COURT OF JUSTICE
OF THE EUROPEAN UNION

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I. CITIZENSHIP OF THE UNION: RIGHT TO MOVE AND RESIDE FREELY WITHIN THE MEMBER STATES

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Mirin, C-4/23

Link to the full text of the judgment

Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Articles 7 and 45 of the Charter of Fundamental Rights of the European Union – Right to move and reside freely within the territory of the Member States – Union citizen who has lawfully acquired, during the exercise of that right and his residence in another Member State, a change of his first name and gender identity – Obligation on the part of that Member State to recognise and enter in the birth certificate that change of first name and gender identity – National legislation which does not permit such recognition and entry, obliging the party concerned to bring new judicial proceedings for a change of gender identity in the Member State of origin – Effect of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

Hearing a reference for a preliminary ruling from the Judecătoria Sectorului 6 Bucureşti (Court of First Instance, Sector 6, Bucharest, Romania), the Court of Justice, sitting as the Grand Chamber, clarifies the scope of the obligation on the part of the Member State of origin to recognise and enter on the birth certificate of one of its nationals a change of first name and gender identity lawfully acquired by that citizen of the European Union when exercising his or her freedom of movement and residence in another Member State.

M.-A. A. was born in 1992 in Romania and was registered at birth as female. After moving to the United Kingdom with his parents in 2008, M.-A. A. obtained British nationality by naturalisation.

In February 2017, in the United Kingdom, M.-A. A. changed his first name and title from female to male using the deed poll procedure, [1] and subsequently had certain official documents issued by the United Kingdom authorities changed. In June 2020, M.-A. A. obtained a gender identity certificate, a document confirming his male gender identity, in the United Kingdom.

In May 2021, on the basis of the declaration made under the deed poll procedure and the gender identity certificate, M.-A. A. requested the Romanian competent authorities to record in his birth certificate entries relating to his change of first name, gender and personal identification number so as to reflect the male sex. He also applied for a new birth certificate containing those new particulars. By decision of 21 June 2021, the Romanian authorities rejected M.-A. A.'s request on the ground, inter alia, that, in accordance with the applicable legislation, an entry relating to a person's change of gender identity may be recorded in his or her birth certificate only when it has been approved by a judicial decision that has become final.

Hearing the action brought by M.-A. A. against that decision, the referring court asks, in particular, whether the status of citizen of the Union and the right to move and reside freely within the territory of the Member States preclude national legislation which requires the person concerned to bring new proceedings for a change of gender identity before the national courts, when that person has already successfully completed a procedure to that end in another Member State of which he is also a

1 This procedure allows UK citizens to change their first or last name by making a simple declaration.

national. In addition, the referring court is uncertain as to the effect, for the resolution of the dispute in the main proceedings, of the withdrawal of the United Kingdom from the European Union. [2]

Findings of the Court

First, the Court points out that while, as EU law currently stands, a person's status, which is relevant to the rules on changing a first name and gender identity, is a matter that falls within the competence of the Member States, each Member State must comply with EU law in exercising that competence.

In that context, the Court has previously held that a refusal by the authorities of a Member State to recognise the name of a national of that State who exercised his or her right of free movement in the territory of another Member State, as determined in that second Member State, is likely to hinder the exercise of the right, enshrined in Article 21 TFEU, to move and reside freely in the territories of the Member States. [3] Such a hindrance may also result from the refusal by those authorities to recognise the change of gender identity made pursuant to the procedures laid down for that purpose in the Member State in which a Union citizen exercised his or her freedom of movement and residence, whether or not that change is linked to a change of first name, as in the present case. Like a name, gender defines a person's identity and personal status. Consequently, the refusal to amend and recognise the gender identity which a national of one Member State has lawfully acquired in another Member State is liable to cause 'serious inconvenience' for that national at administrative, professional and private levels. Thus, for such a Union citizen, there is a real risk, linked to the fact that he or she bears two different first names and has been attributed two different gender identities, of having to dispel doubts as to his or her identity and the authenticity of the documents which he or she presents or the veracity of their content.

Consequently, the refusal to recognise and enter in the civil registers, a change of first name and gender identity lawfully acquired by a national of that State in another Member State, on the basis of national legislation which does not allow such recognition and entry, with the result that the person concerned is obliged to bring new judicial proceedings for a change of gender identity in the first Member State, which disregard that change already lawfully acquired in that other Member State, is liable to restrict the exercise of the right to move and reside freely within the territory of the Member States.

Next, the Court recalls that national legislation which restricts the exercise of the right enshrined in Article 21 TFEU can be justified only where it is consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter') and, in particular, the right to respect for private life set out in Article 7, which has the same meaning and scope as the right guaranteed in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. [4] [5] The European Court of Human Rights has held that the procedure for recognition of gender identity laid down by the national legislation at issue in the main proceedings is incompatible with Article 8 ECHR, in so far as it does not satisfy the requirements imposed by that provision for the examination of a request for a change of gender identity made for the first time before a national court. [6]

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2 Noting that, in the present case, the procedure for a change of gender identity was initiated in the United Kingdom before the withdrawal of that State from the European Union, but was completed after that withdrawal, during the transition period, the referring court asks whether, in such circumstances, Romania is required to recognise the legal effects of that procedure for a change of gender identity conducted in the United Kingdom.

3 See judgment of 8 June 2017, Freitag (C-541/15, EU:C:2017:432). In that judgment, the Court in particular held that confusion and inconvenience are liable to arise from a divergence between the two names used for the same person, since many daily actions, both in the public and in the private domains, require a person to provide evidence of his or her own identity (paragraphs 36 and 37).

4 Convention signed in Rome on 4 November 1950 ('the ECHR').

5 In accordance with Article 52(3) of the Charter.

6 ECtHR, 19 January 2021, X and Y v. Romania, CE:ECHR:2021:0119JUD000214516. In that judgment, the European Court of Human Rights held inter alia that, under Article 8 ECHR, States are required to provide for a clear and foreseeable procedure for legal recognition of gender identity which allows for a change of sex and thus of name and digital personal code, on official documents, in a quick, transparent and accessible manner.

Moreover that procedure cannot constitute an effective means of enabling a Union citizen who, while residing in another Member State and therefore when exercising the right guaranteed in Article 21 TFEU and Article 45 of the Charter, has already lawfully acquired the change of his or her first name and gender identity, effectively to assert his or her rights conferred by those articles, read in the light of Article 7 of the Charter, especially since that procedure exposes that citizen to the risk that it may lead to an outcome contrary to that adopted by the authorities of the other Member State.

In order for national legislation relating to the entry in civil registers of a change of first name and gender identity to be capable of being regarded as compatible with EU law, it is necessary that the provisions or national procedure allowing such a request for such entry to be made do not render impossible or excessively difficult the implementation of the rights conferred by Article 21 TFEU and, in particular, the right to recognition of that change. The exercise of that right may be called into question by the discretion enjoyed by the competent authorities in the context of that procedure, since the existence of such discretion is liable to lead to a divergence between two names and two genders used for the same person as evidence of his or her identity and to serious inconvenience at administrative, professional and private levels. Therefore, national legislation such as that at issue in the main proceedings infringes the requirements under Article 21 TFEU.

Lastly, the Court states that it is irrelevant, in that regard, that the request for recognition and entry of the change of first name and gender identity was made on a date on which the withdrawal from the European Union of the Member State where that change had been lawfully obtained had already taken effect. [7]

II. INSTITUTIONAL PROVISIONS: PUBLIC PROCUREMENT BY THE EU INSTITUTIONS

Judgment of the General Court (Fourth Chamber, Extended Composition), 2 October 2024, VC v EU-OSHA (Exclusion of public procurement pursuant to a suspended national administrative decision), T-126/23

Public supply contracts – Financial regulation – Exclusion from procurement procedures and from the award of grants financed by the general budget of the European Union and by the EDF for a period of two years – Publication of the exclusion – Registration in the early detection and exclusion system database – Serious professional misconduct – Decision of a national competition authority – Suspension by a national court – Obligation to state reasons – Right to effective judicial protection – Remedial measures – Unlimited jurisdiction – Manifest error of assessment – Error of assessment – Proportionality

The General Court, sitting in an extended composition, dismissed the action for annulment brought by the applicant, VC, against the decision excluding that party from participating in procedures for the award of public contracts of the European Union for a period of two years on the basis of serious

7 The Court thus notes that, in so far as M.-A. A., in his capacity as a Union citizen, seeks in his Member State of origin recognition of the change of his first name and of his gender identity acquired, when exercising his freedom of movement and residence in the United Kingdom, before the withdrawal of that Member State from the European Union and before 31 December 2020, the date laid down by the Withdrawal Agreement as marking the end of the transition period, respectively, he may rely, against that Member State of origin, on the rights pertaining to that status, in particular those laid down in Articles 20 and 21 TFEU, including after the end of that period.

professional misconduct. [8] In its judgment, the Court rules, for the first time, on the effects of a national court decision suspending the administrative decision on which the exclusion was based. It has also taken the unprecedented step of specifying the scope of its unlimited jurisdiction in assessing the adequacy of the remedial measures adopted by a tenderer, as well as the need to replace an exclusion penalty by a financial penalty.

The applicant had submitted a bid for a lot in the call for tenders published by the European Agency for Safety and Health at Work (EU-OSHA) for the provision of information and communication technology services. After becoming aware of the existence of a decision of the Comisión Nacional de los Mercados y la Competencia (National Commission on Markets and Competition, Spain) ('the CNMC') finding that the applicant had participated in an infringement of competition law ('the CNMC Decision'), EU-OSHA had requested a panel, convened in accordance with the financial regulation, [9] to make a recommendation concerning whether to impose an exclusion or a financial penalty on the applicant.

Subsequently, the Audiencia Nacional (National High Court, Spain) ordered a stay of execution of the CNMC decision ('the national decision to stay execution'). However, after making a preliminary legal assessment of the applicant's conduct, [10] the abovementioned panel recommended that EU-OSHA exclude that party, taking the view that the conduct in question should be regarded as 'serious professional misconduct'. EU-OSHA followed this recommendation and adopted the contested decision.

Findings of the Court

In the first place, the Court clarifies the scope of the effects of the national decision to stay execution.

First, the Court notes that, based on the financial regulation, [11] an entity can be excluded from participating in procedures for the award of public contracts, in the absence of a final judgment or a final administrative decision, on the basis of a preliminary legal assessment of its conduct by the competent EU authority based on established facts or findings determined in particular by decisions of a national competition authority. It follows that the absence of a final judgment or decision establishing the misconduct in question does not preclude the adoption of an exclusion measure by the competent EU authority.

The Court infers from this that the EU legislature intended to allow the competent EU authority to make its own assessment of the acts committed by the economic operator concerned, without waiting for a court to give judgment.

Accordingly, in the present case, it was for EU-OSHA, in the absence of a final decision, to make its own assessment of the applicant's conduct on the basis of the CNMC decision, but also of other relevant factors relating to the factual context, including, in particular, the stay of execution of that decision.

In the present case, the Court has held that EU-OSHA did take into account the stay of execution of the CNMC decision and that it rightly considered that the stay of execution of that decision did not preclude the findings of that decision from being taken into account in order to demonstrate the

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8 Decision of the European Agency for Safety and Health at Work of 13 January 2023 ('the contested decision').

9 Article 143 of Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU, and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the financial regulation').

10 See Article 136(2) of the financial regulation.

11 Article 106 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1), as amended by Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 (OJ 2015 L 286, p. 1), ('the former financial regulation'), and Article 136 of the financial regulation.

existence of serious professional misconduct on the part of the applicant and to adopt an exclusion measure.

Indeed, the facts alleged against the applicant are not based on mere supposition or presumption, but were established on the basis of the findings of an investigation carried out by the CNMC.

Furthermore, the national decision to stay execution does not take a position on the substance of the CNMC decision. The Court states that the findings and considerations of the CNMC decision relating to the applicant's failure to comply with competition law are therefore in no way called into question, or even doubted, by the national court, which has based its decision to stay execution on considerations derived solely from the consequences of the fine imposed and of the prohibition to conclude contracts on the applicant's continuation of its activities. In any event, the fact that, as the applicant maintains, by granting a provisional measure the national court implicitly but necessarily recognised the plausibility of the CNMC's allegations cannot be sufficient to call into question the explicit considerations and findings of the CNMC decision.

Lastly, it is irrelevant that the national decision to stay execution suspends not only the payment of the fine imposed by the CNMC decision but also the prohibition on the applicant's being awarded procurement contracts in Spain imposed by that decision. The reasons for the stay of execution of the CNMC decision do not call into question the accuracy of the facts serving as the basis for the contested decision and thus ordering the exclusion of the applicant. Furthermore, the national decision to stay execution does not contain any information as to whether the applicant had implemented any remedial measures or whether the adoption of such measures justified the stay of execution.

Secondly, as regards the alleged infringement of the principle of effective judicial protection by the adoption of the exclusion decision, the Court recalls its case-law according to which legislation which paid no heed to the effects of bringing administrative or legal proceedings on the opportunity to participate in a procedure for the award of a contract would risk infringing the fundamental rights of the parties concerned. However, as explained above, it cannot be considered that, in the present case, the national decision to stay execution was disregarded and that the applicant's right to judicial protection was infringed.

Furthermore, the exercise of the power to exclude a person or entity – in this case the applicant – from procedures for the award of public contracts in the EU on the basis of a preliminary legal assessment of its conduct does not infringe Article 47 of the Charter of Fundamental Rights of the European Union. The existence of a remedy to challenge the contested decision before the Courts of the European Union makes it possible to ensure that the applicant is afforded judicial protection.

The Court considers that there is therefore no reason to give the national decision to stay execution the same effect as that given to final decisions or judgments. If the power of the EU authorities to exclude a party from such a procedure could be paralysed by the mere fact of the lodging of a suspensive appeal against the national decision that might serve as a basis for the exclusion or of a suspension of that decision, such a power would be rendered ineffective.

Lastly, the Court adds that, in the event that the national decision to stay execution is followed by a final judgment annulling the CNMC decision, the financial regulation provides [12] that the authorising officer is to terminate the exclusion without delay, thereby giving full effect to the national court decision and at the same time guaranteeing the applicant's judicial protection, which attaches in this case to the national court decision, a decision that is binding on the EU authority.

In the second place, the Court clarifies the nature of its jurisdiction and the extent of its review of the remedial measures adopted by the applicant.

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12 Article 136(2), third subparagraph, of the financial regulation.

First, after reiterating that it has unlimited jurisdiction to review an exclusion decision, [13] the Court finds that the scope of that jurisdiction ought to be strictly limited to determining the penalty, without covering any changes in the constituent elements of the conduct justifying that penalty.

In the present case, however, the Court believes that the examination of remedial measures is part of the assessment of the conduct justifying a penalty. The assessment to be made of the remedial measures is tantamount to verifying whether the serious professional misconduct is continuing, inferred in this case from the infringement established by a national authority, and the possibility that it might recur. It is irrelevant in this respect that the remedial measures are generally implemented after the infringement established by the national authority has occurred. The Court concludes that it cannot exercise its unlimited jurisdiction for the purposes of examining the plea in law relating to the remedial measures adopted by the applicant. It cannot therefore substitute its own assessment of the remedial measures in question for that of EU-OSHA and must confine itself to reviewing the legality of that assessment.

Second, as regards the assessment by the Courts of the European Union as to whether a manifest error of assessment has been committed, on the one hand, the Court notes that in order to establish that an institution has committed a manifest error in assessing complex facts, the evidence adduced by the applicant must be sufficient to make the factual assessments used in the act implausible. Without prejudice to that examination of plausibility, it is not for the General Court to substitute its assessment of complex facts for that of the institution which adopted the decision.

In so far as the institutions have a margin of discretion to assess whether conduct can be classified as serious professional misconduct and the assessment of remedial measures is an integral part of the assessment of such conduct, they must also be given a margin of discretion to assess remedial measures.

On the other hand, the Court specifies the factors that may be taken into account in order to review the legality of EU-OSHA's assessment of the remedial measures adopted by the applicant. By providing that a person or entity is not excluded if it has taken sufficient remedial measures to demonstrate its reliability, [14] the financial regulation places the onus on the person or entity in question to establish that the remedial measures taken are such as to prevent its exclusion. The Court concludes that if the burden of proof imposed by those provisions is not to be rendered ineffective, it cannot be accepted that the operator concerned may adduce evidence before the Court that was not communicated during the exclusion procedure. A fortiori, the Court cannot rule in these proceedings on remedial measures not presented before EU-OSHA.

Furthermore, it would be prejudicial to the proper administration of justice and to the principle of institutional balance if the Court were to rule on new remedial measures or new evidence submitted, where applicable, at the same time to the authorising officer and which might lead that officer to review the contested decision in the course of the proceedings. Accordingly, the Court holds that only the evidence communicated to EU-OSHA before the adoption of the contested decision may be taken into account.

In the third place, the Court notes, in the context of the examination of the proportionality of the exclusion penalty, that the remedial measures adopted by the applicant were taken into account by EU-OSHA as mitigating circumstances in order to limit the duration of the exclusion. In the present case, therefore, it is a question of analysing the remedial measures adopted by the applicant in so far as they contribute not to the establishment of the wrongful conduct but to the determination of the associated penalty, thereby justifying the exercise by the Court of its unlimited jurisdiction.

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13 Article 143(9) of the financial regulation.

14 Article 106(7)(c) of the former financial regulation and Article 136(6)(a) of the financial regulation.

To exercise that jurisdiction, the Court is therefore entitled to consider evidence communicated for the first time in the present proceedings that has not previously been communicated to EU-OSHA, subject, however, to compliance with the rules of admissibility laid down by the Rules of Procedure of the General Court.

Finally, the Court ruled on the alleged failure to assess the application of a financial penalty as an alternative to exclusion.

On the one hand, the Court infers from the provisions of the financial regulation [15] that EU-OSHA was not, in the present case, required to examine the possibility of replacing the exclusion penalty by a financial penalty.

On the other hand, as regards the request made to the Court that it should itself order that replacement within the scope of its unlimited jurisdiction, the Court rejects that request as unfounded. The applicant does not explain why the exclusion penalty should be replaced by a financial penalty in the present case. Furthermore, and in any event, the Court holds that it follows from an examination of the applicant's arguments that the exclusion penalty imposed in the present case is appropriate and should not, therefore, be replaced by a financial penalty.

III. PROCEEDINGS OF THE EUROPEAN UNION: REFERENCES FOR A PRELIMINARY RULING

Judgment of the Court of Justice (Grand Chamber), 15 October 2024, KUBERA, C-144/23

Link to the full text of the judgment

Reference for a preliminary ruling – Article 267 TFEU – Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling – Proceedings relating to the grant of leave to appeal on a point of law to the supreme court of a Member State – Request by the party seeking leave to appeal on a point of law that a question concerning the interpretation of EU law be referred to the Court of Justice – National legislation under which leave to appeal on a point of law is to be granted if the appeal raises a question of law that is important for ensuring legal certainty, the uniform application of the law or its development – Obligation for the national supreme court to consider, in proceedings relating to the grant of leave to appeal on a point of law, whether a reference for a preliminary ruling should be made – Statement of reasons for the decision refusing leave to appeal on a point of law

In a reference for a preliminary ruling from the Vrhovno sodišče (Supreme Court, Slovenia), the Grand Chamber of the Court of Justice rules that in proceedings relating to the grant of leave to appeal on a point of law to a national supreme court, that court is not relieved of its obligation to consider, in the context of those proceedings, whether a question of EU law raised in support of that application for leave to appeal should be referred to the Court of Justice for a preliminary ruling.

KUBERA, a company, purchased cans of Red Bull in Türkiye that had been manufactured in Austria and transported them by ship to the port of Koper (Slovenia) for importation. By two decisions of

15 Article 106(13)(a) of the former financial regulation.

5 October 2021, the Slovenian financial administration decided to detain those cans, pursuant to Regulation No 608/2013, [16] pending the outcome of judicial proceedings initiated by the company Red Bull to protect its intellectual property rights relating to those cans. Having exhausted the administrative appeals available, KUBERA brought actions against those decisions before the Upravno sodišče (Administrative Court, Slovenia), which delivered two judgments dismissing the actions.

KUBERA then submitted two applications to the referring court for leave to appeal on a point of law against those judgments, claiming that the dispute in the main proceedings raises a question of interpretation of Regulation No 608/2013 [17] which, according to KUBERA, is an important legal question that justifies granting leave to bring appeals on a point of law. It also asked that, should the referring court not agree with its preferred interpretation of that regulation, the matter be referred to the Court of Justice for a preliminary ruling.

According to the national legislation applicable, leave to appeal on a point of law is to be granted if the case brought before the Supreme Court raises a question of law that is important for ensuring legal certainty, the uniform application of the law or its development. That legislation sets out the particular situations that correspond to those scenarios. While the referring court considers that, in this instance, the applications of KUBERA for leave to appeal on a point of law do not satisfy those conditions, it is nevertheless uncertain as to whether the third paragraph of Article 267 TFEU [18] places it under an obligation, for the purposes of deciding on those applications for leave to appeal, to examine KUBERA's request that the question of EU law raised by that company be referred to the Court of Justice for a preliminary ruling. It also seeks to establish whether, should it decide that it is not necessary to submit a request for a preliminary ruling to the Court of Justice, it is required, under Article 47 of the Charter of Fundamental Rights of the European Union, to state the reasons for its decision refusing the application for leave to appeal on a point of law.

Findings of the Court

In the first place, the Court rules that the third paragraph of Article 267 TFEU precludes a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law from deciding – in proceedings relating to the examination of an application for leave to appeal on a point of law the outcome of which depends on the significance of the legal issue raised by one of the parties to the dispute with respect to legal certainty, the uniform application of the law or its development – to refuse such an application for leave without having assessed whether it was obliged to submit to the Court for a preliminary ruling a question concerning the interpretation or validity of a provision of EU law raised in support of that application.

The Court recalls, first of all, that although the organisation of justice in the Member States falls within the competence of those Member States, they are required, when exercising that competence, to comply with their obligations deriving from EU law. Accordingly, although EU law does not, in principle, preclude the Member States from establishing procedures for granting leave to appeal or other selection or 'filtering' systems for bringing matters before the national supreme courts, the implementation of such procedures or systems must meet the requirements deriving from EU law, particularly from Article 267 TFEU.

In that regard, the obligation on courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law to refer a question to the Court of Justice for a preliminary ruling is based on cooperation between national courts and tribunals and the Court, and is intended

16 Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ 2013 L 181, p. 15). See Article 17 of that regulation.

17 In this case, the question as to whether that regulation applies to a situation in which the imported goods are manufactured by the holder of intellectual property rights relating to those goods.

18 In accordance with that provision, where any question concerning the interpretation or validity of EU law is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal is to bring the matter before the Court of Justice.

in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States. Such a court or tribunal can be relieved of that obligation in only three situations: where it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. [19] If it is in one of those situations, [20] that court or tribunal is not, therefore, required to bring the matter before the Court, even when the question concerning the interpretation or validity of a provision of EU law is raised by a party to the proceedings before it.

Moreover, the Court notes that the existence of a procedure for granting leave to appeal on a point of law cannot transform the lower court or tribunal whose decision may be challenged in such an appeal into a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law and which is, as a result, under an obligation to make a reference to the Court as provided for in the third paragraph of Article 267 TFEU. However, a national supreme court, such as the referring court, is under such an obligation.

The referring court nevertheless explains that, according to its own interpretation of the national legislation applicable, it is not required to determine, at the stage of the examination of the application for leave to appeal on a point of law, whether or not it is necessary, in the context of the procedure relating to appeals on a point of law, to submit to the Court for a preliminary ruling the question of EU law raised in support of that application. Where leave to appeal on a point of law is not granted, the decision refusing leave definitively brings the procedure to an end. In that case, the lower court's interpretation of EU law could prevail in the national legal order concerned, even though the question raised in support of the application for leave to appeal on a point of law would have warranted a reference for a preliminary ruling being made to the Court.

The Court notes that such legislation or national practices can lead to a situation in which a question concerning the interpretation or validity of a provision of EU law, despite being raised before the Supreme Court, would not be submitted to the Court of Justice, contrary to the obligation imposed on that national court by the third paragraph of Article 267 TFEU. Such a situation is capable of undermining the effectiveness of the system of cooperation between the national courts and tribunals and the Court, and, in particular, the achievement of the objective of preventing a body of national case-law that is not in accordance with EU law from being established in any of the Member States. [21]

The Court nevertheless invites the referring court to ascertain whether it is possible to interpret the national legislation applicable in accordance with the requirements of Article 267 TFEU. [22] In fact, that legislation does not seem to prohibit the referring court from assessing, in the context of the procedure for examining an application for leave to appeal on a point of law, whether the question

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19 Judgments of 6 October 1982, Cilfit and Others (283/81, EU:C:1982:335, paragraph 21), and of 6 October 2021, Consorzio Italian Management and Catania Multiservizi (C-561/19, EU:C:2021:799, paragraph 33).

20 Those three situations in which national courts or tribunals of last instance are not subject to the obligation to make a reference for a preliminary ruling are referred to below as 'exceptions to the duty to refer'.

21 That interpretation is not called into question by the case-law deriving from the judgments of 15 March 2017, Aquino (C-3/16, EU:C:2017:209, paragraph 56), and of 6 October 2021, Consorzio Italian Management and Catania Multiservizi (C-561/19, cited above, paragraph 61), according to which a national court or tribunal against whose decisions there is no judicial remedy under national law may decline to refer a question to the Court of Justice for a preliminary ruling on grounds of inadmissibility specific to the procedure before that national court or tribunal, subject to compliance with the principles of equivalence and effectiveness. Unlike those grounds, a criterion of leave to appeal on a point of law such as that provided for in the national legislation applicable requires the supreme court to examine the significance of the legal issue raised in support of the application for leave to appeal with respect to legal certainty, the uniform application of the law or its development.

22 The Court refers, in that regard, to the information provided in the order for reference concerning the development of the case-law of the Ustavno sodišče (Constitutional Court, Slovenia). In particular, according to the referring court, it follows from a decision of that constitutional court of 31 March 2022 that where one of the parties to a dispute requests, in the context of an application for leave to appeal on a point of law, that a matter be referred to the Court of Justice for a preliminary ruling under Article 267 TFEU, that party's request must be dealt with at the stage of the examination of that application for leave.

concerning the interpretation or validity of a provision of EU law raised in support of that application requires that a reference for a preliminary ruling be made to the Court of Justice or, instead, falls within one of the exceptions to the duty to refer. In particular, the situations which are set out in that legislation and which exclusively involve situations characterised, in essence, by variations in domestic case-law or by the absence of case-law from the national supreme court do not appear to be exhaustive.

In those circumstances, that legislation appears to be capable of being interpreted as meaning that the criterion of the significance of the legal issue raised with respect to legal certainty, the uniform application of the law or its development includes the situation in which the party to the dispute who is seeking leave to appeal on a point of law raises a question concerning the interpretation or validity of a provision of EU law which does not fall within any of the exceptions to the duty to refer and which requires, therefore, that a reference be made to the Court of Justice for a preliminary ruling.

The Court also points out that it is for a national supreme court to which an application for such leave to appeal has been made, and which is under an obligation to make a reference for a preliminary ruling to the Court, to decide whether it is appropriate to do so at the stage of the examination of that application for leave or at a later stage.

If it decides to bring the matter before the Court of Justice for a preliminary ruling at the stage of the examination of that application, it must suspend further processing of that application pending the preliminary ruling and subsequently apply that ruling in its assessment as to whether leave to appeal on a point of law should be granted.

In the second place, the Court recalls that it follows from the system established by Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights, that if a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law takes the view, because the case before it involves one of the three exceptions to the duty to refer, that it is relieved of that duty, the statement of reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court's case-law, or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt. The Court infers from this that, given that, without prejudice to the application of a purely procedural ground of inadmissibility, such a court or tribunal of a Member State cannot refuse an application for leave to appeal on a point of law that raises a question concerning the interpretation or validity of a provision of EU law without first assessing whether it is required to refer that question to the Court of Justice for a preliminary ruling or whether that question falls within one of the three exceptions to the duty to refer, that court or tribunal must, when refusing such an application for leave to appeal on the basis of one of those exceptions, set out the reasons why that reference was not made.

