019, the Commission rejected the complaint by Decision C(2019) 6099 final ('the contested decision'), [46] on the ground, in essence, that the Polish competition authority was best placed to examine it.

It is in those circumstances that the applicant brought an action before the Court seeking annulment of the contested decision. In support of its action, it raised three pleas in law, alleging, respectively, infringement of its right to have its case handled within a reasonable time and failure to state reasons in the contested decision, breach of the principle of the rule of law in Poland, and manifest errors in assessing the EU interest in pursuing the examination of the complaint.

By its judgment of 9 February 2022, the Court upholds the action and annuls the contested decision in its entirety. On this occasion, it examines for the first time the impact of systemic or generalised deficiencies in the rule of law in a Member State on determining the competition authority that is best placed to examine a complaint. It also provides important clarifications as regards the circumstances in which failure to comply with the reasonable time requirement is liable to lead to the annulment of a decision rejecting a complaint in the field of competition law.

Findings of the Court

In the first place, as regards the reasonable time principle, the Court recalls, first, that observance of the reasonable time requirement in the conduct of administrative procedures relating to competition policy constitutes a general principle of EU law. Article 41(1) of the Charter of Fundamental Rights of the European Union ('the Charter') also reaffirms the reasonable time principle in respect of administrative procedures. Thus, the Court points out that the Commission is under an obligation to decide on complaints in the field of competition law within a reasonable time. However, the Court states, secondly, that breach of the reasonable time principle is liable to lead to the annulment of a decision rejecting a complaint only where the applicant shows that the failure to comply with the reasonable time requirement has had an impact on his or her ability to defend his or her position in that procedure, which would in particular be the case if that failure had prevented him or her from gathering or submitting before the Commission factual or legal material concerning the anticompetitive practices complained of or the EU interest in investigating the case.

In the light of those principles, the Court finds that, in the present case, it is not necessary to rule on the European Commission's compliance with the reasonable time principle, since the applicant has not adduced any evidence capable of showing that the alleged failure to comply with that requirement had an impact on its ability to defend its position in that procedure. Consequently, the Court rules that the complaint alleging breach of the reasonable time principle is unfounded.

In the second place, as regards the assessment of the EU interest in pursuing the examination of the complaint, the Court points out that, in the present case, the Commission did not commit any manifest error of assessment by finding that the practices complained of concerned primarily the market for rail freight transport services in Poland, that the Polish competition authority had acquired detailed knowledge of the sector and that, on the basis of those factors, that authority was best placed to examine the complaint. Furthermore, the Court states that the applicant is wrong to assert that, in the present case, the Commission should have also taken account of other factors for the purposes of assessing the EU interest in investigating the case. Consequently, the plea in law alleging manifest errors in assessing the EU interest in pursuing the examination of the complaint is also rejected as unfounded.

In the third place, as regards the question of compliance with the principle of the rule of law in Poland, the Court examines the applicant's argument that the Commission was best placed to examine the complaint, having regard to the systemic or generalised deficiencies in the rule of law in

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46 Commission Decision C(2019) 6099 final of 12 August 2019 (Case AT.40459 – Rail freight forwarding in Poland – PKP Cargo).

Poland and, in particular, the lack of independence of the Polish competition authority and the national courts with jurisdiction in the field.

In the contested decision, the Commission verified whether such deficiencies prevented it from rejecting the complaint on the ground that the Polish competition authority was best placed to examine it. To that end, it applied, by analogy, the two-stage analysis required in the context of execution of European arrest warrants in order to safeguard the fundamental right to a fair trial, in accordance with the judgment in *Minister for Justice and Equality (Deficiencies in the system of justice)*; [47] that analysis consists in assessing, as a first step, whether there is a real risk of a breach of that right connected with a lack of independence of the courts of the Member State in question, on account of systemic or generalised deficiencies in that State, and, as a second step, whether the person concerned actually runs a real risk, having regard to the particular circumstances of the case.

In that regard, in the first place, the Court points out that compliance with the requirements of the rule of law is a relevant factor which the Commission must take into account, for the purposes of determining the competition authority that is best placed to examine a complaint and that, to that end, the Commission was entitled to apply by analogy the analysis in question. While there are differences between the circumstances which gave rise to the abovementioned judgment and those which have given rise to the present case, several considerations of principle justify the application by analogy of the guidance provided in that judgment for the purposes of determining the competition authority that is best placed to examine a complaint concerning an infringement of Articles 101 and 102 TFEU. In that regard, the Court states, first of all, that, like in the case of the area of freedom, security and justice, cooperation, for the purposes of applying Articles 101 and 102 TFEU, between the Commission, the competition authorities of the Member States and the national courts is based on the principles of mutual recognition, mutual trust and sincere cooperation. Next, the Court finds that the case-law requires the Commission, before rejecting a complaint for lack of an EU interest, to ensure that the national authorities are in a position adequately to safeguard the complainant's rights. Lastly, the Court points out that the fundamental right to a fair trial before an independent tribunal enshrined in the second paragraph of Article 47 of the Charter is also, as in the abovementioned judgment, of particular importance for the effective application of Articles 101 and 102 TFEU, the national courts being called upon, first, to review the legality of the decisions of the national competition authorities, and secondly, directly to apply those provisions.

In the second place, the Court points out that the Commission's examination of the second step of the abovementioned analysis was not consistent with EU law. In the present case, the applicant had submitted, during the administrative procedure, a body of specific evidence which, according to the applicant, taken together, is capable of showing that there were substantial grounds to believe that it ran a real risk of a breach of its rights should its case have to be examined by the national authorities. That evidence concerned allegations with regard to, in particular, the control exercised by the State over PKP Cargo, the dependence of the president of the Polish competition authority vis-à-vis the executive, the circumstance that PKP Cargo's parent company is one of the members of an association whose aim is to defend and promote the reform of the Polish judicial system, the leniency of the Polish competition authority towards PKP Cargo, the actions brought by the Public Prosecutor General against decisions of that authority concerning PKP Cargo, and the inability of the Polish national courts with jurisdiction in the field of competition law to remedy the deficiencies of the Polish competition authority on account of their own lack of independence. In the contested decision, the Commission failed to examine that evidence and confined itself, in essence, to asserting that it was unsubstantiated. Finding that the Commission failed to examine specifically and precisely the various pieces of evidence adduced by the applicant during the administrative procedure, the Court rules that the Commission failed to comply with its obligations deriving from the abovementioned judgment and with its obligation to state reasons.

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47 Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, (C-216/18 PPU, EU:C:2018:586).

2. AGREEMENTS, DECISIONS AND CONCERTED PRACTICES (ARTICLE 101 TFEU)

Judgment of the General Court (Tenth Chamber, Extended Composition) of 2 February 2022, Scania and Others v Commission, T-799/17

Link to the complete text of the judgment

Competition – Agreements, decisions and concerted practices – Truck manufacturers' market – Decision finding an infringement of Article 101 TFEU and of Article 53 of the EEA Agreement – Agreements and concerted practices in relation to the prices of trucks, the timing for the introduction of emission technologies and the passing on to customers of the costs relating to those technologies – 'Hybrid' procedure staggered over time – Presumption of innocence – Principle of impartiality – Charter of Fundamental Rights – Single and continuous infringement – Restriction of competition by object – Geographic scope of the infringement – Fine – Proportionality – Equal treatment – Unlimited jurisdiction

By decision of 27 September 2017 ('the contested decision"), [48] the European Commission found that the companies Scania AB, Scania CV AB and Scania Deutschland GmbH, three entities of the Scania group, which produce and sell heavy trucks used for long-haulage transport (together, 'Scania'), had infringed EU rules prohibiting cartels, [49] by participating, from January 1997 to January 2011, with their competitors, in collusive arrangements aimed at restricting competition on the market for medium and heavy trucks in the EEA. The Commission imposed a fine of EUR 880 523 000 on Scania.

