COURT OF JUSTICE
OF THE EUROPEAN UNION

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# MONTHLY CASE-LAW DIGEST
# February 2025


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# I. VALUES OF THE UNION: RULE OF LAW – JUDICIAL INDEPENDENCE

**Judgment of the Court of Justice (Grand Chamber), 25 February 2025, Sąd Rejonowy w Białymstoku and Adoreikė, C-146/23 and C-374/23**

Link to the full text of the judgment

References for a preliminary ruling – Freezing or reduction of remuneration in the national public administration – Measures specifically aimed at judges – Article 2 TEU – Article 19(1), second subparagraph, TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Obligations on Member States to provide remedies sufficient to ensure effective judicial protection – Principle of judicial independence – Powers of the legislatures and executives of the Member States to set the detailed rules for determining judges' remuneration – Possibility of derogating from those rules – Conditions

Hearing two references for a preliminary ruling, one from the Sąd Rejonowy w Białymstoku (District Court, Białystok, Poland) (C-146/23) and the other from the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) (C-374/23), the Court of Justice, sitting as the Grand Chamber, clarifies, in the context of disputes relating to the remuneration of judges in Poland and Lithuania, its case-law relating to the principles of judicial independence and effective judicial protection arising from the second subparagraph of Article 19(1) TEU.

Case C-146/23 concerns the Polish legislation which, in order to limit budgetary expenditure, has the effect of derogating from the mechanism for determining the annual basic salary of judges provided for by the Law on the organisation of the ordinary courts ('the Law') and of leading to a reduction in judges' salaries. Judge XL performs his duties at the Sąd Rejonowy w Białymstoku (District Court, Białystok), which is the referring court. He brought an action before that court, seeking payment of the sum, together with statutory default interest, which he would have received if his remuneration had been calculated in accordance with the Law for the period from 1 July 2022 to 31 January 2023.

The referring court, as XL's employer, considers that it is not entitled to disapply the contested derogating measures. However, it considers that the sustained 'freezing' of the uprating of the judges' remuneration and the de facto abandonment in 2023 of the mechanism for determining judges' remuneration, as provided for in the Law, undermines the principle of judicial independence. In that regard, the case-law resulting from the judgments in *Associação Sindical dos Juízes Portugueses* and *Escribano Vindel* [1] does not seem to it to be transposable to the present case, inasmuch as the derogation from the mechanism for determining judges' remuneration is permanent, and not temporary, and is primarily aimed at judges, which was not true of those aforementioned cases.

Case C-374/23 concerns the Lithuanian legislation which reserves to the legislature and the executive the right to set the amount of judges' remuneration. The judges SR and RB, who perform their duties at an apygardos teismas (Regional Court, Lithuania), brought an action for damages against the Republic of Lithuania before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius), which is the referring court. They submit that the discretion enjoyed by the legislature

[1] In its judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117), and of 7 February 2019, *Escribano Vindel* (C-49/18, EU:C:2019:106), the Court held, in essence, that the principle of judicial independence does not preclude Member States, in order to eliminate excessive budget deficits, from taking measures to reduce the remuneration of all public office holders and employees performing duties in the public sector, including those working in the legislative, executive and judicial arms of the State. Those measures, which did not target or single out members of the judiciary for special treatment, were, moreover, temporary and provided for a limited reduction in the amount of their remuneration.

and the executive of that Member State in order to determine judges' remuneration fails to observe the principle of judicial independence.

In that context, the referring court notes that it follows from the case-law of the Court [2] that judicial independence means that the remuneration of national judges must not be determined arbitrarily by the executive and the legislature and that the level of judges' remuneration must be commensurate with the importance of the functions they carry out. However, it has doubts as to whether the detailed rules for determining the remuneration of judges such as SR and RB are consistent with the principle of judicial independence, which follows, in particular, from Article 2 and the second subparagraph of Article 19(1) TEU. It points out, in that regard, the difference between the amount of a lawyer's hourly salary and the amount of the gross hourly remuneration of a judge of a regional court, excluding the seniority allowance, which would constitute discrimination to the detriment of those judges as compared to lawyers in similar professions.

*Findings of the Court*

The Court specifies the conditions under which the principle of judicial independence does not preclude the legislature and the executive of a Member State, first, from determining judges' remuneration and, second, from derogating from the national legislation, which objectively defines the detailed rules for determining judges' remuneration, by deciding to increase that remuneration less than provided for by that legislation, or even to freeze or reduce the amount of that remuneration.

In that regard, the Court states that no provision of EU law requires Member States to adopt a particular constitutional model governing the relationships and interaction between the various branches of the State, in particular as regards the definition and delimitation of their competences. Under Article 4(2) TEU, the European Union must respect the national identities of the Member States, inherent in their fundamental political and constitutional structures. However, in choosing their respective constitutional model, the Member States are required to comply with their obligations deriving from EU law.