IV. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone), C-548/21

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences – Directive (EU) 2016/680– Article 3(2) – Concept of 'processing' – Article 4 – Principles relating to processing of personal data – Article 4(1)(c) – Principle of 'data minimisation' – Articles 7, 8 and 47 and Article 52(1) of the Charter of Fundamental Rights of the European Union – Requirement that a limitation on the exercise of a fundamental right must be 'provided for by law' – Proportionality – Assessment of proportionality in the light of all the relevant factors – Prior review by a court or independent administrative authority – Article 13 – Information to be made available or given to the data subject – Limits – Article 54 – Right to an effective judicial remedy against a controller or processor – Police investigation in relation to narcotics trafficking – Attempt, by the police, to unlock a mobile telephone in order to gain access, for the purposes of that investigation, to the personal data stored in that telephone

In a reference for a preliminary ruling from the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), the Grand Chamber of the Court of Justice clarifies, first, the conditions under which the competent national authorities can access the data contained in a mobile telephone for the purposes of preventing, investigating, detecting and prosecuting criminal offences in general, in the light of Directive 2016/680. [23] Second, it recognises the right of the data subject to be informed of the grounds on which the authorisation to access such data is based, once the communication of that information is no longer liable to jeopardise the tasks of those authorities.

On 23 February 2021, while carrying out a narcotics check, Austrian customs officers seized a package addressed to CG containing 85 grams of cannabis. That package was sent for examination to the Austrian police. On 6 March 2021, in a police investigation relating to narcotics trafficking, two police officers conducted a search of CG's residence and questioned him regarding the consignor of the package. Following CG's refusal to give access to the police officers to the connection data on his mobile telephone, those officers seized the telephone.

Subsequently, several attempt to unlock CG's mobile telephone were made by various police officers. In the present case, both the seizure of the telephone and the subsequent attempts to make use of it by the police officers were made without the authorisation of the Public Prosecutor's Office or a court.

On 31 March 2021, CG brought an action before the referring court challenging the lawfulness of the seizure of his mobile telephone, which was returned to him on 20 April 2021. CG was not immediately informed of the attempts to make use of his telephone and became aware of them in the proceedings pending before the referring court.

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23 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

In that context, the referring court seeks to ascertain whether, in the light of the Directive on privacy and electronic communications, [24] full and uncontrolled access to all the data contained in a mobile telephone constitutes so serious an interference with fundamental rights [25] that that access must be limited to fighting serious offences. It also asks whether, first, that directive [26] precludes national legal rules pursuant to which, in the course of a criminal investigation, the criminal investigation police can gain, without the authorisation of a court or independent administrative body, full and uncontrolled access to all data contained in a mobile telephone and, second, whether those national legal rules are compatible with the right to an effective judicial remedy, in so far as they does not require the police authorities to inform the owner of a mobile telephone of the measures for the digital exploitation of that telephone.

Findings of the Court

As a preliminary point, the Court notes that an attempt, by the police, directly to access personal data contained in a mobile telephone without any intervention on the part of a provider of electronic communications services, such as that concerning CG, does not fall within the scope of the Directive on privacy and electronic communications.

In the first place, the Court finds that such an access attempt falls within the scope of Directive 2016/680. In that regard, it states that, in view of the broad scope which the EU legislature intended to give to the concept of 'processing', [27] where the police authorities seize a telephone and handle it for the purpose of extracting and consulting the personal data contained in that telephone, they commence 'processing', even if they did not, for technical reasons, succeed in accessing those data. The effectiveness of the principle of purpose limitation [28] necessarily requires that the purpose of the collection be determined as from when the competent authorities attempt to access personal data since such an attempt, if successful, is such as to enable them, inter alia, to collect, extract or consult the data in question immediately. Should it not be possible to classify such an attempt as 'processing' of data, the high level of protection of personal data of natural persons would be called into question. Similarly, if the applicability of Directive 2016/680 were to depend on the success of the attempt to access personal data contained in a mobile telephone, that would create uncertainty incompatible with the principle of legal certainty for both the competent national authorities and individuals.

In the second place, the Court analyses whether the principle of 'data minimisation', [29] as an expression of the principle of proportionality, precludes national legal rules which afford the competent authorities the possibility of accessing data contained in a mobile telephone, for the purposes of the prevention, investigation, detection and prosecution of criminal offences in general, without making reliance on that possibility subject to prior review by a court or an independent administrative body. Thus, the Court recalls that the limitations on the fundamental rights to private and family life and the protection of personal data [30] must comply with the principle of proportionality and may be introduced only if they are necessary and genuinely meet objectives of general interest

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24 And more specifically Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11) ('the Directive on privacy and electronic communications').

25 Provided for in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ('the Charter').

26 And more specifically Article 15(1) of the Directive on privacy and electronic communications.

27 Under Article 3(2) of Directive 2016/680, the concept of 'processing' is defined as 'any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means …'.

28 Article 4(1)(b) of Directive 2016/680.

29 As provided for by Article 4(1)(c) of Directive 2016/680, under which Member States must provide for personal data to be adequate, relevant and not excessive in relation to the purposes for which they are processed.

30 Articles 7 and 8 of the Charter.

recognised by the European Union. To that effect, first, the Court finds that the processing of personal data in the context of a police investigation aimed at the prosecution of a criminal offence – such as an attempt to access the data contained in a mobile telephone – must be regarded, in principle, as genuinely meeting an objective of general interest recognised by the European Union. Second, it notes that the proportionate nature of the limitations on the exercise of the fundamental rights to privacy and the protection of personal data, resulting from such processing, involves balancing all the relevant factors in the individual case.

Thus, first, as regards the seriousness of a limitation of those fundamental rights resulting from legal rules allowing the competent police authorities to access, without prior authorisation, the data contained in a mobile telephone, the Court states that such access is liable to relate, depending on the content of the mobile telephone in question and the choices made by those authorities, to a very wide range of data, and could thus allow very precise conclusions to be drawn concerning the private life of the data subject. Therefore, such an interference with the fundamental rights to privacy and the protection of personal data must be regarded as serious, or even particularly serious.

Second, the Court states that the seriousness of the offence under investigation is an essential parameter when examining the proportionality of the serious interference which access to the personal data contained in a mobile telephone constitutes. However, to consider that only combating serious crime may justify access to such data would limit the investigative powers of the competent authorities in relation to criminal offences in general would disregard the specific nature of the tasks performed by those authorities and would undermine the objective of achieving an area of freedom, security and justice within the European Union. That being so, in order to meet the requirement that any limitation on the exercise of a fundamental right must be 'provided for by law', [31] it is for the national legislature to define with sufficient precision the factors, in particular the nature or categories of the offences concerned, which must be taken into account.

Third, the Court notes that, in order to ensure compliance with the principle of proportionality, where access to personal data by the competent national authorities carries the risk of serious, or even particularly serious, interference with the fundamental rights of the data subject, that access must be subject to a prior review carried out by a court or by an independent administrative body. That review must take place prior to any attempt to access the data concerned, except in cases of duly justified urgency, in which case that review must take place within a short time. In the context of that review, the court or independent administrative body must be entitled to refuse or restrict an access request falling within the scope of Directive 2016/680 where it finds that the interference with fundamental rights which that access would constitute would be disproportionate. In the present case, a refusal to authorise the competent police authorities to access the data contained in a mobile telephone, or a restriction on that access, is therefore necessary if, taking into account the seriousness of the offence and the needs of the investigation, access to the content of the communications or to sensitive data does not appear to be justified.

In the light of the foregoing, the Court concludes that the principle of data minimisation, read in the light of the rights to the protection of personal data and to respect for private life, does not preclude national legal rules which afford the competent authorities the possibility of accessing data contained in a mobile telephone, for the purposes of preventing, investigating, detecting and prosecuting criminal offences in general. Such permissibility is, however, subject to compliance with the principles of legality and proportionality and to the existence of a prior review by a court or by an independent administrative body of the exercise of the right of access to such data.

In the third place, the Court rules on whether CG should have been informed of the attempts to access the data contained in his mobile telephone. [32] It notes in that regard that the competent

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31 Article 52(1) of the Charter.

32 Article 47 of the Charter.

national authorities which have been authorised by a court or an independent administrative body to access stored data must inform the data subjects of the grounds on which that authorisation is based, as soon as such information is no longer liable to jeopardise the investigations carried out by those authorities.

Those authorities must make available to the data subjects all the information provided for by Directive 2016/680 [33] in order for those data subjects to be able to exercise, inter alia, their right to an effective remedy. [34] Accordingly, national legal rules which exclude as a general rule any right to obtain such information are not consistent with EU law.

In the present case, the Court finds that CG should have been informed beforehand of the attempts to access the data contained in his mobile telephone. Since CG's mobile telephone had already been seized at the time the police attempted to unlock it, it does not appear that informing him of those access attempts was liable to harm the investigation. Consequently, the Court concludes that the provisions of Directive 2016/680, read in the light of the Charter, [35] preclude national legal rules which authorise the competent authorities to access data contained in a mobile telephone without informing the data subject of the grounds on which the authorisation by a judge or an independent administrative body to access such data is based, once the communication of that information is no longer liable to jeopardise the tasks for which those authorities are responsible.

V. AGRICULTURE AND FISHERIES

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Herbaria Kräuterparadies, C-240/23

Link to the full text of the judgment

Reference for a preliminary ruling – Agriculture and fisheries – Organic products – Regulation (EU) 2018/848 – Organic production rules – Article 16 – Labelling – Article 30 – Terms referring to organic production – Article 33 – Organic production logo of the European Union – Conditions of use – Compliance of the product with Regulation 2018/848 – Articles 45 and 48 – Import of products from a third country for the purpose of placing them on the market within the European Union as organic products – Equivalence of the production rules of that third country with the rules of Regulation 2018/848 – Use of the third country's organic production logo

In a reference for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), the Court of Justice clarifies the conditions for the use of the organic production logo of the European Union in the case of imports of products containing, in addition to organic products, vitamins and minerals not coming from organic farming.

Herbaria produces a beverage called 'Blutquick', comprising a mixture of fruit juice and organically produced herbs. Non-plant vitamins and ferrous gluconate are added to that beverage, which is

33 Set out in Article 13(1) of Directive 2016/680.

34 Article 54 of Directive 2016/680.

35 More specifically, Articles 13 and 54 of Directive 2016/680, read in the light of Article 47 and Article 52(1) of the Charter.

marketed as a food supplement. The packaging shows the organic production logo of the European Union, the national organic label and a reference to the fact that the ingredients come from 'controlled organic agriculture'.

Since the Bayerische Landesanstalt für Landwirtschaft (Bavarian Regional Office for Agriculture, Germany) took the view that that beverage did not comply with Article 27(1)(f) of Regulation No 889/2008 [36] in that it contains non-plant vitamins and minerals whereas this was not legally required, [37] it ordered Herbaria to remove from the labelling, advertising and marketing of Blutquick the reference to organic production protected under Article 23 of Regulation No 834/2007. [38]

Herbaria challenged that decision before the referring court. Before that court, Herbaria no longer denies that its product does not comply with EU law [39] and therefore no longer challenges the prohibition on the use by that product of the organic production logo of the European Union, the national organic label and terms referring to organic production. However, Herbaria submits that, under Regulation No 2018/848, [40] a product competing with Blutquick, imported from the United States of America, is not subject to such a prohibition, even though it does not comply with EU rules of production, which would constitute unequal treatment in breach of Article 20 of the Charter of Fundamental Rights of the European Union.

In those circumstances, the referring court asked the Court, inter alia, whether Regulation 2018/848 allows a product imported from a third country under the conditions laid down by that regulation to bear the organic production logo of the European Union and terms referring to organic production, even though it does not comply in every respect with the requirements laid down by that regulation.

In its Grand Chamber judgment, the Court interprets Regulation 2018/848 [41] as meaning that a product imported from a third country, whose production rules have been recognised as equivalent to those laid down by that regulation for the placing on the market of a product in the European Union as an organic product, may not use for its labelling either the organic production logo of the European Union or, in principle, terms referring to organic production, where it contains minerals and vitamins of non-plant origin, which are not legally required, and does not therefore meet the requirements of Article 16(1) of that regulation. The organic production logo of that third country may, however, be used in the European Union for such a product, even where that logo contains terms referring to organic production, within the meaning of Article 30(1) of Regulation 2018/848.

Findings of the Court

The Court considers that the wording of Article 30(2) and Article 33(1) of Regulation 2018/848 tends to indicate that the organic production logo of the European Union and terms referring to organic production may be used for organic products, whether they are manufactured in the European Union or imported from a third country for the purpose of being placed on the market in the European Union as organic products, only in so far as they comply with the requirements laid down in that regulation.

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36 Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1).

37 The addition of vitamins and minerals to processed products bearing the term 'organic' is permitted, under the applicable regulations, only if their use is legally required.

38 Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

39 In the present case, Article 16(1) of Regulation 2018/848, read in conjunction with point 2.2.2(f)(i) of Part IV of Annex II thereto, which, in essence, replaced Article 27(1)(f) of Regulation No 889/2008.

40 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ 2018 L 150, p. 1).

41 In the present case, Article 30(2) and Article 33(1) of Regulation No 2018/848.

That literal interpretation is supported by the context in which those provisions are to be found. Indeed, Regulation 2018/848 introduces a distinction between products manufactured in the European Union [42] and those imported from a third country for the purposes of their being placed on the market in the European Union as organic products, which must meet the conditions set out in Article 45 of Regulation 2018/848 and, in particular, one of the three conditions laid down in Article 45(1)(b)(i) to (iii) of that regulation. Those three conditions relate, respectively, to the situation in which the imported products comply with Chapters II, III and IV of that regulation (the situation referred to in point (i)), that in which they are governed by equivalent rules in their country of origin, recognised as such under a trade agreement (situation referred to in point (ii)), and, lastly, the situation in which those rules are recognised as equivalent under a unilateral EU measure (situation referred to in point (iii)).

Of those three conditions, only that referred to in point (i) requires the imported product to comply with the provisions of Chapters II, III and IV of that regulation. Consequently, a product corresponding to the situation referred to in Article 45(1)(b)(iii) of Regulation 2018/848, [43] although not complying with all the production rules laid down in Chapter III of that regulation, may be placed on the market in the European Union as an organic product, provided that it is a product from a third country whose production rules in force have been considered by the European Union to be equivalent to those set out in Chapter III, and it complies with those rules. The Court states that the concept of 'equivalence' of the production rules of the third country concerned presupposes that they pursue the same objectives and observe the same principles, by applying rules which ensure the same level of assurance of conformity as that required by the EU legislation in respect of products manufactured in the European Union. [44]

By contrast, no provision of Regulation 2018/848 permits the use of the organic production logo of the European Union and terms referring to organic production for products from third countries recognised for the purposes of equivalence, in so far as, although they may be imported into the European Union pursuant to Article 45(1)(b)(iii) of that regulation, those products do not, however, comply with the production rules laid down in that regulation.

That interpretation is moreover confirmed by the objectives of Regulation 2018/848, which aims in particular, at maintaining consumer confidence in products labelled as organic products, by ensuring that consumers are informed, in a clear and unambiguous manner, of the fact that the product on which the organic production logo of the European Union or terms referring to organic production appear is fully compliant with all the requirements laid down by Regulation 2018/848, and not merely with rules equivalent to that regulation.

However, the possibility of using the organic production logo of the European Union or terms referring to organic production, both for products which have been manufactured in the European Union or in third countries in compliance with the production rules laid down in Regulation 2018/848 and for products which have been manufactured in third countries according to standards merely equivalent to those production rules, does not enable the consumer to know whether an imported product complies with all the production rules of Regulation 2018/848 or whether it complies merely with production rules of the third country from which it is imported that are equivalent to the production rules of that regulation.

In that regard, the fact that, under Article 32(2) of Regulation 2018/848, where the organic production logo of the European Union is used on a product, an indication must be added specifying the place

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42 Which must comply with the detailed production rules set out in Part IV of Annex II to Regulation 2018/848 and in any implementing act referred to in Article 16(3) thereof.

43 That is the situation referred to by the referring court.

44 Article 3(64) of Regulation 2018/848.

where the agricultural raw materials of which the product is composed have been farmed, is not sufficient to dispel any ambiguity for the consumer.

That said, in order to facilitate trade with third countries and to ensure the effectiveness of Article 45(1)(b)(iii) of Regulation 2018/848, which confers on the European Commission the power to recognise that rules of a third country are equivalent to the rules of that regulation, products imported under that provision, which have access to the EU market as organic products, must be able to use the organic production logo of the third country from which they come, even where that logo contains terms identical to those referring to organic production, within the meaning of Article 30(1) of that regulation and Annex IV thereto.

Judgment of the Court of Justice (Second Chamber), 17 October 2024, Karl und Georg Anwander Güterverwaltung, C-239/23

Link to the full text of the judgment

Reference for a preliminary ruling – Common agricultural policy (CAP) – Funding by the European Agricultural Fund for Rural Development (EAFRD) – Regulation (EU) No 1305/2013 – Articles 31 and 32 – Payments for areas facing natural or other specific constraints – Mountain areas – Compensatory allowance – National administrative provisions excluding payment of that allowance for eligible areas situated in a region, of the same Member State, other than the region where the place of business of the agricultural holding is located – Provisions using the place of business of the agricultural holding as a condition for the grant of that compensatory allowance

The Court of Justice, having received a request for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen, Germany), clarifies the conditions for the grant of payments for mountain areas and other areas facing natural or other specific constraints laid down in Article 31 of Regulation No 1305/2013. [45]

The company Karl und Georg GbR Anwander Güterverwaltung manages a dairy farming operation in Germany, in the border region between the Land Baden-Württemberg (Land Baden-Württemberg) and the Freistaat Bayern (Land of Bavaria). Its place of business is in Baden-Württemberg. It has approximately 100 hectares in that Land and approximately 27 hectares in Bavaria. All of those pieces of land are situated in a mountain area and are classified, by the authorities of those Länder, as land eligible for EU aid for mountain areas.

In 2019, the company submitted an application to the competent authority of the Land Baden-Württemberg for aid in respect of all those pieces of land. That application was refused as regards the land situated in Bavaria, on the ground that it was not situated in Baden-Württemberg.

Following the rejection of its complaint brought against that partial refusal by the competent authority, the company brought an action before the referring court, seeking the grant of aid for the land situated in Bavaria. In that context, that court asks the Court of Justice about the extent of the discretion enjoyed by the Member States and their regions when determining the conditions for the grant of compensatory allowances for mountain areas and other areas facing natural or other specific constraints. Furthermore, it asks, first, whether Regulation No 1305/2013 confers directly on the

45 Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ 2013 L 347, p. 487, and corrigendum OJ 2016 L 130, p. 1), as amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ 2017 L 350, p. 15) ('Regulation No 1305/2013').

farmers concerned a right to payment of such an allowance and, second, against which authority that entitlement to payment could then be invoked.

Findings of the Court

In the first place, as regards the conditions for granting a compensatory allowance to farmers situated in mountain areas and other areas facing natural or other specific constraints, first, the Court rules on whether a region of a Member State may limit the grant of such an allowance to eligible areas within its territory.

In that regard, it states that mountain areas and other areas facing constraints for which a farmer may receive a compensatory allowance are designated, on the basis of Article 32 of Regulation No 1305/2013, in the national or regional programmes concerned. It follows that, where a Member State has opted to establish a series of regional programmes, it is for the regions concerned to choose the measures to be adopted in order to achieve the objectives relating to rural development, including, where appropriate, the measure provided for in Article 31 of that regulation, and to incorporate them into their respective programmes. The various regional programmes are distinct and autonomous.

Thus, where a regional programming of the measures concerned is adopted, it is inherent in the scheme of Regulation No 1305/2013 that the discretion enjoyed by the regions of the Member States may be implemented solely in their regional programmes and, in that case, with regard only to the territory of the regional authority concerned. Similarly, a region of a Member State can neither designate eligible areas nor grant compensatory allowances for such areas outside its territory, since a territorial limitation on the grant of those allowances is inherent in that scheme.

Second, the Court considers that the grant of that allowance cannot, however, depend on the location of the farmer's place of business. The criteria for designating the eligible areas, laid down by Article 32 of Regulation No 1305/2013, relate to the biophysical or natural characteristics of the areas concerned, namely objective factors resulting from the natural properties of the areas in question.

The farmer's place of business is not one of those criteria and has no connection with the biophysical or natural characteristics of an area, which lead to its eligibility as an area facing constraints. Furthermore, by introducing an additional condition of eligibility into its rural development programme, a Member State or a region of a Member State sets aside, in the exercise of the discretion afforded to it, the conditions exhaustively listed in Articles 31 and 32 of Regulation No 1305/2013 relating to the designation of eligible areas and to active farmer status, thereby undermining the effectiveness of those provisions and infringing the principle of non-discrimination laid down in Article 40(2) TFEU.

In the second place, as regards the existence of a right to payment of such an allowance arising directly from Regulation No 1305/2013, the Court points out that it is true that the Member States or their regions may choose what they do or do not include in their rural development programmes. Moreover, the payment of a compensatory allowance under Article 31 of Regulation No 1305/2013 cannot be classified as a measure which the Member States or their regions must compulsorily integrate into their rural development programmes.

However, it follows from the wording of the first subparagraph of Article 31(1) and Article 31(2) of Regulation No 1305/2013 that, where a Member State or a region of a Member State makes provision for payments to areas facing constraints, which have been designated as eligible areas, any 'active farmer', within the meaning of Article 9 of Regulation No 1307/2013, has a right to payment of such an allowance.

By contrast, where a payment for such areas is not provided for in the rural development programme concerned, no entitlement to payment of a compensatory allowance can arise for farmers operating agricultural land in those areas.

Lastly, as regards invocation of the right to the allowance, the Court states that an active farmer's right to payment of a compensatory allowance can be invoked only against the local authority which has decided, in its rural development programme, to grant the payment of compensatory allowances solely in respect of the eligible areas situated on its own territory.

Order of the General Court (Ninth Chamber), 17 October 2024, Complejo Agrícola Las Lomas v Commission, T-729/22

Action for annulment – Agriculture – Common agricultural policy (CAP) strategic plan – Regulation (EU) 2021/2115 – Rules on support for strategic plans drawn up by Member States under the CAP – Approval by the Commission – Composite or complex administrative procedure – Jurisdiction of the General Court – Admissibility – Observance of the period prescribed for instituting proceedings – Date on which the contested act came to the knowledge of the applicant – Locus standi

In the context of the new legal framework governing the common agricultural policy (CAP) for the period 2023-2027, the General Court clarifies its jurisdiction in respect of review of decisions of the European Commission approving CAP Strategic Plans and rules on the imputability to the European Union of measures adopted by Member States in those CAP Strategic Plans.

Pursuant to Article 118 of Regulation 2021/2115, [46] each Member State is to submit to the Commission a draft CAP Strategic Plan, which establishes a framework for implementing EU support financed by the EAGF and the EAFRD. On 31 August 2022, the Commission approved a revised version of the draft CAP Strategic Plan prepared by the Kingdom of Spain for the period 2023-2027. [47]

Complejo Agrícola Las Lomas, SL, a Spanish company engaged in the acquisition and use of agricultural land, applied to the Court for annulment of that approval decision, in so far as the Commission had approved a measure contained in that CAP Strategic Plan according to which the maximum amount of the basic income support for sustainability to be granted to a farmer under Regulation 2021/2115 may not exceed the sum of EUR 200 000 ('the measure at issue').

The Court dismisses that action as inadmissible.

Findings of the Court

In the first place, the Court holds that the action cannot be deemed to have been brought out of time. In the present case, the contested decision had neither been published nor notified to the applicant. Therefore, the time limit for instituting proceedings against that act began to run, as provided for by the sixth paragraph of Article 263 TFEU, when it came to the applicant's knowledge. In such a context, the time limit for bringing an action runs only from the moment when the party concerned acquires precise knowledge of the content of the act in question and of the reasons on which it is based, provided that that party requests the full text of that act within a reasonable period from becoming aware of the existence of the act. That reasonable period in which to request that the act be communicated is not a predetermined period that can automatically be inferred from the period for bringing an action for annulment, but one that depends on the circumstances of the particular case.

In the second place, the Court declares that it has jurisdiction to review the lawfulness of the decision approving a CAP Strategic Plan as an EU act under Article 263 TFEU even if that review necessarily involves examining, inter alia, the compatibility of the content of the proposed CAP Strategic Plan –

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46 Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ 2021 L 435, p. 1).

47 Commission Implementing Decision C(2022) 6017 final of 31 August 2022 approving the 2023-2027 CAP Strategic Plan of Spain for Union support financed by the [EAGF] and the [EAFRD] ('the contested decision').

which remains a national act – with EU law, in accordance with Article 118(4) of Regulation 2021/2115. [48]

The Court states, in that regard, that the Commission and the national authorities have separate competences in the procedure of drawing up and approving a draft CAP Strategic Plan. First, the new method of managing the CAP put in place by the EU legislature is based on a system of collaboration which gives Member States discretion to adapt interventions to the demands and specific needs of their national agriculture while providing for review by the European Union to ensure they are compatible with the CAP. Second, the Commission has its own decision-making power in the context of the procedure for the approval of a draft CAP Strategic Plan, the exercise of which necessarily involves examining the content of that plan. However, the Commission decision approving a draft CAP Strategic Plan must be distinguished from the draft CAP Strategic Plan submitted by a Member State, which remains a national act in connection with which that Member State exercises its competence, inter alia, in the choice of interventions to be included in that draft.

It follows that the Spanish draft CAP Strategic Plan as approved by the Commission does not constitute a preparatory act for the contested decision or an act otherwise forming part of the latter. Similarly, although the act adopted by a national authority is a necessary stage in a procedure leading to the adoption of an EU act, the Commission is not bound by the national act since it is to monitor whether that act complies with certain rules of EU law and it may have to withhold approval if the draft CAP Strategic Plan does not meet the requirements exhaustively listed in Article 118(4) of Regulation 2021/2115.

In the last place, the Court upholds the Commission's objection of inadmissibility alleging the applicant lacks standing.

First, the Court states that the applicant cannot rely on the third situation envisaged in the fourth paragraph of Article 263 TFEU to challenge the contested decision, since the contested decision entails implementing measures with regard to the applicant.

The CAP Strategic Plan is a document on the basis of which each Member State implements the CAP for the period from 1 January 2023 to 31 December 2027. In that context, the implementation of the measure at issue, which may have legal effects on the applicant's economic activity, entails national implementing measures. Thus, since the contested decision merely approves the Spanish CAP Strategic Plan containing the measure at issue and it is for the Kingdom of Spain to implement it together with the entirety of that CAP Strategic Plan, that decision can produce any legal effects with regard to the applicant only by means of national implementing measures.

Second, the Court considers that the applicant cannot rely on the second situation provided for in the fourth paragraph of Article 263 TFEU as the basis for its action either, since it is not individually concerned by the contested decision.

The Court recalls that, where the act affects a group of persons who were identified or identifiable when that act was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that act inasmuch as they form part of a limited class of traders. That can be the case particularly when the act alters rights acquired by the individual prior to its adoption.

In the present case, the mere fact that the applicant is an agricultural undertaking that is a potential beneficiary of EU financial contributions under the CAP is not sufficient to distinguish it individually and differentiate it from any other agricultural undertaking, since the ceiling provided for in the measure at issue is addressed to agricultural undertakings by reason of their objective status as

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48 That provision sets out the criteria for the approval of CAP Strategic Plans, namely, inter alia, the compatibility of the plan with Article 9 and the other requirements set out in Regulation 2021/2115 and in Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ 2021 L 435, p. 187), as well as the delegated and implementing acts adopted pursuant to them.

farmers in the same way as any other trader that is currently or potentially in the same situation. Likewise, the mere fact that the applicant was eligible to receive an amount of basic income support for sustainability above the ceiling fixed by the measure at issue is not capable of distinguishing it individually, since that entitlement to receive support is granted to a multitude of objectively determined traders.

In addition, the contested decision does not alter the applicant's acquired entitlement to receive support since it introduces a new CAP entitlement for the period from 1 January 2023 to 31 December 2027. Moreover, on the date on which the contested decision was adopted, the farmers to whom the ceiling under the measure at issue was to apply were by no means identifiable, since application of the measure at issue presupposed that the farmers concerned would submit applications on the basis of the national legal framework established by the Kingdom of Spain in accordance with its CAP Strategic Plan as approved by the Commission.

Therefore, the applicant is concerned by the contested decision only by reason of its objective status as an agricultural undertaking, in the same way as any other trader currently or potentially in the same situation.

The Court adds that the applicant's argument alleging a lack of effective judicial protection does not make it possible to establish that the action is admissible. Such protection does not require that an individual should have an unconditional entitlement to bring an action for annulment of EU acts directly before the Courts of the European Union. Moreover, it must be assessed bearing in mind also the protection offered by national courts. In the present case, the measure at issue requires national implementing measures.

Consequently, the Court declares the action inadmissible.