The contested decision was adopted following a 'hybrid' procedure combining the settlement procedure [50] and the standard administrative procedure in cartel matters.

In the present case, each undertaking to which a statement of objections was addressed, including Scania, confirmed to the Commission its willingness to participate in settlement discussions. However, following discussions with the Commission, Scania decided to withdraw from that procedure. The Commission thus adopted a settlement decision in respect of the undertakings which had submitted a formal request in that regard, [51] and continued the investigation concerning Scania.

By its judgment of 2 February 2022, the Court dismisses the action brought by Scania seeking annulment of the contested decision, and provides clarifications regarding the legality of a 'hybrid' procedure in cartel matters and the concept of a single and continuous infringement.

Findings of the Court

As regards the legality of the 'hybrid' procedure followed by the Commission, the Court begins by observing that, contrary to what Scania submitted, the Commission's decision to follow such a procedure does not, in itself, entail an infringement of the presumption of innocence, the rights of the

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48 Commission Decision C(2017) 6467 final of 27 September 2017, relating to proceedings under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) (Case AT.39824 – Trucks).

49 Article 101 TFEU and Article 53 of the EEA Agreement.

50 That procedure is governed by Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18). It enables the parties in cartel cases to acknowledge their liability and, in exchange, to receive a reduction in the amount of the fine imposed.

51 Decision C(2016) 4673 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.39824 – Trucks). That decision was adopted on the basis of Article 7 and Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

defence or the duty of impartiality. The provisions governing the settlement procedure do not preclude the Commission from being able to follow such a procedure in the context of the application of Article 101 TFEU. Furthermore, under the case-law, in such procedures, the Commission is entitled, initially, to adopt a settlement decision and then go on to adopt a decision following the standard procedure, provided that it ensures observance of the abovementioned principles and rights.

That being so, the Court examines whether, in the circumstances of the present case, the Commission observed those principles.

As regards the complaint alleging infringement of the principle of the presumption of innocence, Scania submitted that the settlement decision had defined the Commission's final decision as regards the same facts as those set out in the statement of objections and had concluded, on the basis of the same evidence used in the contested decision, that those facts, in which Scania had also participated, constituted an infringement.

In that regard, the Court notes, in the first place, that none of the passages of the statement of reasons for the settlement decision, read in its entirety, in the light of the particular circumstances in which the settlement decision had been adopted, was likely to be understood as a premature expression of Scania's liability. In the second place, the Court clarifies that the acknowledgement by the addresses of a settlement decision of their liability cannot lead to the implicit acknowledgement of the liability of the undertaking which decided to withdraw from that procedure, on account of its possible participation in the same facts regarded as an infringement in the settlement decision. In the context of the standard administrative procedure which follows the adoption of such a decision, the undertaking concerned and the Commission are, in relation to the settlement procedure, in a situation known as 'tabula rasa', where liabilities have yet to be determined. Thus, the Commission, first, is bound solely by the statement of objections and, secondly, is required to review the file in the light of all the relevant circumstances, including all the information and arguments put forward by the undertaking concerned when exercising its right to be heard. Consequently, the Commission's legal classification of the facts with regard to the settling parties does not in itself presuppose that the same legal classification of the facts was necessarily adopted by the Commission with respect to the undertaking which withdrew from such a procedure. In that context, there is nothing to prevent the Commission from relying on evidence used in both decisions of the hybrid procedure.

In the light of those considerations and in view of the fact that Scania did not deny that it had had the opportunity to submit all the evidence to challenge the facts and evidence on which the Commission relied in the standard administrative procedure, including the evidence added to the file after the statement of objections, the Court finds that there was no infringement of the principle of the presumption of innocence in the present case.

As regards the complaint alleging infringement of the rights of defence, the Court found that, in the settlement decision, the Commission had in no way prejudged Scania's liability for the infringement. Consequently, the fact that Scania was not heard in the context of that procedure could not result in there being an infringement of its rights of defence.

As regards the complaint alleging infringement of the principle of impartiality, the Court found that Scania had not established that the Commission had not offered, during the investigation procedure, all the guarantees to exclude any legitimate doubt as regards its impartiality in the examination of the case. When the Commission examines, in the context of the standard procedure, the evidence submitted by the parties which have chosen not to settle, it is in no way bound by the factual findings and legal classifications which it adopted in the settlement decision. Furthermore, given that the principle which prevails in EU law is that evidence may be freely adduced and that the Commission has discretion as to whether it is appropriate to adopt investigative measures, its refusal to adopt new investigative measures is not contrary to the principle of impartiality, unless it is demonstrated that the absence of such measures is due to the Commission's bias.

As regards the concept of a single and continuous infringement, the Court examines the conditions relating to the existence of such an infringement in the present case and its imputability to Scania.

As regards the finding that there was a single and continuous infringement, the Court observes that, contrary to what Scania argued, such a finding does not necessarily presuppose that a number of infringements have been established, each of which falls within Article 101 TFEU, but rather the

demonstration that the various instances of conduct identified form part of an overall plan designed to achieve a single anticompetitive objective.

In the present case, the Court finds that the Commission had established to the requisite legal standard that the collusive contacts which took place over time at different levels, in particular at top management level between 1997 and 2004, at lower headquarters level between 2000 and 2008, and at German level between 2004 and 2011, taken together, formed part of an overall plan aimed at achieving the single anticompetitive objective of restricting competition on the market for medium and heavy trucks in the EEA.

More specifically, the existence of links between the three levels of the collusive contacts was apparent from the fact that the participants in the meetings were always employees of the same undertakings, there was a temporal overlap between the meetings held at the different levels and there were contacts between employees at the lower level of the respective headquarters of the parties to the cartel and the employees at German level. Furthermore, the nature of the information shared, the participating undertakings, the objectives and the products concerned remained the same throughout the infringement period. Thus, even though the collusive contacts at top management level had been interrupted in September 2004, the same cartel, which had the same content and scope, was continued after that date, the only difference being that the employees involved were from different organisational levels within the undertakings involved, and not from top management level. In that context, the alleged fact that the Scania employees at German level did not know that they were involved in the continuation of the practices that had taken place at the other two levels, or that the Scania employees who participated in the meetings at lower headquarters level were not aware of the meetings at top management level was of no relevance to the finding that there was an overall plan. Awareness of the existence of such a plan must be assessed at the level of the undertakings involved and not at the level of their employees.

As regards the imputability of the infringement, the Court finds that, similarly, the factors determining the imputability of the single and continuous infringement must also be assessed at the level of the undertaking. In the present case, since Scania directly participated in all the relevant aspects of the cartel, the Commission was entitled to impute the infringement as a whole to Scania, without the Commission being required to demonstrate that the criteria of interest, knowledge and acceptance of the risk were satisfied.

