COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

MONTHLY CASE-LAW DIGEST
December 2024

I. INSTITUTIONAL PROVISIONS: PUBLIC PROCUREMENT BY THE EU INSTITUTIONS

Judgment of the General Court (Third Chamber, Extended Composition), 18 December 2024, TP v Commission, T-776/22

Link to the full text of the judgment

Public procurement – Financial regulation – Exclusion for a period of two years from procurement and grant award procedures funded by the general budget of the European Union and by the EDF – Significant deficiencies in complying with main obligations in the implementation of a prior contract – Article 136(1)(e) of the Financial Regulation – No automatic link between a finding of a failure to comply with contractual obligations by the court having jurisdiction over the contract and the adoption of an exclusion measure by the authorising officer responsible – Obligation to conduct a specific and individual assessment of the conduct of the person concerned – Prior contract awarded to a group of economic operators – Joint and several contractual liability

The General Court, sitting in extended composition, rules, for the first time, on whether Article 136(1)(e) of Regulation 2018/1046 [1] requires the authorising officer responsible when adopting a penalty to conduct a specific and individual assessment of the conduct of the person concerned before adopting a decision on exclusion from participation in award procedures.

The European Commission launched a procurement procedure for the award of a public works contract concerning the upgrading of a facility that was awarded to the consortium formed by TP, who is the applicant, and its partner. The contract was concluded on 5 October 2009, and the works commenced in November 2009 and were completed two years later.

In 2012, defects were detected in the facility and repaired by the partner, on behalf of the consortium. However, the Commission did not consider the repairs to be satisfactory. After sending their notice of early termination of the contract, the parties referred their dispute to a dispute adjudication board.

Subsequently, the Commission initiated arbitration proceedings under the arbitration rules of the International Chamber of Commerce (ICC), which established an arbitral tribunal for that purpose. In 2022, that arbitral tribunal ordered the applicant and its partner to pay to the European Union an amount corresponding to the costs necessary to repair the facility.

In February 2021, the Commission also referred the matter to the interinstitutional panel set up to assess requests and issue recommendations on the need to take decisions on exclusion and imposition of financial penalties referred to it by the Commission or other EU institutions and bodies.

On 1 October 2022, following the recommendation of the interinstitutional panel, the Commission adopted the decision by which TP was excluded, first, from participating in award procedures governed by Regulation 2018/1046 or financed by the 11th European Development Fund (EDF), and, secondly, from being selected for implementing EU funds ('the contested decision').

TP thus brought an action for annulment of that decision.

Findings of the Court

First of all, the Court interprets Article 136(1)(e) of Regulation 2018/1046, relating to the exclusion from participation in award procedures for significant deficiencies in complying with main obligations, according to a literal, contextual, historical and teleological interpretation and finds that there is no automatic link between a finding of failure to comply with contractual obligations made by the court

1 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').

having jurisdiction over the contract and the adoption of an exclusion measure by the authorising officer responsible.

In that regard, in the first place, the Court notes that that provision, according to a literal interpretation, refers to a failure to comply with obligations in the implementation of a legal commitment, with the result that it is applicable in the event of a failure to comply with contractual obligations. However, that provision does not provide that any failure to comply with a contractual obligation automatically leads to the adoption of an exclusion measure, since that provision refers to showing 'significant deficiencies' in complying with 'main obligations', with the result that they are additional conditions imposed specifically by that financial regulation for the adoption of an exclusion measure. In addition, the terms used are sufficiently imprecise to leave a margin of discretion to the authorising officer responsible in the legal classification of the facts, which confirms that the authorising officer responsible, before adopting an exclusion measure, must make an independent legal classification of the facts.

In the second place, in the course of a contextual interpretation, the Court considers that, since Article 136(2) of Regulation 2018/1046 does not provide that the existence of a final judgment or a final decision adopted by an authority distinct from the authorising officer responsible is to have an impact on the assessment made by the authorising officer responsible in the situation provided for in Article 136(1)(e) of that regulation, any automatic link between the finding by the court having jurisdiction over the contract of a failure to comply with its contractual obligations by the person concerned and the adoption by the authorising officer responsible of an exclusion measure is precluded. On the contrary, as regards specifically that provision, the authorising officer responsible must make an independent legal classification of the conduct of the person concerned.

In the third place, in the context of a historical and teleological interpretation, the Court considers that, in the situation provided for in Article 136(1)(e) of Regulation 2018/1046, the absence of an automatic link is established in recital 76 of that regulation, which states that the possibility to adopt exclusion measures or to impose financial penalties is independent from the possibility to apply contractual penalties, such as liquidated damages. Furthermore, the autonomous regime of penalties laid down by the Financial Regulation pursues, since its establishment, specific objectives in the public interest, which are distinct from the proper performance of the contract or from the protection and compensation of the parties to the contract which a system of contractual liability seeks to ensure. The difference between the objectives pursued by the autonomous regime of penalties established by the Financial Regulation and those pursued by a system of contractual liability confirms that there is no automatic link.

Next, in so far as Article 136(1)(e) of Regulation 2018/1046 does not automatically imply the adoption of an exclusion measure, the Court ascertains whether that provision must be interpreted as imposing on the authorising officer responsible an obligation to carry out an individual assessment of the conduct of the person concerned when the authorising officer responsible intends to apply that provision.

On that point, the Court notes that, according to a literal interpretation of that provision, it follows from the wording of that provision that it is the 'person' or 'entity' that has failed to comply with its contractual obligations that is excluded by the authorising officer responsible. That presupposes, in principle, the identity of the party failing to comply with its contractual obligations with the addressee of the penalty, and therefore an individual failure to comply with its contractual obligations on the part of the addressee of the penalty.

As regards the contextual interpretation of Article 136(1)(e) of Regulation 2018/1046, the Court states that such an interpretation may be based on an analysis of provisions in texts other than that of the provision that is being interpreted, in particular where the provisions at issue are similar or where the texts in which they appear have the same objectives. In that regard, a provision similar to Article 136(1)(e), namely Article 57(4)(g), appears in Directive 2014/24. [2] That provision envisages the possibility of excluding any economic operator from participation in a procurement procedure where

2 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

the economic operator has shown significant or persistent deficiencies. In addition, the EU legislature wished to establish consistency between the Financial Regulation and Directive 2014/24, as is apparent from a number of recitals of that regulation. Accordingly, applying by analogy the case-law of the Court of Justice relating to Directive 2014/24, [3] the General Court considers that it is for the authorising officer responsible to conduct a specific and individual assessment of the conduct of the person concerned when the authorising officer responsible applies Article 136(1)(e) of Regulation 2018/1046.

Lastly, as regards the nature of the examination carried out by the Commission in the contested decision, the Court finds that, for the purposes of the application of Article 136(1)(e) of Regulation 2018/1046, the Commission relied on the joint and several liability of the applicant, as a member of the consortium, without taking into account its individual conduct.

Consequently, since the authorising officer responsible, before adopting an exclusion measure in respect of a person or entity, must conduct a specific and individual assessment of the conduct of that person or entity, in the light of all the relevant factors and since, in the present case, the Commission merely relied on the joint and several liability of the applicant, as a member of the consortium, without taking into account its individual conduct, the Court annuls the contested decision.

II. FREEDOM OF MOVEMENT: FREEDOM OF ESTABLISHMENT AND FREE MOVEMENT OF CAPITAL

Judgment of the Court of Justice (Grand Chamber), 19 December 2024, Halmer Rechtsanwaltsgesellschaft, C-295/23

Link to the full text of the judgment

Reference for a preliminary ruling – Article 49 TFEU – Freedom of establishment – Article 63 TFEU – Free movement of capital – Establishing the applicable freedom – Services in the internal market – Directive 2006/123/EC – Article 15 – Requirements which relate to the shareholding of a company – A purely financial investor's holding in a law firm – Revocation of that law firm's registration with the professional body on account of that holding – Restriction on freedom of establishment and on the free movement of capital – Justifications based on protecting the independence of lawyers and recipients of legal services – Necessity – Proportionality

Hearing a reference for a preliminary ruling from the Bayerischer Anwaltsgerichtshof (Higher Bavarian Lawyers' Court, Germany), the Court, sitting as the Grand Chamber, gives a ruling on the compatibility with Article 63 TFEU and Directive 2006/123 [4] of national legislation which, under penalty of a law firm having its registration with the bar association revoked, prohibits shares in that firm from being transferred to a purely financial investor which does not intend to exercise, in that firm, a professional activity covered by that legislation.

HR, a law firm located in Germany, was established as a limited liability entrepreneurial company subject to the Law on limited liability companies. Its director and sole member was originally Mr Daniel Halmer, who practised as a lawyer.

HR, which was created by contract in January 2020, was entered in the commercial register and at the Munich Bar Association that same year.

3 See judgment of 26 January 2023, HSC Baltic and Others (C-682/21, EU:C:2023:48, paragraphs 46 to 49).

4 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).

In 2021, Mr Halmer transferred 51 of the 100 shares in HR to SIVE Beratung und Beteiligung GmbH ('SIVE'), a limited liability company governed by Austrian law.

HR's articles of association were then amended in order to allow shares to be transferred to a limited liability company which was not registered with the bar association, while reserving the management of HR only to lawyers registered with the bar association, in order to guarantee its independence.

The amendment of HR's articles of association and the transfer of shares in HR were entered in the commercial register, and HR informed the bar association of the amendment to its articles of association and of the transfer of 51 of its 100 shares to SIVE.

However, the bar association informed HR that the transfer of shares to SIVE was prohibited pursuant to the Bundesrechtsanwaltsordnung (Federal Lawyers' Code) ('the Federal Lawyers' Code'), in the version applicable to the facts in the main proceedings, and that, therefore, HR's registration with the bar association would be revoked if that transfer were not undone. Nonetheless, HR informed the bar association that that transfer would not be undone. The bar association therefore revoked that firm's registration, on the ground, in essence, that only lawyers and members of the professions listed in the Federal Lawyers' Code, as well as doctors and pharmacists, may be members in a law firm. [5]

HR then brought an action before the Bayerischer Anwaltsgerichtshof (Higher Bavarian Lawyers' Court, Germany) against the decision adopted by the bar association to revoke its registration. In support of its action, HR submits that the Federal Lawyers' Code infringes, inter alia, the right to free movement of capital, guaranteed in Article 63(1) TFEU, and the rights which it derives from Article 15 of Directive 2006/123. It submits that that decision also infringes SIVE's right to freedom of establishment, as guaranteed by, inter alia, Article 49 TFEU.

In that context, the referring court seeks to ascertain whether that national legislation is compatible with Article 49 and Article 63(1) TFEU, as well as Article 15(2)(c) and Article 15(3) of Directive 2006/123.

The Court answers that question in the affirmative.

Findings of the Court

As a preliminary point, the Court examines, in the light of the purpose of the national legislation at issue and the facts of the present case, which fundamental freedom – freedom of establishment or the free movement of capital – applies to the dispute in the main proceedings.

In that regard, it recalls that, according to settled case-law, national legislation intended to apply only to those shareholdings which enable the holder to exert a definite influence on a company's decisions and to determine its activities falls within the scope of freedom of establishment. On the other hand, national provisions which apply to shareholdings acquired solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking must be examined exclusively in light of the free movement of capital.

Thus, national legislation which is not intended to apply only to those shareholdings which enable the holder to have a definite influence on a company's decisions and to determine its activities, but which applies irrespective of the extent of the holding which the shareholder has in a company, may fall within the ambit of both freedom of establishment and free movement of capital.

That being the case, in principle, the Court will examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the dispute in the main proceedings, that one of them is entirely secondary in relation to the other and may be considered together with it.

The national legislation at issue in the main proceedings is intended, inter alia, to prevent any holding, regardless of its scale, in a law firm being obtained by persons who are neither lawyers nor members of a profession referred to in the Federal Lawyers' Code applicable in the present case.

---

5 Pursuant to Paragraph 59a(1) and (2) of the Federal Lawyers' Code, lawyers may set up a partnership with members of a bar association, industrial property agents, tax advisers, tax representatives, accountants and certified auditors to practise their profession jointly in the framework of their respective areas of professional competence. Lawyers may also practise their profession jointly with members of the legal profession of other States who are authorised to establish themselves in accordance with the Federal Lawyers' Code and have their law firm abroad.

In this instance, SIVE acquired 51% of HR's share capital. National provisions which apply to holdings by a company of a Member State in the capital of a company established in another Member State, giving it definite influence on the company's decisions and allowing it to determine its activities, come within the substantive scope of the freedom of establishment.

However, the Court emphasises that HR's articles of association were amended in order to deprive SIVE of any definite influence, so that the acquisition of shares in HR could have had the sole objective of providing HR with capital intended to enable it to finance the development of an innovative legal model based on new technologies.

The case in the main proceedings therefore concerns both freedom of establishment and the free movement of capital, and neither of those freedoms can be regarded as secondary in relation to the other.

Regarding the substance, as concerns, in the first place, the freedom of establishment, it is apparent from Directive 2006/123 that, where a restriction of the freedom of establishment falls within the material scope of that directive, which is the case for legal advice services, including those provided by lawyers, there is no need to examine it in the light also of Article 49 TFEU.

Accordingly, the Court examines the compatibility with Directive 2006/123 of the requirements of the Federal Lawyers' Code relating to the limitation of the class of persons able to become members of a law firm and the requirement to cooperate actively within the firm; more specifically, whether those requirements are necessary.

In that regard, it finds that the purpose of those requirements is to ensure the independence and integrity of the profession of practising as a lawyer and to ensure compliance with the principle of transparency and the obligation of legal professional privilege. Those objectives are incontestably linked to the protection of recipients of legal services and the sound administration of justice, which constitute overriding reasons relating to the public interest under Directive 2006/123 and primary law.

As regards whether the requirements at issue in the main proceedings are proportionate, the Court specifies that those requirements appear to be appropriate for ensuring that the objective of protecting the sound administration of justice and the integrity of the profession of practising as a lawyer are attained.

The desire of a purely financial investor to make a return on his or her investment could have an impact on the organisation and activity of a law firm. Whereas the objective pursued by a purely financial investor is limited to seeking to make a profit, lawyers do not exercise their activities purely for an economic purpose but are required to comply with professional conduct rules. In the absence of harmonisation at EU level of the rules of professional conduct applicable to the profession of practising as a lawyer, each Member State remains, in principle, free to regulate the exercise of that profession in its territory. Thus, a Member State is entitled to take the view that there is a risk that the measures laid down in the articles of association of the law firm in order to preserve the independence and professional integrity of lawyers working within that firm may, in practice, be insufficient to ensure that the objectives of protecting the sound administration of justice and the integrity of the profession of practising as a lawyer are met in an effective manner in a situation where a purely financial investor has a holding in the capital of that company.