VI. FREEDOM OF MOVEMENT: FREEDOM TO PROVIDE SERVICES

Judgment of the Court of Justice (First Chamber), 17 October 2024, FA.RO. di YK & C., C-16/23

Link to the full text of the judgment

Reference for a preliminary ruling – Services in the internal market – Directive 2006/123/EC – Authorisation scheme – Article 10 – Conditions for granting authorisation – Sale of tobacco products – National legislation making the grant of authorisation to establish a point of sale for tobacco products subject to compliance with conditions – Conditions relating to distance and population – Protection of public health against smoking

In the present reference for a preliminary ruling concerning the establishment of a point of sale for manufactured tobacco products, the Court of Justice rules on the compatibility with Directive 2006/123 [49] of the Italian legislation applicable to the retail sale of those products, inasmuch as that legislation uses restrictive criteria based on geographical distance and population density to authorise that establishment.

49 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Further to the revocation of its licence for the retail sale of tobacco products, the company FA.RO. made a request to the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Authority, Italy; 'the ADM') to set up a new ordinary point of sale for manufactured tobacco products in its commercial restaurant and bar business.

The ADM refused that request on the ground that the conditions relating to the minimum geographical distance between suppliers and population size laid down by the national legislation were not satisfied.

FA.RO. then brought an action before the Tribunale amministrativo regionale per la Liguria (Regional Administrative Court, Liguria, Italy), the referring court. That company claimed, inter alia, that a new point of sale in its establishment would not result in the harmful effect of an inflated supply as compared to demand because of the high level of tourism during certain periods.

The referring court therefore asked the Court of Justice whether, in essence, Article 15 of Directive 2006/123 precludes national legislation which makes the grant of authorisation for points of sale for tobacco products subject to compliance with conditions relating to the minimum geographical distance between suppliers and to population size, without the possibility of the competent public authority taking into account, in place of those conditions, periodic increases in the number of consumers.

Findings of the Court

In the first place, the Court states that legislation which reserves the retail sale of manufactured tobacco products to distributors authorised by the public authorities falls within the scope of Directive 2006/123. Such legislation does not fall within the concept of a monopoly, which is outside the scope of that directive, [50] since the State does not carry out that retail trade activity, which remains subject to competition and is not conferred on a single operator and the authorities cannot, moreover, interfere in the commercial decisions of the operators of points of sale and licenced operators.

In the second place, the Court notes that the organisation of the retail sale of manufactured tobacco products is covered by the concept of 'authorisation scheme' within the meaning of Article 4(6) of Directive 2006/123, since, in the context of the scheme set up by the national legislation at issue, a service provider is obliged to take steps before a competent authority in order to obtain a formal decision enabling the service provider to gain access to that activity.

Accordingly, the restrictive conditions relating to distance and to population size provided for by that authorisation scheme must respect the provisions of Article 10(2)(a) to (g) of Directive 2006/123.

Thus, first, those conditions must be non-discriminatory, which appears to the case here.

Second, they must be justified by an overriding reason relating to the public interest. This may consist in the protection of human health against the risks generated by manufactured tobacco products. By contrast, considerations of a purely economic nature cannot constitute an overriding reason relating to the public interest. An authorisation scheme cannot include prohibited requirements, with Article 14(5) of Directive 2006/123 prohibiting making the granting of authorisation subject to proof of the existence of an economic need or market demand.

However, in the present case, the criteria established by the national legislation relating to distance and the resident population might – subject to verification by the referring court – be classified as an economic test if their objective was to ensure a sufficient income for sellers of manufactured tobacco products or to maximise the collection of tax levies on consumers of those products, since those criteria are intended, inter alia, to avoid, on the one hand, the proliferation of points of sales in places where demand is already satisfied by existing points of sale and, on the other hand, an insufficient number of points of sale, which could leave part of the demand unsatisfied. By contrast, where those

50 Article 1(3) of that directive.

criteria did not pursue an objective of an economic nature and were objectively justified by an overriding reason relating to the public interest, such as the protection of public health, by avoiding increased supply encouraging consumption and by having a dissuasive effect on demand, they would not be covered by that prohibition.

Third, the conditions relating to distance and population size must be suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and must not go beyond what is necessary to attain it.

In that regard, it appears, first of all, that those conditions have the effect of creating a control on the supply of tobacco, making it possible to avoid encouraging its consumption, thus contributing to the objective of protecting public health. In addition, the controlled supply of legally manufactured tobacco products helps reduce the use of contraband products which are likely to act as an incentive to consumption, due to the lower prices, or to pose additional risks to the health of consumers.

However, in order to achieve, in a consistent and systematic manner, the public health protection objective, that control mechanism for the supply of tobacco, which makes it possible to guarantee the accessibility and availability of manufactured tobacco products, should also have a dissuasive effect on the demand for those products. Furthermore, in order to maintain the effectiveness of the objective of protecting public health, it is necessary to verify that the application of the conditions relating to distance and population size is sufficient to discourage the consumption of manufactured tobacco products, without leading to an increase in the unlawful supply of those products. For those reasons, it is for the referring court to ascertain whether, as regulated by the national legislation, the installation of vending machines constitutes a means of selling manufactured tobacco products as an alternative to sale by means of ordinary or special points of sale or by licence, which must comply with the same conditions relating to distance and population size, and does not lead to an increase in the supply of those products.

Next, the Court points out that the Member States have a measure of discretion to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved. It is thus not indispensable for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States. Consequently, the fact that the FCTC [51] does not envisage conditions relating to distance and population size as a measure intended to reduce tobacco consumption has no bearing on the assessment of the necessity of the scheme at issue in the main proceedings to achieve the objective of the protection of public health.

In the light of that discretion, where a Member State considers it useful to introduce measures to control the supply of manufactured tobacco products, that State may legitimately take the view that a periodic increase in the number of consumers is not a factor that should be taken into account. Indeed, to take such a periodic increase into account would run counter to the intended objective of limiting supply in order to dissuade consumption.

Fourth, it appears that the conditions relating to distance and population size are based on objective data, are known in advance and are not, in principle, likely to give rise to difficulties of interpretation or application. That said, according to the national legislation, even if the conditions relating to distance and population size are satisfied, ordinary points of sale are to be established, in particular, when the authorities consider it useful and appropriate in the interest of the service. Since that latter concept is defined in general terms, it is likely to call into question the clear, unambiguous, objective and transparent nature of the criteria governing the exercise of the authorities' discretion, which it is for the referring court to verify.

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51 World Health Organisation Framework Convention on Tobacco Control, signed in Geneva on 21 May 2003.

VII. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky, C-406/22

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – International protection – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Articles 36 and 37 – Concept of 'safe country of origin' – Designation – Annex I – Criteria – Article 46 – Right to an effective remedy – Examination by the court of the designation of a third country as a safe country of origin

In the context of a reference for a preliminary ruling, the Court of Justice, sitting as the Grand Chamber, rules on the limits of the option, given to the Member States in Directive 2013/32, [52] to designate third countries as safe countries of origin and on the scope of the review of such designation by the court hearing an action against a decision rejecting an application for international protection brought by a national from a third country designated as such.

On 9 February 2022, CV, a Moldovan national, lodged an application for international protection in the Czech Republic. In support of that application, he relied, first, on the threats made to him in Moldova by individuals whom the police authorities had failed to identify and, second, on the Russian Federation's invasion of Ukraine. By decision of 8 March 2022, the Ministerstvo vnitra České republiky (Ministry of the Interior of the Czech Republic) rejected that application as manifestly unfounded on the ground, inter alia, that the Czech Republic considers the Republic of Moldova, with the exception of Transnistria, to be a safe country of origin, and CV failed to demonstrate that that would not apply in his particular case. [53]

CV challenged that decision before the Krajský soud v Brně (Regional Court, Brno, Czech Republic). First, that court has doubts as to whether a third country ceases to be able to be designated as a safe country of origin when it decides, as the Republic of Moldova did, initially because of the energy crisis it was experiencing and then because of the Russian Federation's invasion of Ukraine, to invoke the right to derogate from the obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms. [54] Second, it asks whether EU law precludes a Member State from designating a third country as a safe country of origin, with the exception of certain parts of its territory. Third, the referring court raises the question of the extent of the review which it is to carry out in respect of such a designation, having regard, in particular, to the possibility of processing applications for international protection lodged by nationals from third countries designated as safe

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52 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). Under Article 37(1) of that directive, Member States may retain or introduce legislation that allows, in accordance with Annex I thereto, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

53 In accordance with Article 31(8)(b) and Article 32(2) of Directive 2013/32, where the applicant comes from a safe country of origin, Member States may decide to accelerate an examination procedure and/or conduct that procedure at the border or in transit zones, and consider the application to be manifestly unfounded.

54 Signed in Rome on 4 November 1950 ('the ECHR'). Article 15 ECHR, headed 'Derogation in time of emergency', provides in paragraph 1: 'In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.'

countries of origin under an accelerated procedure and of declaring them, as the case may be, to be manifestly unfounded.

Findings of the Court

In the first place, the Court considers that a third country does not cease to fulfil the criteria enabling it to be designated as a safe country of origin, within the meaning of Article 37 of Directive 2013/32, on the sole ground that it invokes the right of derogation provided for in Article 15 ECHR. Apart from the safeguards surrounding the exercise of that right, it cannot be inferred from the fact that the third country invokes such a right either that it has actually taken measures that have the effect of derogating from the obligations laid down in that convention or, if so, what the nature and extent of the derogating measures adopted are.

The Court nevertheless observes that invoking that right must lead the competent authorities of the Member State which designated the third country concerned as a safe country of origin to assess whether such designation should be maintained. Article 37(2) of Directive 2013/32 requires Member States to review regularly the situation in third countries designated as safe countries of origin, since the circumstances giving rise to a presumption of the safety of applicants for international protection in a given country of origin are, by their very nature, subject to variation. That requirement for regular review also covers the occurrence of significant events, in that, because of their importance, they may affect the possibility for a third country, designated as a safe country of origin, to continue to fulfil the criteria set out for that purpose in Annex I to that directive, and thus to be presumed to be capable of guaranteeing the safety of applicants. Invoking the right of derogation provided for in Article 15 ECHR constitutes such an event, given that it cannot be ruled out that derogating measures affecting fundamental rights may be incompatible with the criteria laid down in Annex I to Directive 2013/32. Moreover, invoking that right reveals, in any event, an appreciable risk of a significant change in the manner in which the rules on rights and freedoms are applied in the third country concerned.

In the second place, the Court states that Article 37 of Directive 2013/32 precludes a third country from being designated as a safe country of origin where certain parts of its territory do not satisfy the material conditions for such designation, set out in Annex I to that directive.

That is, in particular, confirmed by the legislative history of that provision. The option for Member States to designate, for the purpose of examining applications for international protection, a portion of the territory of a third country as safe was granted to Member States by Directive 2005/85, [55] in particular by Article 30 thereof. That option no longer appears in the article which replaced it, that is to say, in Article 37 of Directive 2013/32. The intention to remove that option is apparent from the actual wording of the European Commission's proposal that gave rise to Directive 2013/32, [56] that option having been expressly crossed out. Furthermore, such an intention is confirmed by the detailed explanation of that proposal, [57] which expressly mentions the intention to remove the option concerned and the consequence thereof, that is to say, that it is now required that the material conditions for such designation be met for the entire territory of the third country concerned.

Moreover, the objectives pursued by Directive 2013/32 – which seeks to ensure that applications for international protection are dealt with 'as soon as possible, without prejudice to an adequate and complete examination being carried out' [58] – do not preclude that consequence. In so far as the EU legislature seeks to ensure, through that directive, an examination of applications for international

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55 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13). That directive was repealed by Directive 2013/32.

56 Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection COM(2009) 554 final, p. 60.

57 COM(2009) 554 final, Annex, 14959/09 ADD 1, p. 15.

58 Judgment of 25 July 2018, Alheto (C-585/16, EU:C:2018:584, paragraph 109).

protection that is both rapid and exhaustive, it is for that legislature, when exercising the discretion it enjoys, to strike a balance between those two objectives when determining the conditions under which Member States may designate a third country as a safe country of origin. The fact that Member States do not have the option to exclude part of the territory of a third country for the purposes of such designation reflects that balancing exercise and the choice of the legislature to favour an exhaustive examination of applications for international protection lodged by applicants whose country of origin does not satisfy, for the whole of its territory, the material conditions set out in Annex I to that directive. Although Regulation 2024/1348, [59]which repeals Directive 2013/32 with effect from 12 June 2026, reintroduces such an option, [60] it is the prerogative of the EU legislature to reconsider that choice by striking a fresh balance. Furthermore, it must be held that the fact that the legal system introduced, for that purpose, by that regulation differs from the one that had been laid down by Directive 2005/85 supports the interpretation that the EU legislature did not make provision for that option in Directive 2013/32.

Lastly, in the third place, the Court holds that, where an action is brought before a court or tribunal against a decision rejecting an application for international protection, examined in the context of the special scheme applicable to applications lodged by applicants from third countries designated as safe countries of origin, that court or tribunal must raise, on the basis of the information in the file and the information brought to its attention during the proceedings before it, a failure to have regard to the material conditions for such designation, set out in Annex I to Directive 2013/32, even if that failure is not expressly relied on in support of that action.

Article 46(3) of Directive 2013/32 stipulates that the court or tribunal before which the decision relating to the application for international protection concerned is contested is to carry out 'a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs'. The words 'where applicable' in that sentence underline the fact that the full and ex nunc examination to be carried out by the court may concern the procedural aspects of an application for international protection. The designation of a third country as a safe country of origin falls within those procedural aspects in that it is liable to have an impact on the examination procedure relating to such applications.

In the present case, the rejection decision was based on the fact that CV comes from the Republic of Moldova, the Czech Republic having designated that third country as a safe country of origin, with the exception of Transnistria. Thus, the designation of that third country as a safe country of origin is one of the elements on file brought to the attention of the referring court and which it is called upon to hear and determine in the action against that decision. It must therefore be concluded that, in such circumstances, even though the applicant in the main proceedings has not expressly relied on a possible failure to have regard to the rules laid down by Directive 2013/32 for the purposes of such a designation with a view to subjecting the procedure for examining an application for international protection to the special scheme, that failure constitutes a point of law which the referring court must consider as part of the full and ex nunc examination required by Article 46(3) of that directive.

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59 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32 (OJ L 2024/1348).

60 Article 61(2) of Regulation 2024/1348 provides that the designation of a third country as a safe country of origin both at European Union and at national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.

VIII. JUDICIAL COOPERATION IN CRIMINAL MATTERS: FREEZING AND CONFISCATION OF INSTRUMENTALITIES AND PROCEEDS OF CRIME IN THE EUROPEAN UNION

Judgment of the Court of Justice (First Chamber), 4 October 2024, 1Dream and Others, C-767/22, C-49/23 and C-161/23

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in criminal matters – Confiscation of crime-related proceeds, instrumentalities and property – Framework Decision 2005/212/JHA – Directive 2014/42/EU – Scope – National criminal proceedings capable of leading to the confiscation of illegally obtained assets – No finding of a criminal offence – Confiscation without conviction – Reasons other than illness or absconding

Hearing three separate requests for a preliminary ruling from the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), the Court of Justice rules on the scope of Framework Decision 2005/212 [61] and Directive 2014/42 [62] concerning the freezing and confiscation of crime-related proceeds, instrumentalities and property in the European Union.

The requests have been made in three cases involving seizures of funds, financial instruments and immovable property ordered at the investigation stage of various sets of criminal proceedings initiated in Latvia for large-scale laundering of the proceeds of crime. In the course of those criminal proceedings, proceedings relating to illegally obtained assets were brought that targeted the financial assets and immovable property at issue and some of those financial assets and immovable property were confiscated and transferred to the State budget.

In the context of the proceedings relating to illegally obtained assets, the persons concerned brought actions before the referring court, claiming, inter alia, that a number of provisions of the Kriminālprocesa likums (Law on criminal procedure) were inconsistent with the right to a fair trial [63] and the presumption of innocence. [64] That law provides, in particular, for the possibility, at the preliminary stage of criminal proceedings to determine whether a person has committed a criminal offence, of initiating a separate set of proceedings capable of leading to the swift confiscation of illegally obtained assets, where bringing the criminal case before the courts having jurisdiction in the foreseeable future is, for objective reasons, impossible or may give rise to substantial and unjustified costs.

Since a finding that assets were obtained illegally is made by the court before the commission of a criminal offence has been established or a conviction handed down, the referring court decided to stay the proceedings in those cases and to ask the Court, inter alia, whether national legislation such

61 Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49).

62 Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39).

63 In Cases C-767/22, C-49/23 and C-161/23.

64 In Case C-161/23.

as that at issue in the main proceedings falls within the scope of Directive 2014/42 [65] and Framework Decision 2005/212. [66]

Findings of the Court

The Court holds that neither Framework Decision 2005/212 nor Directive 2014/42 can be regarded as governing proceedings which, although provided for by national rules of criminal procedure, are intended exclusively to determine whether assets have been obtained illegally on the basis of case file materials that were taken from proceedings concerning the finding of one or more criminal offences referred to in those acts, without the court hearing the confiscation proceedings having the power, in the context of those proceedings, to find that such a criminal offence has been committed and without that finding being made in the course of the proceedings concerning the finding of one or more criminal offences.

First, although the fact that confiscation proceedings are governed by national rules of criminal procedure may point to the existence of a necessary link between the confiscation proceedings and the finding of a criminal offence, it is not in itself decisive for considering that such confiscation proceedings fall within the scope of Framework Decision 2005/212 or Directive 2014/42.

Article 4(2) of that directive does not cast doubt on the exclusion from the scope of Framework Decision 2005/212 and Directive 2014/42 of confiscation proceedings intended exclusively to determine whether assets have been obtained illegally, without the court hearing those proceedings having the power to find that a criminal offence has been committed and in the absence of a prior finding of such an offence.

The Court makes clear that that provision covers the situation where such a conviction is not possible due to the non-appearance of the suspected or accused person in certain circumstances, at least in the cases of illness or absconding of that suspected or accused person, but where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

It follows that the confiscation provided for in Article 4(2) of Directive 2014/42, while referring to 'instrumentalities' and 'proceeds' within the meaning of Article 2, points 1 and 3, of that directive, requires that it be possible, irrespective even of any conviction of the perpetrator of the criminal offence, for the question whether that criminal offence has actually been committed to be assessed by the court ordering confiscation. Accordingly, Article 4(2) of Directive 2014/42 does not cover proceedings, such as those at issue in the main proceedings, enabling confiscation to be ordered swiftly but which are not intended to determine whether a criminal offence has been committed.

The Court concludes that Framework Decision 2005/212 and Directive 2014/42 must be interpreted as meaning that the scope of those acts does not cover national legislation which provides for the possibility, in the course of criminal proceedings to determine whether a person has committed a criminal offence, of initiating proceedings for the confiscation of illegally obtained assets, on the basis of materials contained in the file in the criminal proceedings, where those confiscation proceedings

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65 In particular, Article 4: '1. Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.

2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.'

66 Article 2(1): 'Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.'

do not concern the finding of such a criminal offence and even though there is no reason relating to the illness or absconding of that person which would prevent him or her from standing trial.

IX. JUDICIAL COOPERATION IN CIVIL MATTERS: BRUSSELS I REGULATION

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Real Madrid Club de Fútbol, C-633/22

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EC) No 44/2001 – Articles 34 and 45 – Recognition and enforcement of judgments – Revocation of a declaration of enforceability of judgments – Grounds for refusal – Public policy in the State in which recognition is sought – Penalty imposed on a newspaper and one of its journalists for harm caused to the reputation of a sports club – Damages – Article 11 of the Charter of Fundamental Rights of the European Union – Freedom of the press

In a reference for a preliminary ruling from the Cour de cassation (Court of Cassation, France) the Court of Justice, sitting as the Grand Chamber, rules on the use of the public policy clause to refuse enforcement of a judgment delivered by a court of a Member State which gives rise to infringement of the freedom of the press.

In December 2006, the newspaper Le Monde published an article in which the author, EE, a journalist employed by that newspaper, claimed that Real Madrid Club de Fútbol ('Real Madrid') and Fútbol Club Barcelona had retained the services of the head of a doping ring in the cycling world. Many media outlets, Spanish media outlets in particular, shared that article. In that same month, Le Monde published a letter of denial it had received from Real Madrid, but made no comment on it.

In May 2007, Real Madrid and AE, a member of its medical team, brought an action for damages before a Spanish court, based on harm done to their honour, against the newspaper company Société Éditrice du Monde and EE. That court ordered the latter to pay EUR 300 000 to Real Madrid and EUR 30 000 to AE by way of compensation for non-material damage and ordered that its decision be published in the newspaper Le Monde and in a Spanish newspaper. That judgment was upheld on appeal and the appeal against that judgment was dismissed by the Tribunal Supremo (Supreme Court, Spain).

In 2014, by two orders, the Spanish court of first instance ordered the enforcement of that judgment of the Tribunal Supremo (Supreme Court) and the payment of the abovementioned principal amounts plus EUR 90 000 by way of interest and costs to Real Madrid and EUR 3 000 by way of interest and costs to AE.

The tribunal de grande instance de Paris (Regional Court, Paris, France) issued two declarations of enforceability relating to that judgment and those orders, but the cour d'appel de Paris (Court of Appeal, Paris, France) overturned those declarations on the ground that the penalties were manifestly contrary to French international public policy inasmuch as they infringed the freedom of expression.

Hearing the appeal lodged by Real Madrid and AE, the Cour de cassation (Court of Cassation) seeks to ascertain in which circumstances the enforcement of a judgment ordering, as in the present case, a newspaper publishing house and one of its journalists to pay damages by way of compensation for non-material damage must be refused under the Brussels I Regulation, [67] on the ground that it constitutes a manifest infringement of the freedom of the press, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

As a preliminary point, the Court recalls the exceptional nature of the public-policy exception provided for by Article 34(1) of the Brussels I Regulation, which can be envisaged only where recognition or enforcement of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the Member State in which enforcement is sought inasmuch as it would infringe a fundamental principle, either of the national law of that Member State or of EU law. In that regard, it is for the national court to ensure with equal diligence the protection of rights established in national law and rights conferred by EU law.

This is so inter alia with respect to the fundamental rights guaranteed by the Charter, with which a national court must comply when applying the Brussels I Regulation and, in so doing, when implementing EU law. [68] However, given the fundamental importance of the principle of mutual trust in that implementation, the Member States may be required to presume that fundamental rights have been observed by the other Member States, save in exceptional circumstances. Therefore, it is only if the enforcement of a judgment in the Member State in which enforcement is sought would give rise to a manifest breach of a fundamental right as enshrined in the Charter that enforcement of that judgment may be refused or, as the case may be, the declaration of enforceability pertaining to that judgment revoked.

As regards the freedom of expression in particular, the Court states that that constitutes one of the essential foundations of a pluralist, democratic society, and is one of the values on which, under Article 2 TEU, the European Union is founded. Interferences with the freedom of expression, such as those concerning journalists and also publishers and press organisations, must therefore be limited to what is strictly necessary.

Similarly, it is apparent from the settled case-law of the European Court of Human Rights that the European Convention on Human Rights (ECHR) [69] leaves little scope for restrictions on freedom of expression in, inter alia, the fields of political speech and matters of public interest, [70] which includes matters relating to professional sports. In that context, considerable weight must be attached to the interest of a democratic society in ensuring and maintaining a free press in the determination of whether the interference in question is proportionate to the legitimate aim pursued. Thus, any judgment awarding damages for harm to reputation must comprise a reasonable relationship of proportionality between the amount awarded and the harm in question.

In that regard, there is a difference between a sanction in favour of a legal entity and one in favour of an individual, since harm to an individual's reputation may have repercussions on the individual's dignity, whereas the reputation of a legal entity is devoid of that moral dimension. As regards the proportionality of a sanction, any undue restriction on freedom of expression entails a risk of obstructing or paralysing future media coverage of similar questions. In particular, according to the case-law of the European Court of Human Rights, the most careful scrutiny is called for when the

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67 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) ('the Brussels I Regulation').

68 Under Article 51(1) of the Charter.

69 The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

70 See Article 10(2) ECHR.

measures taken or the sanctions imposed are capable of discouraging the participation of the press in debates over matters of legitimate public concern and, therefore, have a deterrent effect on the exercise of the freedom of the press in respect of such matters.

On the basis of those considerations, the Court of Justice finds that the enforcement of a judgment ordering a newspaper publishing house and one of its journalists to pay damages by way of compensation for the non-material damage suffered by a sports club and one of the members of its medical team due to harm caused to their reputation by the publication of information about them must be refused where it would give rise to a manifest infringement of the freedom of the press, as enshrined in Article 11 of the Charter. Such a manifest infringement comes within public policy in the Member State in which enforcement is sought and therefore constitutes the ground for refusal laid down in Article 34(1) of the Brussels I Regulation, read in conjunction with Article 45 thereof. [71]

It is for the referring court to determine, taking account of all of the circumstances of the case, including not only the resources of the persons against whom judgment is given but also the seriousness of their wrong and the extent of the harm as found in the judgments at issue in the main proceedings, whether the enforcement of those judgments would give rise to such a manifest infringement. To that end, it is for that court to ascertain whether the damages awarded in those judgments are manifestly disproportionate to the reputational harm in question and thus risk having a deterrent effect on future media coverage of similar matters in the Member State in which enforcement is sought or, more generally, on the exercise of the freedom of the press, as enshrined in Article 11 of the Charter.

In the context of that verification, it may take account of the amounts awarded for similar harm in the Member State in which enforcement is sought. However, any discrepancy between those amounts and the amount of damages awarded in the judgments at issue in the main proceedings is not in itself sufficient for a finding that those damages are, automatically and without subsequent verification, manifestly disproportionate to the reputational harm in question. Moreover, that verification cannot involve a review of the substantive assessments carried out by the court in the Member State of origin, as that would amount to a review of the merits, which is expressly prohibited by Article 36 and Article 45(2) of the Brussels I Regulation. Lastly, should that court find that there is a manifest infringement of the freedom of the press, it should limit the refusal to enforce those judgments to the manifestly disproportionate portion, in the Member State in which enforcement is sought, of the damages awarded.

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71 For an action such as the one in the present case, concerning a judgment given in an action brought against a declaration of enforceability, Article 45 of the Brussels I Regulation refers to the listed grounds of refusal, including Article 34 of that regulation.

X. TRANSPORT: CARRIAGE OF GOODS BY ROAD

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Lithuania and Others v Parliament and Council (Mobility package), C-541/20 to C-555/20

Link to the full text of the judgment

Actions for annulment – First package of mobility measures ('Mobility Package') – Regulation (EU) 2020/1054 – Maximum daily and weekly driving times – Minimum breaks and daily and weekly rest periods – Organisation of the work of drivers in such a way that they are able to return every three or four weeks, as the case may be, to their place of residence or to the operational centre of their employer to start or spend their regular or compensatory weekly rest period there – Prohibition of regular or compensatory weekly rest in the vehicle – Time limit for the installation of second generation (V2) intelligent tachographs – Date of entry into force – Regulation (EU) 2020/1055 – Conditions relating to the requirement of establishment – Obligation to return the vehicle to the operational centre in the Member State of establishment – Obligation concerning the number of vehicles and drivers normally based at the operational centre of the Member State of establishment – Cabotage – Waiting period of four days for cabotage – Derogation for cabotage as part of combined transport operations – Directive (EU) 2020/1057 – Specific rules for posting drivers in the road transport sector – Transposition period – Internal market – Specific regime applicable to the freedom to provide transport services – Common transport policy – Articles 91 and 94 TFEU – Fundamental Freedoms – Principle of proportionality – Impact assessment – Principles of equal treatment and non-discrimination – Principles of legal certainty and protection of legitimate expectations – Protection of the environment – Article 11 TFEU – Consultation of the European Economic and Social Committee and the European Committee of the Regions

The Grand Chamber of the Court of Justice dismissed 15 actions brought by the Republic of Lithuania, the Republic of Bulgaria, Romania, the Republic of Cyprus, Hungary, the Republic of Malta and the Republic of Poland seeking annulment of certain provisions or, in some cases in the alternative, of the entirety of three legislative acts [72] forming part of a 'package of mobility measures', also referred to as the 'Mobility Package', except in so far as they seek annulment of point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009. [73]

Those three legislative acts were adopted in order to adapt the rules in force until then to developments in the road transport sector. They relate, in particular, first, to maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods, and positioning by means of tachographs (Regulation 2020/1054); secondly, to the common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and the common rules for access

72 Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector (OJ 2020 L 249, p. 17).

Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ 2020 L 249, p. 49).

73 Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ 2009 L 300, p. 51).

to the international road haulage market (Regulation 2020/1055); and, thirdly, to the specific rules for posting drivers in the road transport sector (Directive 2020/1057).

Findings of the Court

The Court's review of legality in relation to various provisions of the legislative acts at issue is underpinned by a number of overarching principles and findings.