3. CONCENTRATIONS

Judgment of the General Court (Seventh Chamber, Extended Composition) of 23 February 2022, United Parcel Service v Commission, T-834/17

Link to the complete text of the judgment

Non-contractual liability – Competition – Markets for international express small package delivery services in the EEA – Concentration – Decision declaring the concentration incompatible with the internal market – Annulment of the decision by a judgment of the Court – Rights of the defence – Sufficiently serious breach of a rule of law intended to confer rights on individuals – Causal link

and

Judgment of the General Court (Seventh Chamber, Extended Composition) of 23 February 2022, ASL Aviation Holdings and ASL Airlines (Ireland) v Commission, T-540/18

Link to the complete text of the judgment

Non-contractual liability – Competition – Markets for international express small package delivery services in the EEA – Concentration – Decision declaring the concentration incompatible with the internal market – Annulment of the decision by a judgment of the Court – General reference to other documents – Pleas in law or complaints raised by a third party in another case – Evidence submitted in the reply – No justification for the delay – Inadmissibility – Sufficiently serious breach of a rule of law intended to confer rights on individuals

By decision of 30 January 2013 ('the decision at issue'), [52] the European Commission declared incompatible with the internal market a notified concentration between United Parcel Service, Inc. and TNT Express NV ('TNT'), two undertakings present on the markets for international express small package delivery services.

While publically announcing that it would not go ahead with that concentration, UPS brought an action before the General Court for annulment of the decision at issue. By judgment of 7 March 2017, [53] the General Court upheld that action and, by judgment of 16 January 2019, [54] the Court of Justice dismissed the appeal brought by the Commission against that judgment.

In the meantime, the Commission had declared compatible with the internal market a notified concentration between TNT and FedEx Corp., a competitor of UPS. [55]

52 Commission Decision C(2013) 431 of 30 January 2013 declaring a concentration incompatible with the internal market and the functioning of the EEA Agreement (Case COMP/M.6570 – UPS/TNT Express); see also the Commission's press release IP/13/68.

53 Judgment of 7 March 2017, *United Parcel Service v Commission* (T-194/13, EU:T:2017:144).

54 Judgment of 16 January 2019, *Commission v United Parcel Service* (C-265/17 P, EU:C:2019:23).

55 Decision of 8 January 2016 declaring a concentration compatible with the internal market and the functioning of the EEA Agreement (Case M.7630 – FedEx/TNT Express), a summary of which was published in the *Official Journal of the European Union* (OJ 2016 C 450, p. 12).

At the end of 2017, UPS brought an action for damages against the Commission, seeking compensation for the economic damage allegedly suffered as a result of the unlawfulness of the decision at issue. [56] In 2018, an action for damages was also brought by the companies ASL Aviation Holdings DAC and ASL Airlines (Ireland) Ltd (together, 'the ASL companies'), which, before the adoption of the decision at issue, had concluded commercial agreements with TNT that were to be implemented following clearance of the concentration between UPS and TNT. [57]

Those two actions for damages are dismissed by the Seventh Chamber (Extended Composition) of the General Court.

Findings of the General Court

Dismissal of the action for damages brought by UPS (Case T-834/17)

By its action for damages, UPS claimed that, by adopting the decision at issue, the Commission had committed sufficiently serious breaches of EU law capable of giving rise to non-contractual liability on the part of the European Union. According to UPS, the Commission had, first, infringed its procedural rights during the administrative procedure, second, failed to fulfil the obligation to state reasons and, third, erred in its substantive assessment of the notified concentration.

As a preliminary point, the General Court recalls that in order for the European Union to incur non-contractual liability, three cumulative conditions must be satisfied: there must be a sufficiently serious breach of a rule of law conferring rights on individuals; actual damage must be shown to have occurred; and there must be a direct causal link between the breach and the damaged sustained.

As regards, in the first place, the alleged infringement of UPS' procedural rights during the administrative procedure, UPS claimed, first, that the Commission failed to communicate the final version of the econometric model used to analyse the effects of the notified concentration on prices and the criteria for assessing the efficiencies deriving from that concentration. Second, UPS claimed that the Commission had infringed its right of access to information provided by FedEx during the administrative procedure.

With regard to the failure to communicate the final version of the econometric model used by the Commission, the General Court observes that, under the applicable legislation, the Commission was under an obligation to bring that final version to UPS' attention. Since the Commission had considerably reduced, or even no, discretion in that regard, it committed a sufficiently serious breach of UPS' rights of defence by failing to communicate that model to UPS. In the light of the case-law on observance of the rights of the defence and the judgment of the Court of Justice of 16 January 2019, that infringement of UPS' rights was not, moreover, excusable on account of an alleged lack of clarity of EU law, as contended by the Commission.

The General Court also rejects the Commission's argument in its defence based on the fact that the finalisation of the econometric model had been preceded by numerous exchanges with UPS. By failing to communicate the final version of the econometric model, the Commission not only avoided a procedural constraint intended to safeguard the legitimacy and fairness of the European Union's procedure for the control of concentrations, but also placed UPS in a position where it was unable to understand part of the grounds of the decision at issue.

By contrast, as regards the failure to communicate to UPS the criteria for assessing the efficiencies deriving from the notified concentration, the General Court observes that no provision of EU law applicable to the control of concentrations requires the Commission to define in advance, in the abstract, the specific criteria on the basis of which it intends to accept that an efficiency may be regarded as verifiable. In those circumstances, UPS' line of argument seeking to show that the

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56 Case T-834/17, *United Parcel Service* v *Commission*.

57 Case T-540/18, *ASL Aviation Holdings and ASL Airlines (Ireland)* v *Commission*.

Commission was required to communicate to it the specific criteria and standards of proof which it intended to apply in order to determine whether each of the efficiencies relied on was verifiable is unfounded in law.

The General Court also rejects the argument that the Commission had infringed UPS' right of access to certain documents provided to the Commission by FedEx during the administrative procedure. Since UPS had not exercised its rights of access in due time and in the manner prescribed by the applicable legislation (failure to refer the matter to the hearing officer), it did not meet the conditions for obtaining compensation for alleged damage resulting from the infringement of those rights.

Regarding, in the second place, the alleged failure by the Commission to fulfil the obligation to state reasons, the General Court recalls that an inadequacy in the statement of reasons for an EU measure is not, in principle, in itself such as to give rise to liability on the part of the European Union.

As regards, in the third place, UPS' argument alleging errors in the substantive assessment of the notified concentration, the General Court, while confirming that the Commission made certain errors, observes that those errors do not constitute sufficiently serious breaches of EU law to be capable of giving rise to non-contractual liability on the part of the European Union. In that regard, the General Court states that, even though the Commission used, in disregard of its own rules (Best practices for the submission of economic evidence), an econometric model that departs significantly from standard economic practice, it enjoyed considerable discretion in defining that model. Moreover, in order to carry out its analysis of the effects of the notified concentration, the Commission did not rely exclusively on that econometric model, but also carried out a general analysis of the characteristics of the market in question, highlighting the nature and characteristics of that market and the consequences flowing from the proposed transaction.

In the last place, the General Court concludes that UPS has failed to demonstrate the existence of manifest and serious errors in the assessment of the verifiability of the efficiencies and of FedEx's competitive situation in the proposed concentration, and to provide any indication of unequal treatment between the decision relating to the transaction between FedEx and TNT and the decision at issue.