Indeed, although the organisation of justice in the Member States falls within the competence of those States, the fact remains that, when exercising that competence, the Member States are nonetheless required to comply with their obligations deriving from EU law and, in particular, from Article 2 and the second subparagraph of Article 19(1) TEU. That is the case especially where they lay down the detailed rules for determining judges' remuneration.

Article 19 TEU entrusts the responsibility for ensuring the full application of EU law in all Member States and the judicial protection that individuals derive from EU law to national courts and tribunals and to the Court of Justice. To that end, maintaining the independence of those bodies is essential. The requirement that courts be independent forms part of the essence of the fundamental right to effective judicial protection and to a fair hearing.

The concept of the independence of the courts presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The receipt by the members of the body concerned of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence. [3]

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2 Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, cited above.

3 Judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (paragraphs 44 and 45), and of 7 February 2019, *Escribano Vindel* (paragraph 66), cited above.

More specifically, in accordance with the principle of the separation of powers which characterises the operation of the rule of law, the independence of the judiciary must be ensured in relation to the legislature and the executive. [4]

That said, the mere fact that the legislature and the executive of a Member State are involved in determining judges' remuneration is not, in itself, such as to create a dependence of those judges on the legislature or executive or to give rise to doubts as to the independence or impartiality of the judges. The broad discretion enjoyed by Member States, when drawing up their budgets and deciding between the various items of public expenditure, includes determining the method of calculation, in particular, of the judges' remuneration. The national legislature and executive are indeed best placed to take into account the particular socio-economic context of the Member State in which that budget must be drawn up and judicial independence guaranteed.

However, the national rules on judges' remuneration must not give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them.

In that respect, as regards, in the first place, the detailed rules for determining judges' remuneration, in accordance with the principle of legal certainty, it is important, first, that those detailed rules be determined by law. Furthermore, the principle of judicial independence requires that the detailed rules for determining judges' remuneration be objective, foreseeable, stable and transparent, so as to exclude any arbitrary intervention by the legislature and the executive of the Member State concerned.

Second, the receipt by judges of remuneration at a level commensurate with the importance of the functions they carry out constitutes a guarantee essential to their independence.

In that regard, the level of remuneration of judges must be sufficiently high, in the light of the socio-economic context of the Member State concerned, in order to confer on them a certain economic independence to protect them against any external interference or pressure that might undermine the neutrality of the judicial decisions they must take. [5]

The remuneration of judges may, therefore, vary according to seniority and the nature of the functions entrusted to them, but it must always be commensurate with the importance of the functions they carry out.

In order to assess whether judges' remuneration is adequate, account must be taken not only of the ordinary basic salary but also of the various bonuses and allowances that judges receive, [6] of any exemption from social security contributions as well as of the economic, social and financial situation of the Member State concerned. It is, therefore, appropriate to compare the average remuneration of judges to the average salary in that State.

Third, the detailed rules for determining judges' remuneration must be capable of being subject to effective judicial review in accordance with the procedural rules laid down by the law of the Member State concerned.

In the second place, as regards the possibility, for the legislature and the executive of a Member State, of derogating from national legislation, which objectively defines the detailed rules for determining judges' remuneration, by deciding to increase that remuneration by less than is provided for by that

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4 Judgments of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 124); of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraph 54); and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)* (C-430/21, EU:C:2022:99, paragraph 42).

5 Judgment of 7 February 2019, *Escribano Vindel* (cited above, paragraphs 70, 71 and 73).

6 In particular in respect of their seniority or the duties entrusted to them.

legislation or even to freeze or reduce the amount of that remuneration, the adoption of such derogating measures must itself also satisfy a number of requirements.

First, such a derogating measure must, like the general rules on the determination of judges' remuneration from which it derogates, be provided for by law, and the detailed rules for the remuneration of judges which that measure determines must be objective, foreseeable and transparent.

Second, that derogating measure must be justified by an objective of general interest, such as a requirement to eliminate an excessive government deficit. [7]

The budgetary reasons justifying the adoption of a measure derogating from the rules of ordinary law on judges' remuneration [8] must be clearly set out. In addition, subject to duly justified exceptional circumstances, those measures must not be aimed specifically at members of the national courts alone and must form part of a more general framework seeking to ensure that a wider set of members of the national civil service contribute to the budgetary effort which is being pursued.

Thus, when a Member State adopts budgetary restriction measures affecting its officials and public servants, it may decide to apply those measures also to national judges.

Third, if a derogating measure appears appropriate for the attainment of an objective of general interest, such as the elimination of an excessive government deficit, it must nevertheless remain exceptional and temporary. Furthermore, its impact on judges' remuneration must not be disproportionate to the objective pursued.