Thus, the Court notes, first, that the principle of freedom to provide services in the area of transport is governed by Article 58(1) TFEU, according to which that principle must be applied by implementing the common transport policy, which falls within the scope of the provisions adopted by the European Parliament and the Council of the European Union, on the basis, in particular, of Article 91(1) TFEU. It follows that the EU legislature is entitled to alter the conditions in which freedom to provide services in the field of road transport is exercised, since, under Article 58(1) TFEU, the degree of liberalisation in this area is determined by the legislature itself in the context of the implementation of the common transport policy. Since the latter policy must enable the objectives of the Treaties to be pursued, [74] the measures adopted by the EU legislature in relation to the freedom to provide transport services may therefore have the objective not only of facilitating the exercise of that freedom, but also of ensuring, where appropriate, the protection of other fundamental interests of the European Union recognised by the FEU Treaty, such as the improvement of conditions of employment, [75] the guarantee of adequate social protection [76] and the maintenance of a level playing field.

Secondly, the Court points out that, according to settled case-law, where a legislative act has already coordinated the legislation of the Member States in a given EU policy area, the EU legislature cannot be denied the possibility of adapting that act to any change in circumstances or any development in knowledge having regard to its task of safeguarding the general interests and of taking into account the overarching objectives of the European Union recognised by the FEU Treaty, including the requirements relating to the promotion of a high level of employment, the proper functioning of the internal market and the guarantee of adequate social protection. The EU legislature can, in such a situation, properly carry out its task of ensuring that those general interests and overarching objectives are protected only if it is free, in the light of the significant developments which have affected the internal market, to amend a legislative act in order to rebalance the interests involved.

Thirdly, the Court emphasises, in the context of the examination of pleas of illegality alleging infringement of the principle of proportionality or of the principle of non-discrimination, that it cannot be ruled out that the impact of the contested legislative acts may be greater for transport undertakings, regardless of the Member State in which they are established, which have opted for a certain business model, such as the decision to provide the essential part, if not all, of their services to recipients established in Member States which are distant from the first Member State and whose drivers thus carry out their transport operations away from their place of residence or as part of cabotage operations carried out permanently or continuously within the territory of the same host Member State. However, assuming that this business model is mainly adopted by transport undertakings established in certain Member States, if the EU measure concerned has an impact in all Member States and requires that a balance between the different interests involved should be ensured, the attempt to strike such a balance, taking into account the situation of all EU Member States cannot, in itself, be regarded as contrary to the principles of proportionality and non-discrimination.

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74 Pursuant to Article 90 TFEU.

75 Referred to in the preamble to the FEU Treaty and in the first paragraph of Article 151 TFEU.

76 Within the meaning of Article 9 TFEU and the first paragraph of Article 151 TFEU.

As regards Regulation 2020/1054, the actions sought the annulment, in particular, of the following provisions:

– point 6(c) of Article 1 of that regulation, according to which regular or compensatory weekly rest periods may not be taken by drivers in a vehicle but must be taken, at the expense of the employer, in accommodation suitable for both women and men, including adequate sleeping and sanitary facilities.

– point 6(d) of Article 1 of that regulation, which lays down, first, the obligation for transport undertakings to organise the work of drivers in such a way that they are able to return every three or four weeks, depending on whether or not they have previously taken two consecutive reduced weekly rest periods, to the operational centre of that employer or to their place of residence, respectively, in order to start or spend there at least one regular or compensatory weekly rest period, and, secondly, an obligation on those transport undertakings to document the manner in which they fulfil that obligation.

– point 2 of Article 2 of that regulation, which establishes a new timetable for equipping for various categories of vehicles with a new type of second generation (V2) smart tachograph.

The pleas of illegality raised against point 6(d) of Article 1 of Regulation 2020/1054, which the Court examines first and which it rejects in their entirety, alleged infringement of the principle of proportionality, the principles of equal treatment and non-discrimination, the principle of legal certainty, the free movement of EU citizens, the functioning of the internal market, the free movement of workers, freedom of establishment, the rules of EU law on the common transport policy and the rules of EU law on environmental protection.

The objective of that provision is to improve [77] working conditions and road safety of drivers within the European Union, by ensuring that they can reach their place of residence at regular intervals in order to take their regular or compensatory weekly rest period, so that the period spent by drivers engaged in international transport operations away from that place of residence is not excessively long. The purpose of that provision is thus to remedy the absence of clear rules relating to the weekly rest period and the return of drivers to their place of residence and, therefore, the unfair conditions of competition for transport undertakings which the different national interpretations and practices had previously been able to encourage.

In the first place, the Court rejects several of those heads of illegality, on the ground that they are based on two incorrect premisses.

First, some of the applicant Member States were wrong to argue that point 6(d) of Article 1 of Regulation 2020/1054 requires drivers to return exclusively to the operational centre of their employer or their place of residence by means of heavy goods vehicles which are often empty.

First of all, drivers, including those from third countries, are free to choose to take their regular or compensatory weekly rest period at the place where they so wish, whether it be the operational centre of their employer, their place of residence or any other place of their choice. The contested provision does not require transport undertakings to compel drivers actually to take their regular or compensatory weekly rest period at their own place of residence. Rather, transport undertakings are obliged to organise the work of drivers so that they can return to the place they have chosen in order, respectively, to start or spend that rest period there.

Next, the EU legislature wanted to take account of the pressures that drivers were likely to face in the past. Since the worker must be regarded as the weaker party in the employment relationship, it is necessary to prevent the employer from being able to impose on him or her a restriction of his or her rights or from dissuading the worker from explicitly claiming his or her rights vis-à-vis his or her

77 See, in particular, recitals 1, 2, 6, 8, 13 and 36 of Regulation 2020/1054.

employer. Thus, an employer cannot be exempted from the obligation to organise the work of its drivers in order to make it possible for them to return on the ground that they have waived, in advance and in general, the right conferred on them by the contested provision.

Lastly, the EU legislature intended to allow transport undertakings flexibility, in their capacity as employer, on the one hand, to decide on the specific arrangements for exercising the corresponding rights conferred on drivers, depending on each particular situation, and, on the other hand, to prove, by having recourse to any relevant documentation to that effect, both compliance with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054 and the manner in which that obligation has, where appropriate, been reconciled with the driver's freely expressed choice to take his or her weekly rest period outside his or her place of residence.

Secondly, some of the applicant Member States wrongly maintained that the obligation on transport undertakings to organise the work of drivers in such a way that they can return to the operational centre of their employer or to their place of residence is the cause of a significant increase in traffic. That premiss presupposes that, before the adoption of that measure, only a reduced number of drivers returned to one or other of those places and that that return must necessarily be made using the vehicle used by the driver.

First, already before the adoption of that measure, most drivers returned to their place of residence at regular intervals of less than four weeks. Secondly, transport undertakings may, in order to ensure compliance with the obligation laid down in point 6(d) of Article 1 of Regulation 2020/1054, have recourse to other means of transport, such as public transport, and it is conceivable that the return to one of the two places referred to in that provision may be coupled with a return of the vehicles of the transport undertaking to its operational centre as part of its usual transport activities.

In the second place, the Court rules on a number of questions of law raised, in particular those referred to below.

First, as regards the right of the EU legislature to adapt a legislative act, that right was specifically intended, by amending EU rules on the working time of drivers, to strike a new balance which took into account, on the one hand, the interest of drivers in better working conditions and increased road safety and, on the other hand, the interest of employers in carrying out their transport activities under fair commercial conditions.

In the present case, in balancing the various interests at stake, the EU legislature was entitled to take the view, in the context of its broad discretion in relation to the common transport policy, that the significant increase in periods spent by drivers employed in the European Union away from their place of residence made it necessary to introduce a specific measure to improve their working conditions and that the negative effects on their health of long periods spent away from their place of residence were more serious than the negative consequences for a number of undertakings providing services on a more or less permanent basis in Member States other than those in which they are established. Such rebalancing is consistent with the social ambitions of the European Union.

Secondly, the rule laid down in point 6(d) of Article 1 of Regulation 2020/1054 applies without distinction to all transport undertakings concerned, irrespective of the Member State in which they are established, to all drivers, irrespective of their nationality and the Member State in which their employer is established, and to all Member States, so that it does not involve direct discrimination prohibited by EU law. In addition, the Court holds that that rule does not constitute indirect discrimination prohibited by EU law, in so far as it is, by its very nature, liable to have a greater effect on transport undertakings established in Member States situated, in their view, on the 'periphery of the European Union', the drivers employed by those undertakings and that group of Member States. A provision of EU law cannot be regarded as being, in itself, contrary to the principles of equal treatment and non-discrimination on the sole ground that it has different consequences for certain economic operators, where that situation is the consequence of different operating conditions in which they are placed, in particular by reason of their geographical location, and not an inequality in law inherent in the contested provision.

As regards the pleas of illegality raised against point 6(c) of Article 1 of Regulation 2020/1054, which the Court rejects in their entirety, they alleged infringement of the principle of proportionality, of the

principles of equal treatment and non-discrimination, of the provisions of the FEU Treaty relating to the freedom to provide services and of Article 91(2) and Article 94 TFEU.

The objective of that provision [78] is to improve working conditions and road safety of drivers within the European Union, by ensuring that drivers have high-quality accommodation for taking their regular or compensatory weekly rest period, in order to protect, in particular, drivers engaged in international transport operations over long distances who spend long periods away from their place of residence. The purpose of that provision is to address the absence of clear rules on weekly rest periods and, more specifically, the unequal treatment which may have previously resulted, on account of the different interpretations and applications of Article 8(8) of Regulation No 561/2006 [79] by the competent national authorities, from the application of diverging national rules on penalties in the Member States. It is for the purpose of ensuring, by means of a clearer harmonisation provision, the uniform application of the prohibition on taking the regular or compensatory weekly rest period in the vehicle that the EU legislature codified the interpretation of that Article 8(8) given by the Court in the judgment in Vaditrans. [80]

That prohibition, which applies exclusively to regular or compensatory weekly rest periods, and not to other types of rest, respects both the principle of proportionality and the principle of non-discrimination, whether between drivers, between undertakings or between Member States. Furthermore, that prohibition does not require drivers to take regular or compensatory weekly rest periods as a matter of course outside their place of residence by parking their vehicle in safe and secure areas or in accommodation adjacent to a parking area.

The pleas of illegality raised against point 2 of Article 2 of Regulation 2020/1054, which the Court also rejects in their entirety, alleged infringement of the principle of proportionality, of the principles of legal certainty and the protection of legitimate expectations and of the second paragraph of Article 151 TFEU.

The Court considers that the mere fact that the installation of smart tachographs may have been provided for, in a legislative act applicable before the entry into force of Regulation 2020/1054, on a date different from that which was ultimately adopted by the latter regulation, is not sufficient to establish a breach of legal certainty or of legitimate expectations. That is even less the case as regards a legislative act which concerns, as in the present case, the introduction of equipment likely to be affected by the rapid development of new technologies and which may therefore require constant adjustment to reflect such a development.

As regards Regulation 2020/1055, the actions sought the annulment, in particular, of the following provisions:

– point 3 of Article 1 of that regulation, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, according to which vehicles used for international transport must return to an operational centre in the Member State of establishment of the transport undertaking concerned every eight weeks,

– point 4(a) of Article 2 of Regulation 2020/1055, according to which hauliers are not allowed to carry out cabotage operations with the same vehicle in the same host Member State within four days from the end of a cabotage period carried out in that Member State.

First, as regards the pleas of illegality raised against point 3 of Article 1 of that regulation, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, the Court annuls that provision on the

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78 See, in particular, recitals 1, 2, 6, 8, 13 and 36 of Regulation 2020/1054.

79 Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

80 Judgment of 20 December 2017, Vaditrans (C-102/16, EU:C:2017:1012).

basis of an infringement of the principle of proportionality, on the ground that the EU legislature has not sufficiently established that it had examined the proportionality of the obligation for vehicles to return laid down in that provision.

In that regard, the Court finds that, admittedly, the EU legislature is not required to have at its disposal an impact assessment in every circumstance and that such an impact assessment is not binding on it. However, it must base its choice on objective criteria and examine whether the aims pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators. It follows that that legislature must, when the act at issue is the subject of judicial review, at the very least be able to produce and set out clearly and unequivocally the basic facts that had to be taken into account as the basis of the contested measures of that act and on which the exercise of its discretion depended.

The Court considers that, although the obligation relating to the return of vehicles has not been the subject of an impact assessment, reliance on the data contained in the Impact assessment – establishment section, in that they describe the market concerned and its particular difficulties or in relation to the assessment of the consequences of obligations other than that relating to the return of vehicles – does not amount to producing and setting out clearly and unequivocally the basic facts on the basis of which point 3 of Article 1 of Regulation 2020/1055, in so far as it inserts paragraph 1(b) in Article 5 of Regulation No 1071/2009, was adopted and on which the effective exercise by that legislature of its discretion depended. The same is true of the other basic data relied on before the Court by the European Parliament and the Council, since they do not relate to the obligation concerning the return of vehicles or were presented in an excessively succinct manner. The same applies to the mere reliance on information allegedly provided by the applicant Member States and to which that legislature could have had access.

Secondly, as regards the pleas of illegality raised against point 4(a) of Article 2 of Regulation 2020/1055, which the Court rejects in their entirety, those pleas alleged infringement of the principle of proportionality, the principles of equal treatment and non-discrimination, the rules of EU law on the common transport policy, the functioning of the internal market, the freedom to provide services, the free movement of goods and the rules of EU law and the international commitments of the European Union relating to environmental protection.

As regards the complaint alleging infringement of the principle of proportionality, the Court notes in particular that the waiting period provided for in point 4(a) of Article 2 of Regulation 2020/1055, during which, following a cabotage cycle carried out in a host Member State, hauliers are no longer allowed to carry out cabotage operations in that Member State, is intended to address the unexpected consequences created, under Regulation No 1072/2009, [81] by the emergence of systematic cabotage practices and to achieve the initial objective pursued by the EU legislature, by ensuring the temporary nature of cabotage, in accordance with the level of liberalisation laid down by that legislature in order to contribute to the smooth operation of the internal transport market.

The Court also points out that compliance with the waiting period after a cabotage cycle in a host Member State does not require the transport undertaking concerned to suspend all transport activity. It is therefore wrong to argue that the vehicle is immobilised during that period, and cannot be engaged in transport operations other than cabotage operations in the same host Member State or that the transport undertaking is required to return the vehicle, which is, moreover, empty, to its operational centre during that same period.

As regards the complaint alleging infringement of the rules of EU law and of the EU's international commitments on environmental protection, the Court notes, in particular, that the waiting period laid down in point 4(a) of Article 2 of Regulation 2020/1055 will not give rise to significant adverse effects

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81 Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

on the environment, given, first, the absence of an obligation to return the empty vehicle to the operational centre of the transport undertaking during that period and, secondly, the absence of environmental impact from any immobilisation of the vehicle during that period.

As regards Directive 2020/1057, the actions sought, in essence, the annulment of the provisions of Article 1 of that directive, in so far as they distinguish between different types of road transport operations and exempt some of those types of operations from the application of the rules on the posting of workers laid down in Directive 96/71. [82]

In essence, Directive 2020/1057 lays down specific rules for posting drivers in the road transport sector, which distinguish, in order to facilitate their enforcement, between different types of transport operations depending on the degree of connection of the driver and of the service provided with the territory of the host Member State.

In particular, Article 1 of Directive 2020/1057 provides in that regard that, where a driver carries out bilateral transport operations consisting of transport operations from the Member State in which the transport undertaking is established to the territory of another Member State or a third country or, conversely, in transport operations from a Member State or a third country to the Member State where the transport undertaking is established, or transit operations, which consist of transport operations in which the driver crosses the territory of a Member State without loading or unloading goods, he or she is not to be regarded as posted for the purposes of Directive 96/71.

By contrast, where a driver carries out cross trade operations, which consist of transport operations carried out from a Member State other than the Member State of establishment of that undertaking or from a third country to the territory of another Member State which is also different from that Member State of establishment or to the territory of a third country, or cabotage operations, defined as the provision of services by a haulier in a Member State in which he or she is not established, that driver must be regarded as being posted for the purposes of Directive 96/71.

As regards combined transport operations, which consist of the carriage of goods between Member States in which the lorry or other means of transport of the goods connected with the lorry uses the road for the initial or final leg of the journey and, for the other leg, a rail, inland waterway or maritime route, the driver is not considered to be posted when he or she makes the initial or final road journey of a combined transport operation if that road journey, taken in isolation, consists of bilateral transport operations.

The pleas of illegality raised against the provisions of Article 1 of Directive 2020/1057, which the Court rejects in their entirety, alleged infringement of Article 1(3)(a) of Directive 96/71, the principles of equal treatment and non-discrimination, the principle of proportionality, the rules of EU law on the common transport policy, the free movement of goods, the freedom to provide services and the rules of EU law on environmental protection.

As regards, in particular, the alleged infringement of the principles of equal treatment and non-discrimination, the Court notes that, by adopting sectoral rules on the posting of workers intended to be implemented throughout the European Union in order to ensure the proper functioning of the internal market, the EU legislature sought to achieve [83] a balance between, on the one hand, the improvement of the social and working conditions of drivers and, on the other hand, facilitating the exercise of the freedom to provide road transport services based on fair competition between transport undertakings. In that context, the approach consisting of distinguishing between different types of transport operations for the purposes of applying the rules on posting, far from undermining equality between Member States, is intended, on the contrary, to address the inequalities of

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82 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

83 As is apparent from recitals 3, 7 and 9 of Directive 2020/1057.

treatment which had arisen previously, as a result of discrepancies identified between Member States in the interpretation, application and implementation of the provisions applicable before the entry into force of that directive, discrepancies that placed a heavy administrative burden on drivers and transport undertakings.

In the light of that approach, in order to assess the existence of alleged discrimination between transport undertakings and drivers employed by them according to whether they carry out cross trade operations or bilateral transport operations, the Court rejects the premiss that the assessment of the comparability of the respective situations of those drivers in order to determine the application of the rules on posting must be carried out solely on the basis of the nature of their work, whereas it is the link between the driver concerned and the service provided to the Member State of establishment or the host Member State which, in the light of the objective pursued by the contested provisions of Article 1 of Directive 2020/1057, is relevant for the purposes of that assessment.

The Court also considers incorrect the premiss that a combined transport operation, taken as a whole, is comparable to a bilateral transport operation, having regard to the objective pursued by the rules laid down in Article 1 of Directive 2020/1057. The purpose of that directive is to establish specific rules for the posting of drivers in the road transport sector only. By not assimilating combined transport operations, where the same driver accompanies the vehicle and its cargo, with bilateral transport operations, the EU legislature did not therefore infringe the principles of equal treatment and non-discrimination.

XI. COMPETITION

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

Judgment of the Court of Justice (Second Chamber), 4 October 2024, FIFA, C-650/22

Link to the full text of the judgment

Reference for a preliminary ruling – Internal market – Competition – Rules introduced by an international sports association and implemented by that association with the assistance of its members – Professional football – Private law entities vested with regulatory and control powers, and the power to impose sanctions – Regulations on the Status and Transfer of Players – Regulations relating to the employment contracts concluded between clubs and players – Early termination of an employment contract by the player – Player required to pay compensation – Joint and several liability of the new club – Sanctions – Prohibition on issuing and registering the player's International Transfer Certificate while a dispute relating to the early termination of the employment contract is pending – Prohibition of registration of other players – Article 45 TFEU – Restriction on the freedom of movement of workers – Justification – Article 101 TFEU – Decision by an association of undertakings having as its object the prevention or restriction of competition – Employment market – Recruitment of players by clubs – Market for interclub football competitions – Participation of clubs and players in sporting competitions – Restriction of competition by object – Exemption

On a reference for a preliminary ruling from the cour d'appel de Mons (Court of Appeal, Mons (Belgium)), the Court again rules on the application of EU economic law to the rules introduced by an international sports federation. [84] By the present judgment, it clarifies the way in which the articles of the FEU Treaty establishing the principle of freedom of movement of workers and the prohibition of agreements, decisions and concerted practices [85] apply to the rules adopted by an international sports federation relating to the status and transfer of players.

The Fédération internationale de football association (FIFA) is an association governed by Swiss law whose objectives are, inter alia, to draw up regulations governing the game of football and related matters at world level. It is made up of national football associations which are required, inter alia, to ensure that their own members or affiliates comply with all the rules which it lays down.

In March 2014, FIFA adopted the 'Regulations on the Status and Transfer of Players' ('the RSTP'). The RSTP provide, inter alia, that every new professional football club which signs a player following the termination of an employment contract without just cause is to be jointly and severally liable for payment of the compensation which that player may be required to pay to his or her former club, such compensation being set on the basis of various criteria set out in those regulations. [86] The RSTP also provide that the new club is to be presumed to have induced the player to terminate the employment contract with his or her former club and may, in certain cases, expose that new club to a sporting sanction consisting in a ban on registering any new players during a specified period. [87]

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84 See judgments of 21 December 2023, Royal Antwerp Football Club (C-680/21, EU:C:2023:1010); of 21 December 2023, European Superleague Company (C-333/21, EU:C:2023:1011); and of 21 December 2023, International Skating Union v Commission (C-124/21 P, EU:C:2023:1012).

85 Article 45 and Article 101 TFEU, respectively.

86 See Article 17, paragraphs 1 and 2 of the RSTP.

87 See Article 17, paragraph 4 of the RSTP.

Lastly, the RSTP provide that the national football association to which the former club belongs cannot issue an International Transfer Certificate (ITC) for the player where there is a dispute pending between that former club and that player arising from the early termination of the employment contract where there is no mutual agreement. [88]

BZ is a former professional footballer residing in Paris (France). In August 2013, he signed a four-year employment contract with a Russian professional football club. The following year, the club terminated that contract on grounds of alleged misconduct by BZ and applied to the FIFA Dispute Resolution Chamber for an order that BZ pay compensation of EUR 20 million, alleging 'termination of contract without just cause' within the meaning of the RSTP.

In May 2015, the FIFA Dispute Resolution Chamber upheld the club's claim in part and ordered BZ to pay it compensation of EUR 10.5 million. It also ruled that the RSTP, in so far as they provide that any new professional football club signing the player is to be jointly and severally liable for payment of such compensation, would not apply to BZ in future. In May 2016, the Court of Arbitration for Sport upheld that decision on appeal.

In December 2015, BZ brought proceedings before the tribunal de commerce du Hainaut (division de Charleroi) (Commercial Court, Hainaut (Charleroi Division), Belgium), seeking an order that FIFA and the Union royale belge des sociétés de football association ASBL (URBSFA) pay him compensation of EUR 6 million for the loss which he claimed to have sustained by not being able to be employed in 2015 by the Belgian club Sporting du Pays de Charleroi SA, by reason of the requirements imposed by the RSTP. In January 2017, that court found that claim to be well founded in principle and ordered the two associations to pay a provisional sum.

On appeal by FIFA, the referring court asks the Court whether, having regard to the specificity of sport, in particular as it relates to the proper conduct of sporting competitions, the rules at issue must be considered to constitute a restriction on the freedom of movement of workers and on competition.

Findings of the Court

As a preliminary point, the Court states that the rules at issue in the main proceedings have a direct impact on players' working conditions and, therefore, on their economic activity. In addition, since the composition of the teams is one of the essential parameters of competitions, the rules at issue must be considered to have a direct impact on the conditions of pursuit of the economic activity to which those competitions give rise and on competition between the clubs pursuing that activity. The rules at issue therefore come within the scope of Articles 45 and 101 TFEU, which the Court, in the light of the differences in sphere attaching to those two provisions, interprets in turn.

In the first place, as regards Article 45 TFEU, the Court finds that there is a restriction on the freedom of movement of workers. In that regard, it observes that the rules at issue in the main proceedings are likely to discriminate against players who wish to pursue their economic activity on behalf of a new club established on the territory of a Member State other than that of their residence or of their current place of work by unilaterally terminating their employment contract with their former club for what the former club may or may not claim is not just cause. The existence and combination of those rules have the consequence that those clubs bear significant legal risks, unpredictable and potentially very high financial risks and major sporting risks which, taken together, are clearly such as to dissuade them from signing such players.

As regards the existence of possible justification, the Court points out that the objective of ensuring the regularity of sporting competitions constitutes a legitimate interest of general interest that can be

88 As the International Transfer Certificate is necessary in order for the player to be registered with the new club, the player cannot therefore participate in football competitions for that new club. See Article 9, paragraph 1 of the RSTP and Article 8.2.7 of Annexe 3 to those regulations.

pursued by a sports association. That objective is also of particular importance in the case of football, given the essential role afforded to sporting merit in the conduct of competitions. In addition, the Court observes that, since the composition of teams is one of the essential parameters of competitions, maintaining a certain degree of stability in the player rosters of clubs, and therefore a certain continuity in the related contracts, may thus be regarded as one of the means capable of contributing to the pursuit of that objective.

However, the Court considers that, subject to the verifications which it will be for the referring court to carry out, the various RSTP rules at issue in the main proceedings seem to go beyond what is necessary to achieve that objective, a fortiori because they are intended to apply, to a large extent, in combination and, for some of them, for a significant period of time, to players whose careers are relatively short. That is the case, inter alia, of the criteria for the calculation of the compensation payable where the unilateral breach of the employment contract by the player takes place 'without just cause'. It appears that such criteria for compensation seem to be intended more to protect the clubs' financial interests in the economic context specific to the transfers of players than to ensure what is alleged to be the proper conduct of sporting competitions. That also seems to hold true for the rule which provides, as a matter of principle and therefore without taking account of the particular circumstances of each case, in particular of the actual conduct of the new club which signs that player, that a club is to be jointly and severally liable for payment of the compensation payable by the freshly signed player to his or her former club in the event of the unilateral breach of the contract without just case. That also holds true for the possibility of adopting, virtually automatically, a sporting sanction against the new club on the basis of a presumption that it induced that player to breach his or her contract, as well as a general prohibition on the issuance of an ICT as long as a dispute relating to that breach is pending, irrespective of the circumstances in which that breach of contract occurred.

Consequently, the Court rules that Article 45 TFEU precludes rules such as those at issue in the main proceedings, unless it is established that those rules, as interpreted and applied on the territory of the European Union, do not go beyond what is necessary to pursue the objective consisting in ensuring the regularity of interclub football competitions, by maintaining a certain degree of stability in the player rosters of professional football clubs.

In the second place, that Court recalls that, in order for a decision by an association of undertakings to be regarded as being caught by the prohibition laid down in Article 101(1) TFEU, it is necessary to show either that it has as its object the prevention, restriction or distortion of competition or that it has such an effect. As regards the existence of an anticompetitive object, which, as it recalls, refers exclusively to certain types of coordination between undertakings that reveal a sufficient degree of harm to competition, the Court observes that the collusive conduct of the undertakings may consist, for example, in limiting or controlling the essential parameter of competition consisting, in certain sectors or on certain markets, in the recruitment of highly skilled workers, such as players who have already been trained in the professional football sector.

In the present case, it is clear on a combined reading of the rules of the RSTP at issue in the main proceedings, first, that they are such as to constitute a generalised and drastic restriction, from a substantive viewpoint, of the competition which, in their absence, could pit any professional football club established in a Member State against any other professional football club established in another Member State as regards the recruitment of players already employed by a given club. Second, that restriction of cross-border competition between clubs in the form of the unilateral recruitment of players who are already employed, extends to the entire territory of the European Union and is permanent, in that it covers the entire duration of each of the employment contracts which a player may conclude successively with one club, then, in the event of a negotiated transfer to another club, with the latter club.

Indeed, since the conduct of interclub professional football competitions is based, in the European Union, on matches between and gradual elimination of the participating teams and since it is essentially based on sporting merit, it may be legitimate for an association such as FIFA to seek to ensure the stability of the composition of the player rosters that serve as a pool for the teams which are put together by those clubs during a given season or year. However, the specificity of football and the actual conditions of the functioning of the market constituted by the organisation and marketing of interclub professional football competitions cannot mean that it must be accepted that any

possibility for clubs to engage in cross-border competition by unilaterally recruiting players already employed by a club established in another Member State or players whose employment contract with such a club has purportedly been terminated without just cause should be restricted in a generalised, drastic and permanent manner. Ultimately, such rules, even if they are presented as being intended to prevent player-poaching practices by clubs with greater financial means, can be treated as being equivalent to a general, absolute and permanent ban on the unilateral recruitment of players who are already employed, imposed by decision by an association of undertakings on all the undertakings which the professional football clubs are and borne by all the workers which the players are. On that basis, they constitute a manifest restriction of the competition in which those clubs would be able to engage in their absence.