After thus establishing that the sufficiently serious breach of UPS' procedural rights during the administrative procedure was limited to the failure to communicate the final version of the econometric model used by the Commission to analyse the effects of the notified concentration on prices, the General Court examines, next, whether there is a direct causal link between that illegality and the types of damage relied on by UPS, namely, first, the costs associated with its participation in the procedure for the control of the notified concentration between FedEx and TNT, second, the payment to TNT of a contractual termination fee following the termination of the merger protocol concluded with TNT and, third, the loss of profit on account of the fact that it was impossible to implement that merger protocol.

As regards, first of all, the costs associated with UPS' participation in the procedure for the control of the notified concentration between FedEx and TNT, the General Court holds that that participation was clearly the result of UPS' free choice. Thus, the infringement of UPS' procedural rights during the procedure for the control of the notified concentration between itself and TNT cannot be regarded as the determining cause of the costs associated with its participation in the procedure for the control of the concentration between FedEx and TNT. Likewise, given that the payment of a termination fee to TNT stemmed from a contractual obligation arising from the terms of the merger protocol between UPS and TNT, the illegalities vitiating the decision at issue could not constitute the determining cause of the payment of that fee to TNT.

Regarding, lastly, the alleged loss of profit sustained by UPS, the General Court observes that it cannot be presumed that, had UPS' procedural rights not been infringed in the procedure for the control of the concentration itself and TNT, that concentration would have been declared compatible with the internal market. Furthermore, UPS has neither proved, nor provided the Court with evidence which would enable it to conclude that, without that infringement, the Commission would have declared that transaction compatible with the internal market. Moreover, the fact that UPS decided not to go ahead with the proposed concentration as soon as the decision at issue was announced had the effect of breaking any direct causal link between the illegality identified and the damage alleged.

In the light of the foregoing, the General Court concludes that UPS failed to establish that the infringements of its procedural rights in the procedure for the control of the concentration between itself and TNT constituted the determining cause of the types of damage alleged. Thus, it dismisses the action for damages in its entirety.

Dismissal of the action for damages brought by the ASL companies (Case T-540/18)

The action for damages brought by the ASL companies sought compensation for the alleged loss of profit resulting from the fact that it was impossible to implement the commercial agreements concluded with TNT on account of the decision at issue. In support of that application, the ASL companies relied on a breach of their fundamental rights and those of UPS by the Commission, as well as the existence of serious and manifest errors in the Commission's assessment of the notified concentration between UPS and TNT.

In the first place, the General Court holds that the ASL companies cannot rely, as a basis for their own claim for compensation, on a breach of UPS' rights of defence in the procedure for the control of the concentration between UPS and TNT. In accordance with the settled case-law of the General Court, it is necessary that the protection afforded by the rule relied on in support of an action for damages is effective as regards the person who relies on it and, therefore, that that person is among those on whom the rule in question confers rights.

In the second place, the General Court rejects as unfounded the line of argument put forward by the ASL companies based on the fact that the Commission infringed, in the procedure for the control of the concentration between UPS and TNT, their fundamental rights and in particular their right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. In that regard, the General Court states that, in so far as the ASL companies had freely chosen not to participate in that procedure, they could not rely on an alleged infringement by the Commission of their fundamental rights in the context of that procedure.

In the third place, the General Court rejects as inadmissible the plea alleging the existence of serious and manifest errors committed by the Commission in the assessment of the concentration between UPS and TNT, given that the ASL companies confined themselves to referring in that regard to the application lodged by UPS in Case T-834/17.

In the light of those considerations, the General Court, finding that the ASL companies have not established the existence of sufficiently serious breaches of EU law vitiating the decision at issue, dismisses their action as unfounded.

VI. APPROXIMATION OF LAWS

1. TOBACCO PRODUCTS

Judgment of the Court (Grand Chamber) of 22 February 2022, Stichting Rookpreventie Jeugd and Others, C-160/20

Link to the complete text of the judgment

Reference for a preliminary ruling – Directive 2014/40/EU – Manufacture, presentation and sale of tobacco products – Products not complying with the maximum emission levels – Prohibition on placing on the market – Measurement method – Filter cigarettes with small ventilation holes – Measurement of the emissions on the basis of ISO standards – Standards not published in the *Official Journal of the European Union* – Compliance with the publication requirements laid down in Article 297(1) TFEU read in the light of the principle of legal certainty – Compliance with the principle of transparency

In July and August 2018, the Stichting Rookpreventie Jeugd (Youth Smoking Prevention Foundation, Netherlands) and 14 other entities ('the applicants') made a request for an order to the Nederlandse

Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority). They requested that authority, first, to ensure that filter cigarettes offered for sale to consumers in the Netherlands comply, when used as intended, with the maximum emission levels for tar, nicotine and carbon monoxide prescribed by Directive 2014/40 [58] and, second, to order manufacturers, importers and distributors of tobacco products to withdraw from the market filter cigarettes allegedly not complying with those emission levels.

The applicants challenged the decision rejecting that request by bringing an administrative objection before the State Secretary. After that objection was rejected, the applicants brought an action before the Rechtbank Rotterdam (District Court, Rotterdam, Netherlands). They submitted that Article 4(1) of Directive 2014/40 [59] does not require recourse to a particular method of measuring emission levels and that it is clear, inter alia, from several studies that another measurement method (the 'Canadian Intense' method) should be applied in order to determine the precise emission levels for filter cigarettes used as intended.

The District Court, Rotterdam, made a reference to the Court of Justice for a preliminary ruling concerning, inter alia, the validity of Article 4(1) of Directive 2014/40 having regard to the principle of transparency, [60] to a number of provisions of EU law [61] and to the World Health Organisation Framework Convention on Tobacco Control. [62]

By its judgment, delivered by the Grand Chamber, the Court confirms that that provision is valid, holding that it complies in particular with the principles and provisions of EU and international law mentioned by the reference for a preliminary ruling. [63]

Findings of the Court

First, the Court holds that, pursuant to Article 4(1) of Directive 2014/40, the maximum emission levels prescribed by that directive for cigarettes intended to be placed on the market or manufactured in the Member States must be measured in accordance with the measurement methods arising from the ISO standards to which that provision refers. That provision refers in mandatory terms to those ISO standards and does not mention any other measurement method.

Second, the Court analyses first of all the validity of Article 4(1) of Directive 2014/40 having regard to the principle of transparency. It points out that, whilst that provision refers to ISO standards which have not been published in the Official Journal, it does not lay down any restriction concerning access to those standards, including by making that access subject to the submission of a request pursuant to the provisions regarding public access to documents of the European institutions. [64] So far as concerns, next, the validity of Article 4(1) of Directive 2014/40 having regard to Regulation

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58 Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1). Article 3(1) of that directive lays down the maximum emission levels for tar, nicotine and carbon monoxide in respect of cigarettes placed on the market or manufactured in the Member States ('the maximum emission levels prescribed by Directive 2014/40').

59 Under Article 4(1) of Directive 2014/40, 'the tar, nicotine and carbon monoxide emissions from cigarettes shall be measured on the basis of ISO standard 4387 for tar, ISO standard 10315 for nicotine, and ISO standard 8454 for carbon monoxide. The accuracy of the tar, nicotine and carbon monoxide measurements shall be determined in accordance with ISO standard 8243'.

60 The principle of transparency is laid down in the second paragraph of Article 1 and Article 10(3) TEU, Article 15(1) and Article 298(1) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union ('the Charter').