As concerns, in the second place, the free movement of capital, which is guaranteed in Article 63 TFEU and which covers both the holding of shares conferring the possibility of participating effectively in the management and control of an undertaking and the acquisition of securities solely with the intention of making a financial investment without wishing to influence the management and control of the undertaking, prohibited measures include inter alia those which are likely to discourage non-residents from making investments in a Member State, including in the capital thereof.

The Court finds that the effect of the national legislation at issue in the main proceedings is to prevent persons other than lawyers and members of the professions referred to in the Federal Lawyers' Code from acquiring shares in a law firm, with the result that it deprives investors from other Member States who are neither lawyers nor members of such professions from acquiring holdings in firms of that kind. Accordingly, that national legislation deprives law firms of access to capital which could

assist in their creation or development. It therefore constitutes a restriction on the free movement of capital.

However, on the same grounds as those set out in the context of Directive 2006/123, the Court concludes that those restrictions on the free movement of capital are justified and proportionate in the light of overriding reasons relating to the public interest.

III. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Fifth Chamber), 19 December 2024, Khan Yunis and Baabda, C-123/23

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Border controls, asylum and immigration – Asylum policy – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Application for international protection – Grounds for inadmissibility – Article 2(q) – Concept of 'subsequent application' – Article 33(2)(d) – Rejection by a Member State of an application for international protection as inadmissible due to the rejection of a previous application made in another Member State or the discontinuation of the procedure by another Member State in respect of the previous application

Ruling on a request for a preliminary ruling from the Verwaltungsgericht Minden (Administrative Court, Minden, Germany), the Court of Justice specifies the conditions under which an application for international protection, within the meaning of Article 2(b) of Directive 2013/32, [6] made to a Member State by a third-country national or by a stateless person who has already made an application for international protection to another Member State, can be rejected as inadmissible.

N.A.K. and her minor children, E.A.K. and Y.A.K, who are stateless Palestinians (C-123/23), and M.E.O., a Lebanese national (C-202/23), entered Germany in November 2019 and March 2020 respectively, whereupon they made asylum applications.

N.A.K. had previously lodged applications for asylum with the competent authorities of the Kingdom of Spain and the Kingdom of Belgium. A take-back request by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Federal Office') to the competent Spanish authority was refused by the latter. The application for international protection lodged by N.A.K. with the Belgian authorities had been rejected in July 2019. By decision of 25 May 2021, the Federal Office rejected the applications for asylum by N.A.K., E.A.K. and Y.A.K. on the ground, in essence, that the conditions laid down by the German legislation [7] capable of justifying the opening of a new asylum procedure had not been met. N.A.K., E.A.K. and Y.A.K brought an action challenging that decision before the referring court.

Prior to his entry into Germany, M.E.O. had made an application for international protection in Poland. Since the Polish authorities agreed to take back M.E.O., by decision of 25 June 2020, the Federal Office rejected his asylum application as inadmissible and ordered his removal to Poland. However, the removal decision could not be enforced without a finding that M.E.O. had absconded,

6 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).

7 According to Paragraph 71a(1) of the Asylgesetz (Law on asylum) (BGBl. 2008 I, p. 1798), in the version applicable to the facts in the main proceedings, entitled 'Second application': 'If the foreign national makes an asylum application (second application) in the federal territory following unsuccessful conclusion of an asylum procedure in a safe third country (Paragraph 26a) in which [EU] law on the responsibility for conducting asylum procedures applies or which has concluded an international agreement thereon with the Federal Republic of Germany, a further asylum procedure shall only be conducted if the Federal Republic of Germany is responsible for conducting the asylum procedure and the conditions of Paragraph 51(1) to (3) of the Verwaltungsverfahrensgesetz [(the Law on administrative procedure) (BGBl. 2003 I, p. 102)] are met …'.

and the time limit for his transfer to Poland had expired. On 2 February 2021, the Federal Office then annulled its decision rejecting M.E.O.'s asylum application as inadmissible.

Furthermore, the procedure initiated by M.E.O.'s application for international protection in Poland had been discontinued on 20 April 2020 on the ground that he was residing in Germany, and could have been resumed, at his request, by 20 January 2021 at the latest. By decision of 14 July 2021, the Federal Office then rejected M.E.O.'s asylum application as inadmissible and threatened him with removal to Lebanon. On 27 July 2021, M.E.O. brought an action challenging that decision before the referring court.

Since the referring court had doubts as to whether the applications for international protection in the present case could be dismissed as inadmissible, it decided to refer the matter to the Court of Justice for a preliminary ruling.

Findings of the Court

The Court recalls, first of all, that, in interpreting a provision of EU law, account must be taken not only of its wording but also of its context and of the objectives pursued by the rules of which it forms part.

In that regard, it emphasises, in the first place, that the wording of Article 33(2) of Directive 2013/32, which sets out an exhaustive list of situations in which the Member States may consider an application for international protection to be inadmissible, does not require that, in order to be classified as a 'subsequent application' and rejected as inadmissible in the absence of new elements or findings, a further application for international protection must have been made to the authorities of the same Member State which took the final decision on a previous application by the same applicant.

As regards, in the second place, the context of the legislation, it is apparent from Article 40(7) of Directive 2013/32, read in conjunction with Article 17(1) of the Dublin III Regulation, [8] that a 'subsequent application' is a further application made in the Member State that requested the transfer after a decision has been taken by the Member State to which the person concerned is to be transferred on a previous application by the same applicant.

Furthermore, if, in order to be classified as a 'subsequent application' within the meaning of Article 2(q) of that directive, an application for international protection must have been made to the competent authorities of the same Member State which had taken a decision on a previous application made by the same applicant, the reference, in Article 40(1) of that directive, to a subsequent application made 'in the same Member State' would have been superfluous.

In the third place, it is also consistent with the objective of limiting the secondary movements of applicants for international protection between Member States, pursued by that directive, as is apparent from recital 13 thereof, for Article 33(2)(d) of Directive 2013/32 to be interpreted as meaning that a Member State may classify a further application for international protection made by an applicant whose previous application has been rejected by a final decision taken by another Member State as a 'subsequent application' and reject it as inadmissible if it is not supported by new elements or findings.

In that regard, it should be noted that an interpretation by which the application is rejected, by a final decision of the same Member State, might prompt applicants whose applications for international protection have been definitively rejected by the competent authorities of a Member State to move to a second or even third Member State in order to make a new application of a similar nature.

Moreover, the possibility of rejecting as inadmissible a further application for international protection which is not based on new elements or findings, where a previous application by the same applicant has been rejected by a decision taken by another Member State, is consistent with the principle of mutual trust between the Member States, on which the Common European Asylum System is based.

---

8 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

Therefore, Article 33(2)(d) of Directive 2013/32, read in conjunction with Article 2(q) of that directive, must be interpreted as not precluding legislation which provides for the possibility of rejecting as inadmissible an application for international protection made by a third-country national or a stateless person whose previous application for international protection, made to another Member State to which Directive 2011/95 applies, has been rejected by a final decision taken in that latter Member State.

Next, the Court states that although Article 2(q) of Directive 2013/32 does not expressly refer to the situation where the Member State to which the applicant had made his or her application for international protection has taken the decision to discontinue the examination of that application following its implicit withdrawal, a further application made after the adoption of such a decision may also be classified as a 'subsequent application'. However, the classification of a further application by the same applicant as a 'subsequent application' is excluded where that further application was made before the adoption of a final decision on that applicant's previous application.

Moreover, for the purposes of classifying an application for international protection as a 'subsequent application', it is only the date on which it is made, which is not subject to any administrative formalities, that is of relevance, and not the date it is lodged. Furthermore, the decision taken by the determining authority to discontinue the examination of an application for international protection on the ground that the applicant has implicitly withdrawn his or her application cannot be regarded as a final decision as long as the applicant has the possibility to request that his or her case be reopened or to make a new application which is not to be subject to the procedure referred to in Articles 40 and 41 of Directive 2013/32.

Consequently, Article 33(2)(d) of Directive 2013/32, read in conjunction with Article 2(q) of that directive, must be interpreted as precluding national legislation which provides for the possibility of rejecting as inadmissible an application for international protection made by a third-country national or by a stateless person who has already made an application for international protection with another Member State, where the further application was made before the competent authority of the second Member State had taken the decision to discontinue the examination of the previous application on account of its implicit withdrawal.

Judgment of the Court of Justice (Grand Chamber), 19 December 2024, Kaduna, C-244/24 and C-290/24

Reference for a preliminary ruling – Asylum policy – Temporary protection in the event of a mass influx of displaced person – Directive 2001/55/EC – Articles 4 and 7 – Invasion of Ukraine by Russian armed forces – Implementing Decision (EU) 2022/382 – Article 2(3) – Option for a Member State to grant temporary protection to displaced persons who are not referred to in that decision – Point in time when a Member State that has granted such persons temporary protection may terminate that protection – Return of illegally staying third-country nationals – Directive 2008/115/EC – Article 6 – Return decision – Point in time when a Member State may issue a return decision – Illegal stay

Ruling on two references for a preliminary ruling, the Grand Chamber of the Court of Justice specifies at what point in time a Member State may end the optional temporary protection which it has granted, on the basis of Directive 2001/55 [9] and Implementing Decision 2022/382, [10] to certain

9 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12). Article 7(1) of Directive 2001/55 allows the Member States to extend the temporary protection provided for by that directive to categories of individuals other than those designated by the Council in the decision to which Article 5 of the directive refers and which implements the temporary protection, provided that such persons have been displaced for the same reasons and from the same country or region of origin.

categories of displaced persons other than those referred to in that implementing decision and at what point in time a Member State may issue a return decision, in accordance with Directive 2008/115, [11] with respect to persons no longer enjoying such protection.

P, AI, ZY and BG are third-country nationals who held temporary residence permits valid in Ukraine on 24 February 2022. After the Russian armed forces invaded Ukraine, they fled to the Netherlands, where they were granted temporary protection under Directive 2001/55, in accordance with the Netherlands legislation applicable at that time. [12] Under that legislation, the benefit of optional temporary protection was granted to all holders of Ukrainian residence permits, including temporary permits, valid on 23 February 2022 who were likely to have left Ukraine after 26 November 2021. [13] The Netherlands legislation did not require any assessment to be made of whether or not such persons were able to return in safe and durable conditions to their country or region of origin.

By a judgment of 17 January 2024, the Raad van State (Council of State, Netherlands) held that the temporary protection afforded to third-country nationals in the situation in which P, AI, ZY and BG found themselves would end automatically on 4 March 2024, that being the date [14] on which the temporary protection would have ceased had the Council not adopted a decision in accordance with Article 4(2) of Directive 2001/55. [15] Consequently, by four return decisions under Directive 2008/115, issued on 7 February 2024, the State Secretary [16] ordered P, AI, ZY and BG to leave the territory of the European Union within a period of four weeks commencing on 4 March 2024.

P brought an appeal before the Rechtbank Den Haag, zittingsplaats Amsterdam (District Court, the Hague, sitting in Amsterdam, Netherlands), disputing the legality of the decision concerning him.

The appeals brought by AI and BG against the decisions concerning them were upheld at first instance by judgments of 19 March and 27 March 2024. The State Secretary has brought appeals against those judgments before the Council of State. The appeal brought by ZY against the decision concerning him was, on the other hand, dismissed at first instance as unfounded, by a judgment of 27 March 2024, and ZY has brought an appeal against that judgment before the Council of State.

In the course of these disputes, the two referring courts have made references to the Court of Justice for a preliminary ruling. First, while it is necessary, in order to resolve the disputes, to determine the date on which the optional temporary protection granted by the Netherlands authorities in accordance with Directive 2001/55 ceases, those authorities harbour doubts as to whether the benefit of that protection may be withdrawn before mandatory temporary protection [17] comes to an end. Secondly, they are in doubt as to the lawfulness of the return decisions issued with respect to the appellants in the main proceedings, because those decisions were issued on a date when they were still staying legally in the Netherlands.

Findings of the Court

In the first place, the Court examines whether Articles 4 and 7 of Directive 2001/55 preclude a Member State that has granted temporary protection to categories of persons other than those

---

10 By Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ 2022 L 71, p. 1; 'the Implementing Decision'), the Council decided to activate the temporary protection mechanism provided for in Directive 2001/55. Under Article 2(3) of the Implementing Decision, the Member States may also apply that decision to persons other than those referred to in Article 2(1) and (2), including stateless persons and nationals of third countries other than Ukraine who were residing legally in Ukraine and who were unable to return in safe and durable conditions to their country or region of origin.

11 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

12 Article 3.9a(1)(c) of the Voorschrift Vreemdelingen 2000 (2000 Regulation on foreign nationals), in the version in force between 4 March and 18 July 2022.

13 90 days before the invasion of Ukraine by Russian armed forces.

14 This date being determined by Article 4(1) of Directive 2001/55, which provides that, '[w]ithout prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.'

15 Article 4(2) of Directive 2001/55 provides that, '[w]here reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.'

16 The Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; 'the State Secretary').

17 Mandatory temporary protection arises from the Council's adoption of a decision under Article 5 of Directive 2001/55 establishing the existence of a mass influx of displaced persons. The effect of such a decision is to introduce temporary protection in all the Member States bound by Directive 2001/55 for the specific groups of persons described in the Council's decision, as from the date specified that decision.

referred to in Article 2(1) and (2) of the Implementing Decision from withdrawing the benefit of that optional temporary protection from those categories of persons before the mandatory temporary protection decided on by the Council under Article 4(2) of Directive 2001/55 comes to an end.

The Court begins by holding that a Member State which makes use of the option afforded by Article 7(1) of Directive 2001/55 is implementing EU law and consequently may not grant optional temporary protection to persons who have not been displaced for the same reasons and from the same country or region of origin as persons who enjoy mandatory temporary protection.