Thus, the rules at issue in the main proceedings present, by their very nature, a high degree of harm to the competition in which professional football clubs could engage. In those circumstances, those rules must be considered to have as their object the restriction, indeed the prevention, of that competition, throughout the territory of the European Union. There is accordingly no need to examine their effects

Lastly, clarifying the conditions in which conduct having an anticompetitive object may be exempted under Article 101(3) TFEU, the Court states that, in order to determine whether the condition requiring the conduct at issue to be indispensable or necessary is satisfied in the present case, the referring court will have to take into consideration the fact that the RSTP rules in question are characterised by a combination of factors, a significant number of which are discretionary or disproportionate. It will also have to take account of the fact that those rules provide for a generalised, drastic and permanent restriction of the cross-border competition in which professional football clubs could engage by unilaterally recruiting highly trained players. Each of those two circumstances, taken on its own, prima facie precludes those rules from being considered indispensable or necessary to enable efficiency gains to be made, if such gains were proven to exist.

Consequently, the Court rules that, on the wording of Article 101 TFEU, the abovementioned rules of the RSTP constitute a decision by an association of undertakings which is prohibited and which cannot be exempted under that provision unless it is demonstrated, through convincing arguments and evidence, that all of the conditions required for that purpose are satisfied.

Judgment of the General Court (Sixth Chamber), 2 October 2024, Pharol v Commission, T-181/22

Link to the judgment as published in extract form

Competition – Agreements, decisions and concerted practices – Portuguese and Spanish telecommunications markets – Non-compete clause with respect to the Iberian market inserted in the contract for the acquisition by Telefónica of Portugal Telecom's share in the Brazilian mobile telephone operator Vivo – Annulment in part of the initial decision – Decision amending the amount of the fine – Res judicata – Non-adoption of a supplementary statement of objections – Determination of the value of sales – Exclusion of sales of services for which the parties are not in potential competition

By its judgment, the General Court dismissed the action for annulment brought by Pharol, SGPS SA against a decision of the European Commission [89] amending a decision by which the Commission

[89] Commission Decision C(2022) 324 final of 25 January 2022 amending Decision C(2013) 306 final of 23 January 2013 relating to a proceeding under Article 101 TFEU (Case AT.39839 – Telefónica and Portugal Telecom) ('the contested decision').

imposed a fine for infringement of Article 101 TFEU on two telecommunications operators, including the applicant. In so doing, the Court provides clarification as to the method of calculating the basic amount of the fine by endorsing the Commission's approach of excluding, for the purposes of determining the value of sales, sales of services for which the parties are not in potential competition. The Court also clarifies the circumstances in which the Commission must adopt a supplementary statement of objections and the principle of res judicata attaching to an earlier judgment of the Court [90] by which it annulled in part the Commission's initial decision [91] relating to the same anticompetitive practice.

In July 2010, Portugal Telecom, SGPS SA (subsequently renamed 'Pharol, SGPS SA') and Telefónica, SA signed an agreement whereby Telefónica would acquire Portugal Telecom's share in the Brazilian mobile telephone operator Vivo Participações, SA. Under a clause of that agreement, the parties undertook not to engage or invest, directly or indirectly, through any affiliate, in any project in the telecommunications business that can be deemed to be in competition with the other party on the Iberian market, for a period from the definitive conclusion of the transaction until 31 December 2011 ('the clause'). Taking the view that that clause constituted a non-compete agreement contrary to Article 101 TFEU, the Commission adopted a decision in 2013 imposing a fine on them.

That decision was annulled in part by two judgments of the Court of 28 June 2016, [92] in so far as the amount of the fines imposed had been set on the basis of the value of sales taken into account by the Commission. According to the Court, in order to determine the value of sales, the Commission should have defined the services for which the parties were not in potential competition within the Iberian market, by examining the material put forward by them in their replies to the statement of objections in order to demonstrate the absence of such competition between them with respect to certain services during the period of application of the clause.

Following those judgments, the Commission adopted a new decision in which it recalculated the value of sales and amended the amount of the fine imposed on the applicant. It was in that context that the applicant brought an action before the Court for annulment of that decision.

Findings of the Court

First, the applicant submits that, by interpreting the clause in the contested decision as prohibiting the parties from taking steps in preparation for market entry, the Commission infringed the principle of res judicata attaching to the judgment in Portugal Telecom v Commission, [93] in so far as such an interpretation of the clause was not envisaged by the 2013 Decision, nor was it discussed in the context of the case which gave rise to that judgment.

In that regard, the Court notes, on the one hand, that res judicata extends only to the matters of fact and law actually or necessarily settled by the judicial decision in question and, on the other, that the force of res judicata attaches to both the operative part of that decision and the ratio decidendi of that decision which is inseparable from it.

In the judgment in Portugal Telecom v Commission, the Court did not rule on whether or not the clause prohibited preparatory steps, the scope of that clause having been defined not in relation to the type of measures which it prohibits, but in relation to the services covered by it. Thus, it cannot be

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90 Judgment of 28 June 2016, Portugal Telecom v Commission (T-208/13, EU:T:2016:368). No appeal was brought against this judgment.

91 Commission Decision C(2013) 306 final of 23 January 2013 relating to a proceeding under Article 101 TFEU (Case AT.39.839 – Telefónica/Portugal Telecom) ('the 2013 Decision').

92 Judgments of 28 June 2016, Portugal Telecom v Commission (T-208/13, EU:T:2016:368), and of 28 June 2016, Telefónica v Commission (T-216/13, EU:T:2016:369). The latter judgment was the subject of an appeal which was dismissed by the Court of Justice by judgment of 13 December 2017, Telefónica v Commission (C-487/16 P, not published, EU:C:2017:961).

93 See footnote 90.

considered that, by interpreting the clause as prohibiting those steps, the Commission infringed the principle of res judicata attaching to that judgment.

Second, by interpreting the clause as prohibiting preparatory steps, the Commission, according to the applicant, infringed, inter alia, its rights of defence, owing to the failure to adopt a supplementary statement of objections. In the applicant's view, such an interpretation of the clause extends its scope and amends the 2013 Decision, thus constituting a new matter which is unfavourable to the applicant, on which it should have had the opportunity to comment.

The Court notes, as a preliminary point, that a supplementary statement of objections is necessary only if new objections are raised or if the intrinsic nature of the infringement in question is altered. By contrast, a simple letter of facts is sufficient if the objections raised against the undertakings concerned in the initial statement of objections are only corroborated by new evidence that the Commission intends to rely on.

In the present case, the Commission adopted a statement of objections ('the 2011 statement of objections') in the context of the procedure which led to the 2013 Decision. Following the annulment in part of that decision by the Court, the Commission did not issue a supplementary statement of objections before adopting the contested decision, but sent the companies in question a letter of facts. In that regard, the annulment of an EU act does not necessarily affect the validity of the preparatory measures. The validity of the 2011 statement of objections is not called into question by the judgment in Portugal Telecom v Commission, which annulled the 2013 Decision only in so far as it set the amount of the fine imposed on the applicant on the basis of the value of sales taken into account by the Commission. Accordingly, that judgment does not preclude the information provided in the 2011 statement of objections concerning the scope of the clause from being taken into consideration in order to review whether the applicant's rights of defence were respected.

The Court finds that the interpretation of the clause as prohibiting preparatory steps cannot be regarded as a new objection in relation to the objections notified in the 2011 statement of objections, an alteration of those objections or an alteration of the intrinsic nature of the infringement. Although the 2011 statement of objections does not state that the clause prohibits preparatory steps, such an interpretation is necessary in view (i) of the duration of the clause which is too short to allow actual entry to the markets in question and (ii) of the wording of the clause in its English-language version.

Moreover, the Commission interpreted the clause as prohibiting preparatory steps in order to recalculate the value of sales in accordance with the judgment in Portugal Telecom v Commission. The determination of the value of sales is not one of the matters in respect of which the Commission is required to hear the parties, since the right to be heard does not cover such an element related to the method for determining the amount of the fine.

As regards the applicant's line of argument that the Commission did not give it the opportunity to develop its arguments at an oral hearing, the Court observes that the right to an oral hearing exists only after the Commission has issued a statement of objections. [94] Therefore, since the Commission was not required to adopt a supplementary statement of objections instead of the letter of facts, it was not required to hold an oral hearing before adopting the contested decision.

Third, the applicant claims that the Commission erred in law by assessing the existence of potential competition between the parties on the basis of the criterion of insurmountable barriers to entry. The Court considers that the Commission did not make such an error.

In the judgment in Portugal Telecom v Commission annulling the 2013 Decision, the Court held that sales which did not directly or indirectly relate to the infringement, namely sales of services for which the parties were not in potential competition, should be excluded from the determination of the value

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94 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).

of sales. However, the Court did not specify the criterion for assessing the existence of such competition for the purposes of calculating the fine, whereas it stated that, for the purposes of establishing the infringement, the criterion for assessing the existence of such competition was that of insurmountable barriers to entry to the market.

In the contested decision, the Commission considered that the criterion of insurmountable barriers to entry should also be used for the purpose of calculating the amount of the fine. To require the Commission, in order to determine the value of sales, to go beyond the examination of whether there are insurmountable barriers to entry in order to determine whether the parties have real and concrete possibilities of entering the market would amount to imposing on it, for the purposes of calculating the fine, an obligation which it does not have for the purposes of establishing the infringement where the infringement at issue has an anticompetitive object.

Accordingly, the Court rejects the latter plea in law.

2. ABUSE OF DOMINANT POSITION (ARTICLE 102 TFEU)

Judgment of the Court of Justice (Fifth Chamber), 24 October 2024, Commission v Intel Corporation, C-240/22 P

Link to the full text of the judgment

Appeal – Competition – Abuse of dominant position – Microprocessors market – Decision finding an infringement of Article 102 TFEU and Article 54 of the EEA Agreement – Loyalty rebates – Characterisation as abuse – Strategy aiming to exclude competitors that are at least as efficient as the dominant undertaking from the market

By its judgment, the Court of Justice dismisses the appeal brought by the European Commission against the judgment of the General Court of 26 January 2022 [95] by which the General Court annulled in part the Commission's decision imposing a fine on Intel for having abused its dominant position on the worldwide market for microprocessors by implementing an overall strategy aiming to exclude its main competitor from the market. In so doing, the Court definitively resolves the dispute between Intel and the Commission in that regard that began in 2009, endorsing, in the present case, the analysis followed by the General Court in order to hold that the foreclosure capability of the contested exclusivity rebates had not been demonstrated sufficiently and, accordingly, to overturn the finding of an infringement in that regard. It takes the opportunity to clarify the scope of the review of legality incumbent on the General Court when it is called upon to rule on such an analysis of the potential anticompetitive effects of such practices, and on the implementation of the as efficient competitor test ('the AEC test').

By decision of 13 May 2009, [96] the European Commission imposed on the microprocessor manufacturer Intel a fine of EUR 1.06 billion for having abused its dominant position on the worldwide market for microprocessors (Central Processing Units) [97] with x86 architecture [98] ('x86

95 Judgment of 26 January 2022, Intel Corporation v Commission (T-286/09 RENV, EU:T:2022:19; 'the judgment under appeal').

96 Commission Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article [102 TFEU] and Article 54 of the EEA Agreement (Case COMP/C-3/37.990 – Intel) ('the decision at issue').

97 The CPU is a key component of any computer, both in terms of overall performance and cost of the system.

98 CPUs used in computers can be subdivided into two categories, namely x86 CPUs and CPUs based on another architecture. The x86 architecture is a standard designed by Intel that can run both the Windows and Linux operating systems.

CPUs') between October 2002 and December 2007, by implementing a strategy aiming to exclude its main competitor from the market.

In its decision, the Commission imputed to Intel two types of abusive conduct vis-à-vis its trading partners, namely naked restrictions and conditional rebates. As regards conditional rebates more specifically, Intel was found to have granted to four strategic original equipment manufacturers ('OEMs') (Dell, Hewlett-Packard (HP), NEC and Lenovo), rebates which were conditional on those OEMs purchasing all or almost all of their x86 CPUs from Intel. Similarly, Intel was found to have awarded payments to a European retailer of microelectronic devices (MSH) which were conditional on MSH selling exclusively computers containing x86 CPUs made by Intel. Those rebates and payments ('the contested rebates') ensured the loyalty of the four OEMs and MSH and thereby significantly diminished the ability of Intel's competitors to compete on the merits of their x86 CPUs.

By judgment of 12 June 2014, [99] the General Court dismissed in its entirety the action for annulment brought by Intel against the decision at issue. On the appeal brought by Intel, the Court of Justice set aside the initial judgment by judgment of 6 September 2017 [100] and referred the case back to the General Court. In the judgment on the appeal, the Court of Justice noted that the General Court, like the Commission, had relied on the premiss that the loyalty rebates granted by an undertaking in a dominant position were by their very nature capable of restricting competition, so that it was not necessary to analyse all the circumstances of the case or to carry out an AEC test. That being so, since the Commission had nevertheless carried out such a test and that test had played an important role in the assessment of whether those rebates were capable of foreclosing a competitor as efficient as Intel, the Court of Justice held that the General Court should have examined all of Intel's arguments concerning the Commission's implementation of that test, the Commission being required to analyse not only the extent of the undertaking's dominant position on the relevant market, the share of the market covered by the contested rebates, the conditions and arrangements for granting those rebates, their duration and their amount, but also the possible existence of a strategy aiming to exclude competitors that are at least as efficient as that undertaking from the market.

In the judgment under appeal, the General Court endorsed the findings in the initial judgment concerning the naked restrictions and their unlawfulness under Article 102 TFEU and the assessments in that judgment concerning the characterisation of the contested rebates as 'exclusivity rebates'.

However, it examined, in accordance with the points of law decided by the judgment on the appeal, Intel's arguments concerning the Commission's implementation of the AEC test. In so doing, the General Court identified errors in the Commission's application of that test with regard to the four OEMs and MSH. It also identified errors in the Commission's examination of the share of the market covered by the contested rebates and the duration of their application that justified the partial annulment of the decision at issue, in so far as it characterised the contested rebates as practices constituting an infringement of Article 102 TFEU, and the annulment of the fine imposed on Intel. [101]

The Commission brought an appeal against the General Court's judgment. It alleged, first, errors in the General Court's examination of the AEC test and, second, failure to have regard to the scope of the judicial review carried out by the General Court for the purpose of analysing whether the contested rebates were capable of restricting competition.

Findings of the Court

The Court first of all addresses the complaints made in the first two grounds of appeal relating, in essence, to the scope of the judicial review carried out by the General Court for the purpose of

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99 Judgment of 12 June 2014, Intel v Commission (T-286/09, EU:T:2014:547; 'the initial judgment').

100 Judgment of 6 September 2017, Intel v Commission (C-413/14 P, EU:C:2017:632; 'the judgment on the appeal').

101 Taking the view that it was unable to identify the amount of the fine relating solely to the naked restrictions, the General Court annulled in its entirety the article of the decision at issue imposing on Intel a fine of EUR 1.06 billion in respect of the infringement found.

analysing the capability of the contested rebates to restrict competition. In that regard, it considers that the General Court cannot be criticised for having failed to examine whether material in the decision at issue that is different from that on which the Commission relied in order to find an infringement of Article 102 TFEU made it possible to demonstrate the capability of the contested rebates to have an anticompetitive foreclosure effect, since it is not for the General Court to substitute its own reasoning for that of the author of the act the legality of which it is reviewing. Furthermore, as regards the evidence and documents in the file that the General Court may take into account in its assessments, the Court recalls that the General Court cannot rely on evidence that was not provided to the Commission during the administrative procedure or on evidence that is not apparent from the decision at issue. In the present case, examining the contested grounds of the judgment under appeal does not reveal any infringement of the principles thus recalled.

- *The assessment of the AEC test carried out by the Commission*

The Court then analyses in turn the Commission's complaints concerning the General Court's examination of the application of the AEC test with regard to certain OEMs.

With regard to Dell, the Court examines more specifically whether the General Court made an error, as the Commission claimed, in its analysis of the evidence that was capable of calling into question the result of the AEC test obtained by the Commission.

In the present case, the Commission used the AEC test to assess the capability of the contested rebates to foreclose a competitor as efficient as Intel, albeit not dominant. In that regard, the Court observes that the AEC test carried out was intended to establish at what price a competitor as efficient as Intel and facing the same costs as Intel would have had to offer its x86 CPUs in order to compensate the strategic OEMs and MSH for the loss of the contested rebates, in order to determine whether, in such a situation, that competitor could still cover its costs.

That test is therefore based on a comparison between the contestable share [102] and the required share [103] for each OEM and for MSH. In that context, the Court notes that the Commission relied on assumptions that required a set of several figures to be taken into account.

Clarifying the standard of proof required for the undertaking in a dominant position to be able to call into question the result adopted by the Commission, the Court emphasises that that undertaking cannot merely call into question the accuracy of one of the calculations made in the AEC test, but must establish a deficiency or error that is capable of altering the result of the test, changing it from negative to positive, in such a way as to give rise to reasonable doubt as to the validity of the result adopted.

In the present case, the Court notes that the General Court considered, in its unappealable assessment of the evidence provided by Intel, that all the relevant data to be taken into consideration in assessing Dell's contestable share indicated that that contestable share could in all likelihood be greater than the rate of 7.1% applied by the Commission, which chose to rely on only part of the data, so that the result of the AEC test could have been altered, changing from negative to positive, if all those data had been taken into account. That contestable share was, moreover, conceivable for the Commission itself, which nevertheless chose to rely solely on certain data.

Accordingly, the General Court could validly find that the Commission had not demonstrated to the requisite legal standard that the assessment of Dell's contestable share is well founded.

After also rejecting the complaints alleging errors of law and infringement of the Commission's rights of defence in the examination of the AEC test with regard to HP, the Court examined the complaints

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[102] That term refers, in the present case, to the share of demand which Intel's customers were willing and able to switch to another supplier, which is necessarily limited given, in particular, the nature of the product and Intel's brand image and profile.

[103] That term refers, in the present case, to the proportion of the customer's requirements that a competitor as efficient as Intel must obtain in order for it to be able to enter the market without incurring losses.

relating to the examination of the AEC test with regard to Lenovo concerning, more specifically, the assessment of the amount of the rebates granted to Lenovo.

In the present case, part of the rebates granted by Intel to Lenovo took the form of two non-cash advantages, namely the extension of Intel's standard one-year warranty and the offer of improved use of an Intel supply hub in China.

As the General Court stated, the extent and nature of the contested rebates granted are factors taken into account when calculating the required share to determine the result of the AEC test. Consequently, where those rebates are granted in non-cash form, even in part, they must be assessed.

In that regard, the Court states that the compensation offered by a competitor as efficient as Intel does not necessarily have to take the form of a cash advantage equal to the value of the non-cash advantage for the customer concerned, but may consist in an equivalent non-cash advantage. It is also irrelevant, from the subjective point of view of the customer, that the value of the advantage differs from the cost that the competitor as efficient as Intel had to incur in order to grant it to that customer.

Consequently, it is necessary, in accordance with the principles of the AEC test, to assess a rebate granted in the form of a non-cash advantage by taking into account a hypothetical competitor with a cost structure similar to that of Intel. The Court adds that an adjustment of that cost may, however, be necessary to take account of the fact that the costs of the as-efficient competitor may be affected because it satisfies only the contestable share of the customers, which is smaller than Intel's non-contestable share.

It follows that the Commission, which did not conduct its reasoning on the basis of a hypothetical competitor being capable of selling x86 CPUs to Lenovo while also offering non-cash advantages to Lenovo on the same terms as Intel, proceeded on the basis of an assumption that was contrary to the foundation of the AEC test set out in the decision at issue. The General Court therefore did not substitute its assessment for that of the Commission when it highlighted, in the judgment under appeal, an internal inconsistency in the AEC test.

- *The consequences to be drawn from the errors found in the AEC test*

Last, the Court analyses the Commission's complaints concerning the General Court's incorrect assessment of the consequences to be drawn from the errors found in the AEC test.

In that context, the Court clarifies the scope of the judicial review to be carried out by the General Court in its examination of the Commission's analysis of the foreclosure capability of the contested rebates.

According to settled case-law, the constituent elements of an infringement must be apparent from the statement of reasons for the measure finding the infringement, since the Courts of the European Union cannot alter them by substituting, in the context of the review of legality referred to in Article 263 TFEU, their own reasoning for that of the author of the measure in question.

In the present case, the General Court found, without the specific aspects of its examination being challenged by the Commission in the appeal, that the Commission had erred in the AEC test, had not considered properly the criterion relating to the share of the market covered and had not analysed correctly the duration of the contested rebates.

In the light of those findings, it was not for the General Court to examine, by means of reasoning that did not contain the errors found by it in the judgment under appeal, whether the contested rebates were capable of foreclosing a competitor as efficient as Intel by relying, for the purposes of that examination, on factors different from those on which the Commission had relied in order to establish that capability.

In particular, the sole reference, in the decision at issue, notwithstanding the conclusions to be drawn from the AEC test, to the period during which Intel implemented the contested rebates and to the timing of those rebates was not sufficient, in itself, to justify definitive conclusions as to the foreclosure effects thereby produced. The General Court also did not have to take into account the

actual ability of Intel's main competitor to remain on the market because its products are high-performance, innovative and attractive, since that analysis is independent of the AEC test.

XII. APPROXIMATION OF LAWS

1. COPYRIGHT

Judgment of the Court of Justice (First Chamber), 17 October 2024, Sony Computer Entertainment Europe, C-159/23

Link to the full text of the judgment

Reference for a preliminary ruling – Intellectual property – Copyright and related rights – Legal protection of computer programs – Directive 2009/24/EC – Article 1 – Scope – Forms of expression of a computer program – Concept – Article 4(1)(b) – Alteration of a computer program – Change of the content of the variables stored in the computer's RAM and used during the running of the program

In a reference for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court of Justice rules on the unprecedented question of the scope of copyright protection [104] of computer programs and, in particular, of the content of the variable data transferred by a protected computer program to the RAM of that computer and used by that program in its running.

Sony Computer Entertainment Europe Ltd ('Sony') markets PlayStation games consoles as well as games for those consoles. Until 2014, it offered for sale, among other products, the PlayStation Portable console ('the PSP console') and the game MotorStorm: Arctic Edge intended for that console.

Sony applied to the Landgericht Hamburg (Regional Court, Hamburg, Germany) for a cessation of the marketing of products complementary to its game consoles, namely the Action Replay PSP software, as well as the Tilt FX device and software, produced and distributed by Datel Design and Development Ltd and Datel Direct Ltd.

Those products, which work exclusively with Sony's original games, make it possible, inter alia, to change certain game parameters by presenting the user with game options not provided at that stage of the game by Sony and with the ability to control the PSP console by motion. According to Sony, those products enable users to alter the software which underpins its games in a manner contrary to copyright.

The Regional Court, Hamburg upheld Sony's claims in part. That judgment, however, was varied on appeal by the Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany), which dismissed Sony's action in its entirety.

Hearing an appeal on a point of law against that judgment, the Federal Court of Justice has asked the Court whether the content of variables which are transferred by a protected computer program to the RAM of that computer and which are used by the program in its running comes within the scope of

104 Article 1(1) to (3) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ 2009 L 111, p. 16).

copyright protection in the computer program and, if so, whether the transfer of changed variables to that RAM constitutes an alteration of the computer program within the meaning of Directive 2009/24.

Findings of the Court

The Court notes that it is apparent from Article 1(2) and (3) of Directive 2009/24 that 'expression in any form' of a computer program, apart from ideas and principles which underlie its constituent elements, is protected by copyright, provided that such a program is original, in the sense that it is the author's own intellectual creation. It finds that it is apparent from those provisions that the source code and the object code fall within the concept of 'forms of expression' of a computer program, within the meaning of that provision, since they allow that program to be reproduced or subsequently created, whereas other elements of that program, such as, inter alia, its functionalities, are not protected. Thus, the protection guaranteed by that directive is limited to the literal expression of the computer program in the source code and object code.

Such an interpretation is supported, inter alia, by applicable international law. The TRIPS Agreement [105] provides that computer programs, whether in source or object code, are to be protected as literary works under the Berne Convention for the Protection of Literary and Artistic Works. [106] However, within the meaning of that convention and of the TRIPS Agreement, that copyright protection may be granted to expressions, but not to ideas, procedures, methods of operation or mathematical concepts as such, which is also supported by the preamble to Directive 2009/24. [107]

Furthermore, the interpretation that only the source code and the object code fall within the concept of 'forms of expression' of a computer program is consistent with the objectives pursued by the legal protection of computer programs under Directive 2009/24. The objective pursued by the system of protection of computer programs introduced by the EU legislature is to protect the authors of programs against their unauthorised reproduction, which has been made very easy and inexpensive in the digital environment, and against the distribution of 'pirated' copies of those programs. On the other hand, it is apparent from its origins that the legal regime for the protection of computer programs does not grant monopolies hindering independent development.

The competitors of the author of a computer program are free, once they establish through independent analysis which ideas, rules or principles are being used, to create their own implementation of them in order to create compatible products.

In the case at hand, it is apparent that the software of Datel Design and Development and Datel Direct, in so far as it changes only the content of the variables transferred by a protected computer program to a computer's RAM and used by that program in its running, does not, as such, enable that program or a part of it to be reproduced, but presupposes, on the contrary, that that program will be run at the same time. The content of the variables is therefore an element of that program by means of which users make use of its features, which is not protected as a 'form of expression' of a computer program within the meaning of Article 1(2) of Directive 2009/24, which it is for the referring court to verify.

In conclusion, the Court holds that Article 1(1) to (3) of Directive 2009/24 must be interpreted as meaning that the content of the variable data transferred by a protected computer program to the RAM of a computer and used by that program in its running does not fall within the protection conferred by that directive, in so far as that content does not enable such a program to be reproduced or subsequently created.

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105 Article 10(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'), set out in Annex 1C to the Agreement establishing the World Trade Organization (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

106 Berne Convention for the Protection of Literary and Artistic Works, signed in Berne on 9 September 1886, in the version resulting from the Paris Act of 24 July 1971.

107 Recitals 7, 11 and 15 of Directive 2009/24.

Judgment of the Court of Justice (First Chamber), 24 October 2024, Kwantum Nederland and Kwantum België, C-227/23

Link to the full text of the judgment

Reference for a preliminary ruling – Intellectual and industrial property – Copyright – Directive 2001/29/EC – Articles 2 to 4 – Exclusive rights – Copyright protection for subject matter of applied art the country of origin of which is not a Member State – Berne Convention – Article 2(7) – Criterion of material reciprocity – Division of competences between the European Union and its Member States – Application by the Member States of the criterion of material reciprocity – First paragraph of Article 351 TFEU

Hearing a request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the Court of Justice rules on the applicability of the criterion of material reciprocity laid down in the Berne Convention, which makes copyright protection of certain works conditional upon the existence of similar protection in the country of origin. [108] According to the Court, EU law precludes the application of that criterion, by the Member States, in respect of a work of applied art originating in a third country and the author of which is a national of such a country.

Vitra Collections AG ('Vitra'), a company governed by Swiss law, is a manufacturer and holder of the intellectual property rights over the Dining Sidechair Wood chair ('the DSW chair'). That chair was designed by two nationals of the United States of America as part of a furniture design competition organised by the Museum of Modern Art in New York (United States) and exhibited in that museum from 1950.

Kwantum Nederland BV and Kwantum België BV (together, 'Kwantum') operate, in the Netherlands and in Belgium, a chain of shops selling interior design articles and market a chair called the 'Paris chair'. According to Vitra, that marketing infringes its copyright in the DSW chair.

Hearing an action brought by Vitra, the rechtbank Den Haag (District Court, The Hague, Netherlands) held that Kwantum did not infringe Vitra's copyright in the Netherlands or in Belgium. That judgment was set aside by the Gerechtshof Den Haag (Court of Appeal, The Hague, Netherlands), according to which Kwantum infringed Vitra's copyright in the DSW chair in those two countries.

Hearing an appeal, the referring court asks the Court, first of all, whether the situation at issue in the main proceedings falls within the material scope of EU law. Next, it seeks to ascertain, in essence, whether Article 2(a) and Article 4(1) of Directive 2001/29, [109] read in the light of the Charter, [110] and Article 351 TFEU, preclude the national court from applying the criterion of material reciprocity, as laid down in the second sentence of Article 2(7) of the Berne Convention [111] ('the criterion of material reciprocity'), in the dispute in the main proceedings.

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108 Convention for the Protection of Literary and Artistic Works, signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), as amended on 28 September 1979 ('the Berne Convention').

109 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

110 See Article 17(2) and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

111 The second sentence of Article 2(7) of the Berne Convention provides that ' ... it shall be a matter for legislation in the countries of the Union [established by this Convention] to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union [established by this Convention] only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.'