Fourth, the preservation of judicial independence requires that, notwithstanding the application to the judiciary of a budgetary restriction measure, and even if such a measure were linked to the existence of a serious economic, social and financial crisis, the level of remuneration of judges is always commensurate with the importance of the functions they carry out, so that they remain shielded from external interventions or pressure liable to jeopardise their independent judgment and to influence their decisions.

Fifth, a derogating measure must be capable of being subject to effective judicial review, in accordance with the procedural rules laid down by the law of the Member State concerned.

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7 Within the meaning of Article 126(1) TFEU. See judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (paragraph 46), and of 7 February 2019, *Escribano Vindel* (paragraph 67), cited above.

8 'A derogating measure'.

# II. PROCEEDINGS OF THE EUROPEAN UNION

## 1. ACTION FOR ANNULMENT

**Order of the General Court (Third Chamber), 3 February 2025, Asociația Inițiativa pentru Justiție v Commission, T-1126/23**

Link to the full text of the order

Action for annulment – Decision 2006/928/EC – Mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption – Decision (EU) 2023/1786 repealing Decision 2006/928 – No direct concern – Inadmissibility

By its order, the General Court dismisses as inadmissible the action for annulment brought by a professional association of Romanian prosecutors against Decision 2023/1786, [9] which repealed Decision 2006/928 [10] that had been adopted on the occasion of Romania's accession to the European Union and had established the CVM. The Court rules, in particular, on the novel question of the relationship between the principle of direct effect and the admissibility condition requiring direct concern to a natural or legal person.

The present case has arisen against the background of a wide-ranging reform in the areas of justice and the fight against corruption in Romania, which had been monitored at EU level since 2007 under the CVM. Decision 2006/928 set out four benchmarks to be addressed by Romania under the CVM, in relation to, inter alia, judicial reform and the fight against corruption ('the benchmarks').

On 15 September 2023, in the light of the progress made by Romania in addressing those benchmarks, the European Commission adopted the contested decision.

The Asociația Inițiativa pentru Justiție, a professional association of prosecutors the purpose of which is to ensure respect for the value of the rule of law in Romania by guaranteeing, inter alia, respect for the rights of prosecutors and their independence, brought an action for annulment against that decision.

The Commission raised a plea of inadmissibility as regards the action, on the ground that the contested decision is not of direct concern to either the applicant or any of its members. The applicant, for its part, has submitted that it has standing to bring proceedings as an association representing the interests of its members who are prosecutors. According to the applicant, the contested decision is of direct concern to those members, since the lifting of the CVM could increase their exposure to disciplinary proceedings.

*Findings of the Court*

As a preliminary point, the Court recalls the three situations in which an action for annulment brought by a natural or legal person under the fourth paragraph of Article 263 TFEU may be declared admissible. Since the contested decision is not addressed to the applicant, the Court examines whether that decision is of direct concern to the applicant or to any of its members.

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9 Commission Decision (EU) 2023/1786 of 15 September 2023 repealing Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2023 L 229, p. 94; 'the contested decision').

10 Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56; 'the CVM').

In that regard, the Court states that actions for annulment brought by associations are admissible in three cases: first, where a legal provision expressly grants associations a series of procedural powers; second, where the association represents the interests of its members, who are themselves entitled to bring proceedings; and, third, where the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the act in respect of which annulment is sought.

In that context, the Court carries out, in the first place, an analysis of the admissibility of the action brought by the applicant acting in its own name.

On that point, the Court finds that the decision does not satisfy the conditions relating to the first and third instances of admissibility of an action for annulment, referred to above. First, no legal provision confers on the applicant any procedural powers to ensure effective judicial protection of prosecutors in the context of the CVM. Second, the fact that it was an interlocutor of the Commission in the context of the CVM is not sufficient to confer on it the status of negotiator in the adoption of the contested decision.

In the second place, the Court rules on the admissibility of the action of the applicant acting on behalf of its members, whose interests it defends. Thus, after recalling the two cumulative conditions which must be met in order for a natural or legal person to be regarded as being directly concerned by a decision against which an action for annulment is brought, [11] the Court examines whether the contested decision is capable of having direct legal effects on the situation of the prosecutors who are members of the applicant.

In that regard, it notes at the outset that, in so far as the contested decision repealed Decision 2006/928, it must be examined in the light of the purpose and content of Decision 2006/928 and the legal and factual context in which Decision 2006/928 was adopted. It follows that the contested decision is capable of having direct legal effects on the situation of the Romanian prosecutors who are members of the applicant only in so far as Decision 2006/928 was itself capable of having such effects.

As regards, first, the purpose of Decision 2006/928 and the context in which it was adopted, the Court points out that that decision's aim was to establish the CVM and set benchmarks in order to complete Romania's accession to the European Union, remedying the deficiencies identified by the Commission prior to that accession, in particular in the areas of justice and the fight against corruption. As regards the purpose and context of the contested decision, that decision is intended to repeal Decision 2006/928, in so far as the Commission considered that Romania had satisfactorily complied with those benchmarks.