In that context, the Court notes that Article 7(1) of Directive 2001/55 and Article 2(3) of the Implementing Decision allow Member States to grant optional temporary protection to third-country nationals and stateless persons holding a temporary residence permit valid in Ukraine on 23 February 2022 who are likely to have left that country after 26 November 2021, without assessing whether or not such persons are able to return in safe and durable conditions to their country or region of origin. First, the reason for introducing mandatory temporary protection, identified by the Council in the Implementing Decision, is the invasion of Ukraine by Russian armed forces launched on 24 February 2022. Third-country nationals and stateless persons who, because of the very limited duration of their right of residence on the territory of the European Union, would have been obliged to return to Ukraine only shortly after that invasion was launched, are in a comparable situation to persons displaced as a result of the invasion. Secondly, although Article 2(3) of the Implementing Decision expressly refers, among the potential beneficiaries of optional temporary protection, to stateless persons and third-country nationals who were residing legally in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin, that category of persons is mentioned merely by way of example.

Next, noting that the optional temporary protection granted by the Netherlands authorities to third-country nationals such as the appellants in the main proceedings ceased before the end of mandatory temporary protection, the Court considers whether Articles 4 and 7 of Directive 2001/55 require the benefit of that optional temporary protection to continue for as long as the mandatory temporary protection, introduced by the Council under Article 5 of that directive, continues in effect, or at least until the end of the automatic extension of the initial duration of that mandatory temporary protection, referred to in Article 4(1) of that directive.

In that regard, the Court holds that, under Article 7(1) of Directive 2001/55, the Member States can make an autonomous decision to terminate the optional temporary protection that they have granted before the mandatory temporary protection, provided for at EU level, ends. [18]

First, Article 7(1) of Directive 2001/55 leaves the Member States free to set the date from which they wish to grant optional temporary protection, provided that that date is not before the date on which mandatory temporary protection comes into effect or after the date on which it ends. Secondly, the Member States retain control over the duration of the optional temporary protection they wish to grant, provided that that duration falls within the time frame for implementation of the temporary protection mechanism defined at EU level. Since such protection does not arise from an obligation laid down in EU law, but from the autonomous decision of a Member State to enlarge the circle of beneficiaries of that protection, that Member State should be able to make an autonomous decision also to withdraw that protection.

Moreover, that interpretation of Article 7(1) of Directive 2001/55 is supported both by the objective pursued by that provision, which is to encourage the Member States to extend the categories of displaced persons who can benefit from temporary protection, and by the more general objective of that directive, which is to prevent congestion in the system for granting international protection. Indeed, prohibiting a Member State from withdrawing, for reasons of its own, optional temporary protection before mandatory temporary protection, provided for at EU level, comes to an end would have the effect of discouraging the Member States from implementing the option provided for in

18 The Court adds that the Member States are therefore not obliged to align the duration of that optional temporary protection with the initial duration of the mandatory temporary protection or with the automatic extension period provided for in Article 4(1) of Directive 2001/55 or, where applicable, with the optional extension period provided for in Article 4(2) of that directive.

Article 7 of Directive 2001/55 and would therefore thwart the objectives pursued by that provision and by that directive.

Nevertheless, any such decision to withdraw must not undermine either the objectives or the effectiveness of Directive 2001/55 and must comply with the general principles of EU law, in particular, the principle of the protection of legitimate expectations.

As regards, first of all, safeguarding the objectives and effectiveness of Directive 2001/55, that directive is intended, inter alia, to ensure that third-country nationals and stateless persons enjoying temporary protection continue to have a real opportunity to obtain international protection once their individual situation has been examined appropriately, while at the same time immediately ensuring that they enjoy protection on a lesser scale. It would therefore run counter to that objective and to the effectiveness of that directive if the examination of any application for international protection that such third-country nationals or stateless persons may have made, and on which no decision has yet been reached, were not completed after optional temporary protection has come to an end. Moreover, once optional temporary protection has ended, such persons cannot be prevented from effectively exercising their right to make an application for international protection, which is an essential step in the procedure for granting international protection. Accordingly, the mere fact that a beneficiary of temporary protection has not responded positively to an inquiry from the authorities of the Member State concerned as to whether he or she wishes his or her application for international protection to continue to be examined cannot have the consequence that any application for international protection he or she may make thereafter be classified as a subsequent application within the meaning of Article 2(q) of Directive 2013/32. [19]

Secondly, as regards the principle of the protection of legitimate expectations, individuals cannot have a legitimate expectation that an existing situation which is capable of being altered by the EU institutions in the exercise of their discretionary power will be maintained. In this case, the Council can bring mandatory temporary protection to an end at any time [20] and the Member States cannot make any optional temporary protection that they may have introduced continue in effect after the date on which mandatory temporary protection ends. [21] It follows that the Netherlands authorities could not have given the beneficiaries of optional temporary protection any precise assurances in accordance with EU law regarding the minimum duration of that protection other than the assurance that they had undertaken not to terminate the optional temporary protection before mandatory temporary protection comes to an end. Nevertheless, it does not appear that the Netherlands authorities gave the third-country nationals in the cases in the main proceedings any such assurance, although that is a point for the referring courts to check.

The Court concludes that Articles 4 and 7 of Directive 2001/55 do not preclude a Member State, which has granted temporary protection to categories of persons other than those referred to in the Implementing Decision, from withdrawing from those categories of persons the benefit of that optional temporary protection before the mandatory temporary protection, decided on by the Council in accordance with Article 4(2) of that directive, comes to an end. [22]

In the second place, the Court holds that Article 6 of Directive 2008/115 precludes the issuing of a return decision in respect of a third-country national who is legally staying in the territory of a Member State by virtue of the option exercised by that Member State to grant optional temporary protection, as provided for in Article 7 of Directive 2001/55, to that third-country national before the date on which that protection ends, including where it appears that that protection will cease to have effect on a date in the near future and the effects of the return decision are suspended until that date.

First, Directive 2008/115 precludes the issuing by a Member State of a return decision in respect of a third-country national who is staying legally in its territory, even if the competent authorities expressly

19 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).

20 See Article 6(1)(b) of Directive 2001/55.

21 See Article 7 of Directive 2001/55.

22 That Member State may withdraw the benefit of the temporary protection which it has granted to such categories of persons on a date preceding that on which the temporary protection decided on by the Council comes to an end, provided, in particular, that that Member State does not undermine either the objectives or the effectiveness of Directive 2001/55 and observes the general principles of EU law.

state in the return decision that it will not take effect as long as the stay of the person concerned continues to be legal. Indeed, as soon as a Member State has issued a return decision, it must without delay enter an alert in the Schengen Information System, for the purposes of 'verifying that the obligation to return has been complied with and of supporting the enforcement of … return decisions', [23] including if the return decision does not take immediate effect. In such latter case, however, on the date when the alert is entered, the person concerned will still be staying legally in the territory of the Member State concerned and may have the right to travel to other Member States. Moreover, if a return decision were to be issued prematurely, no account could be taken of possible changes in circumstances in the period between the decision being issued and the end of the legal stay of the person concerned that could be of significance in the assessment of his or her situation.

Secondly, for as long as third-country nationals enjoy optional temporary protection, their stay in the Member State concerned is legal and therefore no return decision may be issued in respect of them. Indeed, the beneficiaries of such protection must enjoy all of the rights that are conferred by Directive 2001/55 on beneficiaries of mandatory temporary protection. [24] Accordingly, since the beneficiaries of mandatory temporary protection must be issued by the Member State concerned with a residence permit allowing him or her to reside on the territory of that Member State, [25] residence permits must also be issued to beneficiaries of optional temporary protection.

Thirdly, while there is a risk that, when optional temporary protection comes to an end, the national authorities responsible for issuing return decisions will be faced with a significant number of individuals whose situations must be examined simultaneously, that risk is not in itself sufficient to permit any derogation from the abovementioned principle. Furthermore, while the removal of illegally staying third-country nationals is, in principle, a matter of priority for the Member States, the Member States must also observe the substantive and procedural requirements imposed on them by EU law, so that such third-country nationals are returned in a humane manner and with full respect for their fundamental rights and dignity. Accordingly, where the authorities of a Member State responsible for issuing return decisions are faced with a very significant number of individuals whose cases must be examined simultaneously, because optional temporary protection has come to an end, Directive 2008/115 merely precludes such authorities from delaying for longer than is reasonable in such circumstances the issuing of the necessary return decisions in respect of the third-country nationals and stateless persons who have enjoyed such protection.

IV. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (First Chamber), 11 December 2024, Glashütter Uhrenbetrieb v EUIPO (Glashütte ORIGINAL), T-1163/23

EU trade mark – Application for EU figurative mark Glashütte ORIGINAL – Absolute ground for refusal – No distinctive character – Article 7(1)(b) of Regulation (EU) 2017/1001

The General Court has ruled for the first time, in an action it has dismissed, on the question of the relevant public's perception of virtual goods and services and has held, in that regard, that the relevant public's perception of real-world goods and services should, in principle, be transferred to their virtual counterparts.

Glashütter Uhrenbetrieb GmbH – Glashütte/Sa. submitted an application to the European Union Intellectual Property Office (EUIPO) for registration of the figurative mark Glashütte ORIGINAL for

23 See Article 3(1) of Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ 2018 L 312, p. 1).

24 See Article 7 of Directive 2001/55.

25 See Article 8 of Directive 2001/55, read in conjunction with Article 2(g) thereof.

downloadable virtual goods and for services associated with the retail sale of such goods and the provision of non-downloadable virtual goods online. [26]

That application was initially rejected by the examiner on the grounds that the mark lacked distinctive character. [27] The Board of Appeal subsequently upheld that decision, finding that the mark was devoid of distinctive character. In the Board of Appeal's view, for a non-negligible part of the relevant German public, that mark would evoke the reputation of excellence of the town of Glashütte (Germany) in the field of watchmaking, since the goods and services in question all referred to horological products and their accessories.

Findings of the Court

First, the Court observes that although marks made up of signs or indications that are used as advertising slogans, indications of quality or incitements to purchase the goods or services covered by those marks convey, by definition, an objective message, they can be capable of indicating to the consumer the commercial origin of the goods or services in question. That is the case, in particular, where they possess a certain originality or resonance, require at least some interpretation by the relevant public or set off a cognitive process in the minds of that public. On the other hand, a sign is not distinctive where the link established between its semantic content and the goods and services in question is sufficiently concrete and direct that it enables those goods and services to be identified immediately by the relevant public. Therefore, for a finding that a sign lacks distinctive character, it is sufficient to establish that the sign in question indicates to the consumer a characteristic of the good or service relating to its market value which, whilst not specific, comes from promotional or advertising information that the relevant public will perceive first and foremost as such, rather than as an indication of the commercial origin of the goods or services.

In the light of that case-law, the Court considers that the name 'Glashütte' evokes for the relevant public a German town famous for the manufacture of high-quality watches and that the term 'original' evokes the idea of authenticity and faithfulness to the original. Consequently, the mark applied for as a whole would be perceived by the relevant public as evoking a heritage of exceptional know-how and a reputation for excellence in the watchmaking industry of the town of Glashütte, and the word elements were thus devoid of distinctive character.

The Court then examines the assessment of the distinctive character of the mark in relation to the virtual goods and services for which registration was sought. In that regard, it holds that the relevant public will, in principle, perceive virtual goods and services in the same way as it perceives the corresponding real-world goods and services. The nature of the goods and services in question is therefore decisive. Thus, if the virtual goods merely represent real-world goods, or if they represent or emulate the functions of real-world goods, or if the virtual services emulate the functions of real-world services in the virtual world, the relevant public's perception of the real-world goods and services can, in principle, be transferred to their virtual counterparts. The possibility of such a transfer must nonetheless be assessed on a case-by-case basis, taking into account the specific nature of the goods and services in question.

In this instance, the virtual goods and services refer to real-world horological products and their accessories and can therefore represent the corresponding real-world goods or emulate their functions. Consequently, when the relevant public is presented with those virtual goods and services, it will directly perceive the mark applied for as a logical extension of the reputation of the town of Glashütte in traditional watchmaking and that mark will evoke the same positive feelings in that public regarding quality and authenticity as exist in relation to the real-world goods and services.

Having regard to those considerations, the Court concludes that the mark applied for is devoid of distinctive character, because it is not liable to be perceived by the relevant public as an indication of the commercial origin of the goods and services in question, but rather as promotional information about the quality and authenticity of those goods and services, conveyed by the reference to the town

---

26 More specifically, that application covered goods and services in Classes 9, 35 and 41 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

27 On the basis of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), read in conjunction with Article 7(2) of that regulation.

of Glashütte and its reputation in the field of physical horological products. Although the reputation of that town for traditional watchmaking does not extend to a virtual transposition of that activity, the goods and services at issue expressly refer to horological products and their accessories, and thus the mark applied for will indeed be used in relation to virtual goods and services that may represent the same real-world goods and services for which the name of the town of Glashütte is renowned or emulate the functions of those real-world goods and services. Furthermore, it has not been demonstrated how the 'substantial difference' between the real-world and virtual horological products in question alters the relevant public's perception. Lastly, it has also not been demonstrated why the relevant public, which is interested in traditional watchmaking and is aware of the reputation of the town of Glashütte in that field, is not interested in virtual watchmaking and vice versa.

2. PRODUCT LIABILITY

Judgment of the Court of Justice (Fifth Chamber), 19 December 2024, Ford Italia, C-157/23

Link to the full text of the judgment

Reference for a preliminary ruling – Approximation of laws – Liability for defective products – Directive 85/374/EEC – Article 3(1) – Concept of 'producer' – Concept of a 'person who … presents him[- or her]self as … [a] producer' – Conditions – Supplier whose name is the same in part as that of the producer and as the trade mark put on the product by the producer

Hearing a request for a preliminary ruling from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the Court of Justice rules on the interpretation of the concept of 'producer' and more specifically on that of 'person who … presents him[- or her]self as … [a] producer' within the meaning of Directive 85/374. [28] Thus, it considers that the latter concept covers the supplier of a vehicle where that supplier has not physically put his or her name, trade mark or other distinguishing feature on the product, but the mark of the vehicle put on it by the producer is the same, on the one hand, as the name of the supplier or a distinctive element thereof and, on the other hand, as the name of the producer. He or she is therefore liable for defects in the vehicle.

On 4 July 2001, ZP purchased a Ford motor vehicle ('the vehicle in question') from Stracciari SpA, a dealer for that make established in Italy. The vehicle in question, produced by Ford WAG, a company established in Germany, was supplied to Stracciari through Ford Italia, which distributes in Italy vehicles produced by Ford WAG.

On 27 December 2001, ZP was involved in a road traffic accident in the course of which an airbag fitted to the vehicle in question failed to work.

On 8 January 2004, ZP brought an action before the Tribunale di Bologna (District Court, Bologna, Italy) against Stracciari and Ford Italia, seeking an order that they pay compensation for the damage which ZP claimed to have suffered as a result of the defect in the vehicle in question. That court held Ford Italia to be non-contractually liable on account of the manufacturing defect in the airbag fitted to the vehicle in question.