61 Article 114(3) and Article 297(1) TFEU, Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ 2013 L 69, p. 1) and Articles 24 and 35 of the Charter.

62 World Health Organisation Framework Convention on Tobacco Control ('the FCTC'), concluded in Geneva on 21 May 2003, to which the European Union and its Member States are party.

63 Inter alia, Article 5(3) of the FCTC.

64 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

No 216/2013, [65] the Court observes that under the case-law the substantive legality of that directive cannot be examined in the light of that regulation. As regards, finally, the validity of Article 4(1) of Directive 2014/40 having regard to Article 297(1) TFEU [66] read in the light of the principle of legal certainty, the Court states that the EU legislature, in the light of the broad discretion that it has in the exercise of the powers conferred on it where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations, may refer, in the acts that it adopts, to technical standards determined by a standards body, such as the International Organisation for Standardisation (ISO).

However, the Court points out that the principle of legal certainty requires that the reference to such standards be clear and precise and predictable in its effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. In the present instance, the Court holds that, since the reference made by Article 4(1) of Directive 2014/40 to the ISO standards complies with that requirement and the directive was published in the Official Journal, the mere fact that that provision refers to ISO standards that have not, at this juncture, been so published is not capable of calling the validity of that provision into question.

Nevertheless, as regards the ability of ISO standards to bind individuals, the Court states that, in accordance with the principle of legal certainty, such standards made mandatory by a legislative act of the European Union are binding on the public generally only if they themselves have been published in the Official Journal. In the absence of publication in the Official Journal of the standards to which Article 4(1) of Directive 2014/40 refers, the public is thus unable to ascertain the methods of measuring the emission levels prescribed by that directive for cigarettes. On the other hand, regarding the ability of ISO standards to bind undertakings, the Court states that, in so far as undertakings have access to the official and authentic version of the standards referred to in Article 4(1) of Directive 2014/40 through the national standards bodies, those standards are binding on them.

Third, as to the validity of Article 4(1) of Directive 2014/40 having regard to Article 5(3) of the FCTC, [67] the Court observes that the latter provision does not prohibit all participation of the tobacco industry in the establishment and implementation of rules on tobacco control, but is intended solely to prevent the tobacco control policies of the parties to the convention from being influenced by that industry's interests. Therefore, the mere fact that the tobacco industry participated in the determination at ISO of the standards in question is not capable of calling into question the validity of Article 4(1) of Directive 2014/40.

Fourth, as to the validity of Article 4(1) of Directive 2014/40 having regard to the requirement for a high level of protection of human health [68] and to Articles 24 and 35 of the Charter, [69] the Court points out that, in accordance with settled case-law, the validity of that provision of Directive 2014/40 cannot be assessed on the basis of the studies mentioned by the referring court in the request for a preliminary ruling, as those studies postdate 3 April 2014, the date on which that directive was adopted.

Fifth and finally, the Court specifies the characteristics that must be displayed by the method of measuring emissions to be used for cigarettes in order to verify compliance with the maximum emission levels prescribed by Directive 2014/40, should the reference made in Article 4(1) of the

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65 Regulation No 216/2013 lays down inter alia the rules relating to the publication of acts of EU law in the Official Journal.

66 Pursuant to that provision, 'legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication'.

67 That provision states that, in setting and implementing their public health policies with respect to tobacco control, the parties to the convention are to act to protect those policies from interests of the tobacco industry in accordance with national law.

68 That requirement is laid down in particular in Article 114(3) TFEU.

69 Article 24 of the Charter relates to the rights of the child, while Article 35 of the Charter concerns health care.

directive to ISO standards not be binding on individuals. Thus, it holds that that method must be appropriate, in the light of scientific and technical developments or internationally agreed standards, for measuring the levels of emissions released when a cigarette is consumed as intended, and must take as a base a high level of protection of human health, especially for young people. The accuracy of the measurements obtained by means of that method must be verified by laboratories approved and monitored by the competent authorities of the Member States as referred to in Article 4(2) of Directive 2014/40. It is for the national court to determine whether the methods actually used to measure the emission levels comply with Directive 2014/40, without taking account of Article 4(1) thereof.

2. PLANT PROTECTION PRODUCTS

Judgment of the General Court (Seventh Chamber) of 9 February 2022, Taminco and Arysta LifeScience Great Britain v Commission, T-740/18

Link to the complete text of the judgment

Plant protection products – Active substance thiram – Non-renewal of approval – Regulation (EC) No 1107/2009 and Implementing Regulation (EU) No 844/2012 – Rights of the defence – Procedural irregularity – Manifest error of assessment – Competence of EFSA – Proportionality – Precautionary principle – Equal treatment

The active substance thiram ('thiram'), used for fungicidal purposes on various fruits and vegetables, was first approved on 1 August 2004. [70] Taminco BVBA and Arysta LifeScience Great Britain Ltd ('the applicants'), companies marketing thiram and plant protection products containing thiram, applied, in accordance with Regulation No 1107/2009, [71] for its renewal in 2014. [72] During the renewal procedure, the applicants limited their application, which initially concerned the use of thiram as a foliar spray and its use as a seed treatment, to seed treatment only.

By implementing regulation of 9 October 2018, [73] the European Commission refused to renew the approval of thiram and prohibited the use and sale of seeds treated with plant protection products containing thiram. In that regard, the recitals of the contested implementing regulation refer, inter alia, to the conclusions of the European Food Safety Authority (EFSA), which identified, inter alia, the existence of a high acute risk to consumers and workers from the application of thiram as a foliar spray and the existence of a high risk to birds and mammals, arising from all representative uses assessed, including seed treatment.

The applicants brought an action for annulment of the contested implementing regulation. That action was dismissed by the General Court.

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70 By Commission Directive 2003/81/EC of 5 September 2003 amending Council Directive 91/414/EEC to include molinate, thiram and ziram as active substances (OJ 2003 L 224, p. 29).

71 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1).

72 That renewal application was submitted in accordance with Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ 2012 L 252, p. 26).

73 Commission Implementing Regulation (EU) 2018/1500 of 9 October 2018 concerning the non-renewal of approval of the active substance thiram, and prohibiting the use and sale of seeds treated with plant protection products containing thiram, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Implementing Regulation (EU) No 540/2011 (OJ 2018 L 254, p. 1) ('the contested implementing regulation').

This case raises two questions that are new to the Court's case-law, concerning, first, the possible failure of the Commission to take into account the partial withdrawal of the application for renewal of the approval of an active substance and, second, the Commission's obligation, in the application of the precautionary principle, to carry out an examination of the benefits and costs [74] within the framework of a procedure for renewal of such an approval.

Findings of the Court

First of all, the Court points out that the principle that it is the applicant which must prove that the conditions for approval of an active substance are satisfied, in order to obtain approval, also applies in the context of the procedure for renewal of the approval of such a substance.

With regard, in the first place, to the applicants' complaints that they were not given the opportunity to express their views on two proposals arising from a meeting of experts within EFSA, namely the reduction of the reference value used in the assessment of the long-term risk to mammals and the proposal for a new classification of thiram as a category 2 carcinogen, [75] the Court observes that the contested implementing regulation constitutes an act of general application. Neither the process of drafting such an act nor those acts themselves require, under the general principles of EU law, such as the right to be heard, consulted or informed, the participation of the persons affected. In such a context, the procedural rights enjoyed by the applicants in the renewal procedure are those explicitly provided for by Regulation No 1107/2009 and by Implementing Regulation No 844/2012. In that respect, the Court finds no irregularity which could constitute a breach of the applicants' right to be heard.