Findings of the Court

In the first place, the Court notes that the scope of Directive 2001/29 is defined not in accordance with the criterion of the country of origin of the work or of the nationality of its author, but by reference to the internal market, which comprises the territories of the Member States. Thus, a situation in which a company claims copyright protection for a subject matter of applied art marketed in a Member State, such as the DSW chair, provided that that subject matter may be classified as a 'work' within the meaning of that directive, falls within the material scope of EU law.

In the second place, first, the Court states that Article 2(a) and Article 4(1) of Directive 2001/29 apply to works of applied art originating in third countries or the authors of which are nationals of such countries. According to those provisions, Member States are to provide authors with exclusive rights to authorise or prohibit the reproduction and distribution to the public of their works. However, that directive does not lay down any condition relating to the country of origin of the work in question or to the nationality of the author of that work. In that regard, the Court finds that, in defining the scope of Directive 2001/29 by means of a territorial criterion, the EU legislature necessarily took into account all the works for which protection is sought in the territory of the European Union, irrespective of the country of origin of those works or the nationality of their author. It adds that that interpretation is consistent with the objectives pursued by Directive 2001/29, [112] which consists in the harmonisation of copyright in the internal market.

Second, the Court examines whether those provisions preclude the application, in national law, of the criterion of material reciprocity. It observes that, under that criterion, works of applied art originating in third countries might be treated differently in different Member States. Moreover, since intellectual property rights are protected under Article 17(2) of the Charter, any limitation on the exercise of those rights must, in accordance with Article 52(1) of the Charter, be provided for by law. The application of that criterion by a Member State may constitute such a limitation which must be provided for by law.

In that regard, the Court recalls that, where a rule of EU law harmonises copyright protection, it is for the EU legislature alone, and not the national legislatures, to determine whether the grant in the European Union of that copyright should be limited in respect of works originating in a third country or the author of which is a national of such a country. [113] However, the EU legislature has not included in Directive 2001/29 or in any other provision of EU law a limitation of the exclusive rights granted to authors by Article 2(a) and Article 4(1) of that directive in the form of a criterion of material reciprocity.

The Court concludes on that basis that those articles of Directive 2001/29, read in conjunction with Article 17(2) and Article 52(1) of the Charter, preclude Member States from applying, in national law, the criterion of material reciprocity in respect of a work of applied art the country of origin of which is a third country and the author of which is a national of such a country. It is for the EU legislature alone to provide, by means of EU legislation, whether the grant in the European Union of the rights laid down in those articles of Directive 2001/29 should be limited.

Lastly, the Court holds that the first paragraph of Article 351 TFEU does not permit a Member State to apply, by way of derogation from the provisions of EU law, the criterion of material reciprocity in respect of a work the country of origin of which is the United States of America. That article states that application of the Treaty does not affect the commitment of the Member State concerned to respect the rights of third countries under an agreement preceding its accession to the European Union. In that regard, the Court holds that the Member States may no longer avail themselves of the option of applying that criterion, even though the Berne Convention entered into force before 1 January 1958. When an international agreement that has been concluded by a Member State prior to its accession allows but does not require it to adopt a measure which appears to be contrary to EU law, that State

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112 Recitals 6, 9 and 15 of Directive 2001/29.

113 See, to that effect, judgment of 8 September 2020, Recorded Artists Actors Performers (C-265/19, EU:C:2020:677, paragraph 88).

must refrain from adopting it. The Court adds that the Berne Convention does not prohibit the parties to that convention from granting copyright protection to a work of applied art which, in the country of origin of that work, is protected only under a special regime as a design. The parties to that convention have discretion in that respect.

2. COMMUNITY DESIGNS

Judgment of the General Court (Sixth Chamber), 23 October 2024, Orgatex v EUIPO – Longton (Floor markings), T-25/23

Link to the full text of the judgment

Community design – Invalidity proceedings – Registered Community design representing floor markings – Articles 3(a) and 25(1)(a) of Regulation (EC) No 6/2002 – Unicity of the design – Consistency of views

Hearing an application for a declaration of invalidity, which it rejects, the General Court rules on the novel issue of the consistency of views in the light of the requirement of unicity of a design. It also clarifies the absence of a principle of interpretation favourable to the registration of a Community design in invalidity proceedings.

Orgatex GmbH & Co. KG, the applicant, is the holder of a Community design representing floor markings. Mr L. Longton applied to the European Union Intellectual Property Office (EUIPO) for a declaration of invalidity of that design, which was rejected by the Cancellation Division.

However, the Board of Appeal annulled the decision of the Cancellation Division and declared the contested design invalid, holding that it had been registered in breach of Article 3(a) of Regulation No 6/2002, [114] as the four views filed were inconclusive and presented at least two different designs.

Findings of the Court

In the first place, the Court points out that the examination of a design under Article 3(a) of Regulation No 6/2002 must be carried out on the basis of the representation entered in the register, which determines the subject matter and scope of protection. Observations made by the applicant or holder during the proceedings can therefore only be taken into account if they are apparent from the representation of the design. Therefore, it will examine whether the views that make up the representation as a whole show the appearance of a single or unitary product, namely whether there is unicity in the design.

In that regard, the Court notes that the requirement that the views be consistent implies that all the views show the appearance of one and the same product, so that they enable one and the same design to be clearly identified. Inconsistencies or contradictions between the views filed may lead to the conclusion that the representation shows different products. That is particularly the case where the views constitute different embodiments or versions of the same concept, or where the use of lines to identify the design or the use of exclusions of certain features is not consistent overall. Indeed, there can be no unicity of design if the views are insolubly inconsistent or insurmountably contradictory, because the appearance of a single product cannot be determined and, consequently, the representation does not allow a single design to be clearly identified. Conversely, the unicity of the design may be established despite minor discrepancies between the views, strictly to the extent that those views can be reconciled in the sense of a unitary design. That being the case, the Court points

[114] Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

out that the EUIPO authorities are not obliged to consider all the possible combinations between the views provided by the applicant in the application for registration, but only those combinations which seem logical and plausible in the light of common experience.

In the second place, the Court observes that there is nothing in Regulation No 6/2002 which requires a principle of interpretation favourable to the applicant for, or holder of, a Community design and infers from that that there is no such principle in invalidity proceedings.

In the third place, the Court notes that the assumption that views 1.1 and 1.2 of the contested design show the front face and views 1.3 and 1.4 the rear face, each with a top view and a perspective view, seems logical and plausible in the light of common experience. Those views are insolubly inconsistent and do not show a unitary design, with the result that the contested design has been entered in the EUIPO register in breach of Article 3(a) of Regulation No 6/2002.

Lastly, the Court examined the hypothesis put forward by the applicant as being more favourable to it, according to which view 1.1 shows the front face and views 1.2, 1.3 and 1.4 the rear face of the contested design. First, it states that EUIPO was not obliged to consider such a hypothesis.

Such a hypothesis is hardly logical or plausible in the light of common experience, since, unless there are special circumstances which have not been demonstrated and are not present in the present case, it seems illogical and implausible to show a single view of the front face and three views of the rear face. Secondly, it notes that that hypothesis also leads to insoluble inconsistencies between the views and stresses that those inconsistencies cannot be overcome by a comparison with products allegedly on the market. While the products marketed corresponding to a design may be taken into account in assessing the overall impression, in the present case it is not a question of assessing whether two conflicting designs produce the same overall impression on the informed user, but of determining whether a design is unique on the basis of the representation recorded in the register.

In the light of those considerations, the Court concludes that, even assuming the hypothesis put forward by the applicant, there are insurmountable contradictions or insoluble inconsistencies between the views and that, consequently, they do not represent a unitary design.

3. PUBLIC PROCUREMENT

Judgment of the Court of Justice (Grand Chamber), 22 October 2024, Kolin Inşaat Turizm Sanayi ve Ticaret, C-652/22

Link to the full text of the judgment

Reference for a preliminary ruling – Public procurement in the European Union – Directive 2014/25/EU – Article 43 – Economic operators of a third country which has not concluded an international agreement with the European Union which guarantees access to public procurement in a reciprocal and equal manner – No right on the part of those economic operators to 'no less favourable' treatment – Participation of such an economic operator in a public procurement procedure – Inapplicability of Directive 2014/25 – Inadmissibility in the context of an action brought by that economic operator seeking a request for a preliminary ruling concerning the interpretation of provisions of that directive

Ruling as the Grand Chamber, the Court of Justice declares inadmissible the request for a preliminary ruling made by the Visoki upravni sud (High Administrative Court, Croatia), on the ground that the

provisions of Directive 2014/25, [115] the interpretation of which was sought by that national court, do not apply to economic operators from third countries which have not concluded an international agreement with the European Union guaranteeing equal and reciprocal access to public procurement. In addition, the Court considers that the national provisions transposing that directive cannot be made applicable to those economic operators by the authorities of a Member State, as otherwise the exclusive competence of the European Union in the field of the common commercial policy would be disregarded.

In September 2020, HŽ Infrastruktura d.o.o., a company governed by Croatian law ('the contracting entity'), opened a procedure for the award of a public contract for the construction of railway infrastructure connecting two localities in Croatia, to be awarded on the basis of the criterion of the most economically advantageous tender.

According to the instructions sent to tenderers by the contracting entity, they were to demonstrate their technical and professional abilities by providing a document showing that, during the 10 years preceding the opening of that procedure, construction work on railway or road infrastructure had been carried out by those tenderers.

In January 2022, the contracting entity decided to award the public contract concerned to the Strabag group, made up of three companies governed by Austrian law, Croatian law and Czech law respectively. Kolin Inşaat Turizm Sanayi ve Ticaret AŞ ('Kolin'), a company governed by Turkish law which is one of the tenderers, filed a complaint against the award decision with the Državna komisija za kontrolu postupaka javne nabave (State Commission for Supervision of Public Procurement Procedures, Croatia; 'the supervisory commission'). Taking the view that it had not been duly established that the Strabag group had the required technical and professional capacity, the supervisory commission set aside the decision awarding the public contract in question.

Following the setting aside of that decision, the contracting entity requested the Strabag group to provide an expanded list of the works carried out, accompanied by a certificate attesting to the proper execution and completion of those works. The Strabag group submitted such a list, accompanied by the relevant certificate, which contained a new reference to other works carried out. Following a review and re-evaluation of the tenders, the contracting entity adopted a new decision in April 2022 to award the contract at issue in the main proceedings to the Strabag group. It took the view that the new reference was sufficient in itself to establish that that group had the required technical and professional capacity.

Claiming that the contracting entity's choice to invite the Strabag group to supplement its list of works was unlawful, Kolin filed a complaint against the new award decision with the supervisory commission. The supervisory commission rejected that complaint on the ground that there was no provision of national law which prevented the Strabag group from supplementing the list of works by indicating other work it had carried out in addition to that initially included, since the Croatian Law on Public Procurement allowed the contracting authority to invite a tenderer to supplement or provide an explanation for the evidence provided. [116]

Kolin therefore brought an action for annulment of the decision of the supervisory commission before the Croatian High Administrative Court, which is the referring court. In the light of Articles 36 and 76 of Directive 2014/25, that court has doubts as to whether the contracting entity is entitled to take into account, after its initial decision awarding the contract concerned was set aside, additional documents relating to the technical and professional capacity of the group, which were not included in the initial tender submitted by that group and which were presented by it at the request of that

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115 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

116 Article 263(2) of the Zakon o javnoj nabavi (Law on Public Procurement) in the version applicable to the dispute in the main proceedings.

contracting entity. The referring court therefore decided to refer several questions to the Court of Justice for a preliminary ruling concerning the interpretation of those provisions.

Findings of the Court

In so far as the questions referred by the national court concern the interpretation of a provision of EU law, the Court is, in principle, bound to give a ruling. Nevertheless, the Court must examine the circumstances in which cases are referred to it by the national court, in order to assess whether it has jurisdiction or whether the request submitted to it is admissible. The Court may, in particular, find it necessary to examine whether the provisions of EU law to which the questions referred relate are applicable to the dispute in the main proceedings. If that is not the case, those provisions are irrelevant in resolving that dispute and the questions referred for a preliminary ruling are not necessary to enable the referring court to give judgment, with the result that those questions must be held to be inadmissible.

First, the Court aims to assess whether the action brought before a court of a Member State by an economic operator of a third country, in this case the Republic of Türkiye, in order to challenge the decision to award a public contract made in a Member State, may be examined in the light of the public procurement rules established by the EU legislature, such as Articles 36 and 76 of Directive 2014/25, which are the subject of the questions referred for a preliminary ruling.

In that regard, the Court notes at the outset that the European Union is bound, with respect to certain third countries, by international agreements, in particular the World Trade Organization Agreement on Government Procurement (GPA), [117] which guarantee, on a reciprocal and equal basis, access for EU economic operators to public procurement in those third countries and for economic operators of those third countries to public procurement in the European Union. Article 43 of Directive 2014/25 reflects those international commitments of the European Union by providing that, in so far the GPA or other international agreements by which the European Union is bound so provide, contracting entities of the Member States must accord to economic operators of third countries which are parties to such an agreement treatment no less favourable than that accorded to EU economic operators. That right to no less favourable treatment enjoyed by economic operators of those third countries means that those economic operators may rely on the provisions of that directive.

Other third countries, including the Republic of Türkiye, have not, to date, concluded with the European Union an international agreement such as those referred to in Article 43 of Directive 2014/25. As regards economic operators of those third countries, the Court notes that, although EU law does not preclude those economic operators, in the absence of exclusion measures adopted by the European Union, from being allowed to participate in a public procurement procedure governed by Directive 2014/25, it does, however, preclude those operators from being able, in the context of their participation in such a procedure, to rely on the directive and thus to require that their tender be treated equally to those submitted by tenderers from Member States and by tenderers from third countries which have concluded an international agreement with the European Union referred to in Article 43 of that directive. The inclusion of economic operators of third countries which have not concluded such an international agreement with the European Union within the scope of Directive 2014/25 would have the effect of conferring on them a right to no less favourable treatment, contrary to Article 43 of that directive, which limits the benefit of that right to economic operators from third countries which have concluded an international agreement with the European Union within the meaning of that provision.

Therefore, the right conferred by Article 45(1) of Directive 2014/25 on ‘any interested economic operator’ to submit a tender in response to a call for competition in the context of an open public

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117 Agreement approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) (OJ 1994 L 336, p. 1).

procurement procedure in the European Union does not extend to economic operators of third countries which have not concluded such an international agreement with the European Union. Nor does it imply that those operators, where they are admitted to participate in such a procedure, are entitled to rely on that directive. Therefore, in a situation such as that at issue in the main proceedings, involving the participation, as accepted by the contracting entity, of a Turkish economic operator in a public procurement procedure governed by Directive 2014/25, that operator cannot rely on Articles 36 and 76 of that directive in order to challenge the decision awarding the contract concerned.

Secondly, the Court examines whether the questions referred, which concern the interpretation of those provisions of Directive 2014/25, are nevertheless admissible in the light of the fact that the provisions of the Croatian legislation transposing those provisions are interpreted as applying without distinction to all tenderers from the European Union and third countries and as, consequently, being capable of being relied on by the Turkish economic operator concerned.

In that regard, the Court recalls that, according to the case-law, it is true that requests for a preliminary ruling concerning the interpretation of EU law in situations which fall outside the scope of EU law are admissible where those provisions, without amendment of their purpose or scope, have been rendered applicable on account of a direct and unconditional reference made by national law. In those situations, it is in the clear interest of the EU legal order that provisions taken from EU law should be interpreted uniformly.

However, that case-law cannot apply where the provisions of national law transposing a directive are rendered applicable by the authorities of a Member State in disregard of an exclusive competence of the European Union. That is the case here as regards the participation in public procurement procedures of economic operators of third countries which have not concluded an international agreement with the European Union guaranteeing equal and reciprocal access to those procedures.

The common commercial policy, referred to in Article 207 TFEU, for which the European Union has exclusive competence by virtue of Article 3(1)(e) TFEU, concerns trade with third countries and encompasses any EU act which is essentially intended to promote, facilitate or govern such trade and has direct and immediate effects on it. Any act of general application specifically intended to determine the arrangements under which economic operators from a third country may participate in public procurement procedures in the European Union is such as to have direct and immediate effects on trade in goods and services between that the European Union and that third country, with the result that it falls within the exclusive competence of the European Union under that provision. [118]

The Court adds that, although the common commercial policy does not cover the negotiation and conclusion of international agreements in the field of transport [119] and cannot therefore entirely cover the issue of access of economic operators from third countries to the sectoral public procurement covered by Directive 2014/25, the fact remains that the conclusion of an agreement guaranteeing such access also falls within an exclusive competence of the European Union, namely that referred to in Article 3(2) TFEU.

Thus, only the European Union has competence to legislate and, therefore, to adopt a legally binding act of general application concerning access to public procurement procedures for economic operators of third countries which have not concluded an international agreement with the European Union guaranteeing equal and reciprocal access to public procurement.

Accordingly, the Court considers that national authorities are not competent to render applicable, to those economic operators from third countries who have been allowed, by a contracting entity, to

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[118] That exclusive competence is illustrated by Article 86 of Directive 2014/25, which confers on the European Union, and not on the Member States, the power to suspend or restrict the participation of undertakings of a third country in public procurement procedures in the European Union.

[119] As is apparent from Article 207(5) TFEU.

participate in a procedure for the award of a public contract in the Member State concerned, national provisions transposing the rules contained in Directive 2014/25, as otherwise the exclusive nature of the European Union's competence would be disregarded. Consequently, the Court considers that the interpretation of Articles 36 and 76 of Directive 2014/25 cannot in any way be relevant to the outcome of the dispute in the main proceedings and declares the request for a preliminary ruling to be inadmissible.

4. CONTROL OF THE ACQUISITION AND POSSESSION OF WEAPONS

Judgment of the General Court (Eighth Chamber), 23 October 2024, Keserű Művek v European Union, T-519/23

Link to the full text of the judgment

Non-contractual liability – Control of the acquisition and possession of weapons – Implementing Directive (EU) 2019/69 – Causal link – Concept of 'firearm' – Concept 'alarm and signal weapons'

Hearing an action for non-contractual liability based on Article 268 TFEU and the second paragraph of Article 340 TFEU, which it dismisses, since it does not satisfy the condition relating to the existence of a causal link, the General Court rules on the novel question whether weapons using a combustible propellant to expel rubber bullets belong to the category of firearms, within the meaning of EU law, and whether their holders must therefore be subject to an authorisation or declaration regime.

The applicant, Keserű Művek Fegyvergyár Kft., is a company established in Hungary which manufactures and sells weapons. It states that it has exclusive rights for the manufacturing and marketing of a weapon model that is capable of shooting rubber bullets ('the Keserű weapon'). Further to Hungary's transposition of Implementing Directive 2019/69, [120] taking the view that that directive caused it damage, in so far as it had the effect of restricting the sale of the Keserű weapon only to persons in possession of a firearm licence, the applicant brought the present action.

Findings of the Court

After pointing out that, according to settled case-law, the European Union may incur non-contractual liability only if a number of cumulative conditions are satisfied, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties, the Court first examines the condition relating to the existence of a causal link.

In that regard, it points out that the purpose of Implementing Directive 2019/69 is to lay down technical specifications relating to the marking of alarm and signal weapons. [121] Therefore, the Court verifies first of all, whether a weapon with the characteristics of the Keserű weapon may be classified as an 'alarm and signal weapon' within the meaning of Directive 2021/555 and whether, consequently, Implementing Directive 2019/69, which, according to the applicant, is the cause of its damage, should

[120] Commission Implementing Directive (EU) 2019/69 of 16 January 2019 laying down technical specifications for alarm and signal weapons under Council Directive 91/477/EEC on control of the acquisition and possession of weapons (OJ 2019 L 15, p. 22).

[121] Under Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ 1991 L 256, p. 51), which was repealed by Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (OJ 2021 L 115, p. 1).

have provided for an exception for the type of weapons with characteristics similar to those of the Keserű weapon.

The concept of a 'firearm' [122] means any portable barrelled weapon that expels a shot, bullet or projectile by the action of a combustible propellant. Objects which correspond to that definition but which are designed for alarm, signalling, life-saving, animal slaughter or harpoon fishing or for industrial or technical purposes are not included in the definition of a 'firearm', [123] provided that they can be used only for that specific purpose.

The concept of 'alarm and signal weapons' [124] is defined as referring to 'devices with a cartridge holder which are designed to fire only blanks, irritants, other active substances or pyrotechnic signalling rounds and which are not capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant'.

In the present case, the Court finds that it follows that the Keserű weapon is a portable barrelled weapon which expels 'bullets', in this case rubber ones, by the action of a combustible propellant and that, therefore, it must be classified as a 'firearm'. Thus, the mere fact that that weapon is designed to shoot rubber bullets by the action of a combustible propellant is sufficient to classify it as a 'firearm'.

Furthermore, the Keserű weapon equally does not fall within the category of weapons referred to in point III(a) of Annex I to Directive 2021/555, which are not included in the definition of a 'firearm'. In fact, that weapon is not designed for alarm or signalling purposes and therefore does not satisfy the condition that it may be used only for that specific use, as required by point III(a) of Annex I to Directive 2021/555. In any event, even assuming that that weapon was designed for the purposes of alarm, the fact remains that it can also shoot rubber bullets, and such use cannot be classified as use solely for the purposes of alarm. Lastly, the fact that that weapon is designed as a non-lethal weapon is not a relevant criterion for determining whether it is a 'firearm'.

It follows that the Keserű weapon cannot be categorised as an 'alarm and signal weapon' within the meaning of Directive 2021/555 and that, consequently, it does not fall within the scope of Implementing Directive 2019/69. Therefore, Implementing Directive 2019/69 could not have caused the damage alleged by the applicant.

The Court concludes that the condition relating to the existence of a causal link between the conduct complained of and the damage alleged is not satisfied.

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122 Pursuant to Article 1(1)(1) of Directive 2021/555.

123 In accordance with point III(a) of Annex I to Directive 2021/555.

124 Pursuant to Article 1(1)(4) of Directive 2021/555.

XIII. ECONOMIC AND MONETARY POLICY: SINGLE RESOLUTION MECHANISM

Judgment of the Court of Justice (First Chamber), 4 October 2024, García Fernández and Others v Commission and SRB, C-541/22 P

Appeal – Economic and monetary policy – Banking Union – Regulation (EU) No 806/2014 – Single Resolution Mechanism for credit institutions and certain investment firms – Resolution procedure applicable where an entity is failing or is likely to fail – Adoption of a resolution scheme in respect of Banco Popular Español SA – Article 14 – Resolution objectives – Article 18(1) – Conditions for the adoption of a resolution scheme – Obligations of the Single Resolution Board (SRB) and of the European Commission – Article 20 – Valuations for the purposes of resolution – Requirements – Articles 88 to 91 – Obligation of confidentiality – Right of access to the file – Statements to the press

Hearing an appeal brought against the judgment in Eleveté Invest Group and Others v Commission and SRB, [125] by which the General Court dismissed an action for annulment of the decision of the Single Resolution Board (SRB) concerning the adoption of a resolution scheme in respect of Banco Popular Español, SA [126] ('Banco Popular') and of Decision 2017/1246 endorsing that scheme, [127] the Court of Justice, in dismissing the appeal, provides clarification on access to documents relating to the resolution by persons other than the addressees, on the obligation to state reasons as regards the decision endorsing the resolution, on taking into account the interests of shareholders and creditors, on the valuation of the assets and liabilities of the institution that is failing or likely to fail, and on the obligation of confidentiality of the members of the SRB during a resolution procedure.

The appellants were shareholders and creditors of the Spanish credit institution Banco Popular before a resolution scheme was adopted in respect of that institution.

Prior to the adoption of the resolution scheme, Banco Popular was valued. That valuation comprised two reports which are annexed to the resolution scheme: the first valuation ('valuation 1'), dated 5 June 2017 and prepared by the SRB, and the second valuation ('valuation 2'), dated 6 June 2017, prepared by an independent expert. The purpose of valuation 2 was, inter alia, to estimate the value of Banco Popular's assets and liabilities, to inform the decision to be taken on the shares and instruments of ownership to be transferred, and to enable the SRB to determine what constituted commercial terms for the purposes of the sale of business tool. Also on 6 June 2017, the European Central Bank (ECB), after consulting the SRB, carried out an assessment as to whether Banco Popular was failing or was likely to fail, in which it took the view that, given the liquidity problems which Banco Popular was facing, the latter would probably be unable, in the near future, to pay its debts or other liabilities as they fell due. On the same day, Banco Popular's Board of Directors informed the ECB that it had reached the conclusion that the institution was likely to fail.

At the same time, on 3 June 2017, the SRB adopted Decision SRB/EES/2017/06, addressed to the Fondo de Reestructuración Ordenada Bancaria (Fund for Orderly Bank Restructuring, Spain) ('the FROB'), concerning the marketing of Banco Popular, by which the SRB approved the immediate launching of the sale process for Banco Popular and set out the marketing requirements. In addition, it stated that the five potential purchasers in the private sale process had to be invited to submit an offer. Of the five potential purchasers, only two remained and, after signing a non-disclosure agreement, were given access to the virtual data room on 5 June 2017. On 6 June 2017, the FROB

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125 Judgment of 1 June 2022, Eleveté Invest Group and Others v Commission and SRB (T-523/17, EU:T:2022:313).

126 Decision SRB/EES/2017/08 of the Single Resolution Board (SRB) in its Executive Session of 7 June 2017 concerning the adoption of a resolution scheme in respect of Banco Popular Español, SA ('the contested resolution scheme').

127 Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español SA (OJ 2017 L 178, p. 15).

issued a letter containing information on the sale process and setting the deadline for the submission of bids at midnight on 6 June 2017. One of the two remaining potential purchasers of Banco Popular informed the FROB at that time that it would not be making a bid.

By letter of 7 June 2017, the FROB informed the SRB that Banco Santander SA had submitted a concrete bid of EUR 1 for shares in Banco Popular, and that it had selected Banco Santander as awardee of the competitive sale process of Banco Popular. It then proposed that the SRB designate Banco Santander as buyer in the SRB's decision on the adoption of a resolution scheme in respect of Banco Popular. In the resolution scheme for Banco Popular, the SRB considered that that institution satisfied the conditions for the adoption of a resolution action, that is to say that it was failing or was likely to fail, that there were no alternative measures that could prevent its failure within a reasonable time frame, and that a resolution action in the form of a sale of business tool was necessary in the public interest. The SRB exercised its power to write down and convert Banco Popular's capital instruments and ordered that the resulting new shares were to be transferred to Banco Santander for the price of EUR 1.

Findings of the Court

As a preliminary point, the Court recalls [128] that, unlike the European Commission endorsement decision at issue in the present case, the resolution scheme at issue does not constitute a challengeable act against which an action for annulment may be brought, [129] and therefore an action is inadmissible in so far as it concerns that scheme. That said, in an action for annulment brought against that endorsement decision, it is open to the natural or legal persons concerned to plead the illegality of the resolution scheme, which is capable of guaranteeing them sufficient judicial protection. Moreover, by such an endorsement decision, which gives that scheme binding legal effects, the Commission is deemed to endorse the information and grounds contained in that scheme, with the result that it must, if necessary, answer to the EU judicature.

In the first place, as regards the question whether the SRB's obligation of confidentiality may preclude access to the full versions of the resolution scheme at issue, of valuation 2 and of other preparatory documents, first of all, the Court recalls that Regulation No 806/2014 [130] provides that persons who are the subject of the SRB's decisions are entitled to have access to the SRB's file, while specifying, first, that their right is subject to the legitimate interest of other persons in the protection of their business secrets and, second, that that right does not extend to confidential information or to internal preparatory documents of the SRB.

Furthermore, it recalls that the institutions are under a duty to exercise their powers in accordance with the general principles of EU law, in particular the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), paragraph (2)(b) of which guarantees that every person has that right of access, while respecting the legitimate interests of confidentiality and of professional and business secrecy.

Thus, according to the very wording of those provisions, the right of access to the file is limited by the need to protect confidential information. That limitation reflects the obligation of confidentiality enshrined in Article 339 TFEU. In that regard, the Court has already held that EU institutions, bodies, offices and agencies are, in principle, required, in accordance with the principle of the protection of business secrets, which is a general principle of EU law, not to disclose to the competitors of a private operator confidential information which that operator has provided. The SRM Regulation provides

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128 Judgment of 18 June 2024, Commission v SRB (C-551/22 P, EU:C:2024:520, paragraphs 102 and 103).

129 For the purposes of the fourth paragraph of Article 263 TFEU.

130 Article 90(4) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1; 'the SRM Regulation').

clarification as regards the preservation of professional secrecy provided for in Article 339 TFEU, [131] by prohibiting the SRB from disclosing information which is subject to those requirements to another public or private entity except where such disclosure is due for the purpose of legal proceedings.