---

28 Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29). Pursuant to that provision, '"producer" means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his [or her] name, trade mark or other distinguishing feature on the product presents him[- or her]self as its producer'.

Ford Italia's appeal against that decision was dismissed by the Corte d'appello di Bologna (Court of Appeal, Bologna), which upheld Ford Italia's liability in the same way as that of the producer.

Ford Italia brought an appeal on a point of law against that judgment before the referring court, criticising the solution adopted by that court in a comparable case, in which Ford WAG's liability, as a producer, had been extended to Ford Italia.

The referring court is uncertain as to the exact scope of the expression 'by putting his [or her] name' referred to in Article 3(1) of Directive 85/374. In essence, it asks whether the extension of the producer's liability to the supplier is thus limited to cases in which the supplier physically puts his or her name, trade mark or other distinguishing feature on the product, with the intention of confusing the supplier's identity with that of the producer, or whether that extension also applies where there is a mere coincidence in the identifying details, as is the case here.

Findings of the Court

In the first place, the Court recalls that Directive 85/374 seeks to achieve complete harmonisation of liability for defective products. Accordingly, the list of persons against whom a consumer is entitled to bring an action under the system of liability for defective products [29] must be regarded as exhaustive.

Although, under Article 1 of Directive 85/374, the EU legislature chose, in principle, to allocate to the producer liability for damage caused by his or her defective products, Article 3 of that directive indicates which of the operators who have taken part in the manufacturing and marketing processes for the product in question will also have to assume that liability. Those operators include, first, the person who is at least partially involved in the process of manufacturing the product concerned and second, the person who presents him- or herself as a producer by putting his or her name, trade mark or other distinguishing feature on that product. [30] It can therefore be concluded that the involvement of the person who presents him- or herself as a producer in the process of manufacturing the product is not necessary in order for such person to be classified as a 'producer'. Ford Italia, which does not manufacture vehicles but merely purchases them from the manufacturer of those vehicles in order to distribute them in another Member State, may fall within the same classification if it presented itself as a 'producer' by putting its name, trade mark or other distinguishing feature on the vehicle in question. By that placement, the person who presents him- or herself as a producer gives the impression of being involved in the production process or of assuming responsibility for it.

In the second place, the Court notes at the outset that Ford Italia, as a distributor of a defective product, has not physically put its name, trade mark or other distinguishing feature on that product. In the light of that clarification, it examines whether the fact that the 'Ford' mark, put on in the course of the manufacturing process of the vehicle in question and corresponding to the name of the manufacturer of that vehicle, also corresponds to a distinctive element of the name of that distributor is sufficient for that distributor to be classified as a 'person who … presents him[- or her]self as … [a] producer' pursuant to Article 3(1) of Directive 85/374.

First, the Court states that, where a person supplies a product, it makes no difference whether that person him- or herself has physically put his or her name, trade mark or other distinguishing feature on that product or whether his or her name contains the wording which has been put on it by the manufacturer and which corresponds to the manufacturer's name. In those two cases, the supplier uses the similarity between the wording in question and that supplier's own company name in order to present him- or herself to the consumer as the person responsible for the quality of the product and to give rise to confidence on the part of that consumer comparable to that which he or she would have if the product had been sold directly by that supplier's producer. In both cases, that person must be regarded as a person who 'presents him[- or her]self as … [a] producer' within the meaning of Article 3(1) of Directive 85/374.

Second, the Court points out that, in the light of the context of Article 3(1) of Directive 85/374 and the objective pursued by that directive, the concept of 'person who … presents him[- or her]self as … [a]

---

29 Articles 1 and 3 of Directive 85/374.

30 Article 3(1) of Directive 85/374.

producer' cannot refer exclusively to the person who has physically put his or her name, trade mark or other distinguishing feature on the product. To agree otherwise would be to restrict the scope of the concept of 'producer' to which the EU legislature chose to give a broad interpretation, and thus compromise the protection of consumers, who must be able to choose freely to claim full compensation for the damage suffered from the producer or from the person who presents him- or herself as such. In particular, the supplier of a product 'presents him[- or her]self as its producer' where the name of that supplier or a distinctive element thereof is the same, on the one hand, as the name of the manufacturer and, on the other hand, as the name, trade mark or other distinguishing feature put on the product by the manufacturer.

Accordingly, the Court concludes that, pursuant to Article 3(1) of Directive 85/374, the supplier of a defective product must be considered to be a 'person who … presents him[-or her]self as … [a] producer' of that product where that supplier has not physically put his or her name, trade mark or other distinguishing feature on that product, but the trade mark which the producer has put on that product is the same, on the one hand, as the name of that supplier or a distinctive element thereof and, on the other hand, as the name of the producer.

V. ECONOMIC AND MONETARY POLICY

1. PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS

Judgment of the Court of Justice (Fifth Chamber), 12 December 2025, Nemea Bank v ECB and Others, C-181/22

Link to the full text of the judgment

Appeal – Economic and monetary policy – Prudential supervision of credit institutions – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the European Central Bank (ECB) – Article 24 – Decision to withdraw a credit institution's authorisation – Administrative review procedure – Decision repealing an earlier decision – Action for annulment – Continuing interest in bringing proceedings – Actions for damages – Manifest inadmissibility

Hearing an appeal brought against the order of the General Court of 20 December 2021, Niemelä and Others v ECB, [31] in which it had held that there was no longer any need to adjudicate on the application for annulment on account of the fact that it had become devoid of purpose and the applicants no longer had an interest in bringing proceedings, the Court of Justice sets aside the order under appeal. In its judgment, the Court of Justice rules on the issue of whether an interest in bringing proceedings is retained in the context of an action against a decision of the European Central Bank (ECB) which, following an opinion of the Administrative Board of Review ('the ABoR') – which is responsible for carrying out an internal administrative review of decisions taken by the ECB – has been abrogated and replaced by another decision with identical content.

Nemea Bank plc, the appellant, is a credit institution governed by Maltese law, subject to the direct prudential supervision of the Awtorità għas-Servizzi Finanzjarji ta'Malta (Malta Financial Services Authority, Malta; 'the MFSA'), on account of its status as a less significant supervised entity. On 25 January 2017, after consulting the national resolution authority, the MFSA submitted to the ECB a draft decision withdrawing the authorisation granted to the applicant to take up the business of a credit institution ('the authorisation'). [32] On 13 March 2017, that draft was approved by the ECB, which gave the appellant three days to submit its comments, which it did on 15 March 2017. On 23 March

31 Order of 20 December 2021, Niemelä and Others v ECB (T-321/17, EU:T:2021:942; 'the order under appeal').

32 In application of Article 80 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1).

2017, the ECB adopted the decision of 23 March 2017 withdrawing the appellant's authorisation ('the decision at issue'). [33]

Having received a request for review of the contested decision, submitted by, inter alia, the appellant, the ABoR adopted an opinion, in which it proposed that that decision be replaced by a decision of identical content. On the basis of that opinion and a draft from the Supervisory Board, the ECB adopted, on 30 June 2017, a decision ('the decision of 30 June 2017') which, as stated in its operative part, replaced the decision at issue. In parallel with that request for review, the applicants at first instance brought an action before the General Court for annulment of the decision at issue and for compensation in respect of the damage which they allegedly suffered as a result of the adoption of that decision. However, they did not bring such an action against the decision of 30 June 2017.

In the order under appeal, the General Court, first, decided that there was no longer any need to adjudicate on the application for annulment because it had become devoid of purpose and the applicants at first instance no longer had an interest in bringing proceedings and, second, dismissed the claim for compensation as manifestly inadmissible.

Findings of the Court

With regard to the loss of its interest in bringing proceedings against the decision at issue, the Court of Justice notes, as the General Court did in the order under appeal, that, according to settled case-law, an interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. That purpose must, like the interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate; this presupposes that the action must be capable, if successful, of procuring an advantage for the party bringing it. However, the Court of Justice recalls that it has recognised that an applicant's interest in bringing proceedings does not necessarily disappear by reason of the fact that the act contested by him or her has ceased to have effect in the course of the proceedings. An applicant may retain an interest in obtaining a declaration that the act in question is unlawful for the period during which it was applicable and took effect, and such a declaration continues to be at least of interest as a basis for a possible action for damages. Furthermore, the question whether an applicant retains his or her interest in bringing proceedings must be assessed in the light of the specific circumstances, taking account, in particular, of the consequences of the alleged unlawfulness and of the nature of the damage claimed to have been sustained.

In that regard, the Court of Justice points out that it is indeed clear from the wording of Article 24(7) of Regulation No 1024/2013 [34] that, where the ECB finds, following an administrative review procedure, that the decision under review should not be amended, it is to abrogate that decision and replace it with a decision of identical content. However, the Court of Justice finds that it cannot be inferred from the above that abrogating the former decision and replacing it with the latter has retroactive effect comparable to that of the annulment of an act of an EU institution by an EU Court.

It is apparent from the case-law of the Court of Justice that the abrogation of an act of an EU institution does not amount to recognition of its illegality and takes effect ex nunc, unlike a judgment annulling an act, by virtue of which the act annulled is removed retroactively from the legal order and is deemed never to have existed. The fact that that abrogation was followed by the replacement of the initial act by a new one cannot give the latter retroactive effect. Therefore, the initial decision is not removed with retroactive effect from the EU legal order by the adoption of the second decision which abrogates and replaces the initial decision, the content of which is identical. [35] Since the authorisation of a credit institution had been withdrawn by that initial decision, that second decision had the effect of extending the effects of the initial decision, without removing those already produced by it.

In the present case, it is the decision at issue that had the effect of withdrawing the appellant's authorisation and which may have had the detrimental consequences of which it complains. In

33 Decision of the ECB of 23 March 2017 withdrawing Nemea Bank's authorisation to operate as a credit institution (ECB/SSM/2017-213800JENPXTUY75VSO/1 WHD-2017-0003).

34 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63; 'the SSM Regulation').

35 As follows from Article 24(7) of the SSM Regulation.

addition, since the request for review of an initial decision did not have suspensory effect, [36] the decision at issue continued to take effect until the decision of 30 June 2017 took effect, namely when it was notified to the appellant. It was therefore only from the point when the appellant was notified that the latter decision abrogated and replaced the decision at issue, as is clear from the wording itself of the operative part of the decision of 30 June 2017.

Accordingly, the Court of Justice concludes that the General Court erred in law in holding that the decision at issue had been replaced with retroactive effect by the decision of 30 June 2017 and that the action for the annulment of that first decision had become devoid of purpose. The Court of Justice finds that the state of the proceedings does not permit final judgment to be given and therefore refers the case back to the General Court.

2. RECOVERY AND RESOLUTION OF CREDIT INSTITUTIONS

Judgment of the Court of Justice (Fourth Chamber), 12 December 2024, Getin Holding and Others, C-118/23

Link to the full text of the judgment

Reference for a preliminary ruling – Recovery and resolution of credit institutions – Directive 2014/59/EU – Decision to take a crisis management measure in respect of a credit institution – Article 85(3) – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy of all persons affected by that decision – Compliance with a reasonable time limit – Requirement of an expeditious judicial review – Provision of national law requiring that all the actions be joined – Article 3(3) – Combining of functions by the resolution authority – Guarantee of operational independence

Hearing a reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Warszawie (Regional Administrative Court, Warsaw, Poland) in the context of the resolution of a credit institution under the law that transposed Directive 2014/59 [37] into Polish law, the Court of Justice clarifies, first, the scope of the right to an effective remedy with regard to a decision made by a national resolution authority to take a crisis management measure and, second, the requirements relating to the operational independence of such an authority where it combines more than one function.

As a result of the failure by Getin Noble Bank S.A. ('GN Bank') to comply with the own funds requirements laid down by EU legislation, in December 2021 the Komisja Nadzoru Finansowego (Financial Supervision Authority, Poland), appointed Bankowy Fundusz Gwarancyjny (Bank Guarantee Fund, Poland) ('the BGF') as 'temporary administrator' [38] to GN Bank, with the aim of improving its financial situation. In September 2022, in view of the risk of GN Bank failing, the BGF, acting as the resolution authority, made a decision placing GN Bank under resolution ('the decision at issue in the main proceedings').

The Supervisory Board of GN Bank and a very large number of other persons brought actions before the referring court against the decision at issue in the main proceedings. The applicants in those various actions claim, inter alia, that the BGF was subject to a conflict of interest which prevented it from performing lawfully the functions attributed to the resolution authority, since it performed supervisory, bank deposit guarantee and resolution functions at the same time.

36 In accordance with Article 24(8) of the SSM Regulation.

37 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190), as amended in turn by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 (OJ 2019 L 150, p. 296) ('Directive 2014/59').

38 A function provided for in Article 29 of Directive 2014/59, in the context of 'early' intervention.

The referring court entertains doubts as regards the existence of such a conflict of interest and as regards the structural guarantees that are adequate in order to ensure the operational independence of a resolution authority in the context of Directive 2014/59. [39] It also expresses doubts regarding respect for the right to an effective remedy of the persons affected by the decision at issue in the main proceedings. [40] In the circumstances of this case, that court states that it is virtually impossible to give judgment within a reasonable time because, on the date of the order for reference, more than 7 000 actions had been brought against the decision at issue in the main proceedings, and because it is obliged by a national procedural rule to join all the actions brought before it against that decision. [41]

Findings of the Court

In the first place, as regards whether a national procedural rule requiring the joinder of all the actions brought against a decision made by a national resolution authority to take crisis management measures is compatible with the right to an effective remedy, the Court notes, first of all, that Directive 2014/59 [42] embodies the right of any person to a hearing within a reasonable time, in relation to such a decision, by requiring that the judicial review available to any person affected by that decision must be 'expeditious'.

In the present case, the Court observes that, although the joinder of connected cases can as a general rule contribute to the proper administration of justice, the same is not so of actions brought against decisions to take crisis management measures, which are liable to affect a considerable number of persons and to give rise to numerous actions. In that situation, such joinder can prevent any judicial review from taking place for a number of years, thereby infringing the right to a hearing within a reasonable time. [43]

Next, the Court notes that, applying the principle of the primacy of EU law and the direct effect of Article 47 of the Charter, the referring court must, inter alia, if necessary, disapply the provisions of national procedural law that would prevent it from disjoining the actions at issue in the main proceedings.