The Court considers, in the second place, the procedural irregularity relied on by the applicants, in that the Commission did not take account of the withdrawal of the application for renewal of the approval of thiram for use as a foliar spray and did not make any distinction between that use and use as a seed treatment.

In that regard, the Court points out, first of all, that Regulation No 1107/2009 does not provide for the situation in which an applicant for renewal of an approval of an active substance withdraws its application for one of the representative uses which it has previously designated. Next, it finds that the recitals of the contested implementing regulation do refer to that partial withdrawal. Finally, the Court analyses the effects of the partial withdrawal of the application for renewal of the approval of thiram. It notes that that partial withdrawal took place after the completion of the risk assessment process evidenced by the adoption of the EFSA conclusions, which raise several risks associated with the application of thiram by foliar spraying and, in particular, a high acute risk to consumers and users. The existence of those risks was not contested by the applicants in the present action. Moreover, they were real and not hypothetical, in that they concerned products already placed on the market. In those circumstances, the Court considers that a new assessment on the basis of the seed treatment alone would have had the effect of delaying the adoption of a position on the renewal of thiram.

Having regard also to the Commission's risk management role and the fact that the contested implementing regulation is an act of general application, the Court concludes that the Commission was not required to base that regulation solely on grounds relating to the use of thiram as a seed treatment. Nor was the Commission required to carry out or have carried out a new risk assessment limited to that use.

In the third place, the Court answers in the negative whether EFSA acted ultra vires in proposing the classification of thiram as a category 2 carcinogen. It is true that EFSA is not competent to propose or

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74 For the purposes of point 6.3.4 of the Communication from the Commission on the precautionary principle (COM(2000) 1 final).

75 In the light of the criteria laid down in Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1).

decide on the classification of the hazards associated with substances incorporated in plant protection products under Regulation No 1272/2008. However, it did not make such a proposal, but merely referred in its conclusions to the unanimous opinion of the experts consulted in the renewal procedure to that effect. Moreover, such an opinion did not in itself prevent the renewal of the approval of thiram. Furthermore, although the procedures provided for in Regulations No 1272/2008 and No 1107/2009 are distinct, the question of whether an active substance is or should be classified in a particular hazard class may be relevant in the context of both procedures, namely both in relation to the identification and communication of the hazards of a substance and in relation to whether it fulfils the criteria for approval under Regulation No 1107/2009.

Finally, with regard to the application of the precautionary principle, the Court considers whether the Commission was obliged to carry out an examination of the benefits and costs in a renewal procedure. That examination is part of the process leading to the adoption of appropriate measures to prevent certain potential risks to public health, safety and the environment under the precautionary principle and is part of the stage of that process aimed at managing the risks identified. The Court concludes that the Commission was required to carry out that examination and that it did in fact fulfil that obligation. To that end, it is sufficient to note that the Commission took cognisance of the effects, positive and negative, economic and otherwise, likely to be induced by the proposed action and by the failure to act, and that it took them into account in its decision, without it being necessary for those effects to be estimated precisely, if that is not possible or would require disproportionate effort.

VII. ECONOMIC AND MONETARY POLICY

Judgment of the General Court (Ninth Chamber, Extended Composition) of 2 February 2022, Pilatus Bank and Pilatus Holding v ECB, T-27/19

Link to the complete text of the judgment

Economic and monetary policy – Prudential supervision of credit institutions – Specific supervisory tasks conferred on the ECB – Decision to withdraw a credit institution's authorisation – Indictment of the main shareholder in a third country – Criterion of good repute – Perception of good repute by the market – Presumption of innocence – Proportionality – Rights of the defence

Pilatus Bank plc is a Maltese credit institution subject to the prudential supervision of the Malta Financial Services Authority (MFSA). Following the indictment in the United States of its main shareholder – who indirectly holds full control over it – for alleged financial offences, Pilatus Bank plc received several requests for withdrawal of deposits, representing approximately 40% of the deposits on its balance sheet.

In response to that situation, the MFSA adopted three decisions, relating, respectively, to the suspension of the voting rights of the indicted shareholder, the moratorium by which it ordered Pilatus Bank plc not to authorise any banking transactions, and the appointment of a competent person entrusted with exercising the main powers normally conferred on Pilatus Bank plc's governing bodies in respect of that bank's specific activities and its assets. The MFSA then submitted a proposal to the European Central Bank (ECB) to withdraw the authorisation of Pilatus Bank plc to take up the

business of a credit institution, [76] on the basis of which proposal the ECB adopted a decision to that effect.

The General Court dismisses the action brought by Pilatus Bank plc against that decision of the ECB. The present case has, inter alia, enabled the Court, for the first time, to rule on the withdrawal of a credit institution's authorisation on the ground that its shareholder lacks good repute.

Findings of the Court

First of all, the Court points out that the criteria which shareholders seeking to acquire a qualifying holding in a credit institution must meet, including the criterion of good repute, are applicable to the assessment of the suitability of the shareholders carried out for the purposes of withdrawing an authorisation to take up the business of a credit institution. [77] Consequently, the competent authorities may withdraw an authorisation of a credit institution if, taking into account the need to ensure the sound and prudent management of that institution and to ensure the preservation and stability of the financial system within the European Union and each Member State, those authorities are not satisfied as to the suitability of the shareholders, in particular because of their lack of good repute.

Next, the Court clarifies the concept of 'good repute', while pointing out that it is an indeterminate legal concept and that the competent authorities enjoy a discretion in applying the criterion of good repute. In its normal meaning, good repute refers to the suitability of a person who complies with customary standards and rules and to the reputation which that person enjoys with the public as regards that fitness and his or her conduct. Thus, good repute depends not only on a person's conduct, but also on the perception of that conduct by others. In assessing the good repute of the shareholders of credit institutions, account must be taken, first, of whether their conduct complies with the applicable laws and regulations and, secondly, of the perception of that conduct and their reputation by the public and by the participants in the financial markets.

The Court then holds that, in the present case, the ECB was fully entitled to consider that, because of the indictment of Pilatus Bank plc's main shareholder and the corresponding perception of his good repute by the financial market participants, which resulted in significant negative consequences for the situation of that credit institution, that shareholder's lack of good repute justified withdrawing Pilatus Bank plc's authorisation to take up the business of a credit institution. The withdrawal decision was based on the specific negative effects which the indictment had had on the reputation of the indicted shareholder and of Pilatus Bank plc, on the public confidence in the latter and, consequently, on the soundness of the management thereof and the stability of the financial system within the European Union and each Member State. Among those effects, the significant requests for withdrawal of deposits, the termination of the correspondent banking relationships, the early termination of contracts and the deterioration in the risk ratio of Pilatus Bank plc were identified.