Second, as regards the content of Decision 2006/928, that decision imposed the obligation on Romania to address the benchmarks set out in the annex to that decision and to report annually to the Commission on the progress made in that regard. That decision also imposed the obligation on the Commission to draw up reports analysing and evaluating Romania's progress against those benchmarks. As regards the content of the contested decision, that decision is based on the conclusion that Romania had satisfactorily complied with those benchmarks.

Third, the General Court recalls that the Court of Justice specified the legal effects [12] of, first, the benchmarks laid down by Decision 2006/928, by noting that they were binding on Romania and that they had direct effect, and second, the reports drawn up by the Commission on the basis of that

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11 The two cumulative conditions for a measure which is the subject of an action for annulment to be of direct concern to a natural or legal person require, first, that the measure at issue must directly affect the legal situation of the person, and second, that it must leave no discretion to its addressees who are entrusted with the task of implementing it.

12 Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393).

decision, by pointing out that Romania had to take due account of the requirements and recommendations made by the Commission in those reports.

According to the General Court, it is unequivocally clear from the analysis of the purpose, content and context of Decision 2006/928 that that decision merely imposed on Romania the obligation to take the necessary measures, having regard, inter alia, to the recommendations made by the Commission in its reports, for the purpose of addressing the benchmarks. Therefore, that decision did not confer any rights on the applicant's members, with the result that it cannot be regarded as directly affecting their legal situation.

In support of that conclusion, the General Court observes, first of all, that the fact that the Court of Justice recognised the direct effect of the benchmarks referred to in Decision 2006/928 cannot imply, per se, that those benchmarks necessarily entail corresponding rights for prosecutors, on which they could rely directly before the national courts in order to challenge, in particular, illegitimate disciplinary actions. The Court of Justice has recognised the direct effect of the benchmarks, not within the meaning of the case-law arising from the judgment in van Gend & Loos (26/62), [13] but from the perspective that the principle of direct effect includes also the obligation for national courts to disapply any national legislation or case-law that is contrary to EU law.

The General Court states, moreover, that the direct effect of the benchmarks cannot mean that individuals may challenge the removal of those benchmarks without demonstrating that that removal in itself has a direct and individual effect on their legal situation, a demonstration which is lacking in the present case.

Next, after recalling that the question whether an individual is directly concerned by an EU measure which was not addressed to him or her is to be examined in the light of the purpose and legal framework of the measure at issue, the Court finds that it is apparent from the provisions of Decision 2006/928 that its effects were confined to relations between the European Union and Romania, without individuals, including prosecutors, being the subject of that decision, either directly or indirectly.

Lastly, the Court states that, while, in certain situations, the discretion available to Member States when implementing a provision of an EU act might not, as such, be sufficient to lead to the conclusion that that provision does not have direct effect, the existence of such discretion prevents the first condition of direct concern from being met. In the present case, Decision 2006/928 granted Romania discretion concerning the measures to be adopted, as regards in particular to aspects relating to the organisation of its judicial system.

In the light of the foregoing, the General Court concludes that Decision 2006/928 did not directly affect the legal situation of the applicant's members, and, consequently, that the contested decision also did not do so. Thus, since the prosecutors whose interests the applicant defends do not themselves have standing to bring proceedings, the applicant has also failed to satisfy the conditions for its action to be admissible inasmuch as the applicant represents the interests of its members.

That being so, the Court recalls that, notwithstanding the repeal of Decision 2006/928, prosecutors who are the subject of disciplinary proceedings may still rely on the judicial protection that they derive from EU law under Article 19 TEU.

In the third place, the Court rejects the applicant's claim that the conditions for admissibility of actions for annulment, as laid down in the fourth paragraph of Article 263 TFEU, should be eased. While those conditions must be interpreted in the light of the fundamental right to effective judicial protection, [14] that protection is not intended to change the system of judicial review laid down by the Treaties and

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13 Judgment of 5 February 1963, *van Gend & Loos* (26/62, EU:C:1963:1).

14 Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

cannot have the effect of setting aside the condition of direct concern expressly laid down in the fourth paragraph of Article 263 TFEU. As regards, more specifically, the approach followed by the European Court of Human Rights with regard to the right to a fair trial, [15] in the judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, [16] the General Court recalls that, whilst fundamental rights recognised by the ECHR constitute general principles of EU law, the ECHR does not constitute, for as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. A provision of the Charter [17] stating that the rights set out in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by that convention is intended to ensure the necessary consistency between the Charter and the ECHR without adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union.