In those circumstances, the Court of Justice holds that the General Court did not err in law in ruling that the appellants could not claim a right of access to the full versions of the documents concerned, in so far as those full versions contained confidential information.

Next, the Court points out that, although it is settled case-law that if the judicial review guaranteed by Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, so as to make it possible for him or her to defend his or her rights and decide whether to apply to the court with jurisdiction, while enabling the latter to review the lawfulness of the decision in question, it has also ruled that the statement of reasons for an act adversely affecting a subject of the law, which is premissed on a balancing of the relative position of private operators, may be limited by the obligation to respect business secrecy, but respecting business secrecy must not deprive the obligation to state reasons of its essence. Therefore, it is true that such a measure may, in the light of the obligation to respect business secrecy, be sufficiently reasoned without including, inter alia, all the figures on which that reasoning is based. That said, the statement of reasons must nevertheless disclose in a clear and unequivocal fashion that reasoning and the methodology used. Accordingly, where confidential information is involved, Article 47 of the Charter does not confer on the person concerned a right of access to the entire file, provided that the abovementioned conditions are met.

Lastly, the Court holds that the right to property enshrined in Article 17 of the Charter [132] cannot be interpreted as granting the person concerned access to the information in the file which goes beyond the requirements arising from the case-law.

In the second place, as regards the obligation to state reasons concerning the Commission's endorsement decision, the Court recalls that, by that endorsement, the Commission is deemed to agree with the information and grounds contained in the resolution scheme at issue, [133] with the result that the reasons which led the SRB to adopt that scheme form an integral part of the endorsement decision and, therefore, also constitute the reasons for that endorsement decision. In those circumstances, the General Court was fully entitled to state that the Commission cannot be required to provide additional justification for its endorsement, since that justification may consist only of a repetition of the elements already contained in the resolution scheme.

The Court of Justice points out that the Commission is required not to carry out a second analysis in addition to that of the SRB, but only to endorse, or not to endorse, the SRB's decision. Furthermore, as regards the fact that the General Court took into account the very short period of time within which the Commission was asked to endorse the resolution scheme, the Court of Justice recalls that the degree of precision of the statement of reasons for a decision must be weighed against practical realities and the time and technical facilities available for making the decision.

In the third place, as regards taking into account the interests of shareholders and creditors in the context of the resolution procedure, the Court notes that, although the examination of the third condition for the adoption of a resolution action, namely that the resolution action is necessary in the public interest, must [134] take into consideration the resolution objectives set out in the SRM

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131 That clarification is provided not only by the caveat expressed in Article 90(4) of the SRM Regulation, but also by the second subparagraph of Article 88(1) of that regulation.

132 Read in conjunction with Article 51(1) of the Charter.

133 Judgment of 18 June 2024, Commission v SRB (C551/22 P, EU:C:2024:520, paragraph 96).

134 Pursuant to the first subparagraph of Article 18(1)(c) and 18(5) of the SRM Regulation.

Regulation, [135] the Court finds that protecting the interests of shareholders and creditors – along with minimising the cost of resolution and avoiding the destruction of value – is not among those objectives. The SRB and the Commission need only endeavour to take those last two aspects into account when pursuing those objectives, [136] without being bound by such an obligation of means as regards the protection of the interests of shareholders and creditors. In addition, the Court of Justice notes that the General Court rightly pointed out that the destruction of value within the meaning of the SRM Regulation does not relate solely to the proprietary interests of the entity's shareholders and holders of capital instruments; it also covers the proprietary interests of the entity's depositors, employees and other creditors. In particular, according to the SRM Regulation, the SRB and the Commission must only seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives. In those circumstances, the Court of Justice considers that the General Court did not err in law in holding that compliance with the condition that resolution must be necessary in the public interest does not require, specifically, that the public interest in resolution of the entity concerned must be weighed against the rights of shareholders and creditors.

In the fourth place, as regards the valuation of the entity concerned by the resolution, the Court recalls, as a preliminary point, that the SRM Regulation [137] provides that the SRB must ensure that a fair, prudent and realistic valuation of the assets and liabilities of the entity concerned is carried out by an independent person, before deciding on a resolution action or the exercise of the power to write down or convert relevant capital instruments. It is also apparent from the SRM Regulation that there is a distinction between definitive valuations, namely those which satisfy all the requirements laid down in Article 20(1) and (4) to (9) of that regulation, and provisional valuations which do not comply with all those requirements. However, under the SRM Regulation, [138] a provisional valuation [139] is a valid basis for the SRB to decide whether to adopt a resolution action or to write down or convert relevant capital instruments.

First of all, as regards valuation 1, the Court recalls that the SRM Regulation recognises the ECB as having primary power to carry out that assessment, in view of its expertise as a supervisory authority. The ECB is best placed to determine, in the light of the definition of 'failing or likely to fail', which refers to matters related to the prudential situation, whether that condition is satisfied. In the present case, it adds that the ECB's assessment was also based on more recent data than valuation 1.

Therefore, it takes the view that the General Court was right to find that, following the ECB's assessment that Banco Popular was failing or likely to fail, valuation 1, which assessed that same situation, had become obsolete.

Next, as regards valuation 2, the Court of Justice considers that the General Court was fully entitled to hold that the reservations expressed by the independent expert in the context of valuation 2 were not capable of calling into question the fair, prudent and realistic nature of that valuation. It notes that the General Court pointed out both that the valuation of the entity concerned had to be based on fair, prudent and realistic assumptions, and that the valuer had to take various factors and circumstances into account. Those matters are taken from the findings of fact made by the General Court, which refers to valuation 2 which is based on assumptions and depends on multiple factors, while relying on prospective estimates and assessments. Moreover, the General Court rightly found, also taking into account the time constraints and the information available, that some uncertainties and approximations are inherent in any provisional valuation.

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135 First subparagraph of Article 14(2) of the SRM Regulation.

136 Second subparagraph of Article 14(2) of the SRM Regulation.

137 Article 20(1) of the SRM Regulation.

138 Article 20(13) of the SRM Regulation.

139 Carried out in accordance with Article 20(10) and (11) of the SRM Regulation.

In addition, as regards the requirements relating to the valuation of assets and liabilities, the Court points out that, for the purposes of assessing the value of assets and liabilities, the SRM Regulation provides that the valuation must be 'fair, prudent and realistic', but does not require all the assets and liabilities to be set out exhaustively. Although, in an emergency situation, the provisional valuation must include an estimate of the assets and liabilities, it need only meet the requirement to be fair, prudent and realistic in so far as is reasonably possible. Indeed, in an emergency situation, it may prove impossible to set out all the assets and liabilities exhaustively. Furthermore, the draft regulatory technical standards [140] provide that the valuer must particularly focus on areas subject to significant valuation uncertainty which have a significant impact on the overall valuation. In those circumstances, the Court of Justice considers that the General Court was fully entitled to hold that, in view of the short period of time it had, the valuer had had to strictly prioritise the review of the available information, focusing only on key assets and liabilities the valuation of which was highly uncertain.

Moreover, as regards the independent nature of the assessment carried out by the SRB itself, the Court recalls that the SRM Regulation specifies the objectives to be pursued in the valuation of assets and liabilities. Although it is provided that that valuation must be carried out by a person independent from any public authority, including the SRB and the national resolution authority, and from the entity concerned, it is also provided that the SRB may carry out a provisional valuation of the assets and liabilities where an independent valuation is not possible.[141] Therefore, the Court of Justice considers that the General Court was fully entitled to find that the analysis of the information to determine whether the conditions for resolution or for the write-down or conversion of capital instruments [142] were met does not always need to be carried out by an independent expert.

Furthermore, as regards the failure to take into account an objective of the valuation provided for in Article 20(5) of the SRM Regulation, the Court notes that that regulation [143] specifies that, in an emergency situation, although some of the requirements in relation to valuation must be met, others need only be complied with in so far as practicable.

In respect of those two types of requirements, Article 20(10) of the SRM Regulation does not mention the analysis of the objectives of the valuation referred to in Article 20(5) of that regulation. In addition, the Court points out that that regulation expressly provides that a valuation which does not comply with all the requirements is to be considered to be provisional until an independent person has carried out a valuation that is fully compliant with those requirements. Such a provisional valuation constitutes a valid basis for the SRB to decide on resolution actions. Thus, the alleged failure to take into account the objective concerned does not make the valuation unlawful, but simply means that it is a provisional valuation.

Lastly, as regards the failure to carry out an ex post definitive valuation, it is true that some of the wording of the SRM Regulation [144] suggests that provisional valuations can constitute a valid basis for the purposes of adopting a resolution action only if certain conditions are met, including the condition that an ex post definitive valuation is carried out. However, that regulation also provides that a valuation which does not comply with all the requirements is to be considered to be provisional until an independent person has carried out an ex post definitive valuation as soon as practicable.[145] It follows from that very wording, in particular from the preposition 'until', that the carrying out of an ex

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140 Draft Regulatory Technical Standards of the European Banking Authority on valuation in resolution (EBA/RTS/2017/05) of 23 May 2017.

141 Article 20(1) and (3) of the SRM Regulation.

142 The objective is laid down in Article 20(5)(a) of the SRM Regulation.

143 Article 20(10) of the SRM Regulation.

144 Article 20(13) of the SRM Regulation.

145 Article 20(11) of the SRM Regulation.

post definitive valuation is not a condition which must be met in order for a valuation to be considered to be provisional. Thus, the Court rules that the purpose of the ex post definitive valuation is, first, to ensure that any losses suffered by the entity concerned are fully recognised in the books of accounts of that entity and, second, to inform the decision to write back creditors' claims or to increase the value of the consideration paid. Moreover, since the ex post definitive valuation necessarily takes place after the adoption of a resolution scheme, the Court recalls that it is settled case-law that the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted. Accordingly, it considers that the General Court did not err in law in holding that the lack of an ex post definitive valuation was not such as to affect the validity of the resolution scheme at issue.

In the last place, as regards the obligation of confidentiality, the Court recalls that members of the SRB are bound by the provisions in that field concerning the members of the institutions of the Union and the officials and other servants thereof.[146] They are therefore required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, unless the disclosure of that confidential information is in the exercise of their functions or in summary or collective form, such that the entity concerned cannot be identified.[147] In that regard, it follows from the wording of recital 116 of the SRM Regulation that information that the SRB and the national resolution authorities are examining a specific entity in the context of – or with a view to carrying out – a resolution procedure or action could be enough to have negative effects on that entity, and must therefore be considered to be covered by the obligation of confidentiality provided for in the SRM Regulation. By contrast, that regulation [148] highlights the significant level to which, in the context of the Single Supervisory Mechanism (SSM), the supervisory tasks attributed to, inter alia, the ECB, and the mission conferred on the SRB by the SRM Regulation are interwoven. It follows that, in order to enhance the effectiveness of the SRM, the SRM Regulation provides that – in particular, but not exclusively in the resolution planning, early intervention and resolution phases – the SRB and the ECB are required to cooperate closely and to provide each other with all information necessary for the performance of their tasks. Thus, the SRB is subject to the requirement to monitor developments in the financial markets and, in particular, to supervise the institutions covered by that regulation, to the same extent as the ECB is, in order to be able to intervene effectively and rapidly where a credit institution is failing or is likely to fail. Consequently, where information is restricted to the fact that the SRB is supervising, alongside the ECB, a credit institution, among other institutions covered by the SRM Regulation, that information cannot generally be considered to fall within the scope of the obligation of confidentiality in the absence of additional information capable of indicating that the SRB is acting in the context of – or with a view to carrying out – a resolution procedure or action.

146 Pursuant to Article 339 TFEU.

147 Article 88(1) of the SRM Regulation.

148 Recitals 15 and 89 of the SRM Regulation.

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

Judgment of the Court of Justice (Second Chamber), 4 October 2024, Friends of the Irish Environment (Project Ireland 2040), C-727/22

Link to the full 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 … which are required by legislative, regulatory or administrative provisions' – Measure adopted by the government of a Member State solely on the basis of a provision of the Constitution of that Member State providing that the executive power of the State is to be exercised by or on the authority of that government

Ruling on a request for a preliminary ruling from the Supreme Court (Ireland), the Court of Justice clarifies the concept of 'plans and programmes' that an environmental assessment must undergo by virtue of Directive 2001/42. [149]

As part of Project Ireland 2040, which aims to create a unified and coherent plan for land use and development within Ireland, the Irish Government adopted the National Planning Framework ('the NPF') and the National Development Plan ('the NDP') by decision of 16 February 2018.

Friends of the Irish Environment, an environmental non-governmental organisation, brought an action against that decision, which was dismissed by the High Court (Ireland) at first instance and by the Court of Appeal (Ireland) by two decisions on appeal. Friends of the Irish Environment then brought an appeal before the referring court against the decisions of the Court of Appeal, by which it is challenging the validity of the NPF and the NDP in the light of the requirements of Directive 2001/42.

Harbouring doubts as to whether those measures fall within the scope of Directive 2001/42, the referring court decided to refer questions to the Court on that point.

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 (first condition), and, second, are required by legislative, regulatory or administrative provisions (second condition).

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 competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of Directive 2001/42. 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.

According to the explanations provided by the referring court, however, the NPF was adopted by a decision of the government solely on the basis of a constitutional provision which, far from regulating the adoption of plans or programmes by providing for the competent authorities to adopt them as well as the procedure for drawing them up, merely establishes, in accordance with the constitutional

149 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).

principle of the separation of powers, that, unlike the legislative and judicial powers, the executive of the State is generally exercised by or on the authority of the government. It follows that such a national planning framework does not meet the condition of being required by legislative, regulatory or administrative provisions and, consequently, does not constitute a plan or a programme for the purposes of Directive 2001/42.

That conclusion is, however, without prejudice to the assessment, in the light of Directive 2001/42, of the plans or programmes that will, where appropriate, be adopted in order to implement the NPF. In that regard, if plans or programmes for the implementation of the NPF are adopted, and they fulfil the conditions laid down by Directive 2001/42, that directive does not authorise the national authorities to justify any effects on the environment of those plans or programmes on the ground that such effects would result from guidelines decided in the NPF, since that framework does not constitute a plan or a programme and therefore does not form part of a hierarchy of plans and programmes liable to be assessed at different levels under Article 4(3) of that directive.

The Court also specifies that the conclusion that the NPF does not constitute a plan or a programme for the purposes of Directive 2001/42 is also without prejudice to the assessment, in the light of the same directive, of the plans or programmes which, depending on the case, will be adopted with a view to amending or replacing the NPF.

As for the NDP, the Court finds that it is apparent from the request for a preliminary ruling that it was adopted by the Irish Government on the same legal basis as the NPF and that it therefore does not constitute a plan or a programme for the purposes of Directive 2001/42, either.

XV. INTERNATIONAL AGREEMENTS: INTERPRETATION OF AN INTERNATIONAL AGREEMENT

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Commission and Council v Front Polisario, C-778/21 P and C-798/21 P

Link to the full text of the judgment

Appeals – External action – International agreements – Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco – Decision on the conclusion of that agreement and the implementation protocol thereto – Allegations of infringements of international law resulting from the applicability of that agreement to the waters adjacent to Western Sahara – Action for annulment – Admissibility – Capacity to be a party to legal proceedings – Locus standi – Condition that an applicant must, in certain cases, be directly and individually concerned by the measure in question – Principle of the relative effect of treaties – Principle of self-determination – Non-self-governing territories – Article 73 of the Charter of the United Nations – Discretion of the Council of the European Union – Customary international law – General principles of EU law – Consent of the people of a non-self-governing territory which holds a right to self-determination as a third party to an international agreement

Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Commission and Council v Front Polisario, C-779/21 P and C-799/21 P

Link to the full text of the judgment

Appeals – External action – International agreements – Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part – Agreement on the amendment of Protocols 1 and 4 to that agreement – Concluding act – Allegations of infringements of international law resulting from the applicability of that second agreement to the territory of Western Sahara – Action for annulment – Admissibility – Capacity to be a party to legal proceedings – Locus standi – Condition that an applicant must, in certain cases, be directly and individually concerned by the measure in question – Principle of the relative effect of treaties – Principle of self-determination – Non-self-governing territories – Article 73 of the Charter of the United Nations – Discretion of the Council of the European Union – Customary international law – General principles of EU law – Consent of the people of a non-self-governing territory which holds a right to self-determination as a third party to an international agreement

The Court of Justice, sitting as the Grand Chamber, dismisses, by two judgments joining (i) Cases C-778/21 P and C-798/21 P and (ii) Cases C-779/21 P and C799/21 P, the appeals brought by the European Commission and the Council of the European Union against two judgments of the General Court which had annulled the decisions of the Council approving the conclusion of agreements between the European Union and the Kingdom of Morocco, following actions for annulment brought by the Front populaire pour la libération de la Saguia-el-Hamra et du Rio de oro (Front Polisario) against those decisions.

By Decision 2019/217, [150] the Council had approved the conclusion of an agreement between the European Union and the Kingdom of Morocco on the amendment of certain protocols to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.[151] The Council had also approved, by Decision 2019/441, [152] the conclusion of a fisheries partnership agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto, as well as the Exchange of Letters accompanying the Agreement, and, by Regulation 2019/440, the allocation of fishing opportunities under that agreement and the Implementation Protocol thereto.[153]

Those two decisions were taken in response to the judgment of 21 December 2016, Council v Front Polisario (C104/16 P, EU:C:2016:973), whereby the Court of Justice had, inter alia, explained that the Euro-Mediterranean Association Agreement covered only the territory of the Kingdom of Morocco and not the non-self-governing territory of Western Sahara, and the judgment of 27 February 2018, Western Sahara Campaign UK (C266/16, EU:C:2018:118), in which the Court had followed a broadly similar line of reasoning with regard to fisheries agreements with the Kingdom of Morocco concerning the waters adjacent to Western Sahara.

The agreement approved by Decision 2019/217 amended the protocols to the Euro-Mediterranean Association Agreement relating to the arrangements applying to (i) imports into the European Union of agricultural products, fish and fishery products originating in Morocco and (ii) the definition of 'originating products', extending to products originating in Western Sahara and exported subject to controls by the Moroccan customs authorities the tariff preferences given to products of Moroccan origin exported to the European Union. The fisheries agreement between the European Communities and Morocco [154] for its part, was amended to include the waters adjacent to the territory of Western Sahara within its scope.

By applications lodged in 2019 contesting those measures in three Front Polisario v Council cases (T-279/19, T-344/19 and T-356/19), Front Polisario had sought the annulment of the contested decisions and the contested regulation.

The General Court, in the case which gave rise to the judgment in Front Polisario v Council (T-279/19), [155] on the one hand, and in the joined cases which gave rise to the judgment in Front Polisario v Council (T-344/19 and T-356/19), [156] on the other, annulled the contested decisions and the contested regulation on the ground that the requirement relating to the consent of the people of Western Sahara had not been met. It held that the Council had not taken sufficient account of all the relevant factors concerning the situation in Western Sahara and had wrongly taken the view that it had a margin of appreciation with regard to compliance with the requirement that the people of that territory had to consent to the application of the agreements at issue in that territory, as a third party

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150 Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2019 L 34, p. 1).

151 Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed in Brussels on 26 February 1996 (OJ 2000 L 70, p. 2).

152 Council Decision (EU) 2019/441 of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement (OJ 2019 L 77, p. 4).

153 Council Regulation (EU) 2019/440 of 29 November 2018 on the allocation of fishing opportunities under the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto (OJ 2019 L 77, p. 1) ('the contested regulation').

154 Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco (OJ 2006 L 141, p. 4).

155 Judgment of 29 September 2021, Front Polisario v Council (T-279/19, EU:T:2021:639).

156 Judgment of 29 September 2021, Front Polisario v Council (T-344/19 and T356/19, EU:T:2021:640).

to those agreements in accordance with the principle of the relative effect of treaties in relation to the principle of self-determination.

The Council and the Commission have each brought an appeal against those judgments before the Court of Justice.

Findings of the Court

- *The admissibility of the actions for annulment brought before the General Court by Front Polisario*

A. Capacity of Front Polisario to be a party to legal proceedings

In the first place, the Court of Justice recalls that any natural or legal person may, under certain conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to them and against a regulatory act which is of direct concern to them and does not entail implementing measures. However, the Court has previously recognised the capacity of entities to be parties to legal proceedings before the Courts of the European Union irrespective of whether they are constituted as legal persons under national law.

Front Polisario is a self-proclaimed liberation movement which was created for the purpose of fighting for the independence, with regard to the Kingdom of Morocco, of the non-self-governing territory of Western Sahara, and for the creation of a sovereign Sahrawi State. In so far as that movement seeks precisely, relying on the exercise of the people of Western Sahara's right to self-determination, to establish a state legal order for that territory, it cannot be required, in order to be recognised as having capacity to be a party to legal proceedings before the Courts of the European Union, to be constituted as a legal person under a particular national legal order. Furthermore, Front Polisario is one of the legitimate interlocutors in the process conducted, with a view to determining the future of Western Sahara, under the auspices of the United Nations Security Council, the decisions of which are binding on all the EU Member States and institutions. Accordingly, Front Polisario, which also maintains bilateral legal relations at international level, has sufficient legal existence to be able to be a party to legal proceedings before the Courts of the European Union.[157] Consequently, the Court of Justice considers that the General Court could, without erring in law, conclude that Front Polisario had the capacity to be a party to legal proceedings before the Courts of the European Union, within the meaning of the fourth paragraph of Article 263 TFEU.

B. Locus standi of Front Polisario

In the second place, the Court of Justice examines the locus standi of Front Polisario. As regards the question whether Front Polisario is directly concerned by the contested decisions and the contested regulation, the Court recalls, first of all, the two cumulative conditions which must be satisfied in that regard, namely that the measure being contested, first, directly affects the legal situation of the person in question and, second, that it leaves no discretion to the addressees who are entrusted with the task of implementing it.

The Court of Justice states, in that regard, that, by its actions for annulment before the General Court, Front Polisario was seeking to protect the people of Western Sahara's right to self-determination [158] and that it is therefore in the light of the effects of the contested acts and, accordingly, of the agreements at issue on the legal situation of that people, that it is necessary to examine whether Front Polisario is directly concerned by the contested acts.

The Court of Justice recalls that, although it has not been officially recognised as being the exclusive representative of the people of Western Sahara, Front Polisario is, according to the resolutions of the

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[157] The Court specifies in that regard that the question whether that entity may legitimately represent the interests of the people of Western Sahara concerns its locus standi in the context of an action for annulment concerning the decision at issue, and not its capacity to be a party to legal proceedings before the EU judicature.

[158] See judgment of 21 December 2016, Council v Front Polisario (C-104/16 P, EU:C:2016:973, paragraphs 88, 91 and 105).

highest bodies of the United Nations, a privileged interlocutor with a view to determining the future status of Western Sahara. Those particular circumstances allow the finding that Front Polisario is entitled to contest, before the EU judicature, the legality of an act of the Union which directly affects the legal situation of that people. In that regard, the contested acts and, by extension, the agreements at issue, satisfy, through their impact on the people of Western Sahara's right to self-determination, the legal condition that a natural or legal person must be directly concerned by the decision which that person is contesting. Taking into account Article 73 of the Charter of the United Nations and the principle of effective judicial protection, that condition must be assessed, in this instance, in relation to the legal situation of the people of Western Sahara, which is represented for the purposes of the present cases by Front Polisario.

Furthermore, the decision concluding an international agreement constitutes a definitive act in the internal legal order of the European Union, expressing the will of the Union to be bound by that agreement. The Court, which does not have jurisdiction to annul an international agreement, recalls that such a decision constitutes an act which is open to challenge. By contrast, contrary to the assertions of some parties, the act of notifying the other contracting party of the approval of such an agreement constitutes an implementing measure which, in principle, must be regarded as an act which is not open to challenge.

The Court of Justice concludes from this that Front Polisario was directly concerned by the decisions at issue and that the General Court did not err in law in that regard.

As regards whether Front Polisario is individually concerned, the Court of Justice also confirms the approach adopted by the General Court, according to which, in view of the circumstances which led to the finding that Front Polisario was directly concerned, it had to be regarded as being individually concerned by the contested decisions. The Court of Justice holds, in that regard, that the people of Western Sahara, represented by Front Polisario, is individually concerned by the decision at issue, in so far as the express inclusion of the territory of Western Sahara in the scope of the agreements at issue, which is binding on the European Union by virtue of the decisions at issue, changes the legal situation of that people because of its status as holder of the right to self-determination with regard to that territory, with that status differentiating it from all other persons or entities, including any other subject of international law.

- *The consent of the people of Western Sahara to the agreements at issue, and the extent of the judicial review carried out by the General Court*

According to the decisions at issue, the agreements in question were approved by the Union after the Commission, in liaison with the European External Action Service, took 'all reasonable and feasible steps … to adequately involve the people concerned in order to ascertain their consent to the [agreements]'.[159] However, the Court of Justice notes, in that regard, that the majority of the current population of Western Sahara is not part of the people holding the right to self-determination, namely the people of Western Sahara, which for the most part has been displaced. It adds that there is a difference between the concept of the 'population' of a non-self-governing territory and that of the 'people' of that territory. The latter refers to a political unit which holds the right to self-determination, whereas the concept of 'population' refers to the inhabitants of a territory.

Next, the Court recalls that, according to the general international law principle of the relative effect of treaties, treaties do not impose any obligations, or confer any rights, on third States. A third party may, in that regard, be affected by the implementation of an agreement in the event that a territory with regard to which that third party has sovereignty or holds the right to self-determination is included in the scope of that agreement. The implementation of an international agreement between the European Union and the Kingdom of Morocco in the territory of Western Sahara must therefore

[159] Recital 10 of Decision 2019/217 and recital 11 of Decision 2019/441.

receive the consent of the people of Western Sahara.[160] Given that the Union's action on the international scene must contribute, in particular, to the strict observance of international law, and to respect for the principles of the Charter of the United Nations, [161] the Court emphasises that a lack of consent by the people of Western Sahara to such agreements, the implementation of which extends to the territory of Western Sahara or to the waters adjacent thereto, is capable of affecting the validity of the acts of the Union concluding those agreements.

- *The need for the consent of the people of Western Sahara and the identification of Front Polisario as the entity to which that consent is to be expressed*

The Court of Justice notes, first of all, that the General Court erred in law when it found that the agreements at issue, by granting the Moroccan authorities certain powers, to be exercised in the territory of Western Sahara, imposed an obligation on the people of Western Sahara.[162] Indeed, although the implementation of the agreements at issue means that the acts of the Moroccan authorities carried out in the territory of Western Sahara have legal effects changing the legal situation of the people of that territory, this does not however allow the finding that those agreements create legal obligations for that people as a subject of international law.

In that regard, the agreements at issue do not mean that the European Union recognises the alleged sovereignty of Morocco over Western Sahara. Similarly, the people of Western Sahara is not, for example, the addressee of the fishing authorisations or other administrative acts drawn up by the Moroccan authorities in connection with the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, which it would be required to recognise; nor is it the addressee of the measures taken by the EU authorities and by the authorities of the Member States with regard to them. The Court of Justice therefore considers that the General Court relied on an incorrect premiss when it found that the expression of the people of Western Sahara's consent to the agreement at issue had to be explicit.

However, the Court of Justice notes that customary international law does not provide that the consent of a third party that is subject to an agreement which confers a right on that third party is to be expressed in a particular form [163] and does not exclude the possibility that such consent may be granted implicitly in certain circumstances. Thus, the consent of a people of a non-self-governing territory to an international agreement in respect of which it has the status of a third party and which is to be applied in the territory to which its right to self-determination relates may be presumed so long as two conditions are satisfied. First, the agreement in question must not give rise to an obligation for that people. Second, the agreement must provide that the people itself receives a specific, tangible, substantial and verifiable benefit from the exploitation of that territory's natural resources which is proportional to the degree of that exploitation. The agreement in question must also provide for a regular control mechanism enabling it to be verified whether the benefit granted to the people in question is in fact received by that people. Fulfilment of those conditions is necessary in order to ensure that such an agreement is compatible with the principle, derived from Article 73 of the Charter of the United Nations and enshrined in customary international law, that the interests of the peoples of non-self-governing territories are paramount.

Where those two conditions are satisfied, the consent of the people concerned must be held to have been obtained. Accordingly, the fact that a movement which presents itself as the legitimate representative of that people objects to that agreement cannot, as such, be sufficient to call in

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160 See judgment of 21 December 2016, Council v Front Polisario (C-104/16 P, EU:C:2016:973, paragraph 106).

161 Article 3(5) and Article 21(1) TEU.

162 Judgments of 29 September 2021, Front Polisario v Council (T-279/19, EU:T:2021:639, paragraphs 322 and 323), and of 29 September 2021, Front Polisario v Council (T-344/19 and T-356/19, EU:T:2021:640, paragraph 318).