In the light of those concrete negative effects, the ECB was not obliged to take into consideration the fact that the conduct of Pilatus Bank plc's main shareholder that is complained of might not be unlawful under EU law. The most important factor to be taken into account is not the merits of the prosecution contained within the indictment under EU law or the law of the third State concerned, but the consequences of that prosecution on the reputation of the indicted shareholder, on the situation of Pilatus Bank plc and on the banking market as a whole. However, the fact remains that the ECB is required to consider any evidence submitted in the context of the administrative procedure capable of demonstrating the absence of any effect of such a prosecution on the reputation or management

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76 Pursuant to Article 14(5) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

77 Conclusion reached from a combined reading of Article 1, first paragraph, Article 4(1) and (3) and Article 14(5) of Regulation No 1024/2013 and Article 14(2), Article 18 and Article 23(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

of the institution concerned and which might result from the abusive or manifestly unfounded nature of such a prosecution.

Lastly, the Court finds that, in the present case, the ECB did not infringe either the presumption of innocence of Pilatus Bank plc or the rights of the defence.

As regards the principle of the presumption of innocence, the Court observes that the failure to review the facts relating to the shareholder's indictment does not demonstrate that that principle has been infringed. Indeed, in the contested decision, the ECB clearly stated that the indictment contained allegations. That decision did not, therefore, imply an accusation of a criminal nature and did not constitute a finding that the offence had been committed. The Court points out that prudential supervision, which is intended to ensure the sound management of credit institutions and to preserve the stability of the financial system within the European Union and each Member State, pursues different objectives from those of criminal proceedings, the latter being intended to penalise conduct punishable by law.

As regards Pilatus Bank plc's rights of defence, which were allegedly infringed owing in particular to the fact that its directors were unable to pay its legal adviser and to have access to its resources and information, the Court holds that those circumstances arise exclusively from the MFSA's decision to appoint a competent person, entrusted with exercising the main powers normally conferred on Pilatus Bank plc's governing bodies in respect of its specific activities and its assets. However, such a decision has no effect on the contested decision and its adoption falls within the competence of the national authority. Thus, the ECB cannot be held liable for the consequences of that decision. The decisions of the EU institutions cannot be rendered unlawful on grounds connected with the application of rules of national law, which do not fall within their competence, and over which they have no control. Moreover, within the framework of the single supervisory mechanism, the ECB is not under any obligation to prevent a national authority from adopting such a decision. Consequently, the circumstances relied on by Pilatus Bank plc are not such as to render the contested decision unlawful.

VIII. ENVIRONMENT: ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

Judgment of the Court (Grand Chamber) of 22 February 2022, Bund Naturschutz in Bayern, C-300/20

Link to the complete text of the judgment

Reference for a preliminary ruling – Environment – Directive 2001/42/EC – Assessment of the effects of certain plans and programmes on the environment – Article 2(a) – Concept of 'plans and programmes' – Article 3(2)(a) – Measures prepared for certain sectors and setting a framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU – Article 3(4) – Measures setting a framework for future development consent of projects – Landscape conservation regulation adopted by a local authority

In 2013, the Landkreis Rosenheim (Rural District of Rosenheim, Germany) adopted a regulation relating to a landscape conservation area ('the Inntal Süd Regulation') [78] without having carried out an environmental assessment beforehand in accordance with Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment. [79] The Inntal Süd Regulation placed an area of around 4 021 hectares under protection, that is to say an area around 650 hectares smaller than the area protected by the previous regulations.

Bund Naturschutz in Bayern eV, an environmental association, challenged that regulation before the Bayerischer Verwaltungsgerichtshof (Higher Administrative Court, Bavaria, Germany). After its application was dismissed as inadmissible, that association brought an appeal on a point of law (*Revision*) against that decision before the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

That court considers that the Inntal Süd Regulation constitutes a plan or programme within the meaning of Directive 2001/42. Having doubts, however, as to whether the Rural District of Rosenheim had an obligation to carry out, in accordance with that directive, an environmental assessment prior to the adoption of that regulation, it has decided to bring that issue before the Court of Justice by means of the preliminary ruling procedure.

In its judgment, delivered by the Grand Chamber, the Court clarifies the concept of plans and programmes that must be subject to an environmental assessment in accordance with Directive 2001/42.

Findings of the Court

As a preliminary point, the Court recalls that Directive 2001/42 covers plans and programmes which, first, are prepared or adopted by an authority at national, regional or local level, and, second, are required by legislative, regulatory or administrative provisions.

Concerning the second condition, it is apparent from settled case-law that plans and programmes the adoption of which is regulated by national legislative or regulatory provisions, which determine the

78 Verordnung des Landkreises Rosenheim über das Landschaftsschutzgebiet 'Inntal Süd'.

79 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of that directive. Thus, a measure must be regarded as 'required' where there exists, in national law, a particular legal basis authorising the competent authorities to adopt that measure, even if such adoption is not mandatory.

Accordingly, as the Inntal Süd Regulation was adopted by a local authority on the basis of a provision of German legislation, it constitutes a plan or programme within the meaning of Directive 2001/42. In that regard, the Court notes that the general nature of that regulation, which contains general and abstract provisions laying down general requirements, does not preclude such a classification. The fact that a national measure is to some extent abstract and pursues an objective of transforming an existing geographical area is illustrative of its planning and programming aspect and does not prevent it from being included in the concept of 'plans and programmes'.

Next, the Court examines whether a national measure, such as the Inntal Süd Regulation, which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits falls within the scope of Article 3(2)(a) of Directive 2001/42. That provision lays down the obligation to carry out an environmental assessment for all plans and programmes which satisfy two cumulative conditions.

In the first place, the plans or programmes must 'concern' one of the sectors referred to in Article 3(2)(a) of Directive 2001/42. [80] In this instance, it appears to the Court that that first condition is satisfied, which it is, however, for the referring court to ascertain.

In that regard, the Court specifies that the fact that the main objective of a plan or programme is the protection of the environment does not mean that that plan or programme may not also 'concern' one of the sectors listed in that provision. Indeed, the very essence of measures of general application prepared with a view to the protection of the environment is precisely to regulate human activities having significant environmental effects, including those covered by those sectors.

In the second place, the plans or programmes must set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment. [81]

That requirement is met where a plan or programme establishes a significant body of criteria and detailed rules for the grant and implementation of one or more of the projects listed in Annexes I and II to Directive 2011/92, inter alia with regard to the location, nature, size and operating conditions of such projects, or the allocation of resources connected with those projects. By contrast, where a plan or programme, such as the Inntal Süd Regulation, merely defines landscape conservation objectives in general terms and makes activities or projects in the conservation area subject to obtaining a compulsory permit, without however setting out criteria or detailed rules for the grant and implementation of those projects, the requirement referred to above is not met, even if that regulation may have a certain influence on the location of projects.

In the light of those considerations, the Court concludes that the Inntal Süd Regulation does not constitute a plan or programme which must be subject to an environmental assessment in accordance with Article 3(2)(a) of Directive 2001/42, in so far as it does not lay down sufficiently detailed rules regarding the content, preparation and implementation of the projects referred to in Annexes I and II to Directive 2011/92, which it is, however, for the referring court to ascertain.

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80 Namely agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use.

81 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), which replaced Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

Lastly, the Court rules that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of projects is also not covered by Article 3(4) of Directive 2001/42, pursuant to which it is for the Member States to determine whether plans and programmes, other than those referred to in paragraph 2 of that article, which set the framework for future development consent of projects, are likely to have significant environmental effects.