**Order of the General Court (Third Chamber), 11 February 2025, Corinne Reverbel v Commission, T-178/24**

Link to the full text of the order

Access to documents – Regulation (EC) No 1049/2001 – Documents concerning the production of COVID-19 vaccines – Implied refusal of access – Express decision adopted after the action was brought – No need to adjudicate

Hearing an action for annulment, which it dismisses by an order that there is no need to adjudicate in which it finds that the action has become devoid of purpose, the General Court relies on the distinction between, on the one hand, a situation in which the contested act is withdrawn in the event that an express rejection decision is adopted that confirms the earlier implied decision and, on the other hand, a situation in which access to the requested documents becomes obsolete. That distinction makes it possible to define more clearly the scope of the case-law relating to the purpose of the dispute continuing in order to prevent the alleged unlawfulness from recurring or to facilitate potential actions for damages, since that case-law is applicable only in the second situation.

The applicant, Ms Corinne Reverbel, had applied to the European Commission for access to several documents [18] concerning the production of COVID-19 vaccines. The Commission had responded to that application by granting partial access to an assessment report of the European Medicines Agency (EMA). Subsequently, the applicant made a confirmatory application. [19] After she did not receive a reply to that application within the prescribed period, [20] the applicant brought the present action for annulment of the Commission's implied decision rejecting her confirmatory application ('the contested decision').

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15 Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR').

16 European Court of Human Rights, 9 April 2024, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (CE:ECHR:2024:0409JUD005360020). In that judgment, that court accepted the standing of an association established with the aim of promoting and implementing effective climate protection measures.

17 Article 52(3) of the Charter.

18 Under Article 7(1) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

19 Under Article 7(2) of Regulation No 1049/2001.

20 Provided for in Article 8(1) and (2) of Regulation No 1049/2001.

After that action had been brought, the Commission adopted an express confirmatory decision in response to the confirmatory application. [21] By that decision, it granted wider partial access to the EMA report and, as to the remainder, expressly confirmed the rejection of the applicant's confirmatory application.

*Findings of the Court*

In the first place, as regards the express rejection of the confirmatory application, the Court holds that the adoption of the express confirmatory decision, in so far as it rejected the applicant's application, had the effect of partially withdrawing the contested decision and therefore eliminated, in that regard, the purpose of the present action, which sought the annulment of that decision.

The Court recalls that, by adopting an express decision rejecting a confirmatory application for access to documents, an institution withdraws the implied decision rejecting that application. That withdrawal of the contested act, in view of its retroactive nature, results in the action becoming devoid of purpose. In such a case, consideration of an action against an implied decision cannot be justified either by the objective of preventing the alleged unlawfulness from recurring or by that of facilitating potential actions for damages, since it is possible to attain both those objectives through consideration of an action brought against the express decision.

It adds that the retroactive withdrawal of an unlawful administrative act giving rise to a right must take place within a reasonable period. However, the contested decision, which is a decision refusing the applicant's application, does not, vis-à-vis the applicant, constitute an act giving rise to rights. Moreover, the condition making the withdrawal of an act subject to its unlawfulness applies in areas in which it is necessary to ensure that such withdrawal does not allow an institution to avoid any judicial review of its actions. The adoption of an express confirmatory decision does not entail such a risk. On the contrary, it enables a person applying for access to documents to ascertain the reasons for the institution's rejection of the application.

Consequently, the applicant no longer has an interest in obtaining the annulment of the implied rejection of her confirmatory application for access to documents in so far as that implied decision was subsequently confirmed by an express rejection decision.

In the second place, as regards the wider partial access to the EMA report granted by the Commission, the Court recalls that the mere grant of access to the documents at issue following the rejection of an application, without the institution acknowledging its error by adopting an express withdrawal, cannot be regarded as a withdrawal.

It specifies, in that regard, that the obsolescence of the contested decisions, which occurred after the lodging of the action, does not in itself place the Court under an obligation to declare that there is no need to adjudicate for lack of purpose or for lack of interest in bringing proceedings at the date of the delivery of the judgment.

Accordingly, the applicant may therefore retain an interest in the annulment of the contested decision for the purposes of a potential action for damages in so far as she was granted wider partial access to the EMA report only when the express confirmatory decision was adopted.

However, an applicant cannot substantiate an interest in bringing proceedings by relying merely on the possibility of bringing an action for compensation for the damage in the future, without adducing specific evidence concerning the impact of the alleged unlawfulness on its situation and the nature of the damage which it claimed to have suffered and in respect of which such an action would have sought compensation. The Court finds that the applicant has not provided any specific evidence to that effect.

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21 Under Article 8(1) of Regulation No 1049/2001.

Consequently, the finding that there is no need to adjudicate cannot be opposed by the applicant on the ground that a potential finding that the contested decision is unlawful would then enable her to bring an action for damages in order to compensate for the damage allegedly caused to her by that decision.