Lastly, also in accordance with Article 47 of the Charter, the national court must, in the event of disjoinder, be able to take the necessary measures making it possible both to ensure respect for the right of any person to a hearing within a reasonable time and to prevent the risk of irreconcilable judgments delivered by different judges. In the present case, having regard in particular to the fact that, in the event of disjoinder, national law provides that the cases are to be heard simultaneously by different judges, which involves a risk of irreconcilable judgments, it is for the referring court to verify whether the hearing of one or more cases pending before it while the other cases are suspended is necessary in order to ensure the full effectiveness of the subsequent judicial decision.

Accordingly, the Court holds that Article 47 of the Charter must be interpreted as precluding the application of a national procedural rule under which a court, before which actions have been brought against the decision of the national resolution authority to take a crisis management measure, must join all the actions brought before it against that decision, where the application of that rule infringes the right to a hearing within a reasonable time.

In the second place, as regards whether a practice is compatible with the right to an effective remedy where it consists of examining substantively, among a large number of actions brought against a decision by the national resolution authority to take a crisis management measure, only the action brought by an organ of the institution under resolution, the Court recalls that Directive 2014/59 [44] provides that all persons affected by such a decision must have the right to challenge it in legal proceedings.

---

39 Article 3(3) of Directive 2014/59.

40 Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), second subparagraph of Article 19(1) TEU and Article 85(3) of Directive 2014/59.

41 Article 111(1) of the ustawa – Prawo o postępowaniu przed sądami administracyjnymi (Law on procedure before the administrative courts) of 30 August 2002 (Dz. U. of 2002, item 329), in the version applicable to the dispute in the main proceedings.

42 Article 85(3) of Directive 2014/59.

43 Article 47 of the Charter.

44 Article 85(3) of Directive 2014/59.

It is true that, under that directive, [45] the annulment of a decision by a resolution authority to take a crisis management measure does not affect any administrative acts or transactions concluded by that authority which were based on the annulled decision where it is necessary to protect the interests of third parties acting in good faith, and that the remedies for persons affected by a decision of that authority therefore afford them only a right to compensation for the loss suffered. However, in the present case, if the judgment ruling on the action brought by the Supervisory Board of GN Bank were to dismiss that action as unfounded, the other applicants in the main proceedings would be unable to bring claims for compensation for the harm caused to them, because such a judgment would have erga omnes effect, while they would have been deprived of the right to raise their own pleas in support of their actions, even though those pleas have not been the subject of an exchange of arguments.

Although the right to an effective remedy is not an unfettered prerogative, the Court notes that if a person affected by the decision of the national resolution authority to take a crisis management measure was deprived of the right to obtain a reasoned judgment ruling on an action validly brought by that person against such a decision, the very substance of that person's right to an effective remedy would be impaired. Accordingly, in the event of the action brought by the Supervisory Board of GN Bank being dismissed as unfounded, the referring court could not rely on the erga omnes effect of such a judgment as a ground for depriving any other persons affected of a reasonable opportunity to present their case.

Consequently, where there is more than one action against a decision of the national resolution authority to take a crisis management measure, and one of those actions was brought by an organ of the institution under resolution, the dismissal as unfounded of that one action alone does not permit the inference that respect for the right to an effective remedy has been ensured with regard to any other person affected by that decision.

In the third place, as regards the applicability of the requirement of operational independence laid down by Directive 2014/59, [46] where a national resolution authority combines the functions of temporary administrator and bank deposit guarantee functions, [47] the Court notes that that directive provides that adequate structural arrangements must be made to ensure the operational independence of that authority and to avoid any conflict of interest.

In such a context, the requirements relating to operational independence and the prevention of conflicts of interest concern the risk, associated with the performance of more than one function by the same entity, of that entity's decision making being distorted, where it acts as a resolution authority, and are intended to protect that decision making against any influence external to the resolution task.

In that regard, the Court infers from the use of very broad, general terms in Directive 2014/59 that the EU legislature intended to impose those requirements in respect of any other functions performed by the resolution authority wherever those functions inherently give rise to an objective risk of that nature. That is undoubtedly true as regards the functions of temporary administrator and bank deposit guarantee functions. It is clear, inter alia, from Directive 2014/59 that those functions are linked to the resolution mechanism, and it is therefore not inconceivable that performance of one of those functions by the resolution authority might affect decision making in the context of the resolution functions. It is irrelevant that all those functions, by different means, pursue the same objective, that is to say, in essence, that of preserving financial stability.

The Court infers from the foregoing that the requirement to make structural arrangements to ensure the operational independence of the national resolution authority applies where that authority also performs functions as a temporary administrator or bank deposit guarantee functions.

Lastly, as regards the scope of the obligation to make structural arrangements to ensure the operational independence of the resolution authority, the Court finds that it is clear from Directive

45 Second subparagraph of Article 85(4) of Directive 2014/59.

46 Article 3(3) of Directive 2014/59.

47 See Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149).

2014/59 [48] that the necessary relevant internal rules may be laid down not only by the Member State itself but also by the national resolution authority. In addition, Directive 2014/59 requires such rules to be made public, although it does not, however, prescribe either the form that those rules should take in internal law or the specific arrangements for their publication.

Consequently, organisational and other adequate measures can constitute 'internal rules' within the meaning of Directive 2014/59, in so far as they are described with sufficient precision. The Court therefore holds that Directive 2014/59 must be interpreted as meaning that, where the national resolution authority combines more than one function and where there are no written rules intended to ensure the operational independence of that authority, there can be compliance with the requirements intended to ensure operational independence and to avoid any conflict of interest as the result of the introduction of organisational and other measures that are sufficient for that purpose.

The Court also provides a number of clarifications. First, in respect of the substance of the adequate structural arrangements, the requirements laid down by Directive 2014/59 relating to the staff involved in the various functions performed by the resolution authority do not oblige an administrative authority which is entrusted, inter alia, with the resolution function to have a separate decision-making body when it acts as a resolution authority. Similarly, those requirements do not prevent certain internal functional areas of that authority, such as the legal department, the human resources department or technical departments, from providing support services both to staff assigned to resolution functions and to staff assigned to other functions, without prejudice to rules on professional secrecy.

Second, in respect of the consequences of any failure to publish the internal rules, the Court infers from the absence of any rights conferred on individuals and from the fact that those rules serve the interests of transparency that such a failure does not automatically invalidate the decisions made by the resolution authority. However, if the non-publication of those rules is established during the hearing of an action against a decision of the resolution authority, it is for the latter to establish that, notwithstanding the absence of publication, those rules were complied with, and that the decision in question was accordingly made exclusively in order to achieve one or more resolution objectives referred to by Directive 2014/59. [49]

48 Third subparagraph of Article 3(3) of Directive 2014/59.
49 Article 31 of Directive 2014/59.

VI. EUROPEAN CIVIL SERVICE: TRADE UNION OR PROFESSIONAL ORGANISATION OF STAFF

Judgment of the General Court (Ninth Chamber, Extended Composition), 11 December 2024, Council section of the European Civil Service Federation (FFPE, Council section) v Council, T-179/23

Link to the full text of the judgment

Law governing the institutions – Agreement concluded between the Council and trade union or professional organisations for the implementation of Article 10c of the Staff Regulations – Procedure for verifying the criteria for the recognition and representativeness of trade union or professional organisations – Note providing information about the outcome of the verification procedure – Obligation to state reasons – Principle of good administration – Principle of performance in good faith – Freedom of association

Ruling in the extended five-judge composition, the General Court dismisses the action brought by a trade union or professional organisation of staff (OSP) seeking the annulment of a decision of the Council of the European Union finding that the applicant is no longer representative within that institution. The General Court thus implicitly confirms its jurisdiction to rule on measures adopted pursuant to an agreement concluded between an institution and an OSP and directly affecting the collective interest protected by the latter. In addition, the General Court clarifies the scope of the obligations on the Council with a view to measuring representativeness.

In 2006, the applicant and other OSPs ('the cosignatory OSPs') signed an agreement with the Council with a view to laying down the criteria for the recognition and representativeness of the OSPs of the Council ('the Agreement'), in the context of implementing Article 10c of the Staff Regulations of Officials of the European Union.

The Agreement provides that, to be recognised, OSPs must have at least 60 members ('the recognition threshold'). To constitute a representative OSP within the General Secretariat of the Council ('the GSC'), the threshold is set at 300 members ('the representativeness threshold'). Representative OSPs enjoy greater advantages than recognised OSPs. Under the Agreement, compliance with those thresholds by the cosignatory OSPs must be verified every three years by an independent body ('the verification procedure').

In March 2022, the GSC informed the cosignatory OSPs that a verification procedure would be implemented. The OSPs requested that the reference date taken into account in order to draw up the lists of their members be set as 31 July 2022 ('the first reference date'). However, that date was set as 31 May 2022.

Further to a first verification procedure, the bailiff produced a report ('the first report') finding that the applicant had not reached the recognition threshold or, therefore, the representativeness threshold as at the date specified. By note of 24 November 2022, the applicant was invited, in accordance with the Agreement, to comply with the recognition and representativeness thresholds within three months.

According to a report produced as part of a second verification procedure ('the second report'), the applicant satisfied the recognition threshold, as at a new reference date, but not the representativeness threshold.

By note of 3 April 2023, the GSC informed the applicant that its rights as a representative OSP would be suspended but that it would continue to be granted resources as a recognised OSP.

The applicant requested that the General Court annul that decision on the basis of Article 263 TFEU, in so far as the decision suspended its rights as a representative OSP ('the contested decision').

Findings of the Court

In the first place, with regard to the statement of reasons for the contested decision, the General Court observes that neither that decision nor the second report specifies the exact number of members used by the bailiff. However, the General Court rejects the plea in law as unfounded since it was clear from the contested decision that that number had to be greater than or equal to the recognition threshold but below the representativeness threshold, and that the shortfall determined was not less than 20 members (that is to say, the applicant had between 60 and 280 members).

In the second place, the General Court rejects the plea in law alleging, first, infringement of the Agreement in the course of the first verification procedure that led to the adoption of the note of 24 November 2022 and, second, irregularities affecting the first report. From the outset, it states that, since that note is a measure of a purely preparatory nature, the applicant may criticise, as an incidental plea, the first verification procedure and the merits of the note. According to settled case-law, any legal defects vitiating measures of a purely preparatory character may be relied upon in an action directed against the definitive act for which they represent a preparatory step.

In particular, with regard to the complaint that the contested decision was adopted belatedly having regard to the three-year schedule for measuring the representativeness of the OSPs laid down in the Agreement, the General Court observes, first, that the purpose of that schedule is to guarantee that the conditions for the recognition and representativeness of the OSPs of the Council are verified at regular intervals and, second, that the Agreement does not provide for penalties for failing to comply with the schedule. Thus, it took the view that non-compliance with that schedule had to be viewed as a procedural irregularity and not as a breach of an essential procedural requirement. In addition, in the present case, the applicant failed to adduce prima facie evidence that it had a sufficient number of members to meet the representativeness threshold as at the dates complying with the three-year schedule and, therefore, does not establish that the content of the contested decision could have been different.

In addition, as for the complaint based on an error relating to the first reference date, the General Court observes that the determination of the reference dates for the verifications is not governed by the Agreement. The principles of legal certainty and equal treatment required the Council to set, as it did in the present case, a first reference date which was not only the same for all the cosignatory OSPs but was also clear and foreseeable.

In the third place, the General Court rejects the plea alleging a breach of the spirit of sincere cooperation flowing from the Agreement and from the principles of good administration, proportionality and the performance in good faith of agreements.

First of all, in response to a line of argument based on the breach of the latter principle, the General Court notes that, according to settled case-law, measures directly affecting the collective interest protected by an OSP in the context of its relations with an institution may form the subject of an action for annulment brought by that OSP on the basis of Article 263 TFEU, including where those measure are adopted pursuant to an agreement concluded between the institution concerned and OSPs. Furthermore, by bringing the matter before the Court on the basis of that provision of the TFEU, the parties to the proceedings implicitly, but necessarily, took the view that the assessment of the lawfulness of the contested decision did not fall within the jurisdiction of the court with jurisdiction in respect of the Agreement.

Next, the General Court rejects the line of argument raised by the applicant alleging breach of the duty to act diligently because, inter alia, the Council refused to defer the first reference date to 31 July 2022. In particular, the General Court found that the OSPs concerned by the first verification procedure had had sufficient time to prepare for that procedure. Furthermore, the applicant did not put forward any evidence to establish that, as at the second reference date, it would have been able to reach the representativeness threshold, even though the second verification procedure had given it additional time and a further opportunity to meet that threshold.

Moreover, referring to the confidentiality clause contained in the Agreement and to Regulation 2018/1725, [50] the General Court rejects the complaint that, for the purposes of the verification procedures, the Council should have provided the applicant with certain information relating to the grades and the remuneration of the officials, servants and pension recipients of that institution, since such data constitute personal data.

Lastly, the General Court rejects the line of argument alleging breach of the principle of sincere cooperation on the ground, inter alia, that the first subparagraph of Article 4(3) TEU, which provides for respect and mutual assistance between the European Union and its Member States in carrying out tasks which flow from the Treaties, does not impose on the Council a duty of sincere cooperation in its relations with a legal person such as the applicant.

In the fourth place, the General Court rejects, in the light, inter alia, of Article 12(1) of the Charter of Fundamental Rights of the European Union as well as Articles 27 and 28 thereof, the plea in law alleging violation of the fundamental right to freedom of association. The General Court observes that the contested decision does not seek to impose penalties on or impede the exercise of the freedom of trade union activity by the applicant, which retains the possibility of performing its missions of representation and consultation. Nor does that decision prevent the applicant from regaining its status as a representative OSP.

VII. COMMON COMMERCIAL POLICY

1. ANTI-DUMPING

Judgment of the General Court (Tenth Chamber, Extended Composition), 4 December 2024, PGTEX Morocco v Commission, T-245/22

Link to the full text of the judgment

Dumping – Extension of the definitive anti-dumping duty imposed on imports of certain woven or stitched glass fibre fabrics originating in China to imports of those products consigned from Morocco – Anti-circumvention investigation – Circumvention – Euro-Mediterranean Association Agreement EC-Morocco – Article 22(a) of Regulation (EU) 2016/1036 – Misuse of powers – Conditions which must be met in order to establish circumvention – Article 13 of Regulation 2016/1036 – Change stemming from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty – Assembly operations – Completion operations – Concept of 'value added' – Like imported product or parts of that product continuing to benefit from the subsidy – Error of law – Manifest error of assessment – Principle of non-discrimination – Equal treatment – Principle of good administration – Article 18(1) and (3) of Regulation 2016/1036 – Use of the facts available

The General Court dismisses the action, which was brought before it by a Moroccan company belonging to the Chinese group PGTEX, seeking annulment of Implementing Regulation 2022/302 [51] extending the definitive anti-dumping duty on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China to imports of GFF consigned from Morocco. On this occasion, the Court provides clarification as to whether it is possible for the European

50 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

51 Commission Implementing Regulation (EU) 2022/302 of 24 February 2022 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2020/492, as amended by Implementing Regulation (EU) 2020/776, on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China to imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, and terminating the investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2020/492 on imports of GFF originating in Egypt by imports of GFF consigned from Morocco, whether declared as originating in Morocco or not (OJ 2022 L 46, p. 49; 'the contested implementing regulation').