163 See judgment of the Permanent Court of International Justice of 7 June 1932, 'Free Zones of Upper Savoy and the District of Gex' (PCIJ Reports 1927, Series A/B, No 46, p. 148).

question the existence of such consent. That presumption may nonetheless be reversed so long as legitimate representatives of that people establish that the system of benefits conferred on that people by the agreement in question, or the regular control mechanism which must accompany it, does not satisfy those conditions.

In this instance, the Court finds that the agreements at issue, although they change the legal situation of the people of Western Sahara in EU law with regard to the right to self-determination which that people holds, do not give rise to legal obligations for that people as a subject of international law. The first of those two conditions is therefore satisfied.

Regarding the second condition, the Court finds that any benefit for the people of Western Sahara which displays the characteristics previously listed is manifestly absent from the agreements at issue. It also states that, while an agreement should, in the future, benefit the people of Western Sahara in accordance with those requirements, the possibility that that agreement might also benefit the inhabitants of that territory in general is not such as to prevent a finding of presumed consent on the part of that people.

- *Whether international law can be relied upon*

The Court recalls that the European Union is bound, when exercising its powers, to observe international law, and that the Court therefore has jurisdiction, in the context of an action for annulment, to assess the compatibility with the rules of international law of an international agreement concluded by the European Union.

In accordance with the Treaties, those rules are binding on the Union, and the review by the Court of the validity of the act by which the European Union has concluded such an international agreement is capable of encompassing the legality of that act in the light of the actual content of the international agreement in question.[164] Thus, the General Court could correctly consider that the principle of self-determination and the principle of the relative effect of treaties could be relied upon in connection with the review of the validity of the decisions at issue.

Conclusion

As none of the grounds raised in support of the appeals brought by the Council and the Commission have been accepted by the Court of Justice, that court dismisses those appeals in their entirety.

- *Maintaining the effects of the decisions at issue in the event that the appeals submitted by the Council and the Commission are dismissed*

In Joined Cases C-778/21 P and C-798/21 P, the judgment under appeal had maintained the effects of the decision at issue in those cases pending the delivery of the present judgment. However, as the implementation protocol to the agreement at issue in those cases expired on 17 July 2023 and the fisheries agreement does not itself authorise access by Union vessels to the 'fishing zone' concerned, the Court rules that the claims submitted in the alternative by the Commission and the Council, requesting that the effects of that decision be maintained, have become devoid of purpose.

In Joined Cases C-779/21 P and C-799/21 P, the agreement concluded by the decision at issue in those cases entered into force on 19 July 2019. As the annulment of that decision, without its effects being maintained for a limited period, would be liable to give rise to serious negative consequences for the external action of the European Union and to call in question the legal certainty of the international commitments to which it has agreed and which are binding on the institutions and the Member States, the Court decides that the effects of that decision are to be maintained for a period of 12 months from the date of delivery of the judgment.

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[164] Judgment of 27 February 2018, Western Sahara Campaign UK (C-266/16, EU:C:2018:118, paragraphs 47 to 51).

XVI. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the General Court (Sixth Chamber), 16 October 2024, CRA v Council, T-201/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures taken in view of the situation in Iran – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Inclusion of the applicant's name on the list – Obligation to state reasons – Rights of the defence – Right to effective judicial protection – Proportionality – Misuse of powers

By its judgment, the General Court dismisses the action for annulment brought by the Communications Regulatory Authority (CRA) against Regulation 2023/152 [165] by which that institution was included in 2023 by the Council of the European Union on the list of persons and entities subject to restrictive measures in view of the situation in Iran. The Court finds that the Council did not make an error of assessment in the light of the evidence provided, as regards the applicant's use of spyware against the Iranian population.

The applicant is a governmental institution affiliated with the Iranian Ministry of Communications and Information Technology. It has had its funds frozen because it is considered responsible for serious human rights violations in Iran for having enforced the Iranian government's requirements to filter internet content through a spyware called SIAM and, during the 2022 protests which followed the death of Mahsa Amini, used its control of internet access and mobile phones to track protesters and their activities. According to the Council, the applicant thus supported those authorities' repression of protesters who spoke up in defence of their legitimate rights.

Findings of the Court

In the first place, the Court rejects the applicant's complaints alleging infringement of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. The Court recalls in that regard that, in the event of challenge, it is the task of the competent European Union authority to establish that the reasons relied on against the person or entity concerned are well founded. However, it does not follow that the alleged inability of the Council to produce evidence to show that the reasons relied on to justify the applicant's listing in Annex I to Regulation No 359/2011, [166] if it were established, would undermine the applicant's rights of defence. It is quite the contrary since safeguarding the effectiveness of Article 47 of the Charter of Fundamental Rights requires that the Courts of the European Union be obliged to verify, in the context of reviewing the legality of restrictive measures, the merits of the reasons underlying those measures and, therefore, the evidential value of the documents produced by the Council.

In the second place, the Court recalls that press articles may be used in order to corroborate the existence of certain facts where they come from several different sources and they are sufficiently specific, precise and consistent as regards the facts there described.

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165 Council Implementing Regulation (EU) 2023/152 of 23 January 2023 implementing Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2023 L 20 I, p. 1).

166 Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2011 L 100, p. 1).

In the present case, the Council based the adoption of the restrictive measures at issue against the applicant on various documents of that nature. As regards an article published on the website of The Intercept, [167] the Court considers that that article supports the Council's claims by providing access to the English-language SIAM software user manual and to a second manual written in Farsi which bore the applicant's logo. Those allegations are supported by other evidence. Thus, an article from the website Commsrisk [168] reports on its meeting with the representative of a technology company which tried to sell to Iran software with 'disturbingly similar' functions to those of the SIAM software and who had volunteered information about that sale to the author of that article.

Last, it is apparent from an article of the ARTICLE 19 organisation [169] that it has monitored the extent of internet controls in Iran for several years. That association discovered, inter alia, that the applicant, operating under the control of the Ministry of Communications and Information Technology, which is in actual fact controlled by Iran's intelligence services, enforced the use of surveillance and censorship equipment at internet service provider level and ordered shutdowns and other disruptions of internet access acting on behalf of the Iranian Supreme National Security Council.

Accordingly, given the consistency of the various items of evidence and the circumstances in which they came into being, the Court considers that those allegations could legitimately be taken into account.

In the third place, the Court considers that the Council has produced before it a body of sufficiently specific, precise and consistent evidence to establish that there is a sufficient link between the applicant and the situation being combated in the present case, namely the repression by the Iranian authorities of peaceful demonstrators, journalists, human rights defenders, students and others speaking up in defence of their legitimate rights.

First, the Court rejects the applicant's argument that it does not have the legal capacity to perform the acts alleged against it. The Court finds that, while the interception of communications is in principle prohibited under Iranian law, it remains possible as a matter of law in certain situations which are defined very broadly.

Second, the Court rejects the applicant's argument based on its technical inability to monitor or control the users of Iranian mobile networks. It finds that the SIAM software commands are addressed to all Iranian mobile operators and that those operators are required to respond to them at any time.

Moreover, first of all, contrary to what the applicant claims, the use of those commands produces the effect described by the Council and does not serve a legitimate objective. Thus, the 'LocationCustomerList' command allows all users of a mobile network in a particular geographic area – albeit an approximate one – to be identified. Next, the 'Force2GNumber' command, the purpose of which is to force a mobile telephone to use the 2G network instead of the newer 3G and 4G networks has the effect of making it impossible to view or share videos using that telephone. The Court also notes that the applicant does not provide any evidence to show that the 'GetCDR' and 'GetIPDR' commands, which serve, in the case of the former, to consult a telephone's call history and, in the case of the latter, to obtain the IP address of the devices in which a particular SIM card has been activated, can be used only to respond to legitimate requests made by Iranian courts and police authorities.

Last, the Court points out that the situation in Iran is marked by regular challenges to the regime by the civilian population, challenges which are systematically repressed by the Iranian authorities using, inter alia, internet surveillance methods. In those circumstances, it cannot be ruled out that commands originally designed for 'legal' purposes – such as 'ApplySusp' and 'ApplySusplp', which

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167 Article entitled 'Hacked documents: How Iran can track and control protesters' phones', published on 28 October 2022.

168 Article entitled 'Hacker Leaks Manuals Showing How Iran Uses Mobile Networks to Track Protesters', published on 31 October 2022.

169 Article entitled 'Iran: New tactics for digital repression as protests continue', published on 17 November 2022.

allow SIM cards reported lost or stolen by users, or belonging to persons who have been declared dead, to be disabled – may be misused and used by the Iranian authorities for law enforcement purposes.

Judgment of the General Court (Fifth Chamber), 23 October 2024, Plahotniuc v Council, T-480/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures taken in view of actions destabilising Moldova – Freezing of funds – Restrictions on entry into the territories of the Member States – Lists of persons, entities and bodies subject to the freezing of funds and to restrictions on entry into the territories of the Member States – Inclusion of the applicant's name on the lists – Criminal investigations and prosecutions initiated by the authorities of a third State – Obligation to verify that that decision observes the rights of the defence and the right to effective judicial protection – Obligation to state reasons

By its judgment, the General Court upholds the action for annulment brought by Vladimir Gheorghe Plahotniuc against the acts by which, in 2023, [170] the Council of the European Union included him on the lists of persons and entities subject to restrictive measures in view of the situation in the Republic of Moldova. This case allows the Court to clarify the case-law developed in the judgment in Azarov v Council [171] concerning the Council's obligation to verify, when adopting restrictive measures on the basis of a decision of a third State, that that decision was adopted in accordance with the rights of the defence and the right to effective judicial protection.

In the face of threats to the stability of the Republic of Moldova, restrictive measures were introduced for the first time in April 2023. [172] The applicant, a politician and businessman of Moldovan nationality, had his funds and economic resources frozen on the ground that 'through his serious financial misconduct concerning public funds and the unauthorised export of capital, [he] is responsible for actions and implementing policies which undermine and threaten the democracy, the rule of law, stability or security in the Republic of Moldova through undermining the democratic political process in the Republic of Moldova and serious financial misconduct concerning public funds'.

Findings of the Court

As a preliminary point, the Court states that, by referring in the grounds for listing of the contested acts to 'serious financial misconduct concerning public funds and the unauthorised export of capital in an unauthorised manner', the Council relied on a criterion that was distinct from that referred to in Article 2(3)(a)(iii) of Regulation 2023/888 [173] and Article 1(1)(a)(iii) of Decision 2023/891. [174] Such

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170 Council Decision (CFSP) 2023/1047 of 30 May 2023 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 140 I, p. 9) and Council Implementing Regulation (EU) 2023/1045 of 30 May 2023 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 140 I, p. 1).

171 Judgment of 19 December 2018, Azarov v Council (C-530/17 P, EU:C:2018:1031).

172 See Article 1(1) of Decision 2023/891 and Article 2(3) of Regulation 2023/888.

173 Council Regulation (EU) 2023/888 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 114, p. 1).

174 Council Decision (CFSP) 2023/891 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 114, p. 15).

ambiguous wording is liable to give rise to a reasonable doubt as to whether the Council also relied on the criterion of undermining the democratic political process in the Republic of Moldova, laid down in Article 2(3)(a)(i) of Regulation 2023/888, vis-à-vis the applicant. The Court takes the view in that respect that although such ambiguity is not capable of establishing that the statement of reasons for the contested acts, taken as a whole, is inadequate, it nevertheless means that the applicant's inclusion on the lists at issue must be regarded as being based solely on the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital.

The Court goes on to examine the plea alleging that the Council infringed the applicant's rights under Article 6 TEU, read in conjunction with Articles 2 and 3 TEU, and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, only as regards his inclusion on the lists at issue on the basis of the criterion of serious financial misconduct concerning public funds and the unauthorised export of capital.

In the present case, the Court finds that the statement of reasons for the contested acts shows that the applicant's inclusion on the lists at issue is based exclusively on decisions of the Moldovan authorities to conduct criminal investigations and criminal proceedings against him.

It is true that the Council did not rely directly on decisions of the Moldovan authorities, which were competent to make them, to initiate criminal investigations or criminal proceedings concerning offences of embezzlement of State funds; rather, it essentially relied on press articles and press releases issued by the prosecutorial or investigating authorities of the Republic of Moldova, on official announcements by State bodies of third countries or on reports, all of which refer to such criminal investigations and criminal proceedings.

However, according to the Court, that fact cannot, in the instant case, release the Council from its obligation, when it adopts or maintains restrictive measures on the basis of a decision of a third State, to verify that that decision was taken in accordance with, inter alia, the rights of the defence and the right to effective judicial protection in that State, and then to show, in the acts imposing restrictive measures, that it satisfied itself that the decision of that State on which those measures are based was adopted in accordance with those rights.

On the contrary, the case-law deriving from the judgment in Azarov v Council must be applied all the more strictly to the Council, since the only evidence on which it relies is indirect evidence of the investigation measures and prosecutions justifying the applicant's inclusion on the lists at issue.

Thus, irrespective of the evidence on which the initial listing is based, the Council may rely, directly or indirectly, on decisions of the authorities of third States to initiate criminal investigations or criminal proceedings only if it complies with the verification obligation and the obligation to state reasons.

Any other conclusion would allow the Council to evade the strict obligations imposed by the case-law of the Court of Justice, in that rather than relying on documents emanating from the authorities of the States concerned with competence to initiate criminal investigations or criminal proceedings concerning offences of embezzlement of State funds, it could act solely on the basis of documents which merely refer to them.

In the present case, the Council failed to show that it had verified that the prosecutions referred to in the grounds had been conducted in accordance with the applicant's rights of defence and right to effective judicial protection.

The Court therefore concludes that the Council failed to fulfil its obligation to state reasons and annuls the contested acts in so far as they concern the applicant.

XVII. BUDGET AND SUBSIDIES OF THE EUROPEAN UNION: RECOVERY OF EU DEBTS

Judgment of the General Court (Sixth Chamber), 16 October 2024, HG v Council, T-494/23

Link to the full text of the judgment

Civil service – Officials – Compensation for damage suffered by the European Union – Recovery of a debt by offsetting – Limitation period – Applicable law – Second subparagraph of Article 98(2) of Regulation (EU, Euratom) 2018/1046 – Concept of 'normal circumstances' – Prior formal decision establishing the claim which was the subject of the action

By its judgment, the Court, sitting in extended composition, dismisses the action brought by HG, an official of the European Commission, against several decisions of that institution on the offsetting of claims concerning him. By doing so, the Court rules on the novel question of the starting point of the limitation period for the recovery of debts owed to the European Union, pursuant to the Financial Regulation of 2018. [175]

In the present case, by decision of 10 February 2015, the Commission imposed a disciplinary penalty on HG and ordered him to pay compensation for damage suffered by the European Union in the amount of EUR 108 596.35 on the basis of the first paragraph of Article 22 of the Staff Regulations of Officials of the European Union. That decision, which the applicant has challenged, came into effect on 1 March 2015.

By its judgment in HG v Commission (T-693/16 P-RENV-RX), [176] the Court, inter alia, reduced the amount of compensation sought from HG to EUR 80 000 on the date of delivery of the judgment, on the ground that the Commission had contributed to bringing about the damage.

The Commission's authorising officer responsible sent a debit note to HG dated 3 March 2022, for the amount of EUR 80 000, indicating 19 April 2022 as the payment deadline. Claiming the existence of a five-year limitation period, HG submitted a request to withdraw that debit note, which was rejected by the authorising officer.

From 10 October 2022, HG was notified of the accounting officer's successive decisions seeking to offset the debt that he had in respect of the Commission against his salary or other amounts that he owed to it. HG submitted several complaints against those decisions, which were rejected by decision of 5 May 2023. In that decision, the Commission stated, inter alia, that the five-year limitation period on which the applicant had relied on the basis of the Financial Regulation of 2018 is not applicable to the situation, which is governed by the Financial Regulation of 2012, [177] which does not provide for a time limit for the communication of a debit note.

Findings of the Court

In the first place, the Court observes that the provisions of the second subparagraph of Article 98(2) of the Financial Regulation of 2018, providing for the five-year limitation period relied on by the applicant, are applicable from the date of the entry into force of that regulation, that is 2 August 2018, in accordance with Article 282(2) of that regulation. The transitional provisions laid down in Article 279 of that regulation and the retroactive or deferred dates of applicability for certain provisions, laid down in Article 282(3) thereof, do not concern them. Furthermore, Article 281 of the Financial

175 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation of 2018').

176 Judgment of 15 December 2021, HG v Commission (T-693/16 P-RENV-RX, EU:T:2021:895).

177 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; 'the Financial Regulation of 2012').

Regulation of 2018 provides that, save for exceptions not relevant in the present case, the Financial Regulation of 2012 is repealed with effect from 2 August 2018.

The Court notes that, in accordance with the principles of succession of rules over time, in principle, a new rule applies immediately to the future effects of a situation which arose under the old rule. The future effects of a situation which arose under an old rule must be understood to include the current effects of that situation from the time when the new rule applies. The application of a new rule to the current effects of a situation which arose under the old rule does not constitute a retroactive application of the new rule.

Accordingly, a new rule applies from its date of applicability set out in the act introducing it, and while, in principle, it does not apply to legal situations that have arisen and become definitive under the old rule, it does apply to their future effects, and to new legal situations. More specifically, procedural rules are generally taken to apply from the date on which they enter into effect, as opposed to substantive rules, which are usually interpreted as applying to situations existing before their entry into effect only in so far as it clearly follows from their terms, their objectives or their general scheme that such an effect must be given to them.

In the present case, the debt owed to the European Union by HG had not become definitive on 2 August 2018, since the applicant had challenged that debt and the action in connection with it was still pending and, accordingly, it cannot be recognised that, before that date, in the light of those circumstances, the Commission had definitively lost the right to recover that debt due to a delay in implementing that right. First, the Financial Regulation of 2012 did not provide for a particular time limit for sending a debit note and, second, the reasonable time which an EU institution must nevertheless respect in this type of situation in order to exercise its powers was not exceeded in the light of the circumstances. Consequently, the second subparagraph of Article 98(2) of the Financial Regulation of 2018 applies in respect of the debt at issue.

Since the second subparagraph of Article 98(2) of the Financial Regulation of 2018 provides that the five-year limitation for the sending of the debit note to the debtor period runs ‘from the time when the Union institution was, in normal circumstances, in a position to claim its debt’, the Commission was fully entitled to find that the circumstances of the present case in which a contested debt which may subsequently be cancelled or reduced were normal, within the meaning of that provision, only once the judgment in HG v Commission (T-693/16 P-RENV-RX) had become final.

In that regard, in a procedural situation where the debt first had to be established, at the end of a particular procedure, by a formal decision prior to its establishment, such an interpretation of the second subparagraph of Article 98(2) of the Financial Regulation of 2018 is in the interests of good administration. It is favourable both to the interests of creditor institutions and those of their debtors or any third parties concerned, since it does not oblige the authorising officer responsible in all circumstances to order the recovery of debts contested, in their principle or in their amount, by debtors before knowing the final fate of those debts and without taking the abovementioned interests into account. In particular, when a debt is against an official and the latter contests it, both in its principle and in its amount, by requesting the annulment or alteration of the prior decision which established it, the authorising officer may, in order to determine the appropriate time for establishing the debt, order its recovery and send the debit note. Thus, the authorising officer may take into consideration, inter alia, in the light of the administration’s duty to have regard for the welfare of its employees (which requires the administration to take into account not only the interests of the service, but also those of the official concerned), the importance of the sum involved in relation to the official and his or her assessment of the possibility that that sum, particularly if it arises from the liability of the official being incurred, is amended by the judicature in the exercise of unlimited jurisdiction.

In the second place, the Court notes that, by adopting the contested decisions, the Commission’s accounting officer did not breach the principle of good administration or the duty of the institutions to have regard for the welfare of their officials, since the accounting officer proceeded to offset the applicant’s salary or the reimbursements of expenses, as required under Article 102(1) of the Financial Regulation of 2018, and by raising of its own motion a plan for repayment in instalments leaving the applicant with a suitable income taking into account his level of remuneration.

XVIII. JUDGMENT PREVIOUSLY DELIVERED

BUDGET AND SUBSIDIES OF THE EUROPEAN UNION: OLAF INVESTIGATION

Judgment of the General Court (Fourth Chamber, Extended Composition), 11 September 2024, CQ v Court of Auditors, T-386/19

Link to the full text of the judgment

Law governing the institutions – Member of the Court of Auditors – Activity incompatible with the duties of a Member of the Court of Auditors – Expenses considered undue – Recovery decision – Decision of the Court ruling on the breach of the obligations arising from the office of Member of the Court of Auditors – Lawfulness of OLAF's investigation and final report – Duty to state reasons – Limitation period – Article 98(2) of Regulation (EU, Euratom) 2018/1046 – Legitimate expectations – Error of assessment – Non-contractual liability – Non-material damage

Ruling in the extended five-judge composition, the General Court rules for the first time on the financial consequences of alleged irregularities ascribed to an individual holding a senior position within an EU institution in the performance of the obligations arising from his office, following a judgment of the Court of Justice finding that the individual in question had not complied with those obligations.

The applicant, CQ, was a Member of the European Court of Auditors, where he completed two terms of office. In that capacity, CQ enjoyed the benefit of, amongst other things, the reimbursement of various expenses, an official car and the services of a driver.

While CQ was in office, the Court of Auditors received information concerning a number of serious irregularities imputed to him.

Subsequently, the Secretary-General of the Court of Auditors forwarded a file to the European Anti-Fraud Office (OLAF) relating to the activities of CQ which had led to possible undue expenditure from the budget of the European Union.

After carrying out an investigation, OLAF sent the Court of Auditors its final report, in which it found, inter alia, that CQ had misused the resources of the Court of Auditors in the context of activities unrelated to his duties.

After receiving OLAF's report, the Court of Auditors established an amount receivable from the applicant, claiming that he had unduly received the sum of EUR 153 407.58 in mission expenses and daily subsistence allowances, representation expenses and drivers' services. Accordingly, it ordered the recovery of that sum ('the contested decision').

By the action which he brought on 24 June 2019, the applicant sought the annulment of the contested decision and damages for the non-material loss he alleges he has suffered. [178]

Independently of the present action for annulment, the Court of Auditors had brought before the Court of Justice an action alleging that CQ had breached the obligations arising from his office at the

[178] On the basis of Articles 263 and 268 TFEU.

Court of Auditors. [179] The Court of Justice held that the applicant had indeed breached those obligations and ordered that he be deprived of two thirds of his pension entitlement.

Findings of the Court

As regards the merits of the contested decision, in the first place, the General Court examines the argument that the Court of Auditors was not entitled to send the applicant a debit note more than five years after establishing an amount receivable on account of the time limit provided for by Article 98 of Regulation 2018/1046. [180]

The General Court observes that the starting point of that period, which is to say the time when the institution concerned is, in normal circumstances, in a position to claim its debt, is not necessarily the same as the time when a person such as the applicant requests an institution to pay a sum of money. Where other circumstances prevail, it could be the time when OLAF delivers a report to that institution.

Accordingly, the Court finds that the majority of the claims concerning amounts receivable, moneys which the Court of Auditors considered CQ to have received unduly, are not time-barred, since the Court of Auditors was not in a position to claim its debt until after OLAF's investigation. On the other hand, a very limited number of claims, amounting to a total of EUR 3 170.19, are held to be time-barred because, if it had acted with due diligence, the Court of Auditors would have been in a position to claim the debt once the claims for reimbursement in question had been lodged.

In the second place, the Court examines the plea alleging, in substance, breach of the principle of the protection of legitimate expectations and the existence of 'manifest errors' in the contested decision in the Court of Auditors' determination of the sums for which the applicant was liable.

As regards the scope of its review, the Court emphasises at the outset that, in the judgment in Court of Auditors v Pinxten, [181] the Court of Justice stated that its findings regarding the alleged irregularities ascribed to the applicant did not pertain to the determination of the sums for which he might be liable and were therefore without prejudice to the assessment of the contested decision that the General Court would have to make in any action for annulment.

The Court points out, first, that the subject matter of the action brought on the basis of Article 286(6) TFEU, in which the Court of Justice adopted its position regarding the applicant, is distinct from the present action. The earlier action concerned the establishment of a breach of the obligations arising from the office of Member of the Court of Auditors and the possible imposition of a penalty. By contrast, the subject matter of the present action, brought pursuant to the fourth paragraph of Article 263 TFEU, is the issue of the recovery of sums unduly paid and the annulment of the contested decision.

Secondly, the burden of proof in the proceedings before the General Court is different from that in the proceedings before the Court of Justice. In the present action, the burden of proof lies with the applicant, who has to demonstrate, for each claim for reimbursement, that he incurred the expenses in question in compliance with the applicable rules.

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179 For the purposes of Article 286(6) TFEU.

180 More specifically, pursuant to the second subparagraph of Article 98(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation No 966/2012 (OJ 2018 L 193, p. 1), '[t]he authorising officer shall send the debit note immediately after establishing the amount receivable and at the latest within a period of five years from the time when the Union institution was, in normal circumstances, in a position to claim its debt. Such period shall not apply where the authorising officer responsible establishes that, despite the efforts which the Union institution has made, the delay in acting was caused by the debtor's conduct.'

181 Judgment of 30 September 2021, Court of Auditors v Pinxten (C-130/19, EU:C:2021:782).

In addition, the Court observes that, in the judgment in Court of Auditors v Pinxten, the Court of Justice carried out a legal assessment of each of the applicant's activities that the Court of Auditors considered to be irregular. It concluded that some of those activities were regular or not manifestly irregular and that others were irregular or manifestly irregular.

Nevertheless, given the different subject matter of the two actions, the different burden of proof, and the fact that, in the present case, some of the pleadings were not lodged until after the judgment in Court of Auditors v Pinxten was delivered, the parties have been able, in the present proceedings, to provide additional clarifications and to put forward new arguments and evidence.

Accordingly, the Court carries out an assessment of each of the applicant's activities associated with the claims for reimbursement at issue, in the light of the arguments and explanations put to it by the parties, in order to determine whether or not it is appropriate to reach the same finding as in the judgment in Court of Auditors v Pinxten.

More specifically, the Court finds that the expenses relating to meetings with politicians who were members of a national political party bear no connection with the performance of the applicant's duties as a Member of the Court of Auditors. It concludes that they were irregular, in particular, because of the specific context of those meetings that became apparent from the OLAF report. Consequently, the Court dismisses the action in so far as it concerns those expenses.

By contrast, the Court annuls the contested decision in so far as it orders the recovery of certain expenses for which reimbursement was claimed, amounting to a total of EUR 16 084.01. It concludes that those expenses are not vitiated by any irregularity.

In view of all those considerations, and after dismissing the other pleas in the action, alleging the unlawfulness of the investigation carried out by OLAF and breach of the duty to state reasons, the General Court annuls the contested decision to the extent that it relates to the sum of EUR 19 254.20 and determines the default interest payable on that sum. In addition, the Court dismisses the claim for compensation for the non-material damage allegedly suffered by the applicant.

Nota bene:

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

- Judgment of the General Court (Second Chamber, Extended Composition), 2 October 2024, TotalEnergies Marketing Nederland v Commission, T-332/22
- Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Lindenapotheke, C-21/23
- Judgment of the Court of Justice (First Chamber), 4 October 2024, Agentsia po vpisvaniyata, C-200/23
- Judgment of the Court of Justice (First Chamber), 4 October 2024, AFAÏA, C-228/23
- Judgment of the Court of Justice (First Chamber), 4 October 2024, Staatssecretaris van Financiën (Interest in respect of an intra-group loan), C-585/22
- Judgment of the Court of Justice (First Chamber), 4 October 2024, Tecno*37, C-242/23
- Judgment of the General Court (Second Chamber, Extended Composition), 2 October 2024, Crown Holdings and Crown Cork & Seal Deutschland v Commission, T-587/22
- Judgment of the General Court (Second Chamber, Extended Composition), 2 October 2024, European Food and Others v Commission, T-624/15 RENV, T-694/15 RENV and T-704/15 RENV
- Judgment of the Court of Justice (First Chamber), 4 October 2024, Aeris Invest v Commission and SRB, C-535/22 P
- Judgment of the Court of Justice (Second Chamber), 4 October 2024, Protéines France and Others, C-438/23
- Judgment of the Court of Justice (Grand Chamber), 4 October 2024, Confédération paysanne (Melons and tomatoes from Western Sahara), C-399/22
- Judgment of the General Court (Third Chamber), 2 October 2024, CCCME and Others v Commission, T-263/22
- Judgment of the General Court (Grand Chamber), 2 October 2024, Ordre néerlandais des avocats du barreau de Bruxelles and Others v Council, T-797/22