## 2. INTERIM MEASURES

**Judgment of the General Court (Second Chamber, Extended Composition), 5 February 2025, Poland v Commission, T-830/22 and T-156/23**

Link to the judgment as published in extract form

Law governing the institutions – Partial failure to comply with an order of the Court of Justice imposing interim measures in the context of an action for failure to fulfil obligations – Periodic penalty payment – Recovery of amounts receivable by offsetting – Article 101(1) and Article 102 of Regulation (EU, Euratom) 2018/1046 – Jurisdiction of the General Court

Ruling in the extended five-judge composition, the General Court rejects the actions brought by Poland seeking annulment of the decisions of the European Commission of 12 October and 23 November 2022 and of 13 January 2023 to recover by way of offsetting the amounts payable by Poland in respect of the daily penalty payment imposed by the order of the Court of Justice of 27 October 2021. [22] In this connection, it rules, for the first time, on the consequences of partial compliance with interim measures imposed in interlocutory proceedings, under Article 279 TFEU, concerning whether the penalty payment is due.

Taking the view that the 2019 Polish legislation concerning the organisation of the justice system [23] was contrary to EU law, on 1 April 2021 the Commission brought an action for failure to fulfil obligations against Poland. In parallel, it had brought an application for interim measures, which the Court of Justice granted by an order of 14 July 2021. [24] On account of the inadequacy of the measures adopted by Poland, the Court of Justice, by its order of 27 October 2021, upheld a new application for interim measures brought by the Commission and ordered that State to pay a daily penalty payment. [25]

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22 Order of the Vice-President of the Court of Justice of 27 October 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:878; 'the order of 27 October 2021').

23 Ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law relating to the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws), of 20 December 2019 (Dz. U. of 2020, item 190).

24 Order of the Vice-President of the Court of Justice of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593; 'the order of 14 July 2021'). By that order, Poland was required, inter alia, pending delivery of the judgment in the proceedings for failure to fulfil obligations, to suspend the application of certain national provisions and to communicate to the Commission, no later than one month after notification of that order, the measures adopted in order to comply with it.

25 In accordance with the order of 27 October 2021, Poland was ordered to pay the Commission a periodic penalty payment of EUR 1 000 000 per day, from the date of notification of that order to Poland until such time as that Member State had complied with the obligations arising from the order of 14 July 2021 or, if it should fail to do so, until the date of delivery of the judgment in the proceedings for failure to fulfil obligations.

Given Poland's failure to pay the daily penalty payments, the Commission proceeded to recover those amounts by means of offsetting. [26] Thus, by its two decisions of 2022, it planned to offset the debt of EUR 63 210 000 in respect of the period between 15 July and 29 August 2022 and, by its 2023 decision, the debt of EUR 60 270 027.40 in respect of the period from 30 August to 28 October 2022. Poland brought actions for annulment against those three decisions before the General Court.

On 15 June 2022, Poland informed the Commission of the adoption of the new law. [27] That change in circumstances led to the new order of the Court of Justice, adopted on 21 April 2023, [28] by which, as of the date of the signature of that order, the daily penalty payment imposed on Poland was reduced by half. Subsequently, the Court found that Poland had failed to fulfil its obligations. [29]

*Findings of the Court*

At the outset, the General Court dismisses the plea of lack of jurisdiction raised by the Commission.

It notes that, in the present case, Poland seeks annulment of the decisions by which the Commission offset amounts payable by that Member State in respect of the penalty payments imposed by the judge of the Court of Justice hearing the application for interim measures in the exercise of that judge's jurisdiction under Article 279 TFEU. The periodic penalty payments were therefore imposed in interim proceedings ancillary to an action for failure to fulfil obligations. The present actions for annulment, brought on the basis of Article 263 TFEU, fall within the jurisdiction of the General Court since the derogations provided for in Article 256 TFEU, as specified in Article 51 of the Statute of the Court of Justice of the European Union, do not apply in the present case.

The General Court points out, in particular, that the derogation, referred to in Article 51(c) of the Statute of the Court of Justice of the European Union, concerning actions for annulment brought against an act of the Commission relating to a failure to comply with a judgment delivered by the Court of Justice under the second subparagraph of Article 260(2) TFEU and which are reserved to the Court of Justice, is not applicable by analogy in the present case. As a derogation from the general principle of the jurisdiction of the General Court under Article 256(1) TFEU, that derogation must be interpreted strictly.

So far as the substance is concerned, in the first place, as regards Poland's line of argument by which it challenges the existence of the debt and claims, in essence, that the adoption of the Law of 9 June 2022 was sufficient in order to ensure compliance with all the interim measures set out in the order of 14 July 2021, the General Court states that, by order of 21 April 2023, the Court of Justice held that the measures implemented by that State after the signature of the order of 27 October 2021 were capable of ensuring, to a significant degree, the implementation of the interim measures set out in the order of 14 July 2021. However, the Court of Justice concluded that, despite the adoption of the Law of 9 June 2022, Poland had not fully complied with the obligations arising from that order. Therefore, the General Court rejects Poland's line of argument.