Commission to extend anti-dumping duties imposed on the People's Republic of China to imports of like products from a third country with which the European Union has signed an association agreement, where circumvention of the measures in force is taking place.

In 2020, following the anti-dumping investigation carried out by its services, the Commission adopted Implementing Regulation 2020/492 [52] imposing definitive anti-dumping duties on imports of certain GFF originating in the People's Republic of China and Egypt.

In 2021, following a request lodged by Tech-Fab Europe eV, an association of GFF producers in the European Union, the Commission initiated an investigation concerning the possible circumvention of those anti-dumping measures through imports of the same product consigned from Morocco, whether declared as originating in that country or not. Following its investigation, the Commission adopted the contested implementing regulation.

By its action, the applicant, PGTEX Morocco, a Moroccan company producing and exporting GFF to the European Union, seeks the annulment of the contested implementing regulation, in so far as it concerns PGTEX Morocco. It alleges, inter alia, an infringement of the association agreement concluded between the European Union and the Kingdom of Morocco. [53] The applicant also disputes the findings as to the lack of economic justification for the establishment of the applicant's production site in Morocco other than the imposition of the anti-dumping duties and disputes the classification of the manufacturing process implemented by the applicant in Morocco as an 'assembly operation'.

Findings of the Court

The association agreement and the possibility of applying the anti-circumvention rules laid down in Article 13 of Regulation 2016/1036. [54]

In the first place, the Court examines whether the Commission was entitled to rely on the anti-circumvention rules laid down in Article 13 of the basic anti-dumping regulation in order to extend the anti-dumping duties imposed on imports of GFF from China to imports of like products from Morocco, disregarding the fact that the European Union signed an association agreement with Morocco.

In that regard, the Court notes that the association agreement and Article 13 of the basic anti-dumping regulation are two instruments of EU trade policy with different aims and rationales. The first is an instrument of cooperation designed to promote the free movement of goods from Morocco within the European Union by eliminating, inter alia, customs duties and charges having equivalent effect. The second is a trade defence instrument designed to sanction unfair commercial practices liable to undermine the effectiveness of anti-dumping measures already in force in relation to third countries by allowing the institutions, under certain conditions, to extend those anti-dumping measures to imports of like products from, inter alia, another country, in order to prevent circumvention of the anti-dumping measures.

In the present case, taking the view that the PGTEX Group had used the territory of Morocco in order to circumvent the anti-dumping duty imposed on Chinese imports of GFF, the Commission extended, by the contested implementing regulation, the anti-dumping duty to GFF consigned from Morocco. Furthermore, the duty thus extended, the sole purpose of which is to ensure the effectiveness of the anti-dumping duty imposed on the People's Republic of China, cannot be distinguished from the latter duty, to which it is ancillary. Thus, by the contested implementing regulation, the Commission targets the Chinese undertakings in the PGTEX Group in order to prevent them from using the territory of Morocco to avoid the anti-dumping duty imposed on Chinese imports of GFF.

In that regard, the Court observes that the association agreement concluded between Morocco and the European Union does not prevent the latter from using anti-circumvention measures to counter conduct such as that described above, provided that all the conditions for the application of Article 13

52 Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ 2020 L 108, p. 1).

53 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 2000 L 70, p. 2), as amended ('the association agreement').

54 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the basic anti-dumping regulation').

of the basic anti-dumping regulation are satisfied. A different reading would be liable to deprive the European Union of a trade defence instrument which is crucial for ensuring effective protection of EU industry and might transform Morocco into a 'free zone', in which commercial operators could carry out any kind of operations to circumvent anti-dumping measures, which would be contrary to the mutual commitments made by Morocco and the European Union under that agreement.

Therefore, according to the Court, the Commission did not err in using the anti-circumvention rules laid down in Article 13 of the basic anti-dumping regulation.

The assessment of the conditions for the application of Article 13 of the basic anti-dumping regulation in the present case

In the second place, the Court notes, first, that, among the conditions necessary in order to establish the existence of circumvention, Article 13(1) of the basic anti-dumping regulation requires (i) that there must be a change in the pattern of trade between a third country and the European Union or between individual companies in the country subject to measures and the European Union, and (ii) that change must stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. [55] Second, under the fourth subparagraph of Article 13(1), assembly operations in the European Union or in a third country are one of the practices, processes or works liable to constitute circumvention.

In the present case, after finding that the increase in exports of GFF from Morocco to the European Union constitutes a change in the pattern of trade between them, the Commission analysed the second condition necessary to establish the existence of circumvention as regards the establishment of the applicant's production site in Morocco.

In that regard, the Court finds, first, that the Commission did not err in concluding that there was insufficient due cause or economic justification for the establishment of a GFF production site in Morocco other than a desire to circumvent the anti-dumping duties in force.

The decision to establish that production site was taken in March 2019, that is, just after the initiation of the anti-dumping investigation that led to the imposition of the anti-dumping duties on Chinese imports of GFF, and was finalised in October 2019, that is, seven months after the initiation of that investigation.

The existence of such a coincidence in time between the initiation of the anti-dumping investigation and the establishment of the applicant's production site in Morocco is, according to the case-law, capable of justifying the presumption that the purpose of the establishment of a production factory in the country from which the goods are exported is to avoid the application of trade policy measures.

Where there is such a coincidence in time, it is for the economic operator concerned to prove that there were reasonable grounds, other than a desire to avoid the consequences of the measures in question, for establishing a production site in the country from which the goods are exported. Thus, it was for the applicant to prove that there was a due cause and economic justification for the establishment of its production site in Morocco other than to avoid the anti-dumping measures at issue; the applicant did not do in the present case.

Furthermore, the applicant is wrong to claim that the Commission failed to fulfil its obligation to examine carefully and impartially all the relevant aspects of the case, since the Commission carried out a correct analysis of the evidence adduced by the applicant and was fully entitled to find that that evidence did not succeed in calling into question the Commission's conclusion.

Second, the Commission did not err or infringe Article 13 of the basic anti-dumping regulation in concluding that the GFF manufacturing process carried out in Morocco is a completion operation, which falls within the concept of 'assembly operation' within the meaning of that provision.

In the present case, the Court carries out a textual, contextual and teleological analysis of the provision concerned, in order to determine whether the concept of 'assembly operation' must, as the

55 The other two conditions are evidence of injury to the Union industry or that the remedial effects of the anti-dumping duty are being undermined in terms of the prices or quantities of the like product and evidence of dumping in relation to the normal values previously established for the like product.

Commission argues, be given a broad interpretation capable of encompassing completion operations or, as the applicant suggests, be interpreted strictly, to the effect that completion operations do not fall within the concept of an 'assembly operation'.

In that regard, the Court notes that the basic anti-dumping regulation does not define the concept of 'assembly operation' or that of 'completion operation'. Nor does it specify whether the latter operations are included within the concept of 'assembly operation'.

As regards the context, completion operations are not among the practice, process or work liable to constitute circumvention within the meaning of Article 13(1) of the basic anti-dumping regulation. However, Article 13(2)(b), [56] which sets out the conditions under which an assembly operation is considered to circumvent the measures in force, refers to 'completion'. Such a reference suggests that completion operations can be interpreted as being a type of assembly operations.

Such an interpretation is, first, consistent with the underlying objective of the EU rules on circumvention, namely to ensure the effectiveness of anti-dumping measures adopted by the European Union and to prevent circumvention of those measures, and, second, is supported by the fact that the legislature left a broad margin of discretion to the EU institutions as regards the definition of circumvention operations.

Lastly, the circumstances referred to by the applicant, such as the complexity of the process of manufacturing GFF, have no bearing on the classification of the process of manufacturing GFF in Morocco as an assembly or completion operation. In order for an assembly operation to constitute circumvention, Article 13(2) of the basic anti-dumping regulation refers to the proportion of parts used originating in the country subject to measures, and refers to the value added to those parts by the operation in question.

Third, as regards the determination of the value added by the assembly operations, for the purposes of Article 13(2)(b) of the basic anti-dumping regulation, the Commission did not make a manifest error of assessment or infringe that provision by making adjustments to the depreciation costs, as calculated by the applicant, by taking into account the actual capacity utilisation rate during the reference period and by disregarding the three other methods for calculating the value added that were proposed by the applicant.

In that regard, the Court notes that it is apparent both from the context and from the objective of Article 13 of the basic anti-dumping regulation that, in order to determine the value added by the assembly operations, it is necessary to take into account only the costs which relate to the actual production of GFF, or only the depreciation and rental costs which relate to the operation of the machines that were actually used to produce the parts actually brought in during the reporting period.

In the present case, the applicant provided the Commission with depreciation costs calculated on the basis of the theoretical maximum operation of all its machines. Taking the view that those depreciation costs and the rental costs could not credibly reflect the value added to the parts brought in, the Commission made the necessary adjustments. To that end, it used the capacity utilisation rate as provided by the applicant and not disputed by the latter.

Since both the depreciation cost, calculated by the applicant on the basis of the theoretical maximum capacity of its machines, and the capacity utilisation were calculated on the basis of the same number of GFF machines, as if the latter had been in operation throughout the reporting period, using one to adjust the other does not constitute an error of fact.

As regards the other methods, for calculating the value added, which the applicant proposed to the Commission, the latter rightly considered that they would not have provided a more accurate reflection of the value added to the parts brought in.

---

56 Under that provision, an assembly operation in the European Union or a third country is considered to circumvent the measures in force where: '(b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost'.

Fourth, the Commission did not infringe the principles of non-discrimination and equal treatment by making the abovementioned adjustments to determine the value added, even though, when calculating the injury margin, it did not adjust the production costs of the Union industry, despite a finding that there had been a low level of production capacity utilisation.

The taking into account of the production costs in order to calculate the injury margin of the Union industry due to dumped imports and the taking into account of production costs in order to calculate the value added to the parts brought in during an assembly or completion operation, in order to ascertain whether anti-dumping measures are being circumvented, take place in a different context and for different purposes. The applicant should have explained how, by taking those costs into account differently, the Commission could have infringed the principles of non-discrimination and equal treatment; the applicant did not do in the present case.

Since the Commission examined carefully and impartially all the relevant aspects of the case and adjusted the costs by taking into consideration the applicant's explanations concerning the use of the machinery and the rental costs, the Court also rejects the complaint alleging infringement of the right to good administration.

The use of the facts available

In the last place, the Court examines the plea by which the applicant complains that the Commission infringed Article 18 of the basic anti-dumping regulation in that it used the facts available, even though the applicant had provided the information requested by the Commission.

In accordance with the first paragraph of that provision, the Commission may, during its anti-dumping investigation, use the facts available to the detriment of the facts which are specific to one or more of the interested parties, in the event that an interested party refuses access to, or otherwise does not provide, necessary information or significantly impedes the investigation.

In the present case, it is apparent from the contested implementing regulation that the Commission used the data submitted by the applicant concerning sales and costs as a starting point for its analysis. It also used statistical data to rectify the unreliability of the information provided by the applicant as regards the volumes of export sales to the European Union and to determine whether there had been a change in the pattern of trade, which the applicant does not dispute. However, the Commission did not use the facts available to prove the existence of an assembly or completion.

Consequently, the Court rejected that plea as ineffective.

In the light of all of those considerations, the Court dismisses the action in its entirety.

2. ANTI-SUBSIDIES

Judgment of the General Court (Tenth Chamber, Extended Composition), 4 December 2024, PGTEX Morocco v Commission, T-246/22

Link to the full text of the judgment

Subsidies – Extension of the definitive countervailing duty imposed on imports of certain woven or stitched glass fibre fabrics originating in China to imports of those products consigned from Morocco – Anti-circumvention investigation – Circumvention – Euro-Mediterranean Association Agreement EC-Morocco – Article 33(a) of Regulation (EU) 2016/1037 – Misuse of powers – Conditions which must be met in order to establish circumvention – Article 23(3) of Regulation 2016/1037 – Change stemming from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty – Assembly operations – Completion operations – Concept of 'value added' – Like imported product or parts of that product continuing to benefit from the subsidy – Error of law – Manifest error of assessment – Principle of non-discrimination – Equal treatment – Principle of good administration – Article 28(1) and (3) of Regulation 2016/1037 – Use of the facts available

The General Court dismisses the action, which was brought before it by a Moroccan company belonging to the Chinese group PGTEX, seeking annulment of Implementing Regulation 2022/301 [57] extending the definitive countervailing duty on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China to imports of GFF consigned from Morocco. On this occasion, the Court provides clarification as to whether it is possible for the European Commission to extend countervailing duties imposed on the People's Republic of China to imports of like products from a third country with which the European Union has signed an association agreement, where circumvention of the measures in force is taking place. In that context, the Court confirms, inter alia, that assembly operations may constitute circumvention capable of justifying an extension of countervailing duties under Article 23 of Regulation 2016/1037. [58]

In 2020, following the anti-subsidy investigation carried out by its services, the European Commission adopted Implementing Regulation 2020/776 [59] imposing a definitive countervailing duty on imports of certain GFF originating in the People's Republic of China and Egypt.

In 2021, following a request lodged by Tech-Fab Europe eV, an association of GFF producers in the European Union, the Commission initiated an investigation concerning the possible circumvention of those countervailing measures through imports of the same product consigned from Morocco, whether declared as originating in that country or not. Following its investigation, the Commission adopted the contested implementing regulation.