IX. JUDGMENT PREVIOUSLY DELIVERED

INSTITUTIONAL PROVISIONS: PUBLIC PROCUREMENT BY THE INSTITUTIONS OF THE EUROPEAN UNION

Judgment of the General Court (Ninth Chamber, Extended Composition) of 26 January 2022, Leonardo v Frontex , T-849/19

Public supply contracts – Tendering procedure – Aerial surveillance services – Action for annulment – No interest in bringing proceedings – Inadmissibility – Non-contractual liability

On 18 October 2019, by contract notice, [82] the European Border and Coast Guard Agency (Frontex) launched a tendering procedure [83] ('the contested contract notice') in order to acquire aerial surveillance services by the means of Medium Altitude Long Endurance Remotely Piloted Aircraft System for maritime purposes.

The applicant, Leonardo SpA, a company operating in the aerospace sector, did not participate in the tendering procedure launched by the contested contract notice.

On 31 May 2020, the tender evaluation committee submitted its evaluation report to the authorising officer responsible who then approved the tender evaluation report and signed the contract award decision ('the contested award decision').

The applicant then brought an action before the General Court, first, for annulment of the contested contract notice and its annexes [84] and the contested award decision and, secondly, for compensation for the damage it claims to have suffered as a result of the unlawful nature of the call for tenders at issue. [85]

By its judgment, delivered in a chamber sitting in extended composition, the Court dismisses the applicant's action in its entirety. The principal feature of the case is that the action for annulment is directed against a contract notice and its annexes and has been brought by an undertaking which did not participate in the tendering procedure organised by that notice. The question whether such an action is admissible is without precedent.

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82 Contract notice published in the Supplement to the *Official Journal of the European Union* (OJ 2019/S 202-490010).

83 Tendering procedure FRONTEX/OP/888/2019/JL/CG entitled 'Remotely Piloted Aircraft Systems (RPAS) for Medium Altitude Long Endurance Maritime Aerial Surveillance'.

84 Article 263 TFEU.

85 Article 268 TFEU.

Findings of the Court

In the first place, examining the admissibility of the applications for the annulment of the contested acts, the Court notes that, in the light of the applicant's assertion that it did not participate in the tendering procedure at issue since the requirements of the tender specifications prevented it from submitting a tender, the question is whether, in such circumstances, it has an interest in bringing proceedings for the purposes of Article 263 TFEU against that call for tenders. In that context, the General Court recalls the position taken in that regard by the Court of Justice in a preliminary ruling, according to which, since it is only in exceptional cases that a right to bring proceedings is given to an operator which has not submitted a tender, it cannot be regarded as excessive to require that operator to demonstrate that the clauses in the call for tenders make it impossible to submit a tender. [86] Although that judgment was delivered in response to a question referred for a preliminary ruling on the interpretation of provisions of Directive 89/665, [87] which is binding only on the Member States, the Court considers that the solution it provides can be applied, *mutatis mutandis*, in a case such as the present one, in which the applicant claims that it was prevented from submitting a tender on account of the technical specifications of the tender documents launched by an agency of the European Union, technical specifications which it disputes. It must therefore, in the Court's view, be determined whether the applicant has established that it was prevented from submitting a tender and, therefore, whether it has an interest in bringing proceedings.

In that regard, first, in respect of the tendering procedure at issue, the Court recalls that, in the present case, that procedure was preceded by the tendering procedure FRONTEX/OP/800/2017/JL, launched in 2017, for the trials of two types of remotely piloted aircraft systems (RPAS). That contract was divided into two lots and the applicant won the contract for the second lot. Once those contracts were performed, Frontex carried out detailed assessments and it was on the basis of those evaluation reports that it established the requirements contained in the contested contract notice and its annexes, the questions and answers and the minutes of the informative meeting, referred to in the application, which include those which the applicant considers to be discriminatory. The establishment of those requirements was therefore, in the Court's view, at the end of a staged process marked by feedback which enabled Frontex to assess their necessity in detail and diligently.

Secondly, with regard to the applicant's assertion that 'the rules of the call for tenders contain clauses which are *contra legem* and unjustified and which expose potential competitors to claims which are not technically feasible', the Court finds that three undertakings submitted a tender and two of them, at the very least, fulfilled all of the technical specifications as the contract was awarded to them.

Thirdly, with regard to the treatment of the applicant in relation to the other candidates, the Court considers that the applicant has not established either that the technical specifications were applied differently to it than to the other candidates or, more generally, that it was treated differently even though it was in a similar situation to those candidates.

Fourthly, with regard to the applicant's assertion that its participation was made 'impossible' or that it was subject to 'excessive economic burdens to the point of undermining the submission of a competitive tender', the Court finds that that argument cannot demonstrate any discrimination against the applicant.

In those circumstances, the Court holds that the applicant has not demonstrated that the requirements of the call for tenders at issue could be discriminatory against it. Therefore, the applicant has not established that it was prevented from submitting a tender and therefore it does

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86 Judgment of 28 November 2018, *Amt Azienda Trasporti e Mobilità and Others* (C-328/17, EU:C:2018:958, paragraph 53). That judgment was delivered in response to a question referred for a preliminary ruling on the interpretation of Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 (OJ 2007 L 335, p. 31).

87 See footnote 5 for the full reference for Directive 89/665.

not have an interest in seeking the annulment of the contested acts. Consequently, the Court rejects as inadmissible the claims for annulment of those acts and, as a result, those directed against the award decision, without there being any need to rule on the requirements relating to the existence of a challengeable act and the applicant's standing to bring proceedings, or on the effectiveness of the measures of inquiry sought.

In the second place, examining the claim for compensation, the Court recalls that, as regards the condition requiring actual damage to have been suffered, the European Union will incur liability only if the applicant has actually suffered 'real and certain' loss. Consequently, it is for the applicant to produce to the EU Courts the evidence to establish the fact and the extent of such loss. In the present case, the Court finds that the applicant is merely seeking compensation for all the damage that has been suffered and continues to be suffered as a result of the unlawful nature of the call for tenders at issue, without adducing evidence to establish the fact and the extent of that damage. It follows that the condition requiring actual damage to have been suffered has not been satisfied for the European Union to incur non-contractual liability. [88]

In those circumstances, the Court holds that the applicant's claim for compensation must be rejected and, consequently, its action must be dismissed in its entirety.

88 Under the second paragraph of Article 340 TFEU.

Nota:

The summaries of the following cases are currently being finalised and will be published in a future issue of the Monthly Case-Law Bulletin:

- Judgment of 21 December 2021, Euro Box Promotion and Others, C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034
- Judgment of 24 February 2022, "Viva Telecom Bulgaria", C-257/20, EU:C:2022:125
- Judgment of 24 February 2022, Glavna direktsia "Pozharna bezopasnost i zashtita na naselenieto", C-262/20, EU:C:2022:117
- Judgment of 20 October 2021, JMS Sports v EUIPO – Inter-Vion (Élastique pour cheveux en spirale), T-823/19, EU:T:2021:718
- Judgment of 10 November 2021, Google and Alphabet v Commission (Google Shopping), T-612/17, EU:T:2021:763
- Judgment of 15 December 2021, Oltchim v Commission, T-565/19, EU:T:2021:904
- Judgment of 12 January 2022, Verelst v Conseil, T-647/20, EU:T:2022:5
- Judgment of 9 February 2022, QI and Others v Commission and ECB, T-868/16, EU:T:2022:58
- Judgment of 23 February 2022, Ancor Group v EUIPO – Cody's Drinks International (CODE-X), T-198/21, EU:T:2022:83