In the second place, inasmuch as Poland seeks, in the alternative, the partial annulment of the contested decisions and criticises the Commission, in essence, for recovering all the amounts payable in respect of the daily penalty payments for the period from 15 July to 28 October 2022, even though, as confirmed by the order of 21 April 2023, Poland largely complied, by means of the Law of 9 June

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26 Under Article 101(1) and Article 102 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

27 Ustawa o zmianie ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the Supreme Court and certain other laws), of 9 June 2022, which entered into force on 15 July 2022 (Dz. U. of 2022, item 1259; 'the law of 9 June 2022').

28 Order of the Vice-President of the Court of Justice of 21 April 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21 R-RAP, EU:C:2023:334; 'the order of 21 April 2023').

29 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442).

2022, with the interim measures imposed on it by the order of 14 July 2021, the General Court notes, first, that an application to vary or cancel an order granting an interim measure [30] cannot seek to call into question the past effects of that order. Thus, the reduction of the daily penalty payment imposed by the order of 21 April 2023 took effect only with regard to the future.

Next, as regards the Commission's obligations in enforcing the daily penalty payments, the General Court points out that the FEU Treaty does not lay down detailed rules for the payment of such periodic penalty payments imposed under Article 279 TFEU. However, it is for the Commission to recover the amounts payable to the EU budget in compliance with the order imposing the payment of such penalty payments.

In that context, the General Court observes that the order of 27 October 2021 fixed the amount of the daily penalty payment, which remained unchanged until 21 April 2023, and the period for which that penalty payment ran. It points out that it is apparent from that order that the penalty payment is due and that, therefore, the Commission is required to ensure its recovery, as long as Poland has not complied in full with the obligations imposed by the order of 14 July 2021.

The General Court states that, by contrast, it is not apparent from the order of 27 October 2021 that the Commission was entitled to reduce the amount of the daily penalty payment in the event of partial compliance. In addition, to acknowledge that the Commission has the option, or even the obligation, to adjust the amount of the daily penalty payment according to the level of compliance, by Poland, with the obligations arising from the order of 14 July 2021 would call into question the authority of the order of 27 October 2021.

Lastly, the General Court observes that, in fact, the Commission took the view that, despite the progress made, the Law of 9 June 2022 did not ensure full compliance with the obligations arising from the order of 14 July 2021, which was moreover confirmed by the order of 21 April 2023.

In the light of those considerations, the General Court concludes that, in the absence of a finding that Poland had complied in full with its obligations, the Commission was fully entitled to enforce the full amount of the penalty payment for the period from 15 July to 28 October 2022.

## III. PROTECTION OF PERSONAL DATA

**Judgment of the Court of Justice (First Chamber), 27 February 2025, Dun & Bradstreet Austria and Others, C-203/22**

Link to the judgment as published in extract form

Reference for a preliminary ruling – Protection of personal data – Regulation (EU) 2016/679 – Article 15(1)(h) – Automated decision-making, including profiling – Scoring – Assessment of the creditworthiness of a natural person – Access to meaningful information about the logic involved in profiling – Verification of the accuracy of the information provided – Directive (EU) 2016/943 – Point 1 of Article 2 – Trade secret – Personal data of third parties

Hearing a matter referred by the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) for a preliminary ruling, the Court of Justice develops its recent case-law on the rights of data subjects

30 An application lodged under Article 163 of the Rules of Procedure of the Court of Justice.

concerned by profiling for the purposes of assessing their creditworthiness. [31] First, it defines the scope of the data subject's right of access to information relating to the processing of his or her data. Second, it rules on the balancing of that right with the right to protection of third parties' data or trade secrets.

CK was refused, by a mobile telephone operator, the conclusion or extension of a mobile telephone contract. That refusal was based on an automated assessment of her credit standing carried out by D & B, an undertaking specialising in the provision of such assessments.

By its decision, the Austrian data protection authority ordered D & B to provide CK with meaningful information about the logic involved in the automated decision-making based on CK's personal data. The action, brought by D & B against that decision, was dismissed by decision of 23 October 2019 of the Bundesverwaltungsgericht (Federal Administrative Court, Austria). The Magistrat der Stadt Wien (City Council of Vienna, Austria) rejected CK's application for enforcement of that judicial decision.

Hearing CK's action against the decision of the City Council of Vienna, the referring court asks the Court to clarify the scope of the information which must be provided to the data subject in order for his or her right of access provided for by the General Data Protection Regulation [32] to be guaranteed in full. It also asks the Court to clarify whether and to what extent the exception based on the existence of a trade secret is capable of restricting that right.

*Findings of the Court*

In the first place, by clarifying the right of the data subject concerned by an automated decision, including profiling, to have access to 'meaningful information about the logic involved' within the meaning of Article 15(1)(h) of the GDPR, the Court, on the basis of the various language versions of that provision, takes the view that its wording covers all relevant information concerning the procedure and principles relating to the use, by automated means, of personal data with a view to obtaining a specific result.