By its action, the applicant, PGTEX Morocco, a Moroccan company producing and exporting GFF to the European Union, seeks the annulment of the contested implementing regulation, in so far as it concerns PGTEX Morocco. It alleges, inter alia, an infringement of the association agreement

57 Commission Implementing Regulation (EU) 2022/301 of 24 February 2022 extending the definitive countervailing duty imposed by Implementing Regulation (EU) 2020/776 on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China ('the PRC') to imports of GFF consigned from Morocco, whether declared as originating in Morocco or not, and terminating the investigation concerning possible circumvention of the countervailing measures imposed by Implementing Regulation (EU) 2020/776 on imports of GFF originating in Egypt by imports of GFF consigned from Morocco, whether declared as originating in Morocco or not (OJ 2022 L 46, p. 31; 'the contested implementing regulation').

58 Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016 L 176, p. 55; 'the basic anti-subsidy regulation').

59 Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ 2020 L 189, p. 1).

concluded between the European Union and the Kingdom of Morocco. [60] The applicant also disputes the findings as to the lack of economic justification for the establishment of the applicant's production site in Morocco other than the imposition of the countervailing duties, disputes the classification of the manufacturing process implemented by the applicant in Morocco as an 'assembly operation', and disputes the findings regarding the inclusion of such an assembly operation as one of the circumvention practices under Article 23 of the basic anti-subsidy regulation.

Findings of the Court

The association agreement and the possibility of applying the anti-circumvention rules laid down in Article 23 of the basic anti-subsidy regulation

In the first place, the Court examines whether the Commission was entitled to rely on the anti-circumvention rules laid down in Article 23 of the basic anti-subsidy regulation in order to extend the countervailing duties imposed on imports of GFF from China to imports of like products from Morocco, disregarding the fact that the European Union signed an association agreement with Morocco.

The association agreement and Article 23 of the basic anti-subsidy regulation are two instruments of EU trade policy with different aims and rationales. The first is an instrument of cooperation designed to promote the free movement of goods from Morocco within the European Union by eliminating, inter alia, customs duties and charges having equivalent effect. The second is a trade defence instrument designed to sanction unfair commercial practices liable to undermine the effectiveness of anti-subsidy measures already in force in relation to third countries by allowing the institutions, under certain conditions, to extend those anti-subsidy measures to imports of like products from, inter alia, another country, in order to prevent circumvention of the anti-subsidy measures.

In the present case, taking the view that the PGTEX Group had used the territory of Morocco in order to circumvent the countervailing duty imposed on Chinese imports of GFF, the Commission extended, by the contested implementing regulation, the countervailing duty to GFF consigned from Morocco. That duty thus extended, the sole purpose of which is to ensure the effectiveness of the countervailing duty imposed on the People's Republic of China, cannot be distinguished from the latter duty, to which it is ancillary. Thus, by the contested implementing regulation, the Commission targets the Chinese undertakings in the PGTEX Group in order to prevent them from using the territory of Morocco to avoid the countervailing duty imposed on Chinese imports of GFF.

In that regard, the Court observes that the association agreement concluded between Morocco and the European Union does not prevent the latter from using anti-circumvention measures to counter conduct such as that described above, provided that all the conditions for the application of Article 23 of the basic anti-subsidy regulation are satisfied. A different reading would be liable to deprive the European Union of a trade defence instrument which is crucial for ensuring effective protection of EU industry and might transform Morocco into a 'free zone', in which commercial operators could carry out any kind of operations to circumvent anti-subsidy measures, which would be contrary to the mutual commitments made by Morocco and the European Union under that agreement.

Therefore, according to the Court, the Commission did not err in using the anti-circumvention rules laid down in Article 23 of the basic anti-subsidy regulation.

The assessment of the conditions for the application of Article 23 of the basic anti-subsidy regulation in the present case

In the second place, the Court notes that, in accordance with Article 23(3) of the basic anti-subsidy regulation, four conditions are necessary in order to establish the existence of circumvention. First, there must be a change in the pattern of trade between a third country and the European Union or between individual companies in the country subject to measures and the European Union. Second, that change must stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the countervailing duty. Third, there must be evidence of injury to EU industry or that the remedial effects of the anti-subsidy duty are being

60 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 2000 L 70, p. 2), as amended ('the association agreement').

undermined in terms of the prices or quantities of the like product. Fourth, the imported like product and/or parts thereof must still benefit from the subsidy.

In the present case, after finding that the increase in exports of GFF from Morocco to the European Union constitutes a change in the pattern of trade between them, the Commission analysed the second condition necessary to establish the existence of circumvention as regards the establishment of the applicant's production site in Morocco.

In that regard, the Court finds, first, that the Commission did not err in concluding that there was insufficient due cause or economic justification for the establishment of a GFF production site in Morocco other than a desire to circumvent the countervailing duties in force.

The establishment of that production site was finalised in October 2019, that is, five months after the initiation of the anti-subsidy investigation which led to the imposition of countervailing duties on Chinese imports of GFF.

The existence of such a coincidence in time between the initiation of the anti-subsidy investigation and the establishment of the applicant's production site in Morocco is, according to the case-law, capable of justifying the presumption that the purpose of the establishment of a production factory in the country from which the goods are exported is to avoid the application of trade policy measures.

Where there is such a coincidence in time, it is for the economic operator concerned to prove that there were reasonable grounds, other than a desire to avoid the consequences of the measures in question, for establishing a production site in the country from which the goods are exported. Thus, it was for the applicant to prove that there was a due cause and economic justification for the establishment of its production site in Morocco other than to avoid the anti-subsidy measures at issue; the applicant did not do in the present case.

Furthermore, the applicant is wrong to claim that the Commission failed to fulfil its obligation to examine carefully and impartially all the relevant aspects of the case, since the Commission carried out a correct analysis of the evidence adduced by the applicant and was fully entitled to find that that evidence did not succeed in calling into question the Commission's conclusion.

Second, the Commission did not err or infringe Article 23 of the basic anti-subsidy regulation by including the assembly operations, referred to in the fourth subparagraph of Article 13(1) of Regulation 2016/1036, [61] in the practice, process or work liable to constitute circumvention within the meaning of the second subparagraph of Article 23(3) of the basic anti-subsidy regulation, in order to assess whether, in the present case, circumvention of the anti-subsidy measures in force was taking place.

In that regard, the Court notes that assembly operations do not expressly appear in the second subparagraph of Article 23(3) of the basic anti-subsidy regulation, which, as with the fourth subparagraph of Article 13(1) of the basic anti-dumping regulation, defines possible circumvention practices. However, the lack of such a reference does not mean that the EU legislature intended to exclude assembly operations from the scope of that article.

That provision sets out a non-exhaustive list of possible circumvention practices. It therefore can also cover other circumvention practices which are not expressly listed in the article in question, such as assembly operations.

That interpretation is not only supported by the case-law according to which the fourth subparagraph of Article 13(1) of the basic anti-dumping regulation does not contain an exhaustive list of possible circumvention practices, but is also consistent with the underlying objective of that provision, namely to ensure the effectiveness of the anti-subsidy measures in force.

That being so, the Commission did not err or infringe Article 13 of the basic anti-dumping regulation in concluding that the GFF manufacturing process carried out in Morocco is a completion operation, which falls within the concept of 'assembly operation' within the meaning of that provision.

---

61 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the basic anti-dumping regulation'). The fourth subparagraph of Article 13(1) of that regulation defines the practice, process or work liable to constitute circumvention.

In the present case, the Court carries out a textual, contextual and teleological analysis of the provision concerned, in order to determine whether the concept of 'assembly operation' must, as the Commission argues, be given a broad interpretation capable of encompassing completion operations or, as the applicant suggests, be interpreted strictly, to the effect that completion operations do not fall within the concept of an 'assembly operation'.

In that regard, the Court notes that the basic anti-dumping regulation does not define the concept of 'assembly operation' or that of 'completion operation'. Nor does it specify whether the latter operations are included within the concept of 'assembly operation'.

As regards the context, completion operations are not among the practice, process or work liable to constitute circumvention within the meaning of Article 13(1) of the basic anti-dumping regulation. However, Article 13(2)(b), [62] which sets out the conditions under which an assembly operation is considered to circumvent the measures in force, refers to 'completion'. Such a reference suggests that completion operations can be interpreted as being a type of assembly operations.

Such an interpretation is, first, consistent with the underlying objective of the EU rules on circumvention, namely to ensure the effectiveness of anti-subsidy measures adopted by the European Union and to prevent circumvention of those measures, and, second, is supported by the fact that the legislature left a broad margin of discretion to the EU institutions as regards the definition of circumvention operations.

Lastly, the circumstances referred to by the applicant, such as the complexity of the process of manufacturing GFF, have no bearing on the classification of the process of manufacturing GFF in Morocco as an assembly or completion operation. In order for an assembly operation to constitute circumvention, Article 13(2) of the basic anti-dumping regulation refers to the proportion of parts used originating in the country subject to measures, and refers to the value added to those parts by the operation in question.

Third, as regards the determination of the value added by the assembly operations, for the purposes of Article 13(2)(b) of the basic anti-dumping regulation, the Commission did not make a manifest error of assessment or infringe that provision by making adjustments to the depreciation costs, as calculated by the applicant, by taking into account the actual capacity utilisation rate during the reference period and by disregarding the three other methods for calculating the value added that were proposed by the applicant.

In that regard, the Court notes that it is apparent both from the context and from the objective of Article 13 of the basic anti-dumping regulation that, in order to determine the value added by the assembly operations, it is necessary to take into account only the costs which relate to the actual production of GFF, or only the depreciation and rental costs which relate to the operation of the machines that were actually used to produce the parts actually brought in during the reporting period.

In the present case, the applicant provided the Commission with depreciation costs calculated on the basis of the theoretical maximum operation of all its machines. Taking the view that those depreciation costs and the rental costs could not credibly reflect the value added to the parts brought in, the Commission made the necessary adjustments. To that end, it used the capacity utilisation rate as provided by the applicant and not disputed by the latter.

Since both the depreciation cost, calculated by the applicant on the basis of the theoretical maximum capacity of its machines, and the capacity utilisation were calculated on the basis of the same number of GFF machines, as if the latter had been in operation throughout the reporting period, using one to adjust the other does not constitute an error of fact.

62 Under that provision, an assembly operation in the European Union or a third country is considered to circumvent the measures in force where: '(b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost'.

As regards the other methods, for calculating the value added, which the applicant proposed to the Commission, the latter rightly considered that they would not have provided a more accurate reflection of the value added to the parts brought in.

Fourth, the Commission did not infringe the principles of non-discrimination and equal treatment by making the abovementioned adjustments to determine the value added, even though, when calculating the injury margin, it did not adjust the production costs of the Union industry, despite a finding that there had been a low level of production capacity utilisation.

The taking into account of the production costs in order to calculate the injury margin of the Union industry due to dumped imports and the taking into account of production costs in order to calculate the value added to the parts brought in during an assembly or completion operation, in order to ascertain whether anti-dumping measures are being circumvented, take place in a different context and for different purposes. The applicant should have explained how, by taking those costs into account differently, the Commission could have infringed the principles of non-discrimination and equal treatment; the applicant did not do in the present case.

Since the Commission examined carefully and impartially all the relevant aspects of the case and adjusted the costs by taking into consideration the applicant's explanations concerning the use of the machinery and the rental costs, the Court also rejects the complaint alleging infringement of the right to good administration.

As regards the fourth condition, the Commission established that, since glass fibre rovings, namely the raw material for GFF, benefited from a number of subsidies in China and those rovings were assembled or completed in Morocco by the applicant in order to produce its own GFF, the GFF exported from Morocco to the European Union continued to benefit from the subsidies granted to Chinese producers of GFF.

In that regard, the Court finds, first of all, that the applicant cannot claim that the assessments made by the Commission when imposing countervailing duties on imports of GFF from China are valid only in so far as they concern those products and not the raw material used to produce them, since the Commission concluded, without being contradicted by the applicant, that the subsidies granted by the Chinese authorities benefited all of the production of the entire PGTEX Group, whether in respect of the GFF or their raw material.

Next, by the contested implementing regulation, the Commission seeks not to countervail subsidies granted by Morocco, but to ensure that the countervailing measures established in respect of Chinese imports of GFF are not circumvented.

Lastly, the Commission was fully entitled to rely on the legal presumption that subsidies are passed through where there are related companies, in particular when the downstream company assembled the final product and exported it to the European Union, in order to find that the fourth condition was met in the present case. The Commission demonstrated, first, that the raw material used in the production of GFF had been subsidised and, second, that the sales prices charged to the applicant were always lower than the sales prices charged to unrelated customers.

The use of the facts available

In the last place, the Court examines the plea by which the applicant complains that the Commission infringed Article 28 of the basic anti-subsidy regulation in that it used the facts available, even though the applicant had provided the information requested by the Commission.

In accordance with the first paragraph of that provision, the Commission may, during its anti-subsidy investigation, use the facts available to the detriment of the facts which are specific to one or more of the interested parties, in the event that an interested party refuses access to, or otherwise does not provide, necessary information or significantly impedes the investigation.

In the present case, it is apparent from the contested implementing regulation that the Commission used the data submitted by the applicant concerning sales and costs as a starting point for its analysis. It also used statistical data to rectify the unreliability of the information provided by the applicant as regards the volumes of export sales to the European Union and to determine whether there had been a change in the pattern of trade, which the applicant does not dispute. However, the Commission did not use the facts available to prove the existence of an assembly or completion.

Consequently, the Court rejected that plea as ineffective.

In the light of all of those considerations, the Court dismisses the action in its entirety.

VIII. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the General Court (Fifth Chamber), 18 December 2024, Mironovich Shor v Council, T-489/23

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 – Restriction on entry into the territories of the Member States – Lists of persons, entities and bodies subject to the freezing of funds and economic resources or to restrictions on entry into the territories of the Member States – Inclusion and maintenance of the applicant's name on the lists – Planning and directing violent demonstrations – Article 1(1)(a)(ii) and Article 2(1)(a)(ii) of Decision (CFSP) 2023/891 and Article 2(3)(a)(ii) of Regulation (EU) 2023/888 – Obligation to state reasons – Plea of illegality – Error of assessment – Freedom to conduct a business – Right to property – Non-contractual liability

By its judgment, the General Court dismisses the action for annulment brought by Ilan Mironovich Shor against the acts by which, in 2023 [63] the Council of the European Union included, and subsequently in 2024 [64] retained, 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 rule, for the first time, on the lawfulness of the listing criterion which allows the Council to adopt restrictive measures against persons who plan, direct or engage in violent demonstrations or other acts of violence, set out in Article 1(1)(a)(ii) and Article 2(1)(a)(ii) of Decision 2023/891 [65] ('criterion (ii)'). It is also the first judgment, delivered in the context of the restrictive measures introduced in view of the situation in the Republic of Moldova, in which the Court examines the merits of the case.

In the face of the destabilising actions with which the Republic of Moldova was confronted, restrictive measures were adopted by the European Union for the first time in April 2023. In particular, they target persons responsible for actions or policies which undermine or threaten the sovereignty and independence of that third country, as well as democracy, the rule of law, stability or security in that country, or who support or carry out those actions. [66]

The applicant, a politician and businessman of Moldovan and Israeli nationality, had his funds and economic resources frozen inter alia on account of his role in directing and planning violent demonstrations. In that regard, the Council alleged that the applicant was involved in inciting violence against the current government of the Republic of Moldova and supporting pro-Russian activity in that country.

Findings of the Court

In the first place, as regards criterion (ii) the Court states that the Council set out in a comprehensible and unequivocal manner the specific and concrete reasons why it considered that the

63 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).

64 Council Decision (CFSP) 2024/1244 of 26 April 2024 amending Decision (CFSP) 2023/891 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ L 2024/1242) and Council Implementing Regulation (EU) 2024/1243 of 26 April 2024 implementing Regulation (EU) 2023/888 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ L 2024/1243).

65 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).

66 See Article 1(1) of Decision 2023/891 and Article 2(3) of Council Regulation 2023/888 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova (OJ 2023 L 114, p. 1).

demonstrations directed and planned by the applicant rendered him responsible for actions which undermined and threatened the sovereignty and independence of the Republic of Moldova and democracy, the rule of law, stability and security in that State. Therefore, and also taking into account the context in which the acts were adopted, the Court dismisses the plea alleging breaches of the obligation to state reasons.

In the second place, the Court also dismisses as unfounded the plea alleging illegality of Decision 2023/891 and Regulation 2023/888.

In that regard, first of all the Court considers that criterion (ii) could be introduced into the EU legal order by Decision 2023/891 and Regulation 2023/888, based, respectively, on Article 29 TEU and Article 215(2) TFEU. In the light of the aim and content of Decision 2023/891, that decision is directly linked to the aims of the Common Foreign and Security Policy (CFSP) set out in Article 21(2)(b) TEU in that it seeks to consolidate and support democracy and the rule of law in the Republic of Moldova. In those circumstances, the planning and direction of, or engagement in, violent demonstrations or other acts of violence can justify action by the European Union under the CFSP based on the objective of consolidating and supporting democracy and the rule of law in a third country. The Court states that violent demonstrations are liable to undermine the legal and institutional foundations of the country concerned and that they are not covered by the fundamental right to freedom of peaceful assembly guaranteed by Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [67] and by Article 12(1) of the Charter of Fundamental Rights of the European Union.

Next, the Court considers that the category of persons potentially targeted by restrictive measures based on criterion (ii) is not disproportionate. For restrictive measures to be adopted on the basis of that criterion, the actions of the person concerned must be liable to undermine or threaten the sovereignty and independence of the Republic of Moldova, or democracy, the rule of law, stability or security in that State. In other words, the actions must be such as to undermine the legal and institutional foundations of that country. Thus, restrictive measures cannot be adopted against persons responsible for planning, directing or engaging in demonstrations covered by the right to freedom of peaceful assembly.

Lastly, the Court holds that the Council did not make an error of assessment in considering that the violent demonstrations directed and planned by the applicant rendered him responsible for actions which undermined or threatened democracy and the rule of law in the Republic of Moldova.

In that regard, the Court finds, first of all, that the grounds of the contested acts are sufficiently substantiated to establish, first, that the applicant took part in the training of persons with a view to causing disorder and unrest at demonstrations in the Republic of Moldova and, second, that his party planned violent demonstrations and gatherings, mainly in the capital Chișinău, with the assistance of paid demonstrators in 2022 and 2023. Several items of evidence show in a concrete, precise and consistent manner that a large number of persons were selected and remunerated by the applicant's party to take part in the demonstrations at issue. It follows in particular that the applicant's intention was to involve in those demonstrations, in return for remuneration, certain persons with a particular profile capable of causing disturbances and unrest at them, with a view to intimidating the government. To that extent, it cannot be held that those persons intended to exercise their right to freedom of peaceful assembly by taking part in the demonstrations in order to express their personal convictions and opinions.

The Court also observes that the violent demonstrations at issue were organised in the interest and with the assistance of the Russian Federation and therefore formed an integral part of the actions to destabilise the Moldovan Government to which the restrictive measures at issue were intended to respond.

Lastly, the Court considers that, despite the fact that the Council did not adduce evidence that the applicant had planned, directed or engaged in, directly or indirectly, in violent demonstrations or other acts of violence since his name was entered on the lists at issue, the mere dissolution of the

67 Signed in Rome on 4 November 1950.

applicant's party is not sufficient to render obsolete the restrictive measures adopted against him, as the Council found that there was still a threat to democracy and the rule of law and the stability and security in the Republic of Moldova.

The Court notes in that regard that the planning of violent demonstrations does not depend on the existence of the political party of which the applicant was president.

Furthermore, the fact that the grounds for including the applicant's name on the lists at issue refer to a factual situation which existed before the adoption of the initial acts and which was recently modified does not necessarily mean that the restrictive measures adopted against him by those acts are obsolete. That interpretation is borne out by the second paragraph of Article 8 of Decision 2023/891 and by Article 13(4) of Regulation 2023/888. Those provisions permit the retention on the lists at issue of the names of persons and entities who have not committed any act to destabilise the Republic of Moldova during the period preceding the review if that retention is still justified in the light of all the relevant circumstances and, in particular, of the fact that the objectives pursued by the restrictive measures have not been achieved.

Moreover, the applicant created a new political formation immediately after the dissolution of his party and the links between the applicant and the Russian Federation did not disappear solely on account of the dissolution of his party in June 2023.

Consequently, the context which justified the initial inclusion of the applicant's name on the lists at issue has not changed in such a way as to prevent the Council from retaining the applicant's name on those lists pursuant to criterion (ii) by relying on the same evidence as that which justified the initial inclusion of his name.

In the light of the foregoing, the Court dismisses the applicant's action for annulment and, in the absence of evidence of the existence of actual and certain damage, his claim for damages.

IX. BUDGET AND SUBSIDIES OF THE EUROPEAN UNION: GRANT AGREEMENT

Judgment of the General Court (Tenth Chamber, Extended Composition), 11 December 2024, UIV Servizi v REA, T-440/22

Link to the full text of the judgment

Arbitration clause – Grant agreement concerning the project TTD.EU ('European Quality Wines: Taste the Difference') – Information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries – Suspension of the grant agreement – Suspicion of fraud in the context of a criminal investigation relating to another grant agreement – Contractual liability

The General Court, before which an action had been brought under Article 272 TFEU, pursuant to an arbitration clause, rules on the novel issue of the validity of the decision of the European Research Executive Agency (REA) to suspend the TTD.EU grant agreement [68] ('the contested decision'). By its judgment, the Court declares invalid the contested decision, finds that there is no longer any need to adjudicate on the claim that the REA should be ordered to lift the suspension of the TTD.EU grant agreement and dismisses the claim for damages, which was also brought before it.

In December 2019, following a call for proposals for grants for information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries, the applicant, the Italian association Unione Italiana Vini Servizi Soc. coop. arl (UIV Servizi), concluded the TTD.EU grant agreement with the Consumers, Health, Agriculture and Food Executive Agency (Chafea). From April 2021, the REA was entrusted with the implementation of the actions carried out by Chafea.

In May 2021, criminal proceedings were brought at national level, in Italy, against the applicant's Chief Executive Officer and Chief Financial Officer for suspected fraud in the context of a grant agreement coordinated by the applicant, other than the TTD.EU grant agreement ('the Italian criminal investigation'). In July 2021, the applicant informed the REA that the Guardia di Finanza di Milano (Milan Financial Police, Italy) had carried out an audit of the applicant in the context of that criminal investigation. Thereafter, in August 2021, the applicant and the person in charge of the TTD.EU grant agreement at the REA held a meeting. During that meeting, the person in charge at the REA observed that, since the Italian criminal investigation related to a different grant agreement, the TTD.EU grant agreement could continue to be implemented as normal, without it being necessary to take any measures in relation to that implementation.

In January 2022, the European Anti-Fraud Office (OLAF) informed the REA that it had opened, in December 2021, an investigation concerning allegations of fraud and other irregularities in the implementation of grant agreements concluded by the applicant, which included the TTD.EU grant agreement.

A month later, the REA informed the applicant, by pre-information letter, of its intention to suspend the TTD.EU grant agreement. After having rejected the applicant's observations, the REA confirmed, in May 2022, its intention to suspend the TTD.EU grant agreement by way of the contested decision, on the basis of Article 33.2.1(a) of that agreement, in order to protect the financial interests of the European Union. In accordance with that article, the REA may suspend the implementation of the action of the grant agreement 'if … a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed or is suspected of having committed … substantial errors, irregularities or fraud, or … serious breach of obligations under this Agreement …'. In those

68 Grant Agreement No 874904 for the purpose of carrying out a project entitled 'European Quality Wines: Taste the Difference – TTD.EU', aimed at promoting Italian and Spanish wines on the Chinese and United States markets ('the TTD.EU grant agreement').

circumstances, the applicant brought an action before the Court asking it to (i) declare invalid the contested decision; (ii) order the REA to lift the suspension of the TTD.EU grant agreement; and (iii) order the REA to pay it compensation for the pecuniary and non-pecuniary damage which it has suffered.

After that action had been brought, the OLAF investigation was closed in December 2022. On the basis of the findings of that investigation, OLAF had then sent the REA financial recommendations, the implementation of which, as regards the TTD.EU grant agreement, had not given rise, on the date of the hearing, to implementing measures.

Subsequently, the REA lodged an application for a declaration that there is no need to adjudicate, in which it informed the Court of the fact that the suspension of that agreement had been lifted. Following the reopening of the oral part of the procedure, the applicant lodged its observations regarding that application for a declaration that there is no need to adjudicate, to which it was opposed.

Findings of the Court

In the first place – after having, first, recalled the relevant provisions, both of EU law and of Belgium civil law, governing the contract in which the arbitration clause is included in the present case and, second, dismissed the REA's application for a declaration that there is no need to adjudicate, in so far as, by its action, the applicant seeks to obtain a ruling from the Court in the dispute between it and the REA concerning the application of the TTD.EU grant agreement and a declaration that the decision to suspend that agreement is invalid – the Court considers the validity of the contested decision. To do so, it interprets Article 33.2.1 of the TTD.EU grant agreement.

First, as regards the wording of Article 33.2.1(a)(i), the Court finds that the applicant's Chief Executive Officer and Chief Financial Officer, who were the subject of the Italian criminal investigation for suspicious of fraud linked to the implementation of a different grant agreement, are natural persons who have the power to represent or take decisions on behalf of the applicant. In the present case, the Chief Financial Officer signed both the TTD.EU grant agreement and the grant agreement at issue in the Italian criminal investigation, on behalf of the applicant, and the Chief Executive Office signed, on behalf of the applicant, the letter of interim assignment for the implementation of actions linked to the TTD.EU grant agreement. Accordingly, the Court notes that the suspicions of fraud concerning the applicant's Chief Executive Officer and Chief Financial Officer could, in principle, justify the suspension of the TTD.EU grant agreement, in so far as they are authorised to represent or take decisions on behalf of the applicant.

Next, the Court determines whether the REA was entitled to classify those natural persons as 'persons suspected of having committed fraud' within the meaning of Article 33.2.1(a)(i), thus justifying the suspension of the agreement. In that regard, it notes that that article refers in a general manner to the suspicions of having committed 'substantial errors, irregularities or fraud', without specifying the origin or source of such suspicions. Accordingly, the existence of a criminal investigation based on suspicions of fraud, as in the present case, may constitute, in principle, a source of 'suspected fraud' within the meaning of Article 33.2.1(a)(i) of the TTD.EU grant agreement.

Lastly, the Court addresses the question of whether the REA could, by adopting the contested decision, suspend the TTD.EU grant agreement pursuant to Article 33.2.1(a)(i) thereof, despite the fact that the suspicions of fraud against the applicant's Chief Executive Officer and Chief Financial Officer arose from the Italian criminal investigation concerning a different grant agreement. In that regard, the Court undertakes a detailed interpretation of points (a) and (b) of Article 33.2.1, in the light of, inter alia, the provisions of the Belgian Civil Code.

As regards Article 33.2.1(a), the Court states that point (a)(i) does not contain any reference to the TTD.EU grant agreement, with the result that suspicions of fraud relating to the performance of a different agreement could justify the suspension of the TTD.EU grant agreement. However, point (a)(ii) does contain such a reference. Furthermore, in accordance with Article 33.2.1(b), the REA may suspend the implementation of the grant agreement 'if … a beneficiary (or a natural person who has the power to represent or take decisions on its behalf) has committed – in other EU or Euratom grants awarded to it under similar conditions – systematic or recurrent errors, irregularities, fraud …'. Thus, a reading of Article 33.2.1(a)(i) that suspicions of fraud concerning a different agreement could justify

the suspension of the TTD.EU grant agreement would effectively deprive Article 33.2.1(b) of any practical effect.

Consequently, the Court holds that, by deciding to suspend the TTD.EU grant agreement on account of the fact that the applicant's Chief Executive Officer and Chief Financial Officer were suspected of fraud in the context of a different grant agreement, the REA infringed Article 33.2.1(a)(i) of the TTD.EU grant agreement, making that decision invalid.

In the second place, since the suspension of the TTD.EU grant agreement had in the meantime been lifted, the Court found that there was no longer any need to adjudicate on the claim that the REA should be ordered to lift the suspension.

In the third place, as regards the claim for damages, after having held that it is necessary to give a ruling on that claim, despite the fact that the suspension of the TTD.EU grant agreement had been lifted, the Court notes that, according to the Belgian Civil Code, three cumulative conditions must be satisfied in order for damage of contractual origin to be compensated, namely non-performance of the contract, harm and a causal link between the non-performance and the harm.

It is true that the Court observes that the REA decided, by the contested decision, to suspend the TTD.EU grant agreement, in breach of Article 33.2.1(a)(i) thereof. However, it considers that, although it is indeed likely that, following the suspension of the TTD.EU grant agreement, the applicant probably had to suspend or cancel certain events scheduled for the implementation of the agreement, nevertheless it does not prove that the pecuniary damage which it alleges actually materialised in the present case. Nor does the applicant prove the non-pecuniary damage, in the form of damage to its reputation and image, which it claims to have suffered.