The Court then notes that the contextual interpretation of that provision of the GDPR supports the literal interpretation thereof and that, moreover, the requirement of transparency which applies to all data and information, including those relating to automated decision-making, [33] requires that that information be provided in a concise, transparent, intelligible and easily accessible form.

In addition, the Court points out that it is apparent from the examination of the purposes of the GDPR and, in particular, those of Article 15(1)(h) thereof that the right to obtain 'meaningful information about the logic involved' in automated decision-making, within the meaning of that provision, must be understood as a right to an explanation of the procedure and principles actually applied in order to use, by automated means, the personal data of the data subject with a view to obtaining a specific result, such as a credit profile. In order to enable the data subject to exercise his or her rights under the GDPR [34] effectively, that explanation must be provided by means of relevant information and in a concise, transparent, intelligible and easily accessible form. Those requirements cannot be satisfied either by the mere communication of a complex mathematical formula, such as an algorithm, or by the detailed description of all the steps in automated decision-making, since none of those would constitute a sufficiently concise and intelligible explanation.

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31 Judgment of 7 December 2023, *SCHUFA Holding and Others (Scoring)* (C-634/21, EU:C:2023:957).

32 Article 15(1)(h) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1; 'the GDPR').

33 Referred to in Article 12(1) of the GDPR.

34 In particular, Article 22(3) of the GDPR.

The Court concludes that the 'meaningful information about the logic involved' in automated decision-making, within the meaning of Article 15(1)(h) of the GDPR, must describe the procedure and principles actually applied in such a way that the data subject can understand which of his or her personal data have been used in what way in the automated decision-making, with the complexity of the operations to be carried out in the context of automated decision-making not being capable of relieving the controller of the duty to provide an explanation.

It states, specifically concerning profiling such as that in the present case, that the referring court may find, inter alia, that it is sufficiently transparent and intelligible to inform the data subject of the extent to which a variation in the personal data taken into account would have led to a different result.

In the second place, as regards the balancing of the right of access guaranteed by the GDPR with the right to protection of third parties' data or trade secrets, [35] the Court begins by recalling its case-law according to which a national court may take the view that the personal data of the parties or of third parties must be disclosed to it in order to be able to balance, in full knowledge of the facts and in accordance with the principle of proportionality, the interests involved. That assessment may, depending on the case, lead it to authorise the full or partial disclosure to the opposing party of the personal data thus communicated to it, if it finds that such disclosure does not go beyond what is necessary for the purpose of guaranteeing the effective enjoyment of the rights which individuals derive from Article 47 of the Charter of Fundamental Rights of the European Union. [36]

Next, it states that that case-law can be fully transposed to the situation in which the information to be provided to the data subject under the right of access guaranteed by Article 15(1)(h) of the GDPR is likely to result in an infringement of the rights and freedoms of others, in particular in so far as it contains personal data of third parties protected by that regulation or trade secrets. In that case too, that information must be disclosed to the competent supervisory authority or court, which must balance the rights and interests at issue with a view to determining the extent of the data subject's right of access to personal data concerning him or her.

The Court notes that, having regard to the need to make that determination on a case-by-case basis, Article 15(1)(h) of the GDPR precludes inter alia the application of a national provision which excludes, as a rule, the data subject's right of access where such access would compromise a business or trade secret of the controller or of a third party. In that regard, the Court recalls that a Member State cannot definitively prescribe the result of a case-by-case balancing of the rights and interests at issue imposed by EU law. [37]

In conclusion, the Court held that Article 15(1)(h) of the GDPR must be interpreted as meaning that, where the controller takes the view that the information to be provided to the data subject in accordance with that provision contains data of third parties protected by that regulation or trade secrets, that controller is required to provide the allegedly protected information to the competent supervisory authority or court, which must balance the rights and interests at issue with a view to determining the extent of the data subject's right of access provided for in Article 15 of the GDPR.

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35 Within the meaning of point 1 of Article 2 of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ 2016 L 157, p. 1).

36 Judgment of 2 March 2023, *Norra Stockholm Bygg* (C-268/21, EU:C:2023:145, paragraph 58).

37 See, to that effect, judgment of 7 December 2023, *SCHUFA Holding and Others (Scoring)* (C-634/21, EU:C:2023:957, paragraph 70 and the case-law cited).

## IV. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

**Judgment of the Court of Justice (Grand Chamber), 4 February 2025, Keren, C-158/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – Refugee status or subsidiary protection status – Directive 2011/95/EU – Article 34 – Access to integration facilities – Obligation to pass, on pain of a fine, a civic integration examination – Beneficiary of international protection who has not passed such an examination in time – Obligation to pay a fine – Obligation to bear the full costs of civic integration courses and examinations – Possibility of obtaining a loan in order to pay those costs

Ruling on a request for a preliminary ruling from the Raad van State (Council of State, Netherlands), the Court, sitting as the Grand Chamber, provides clarifications as to whether and to what extent the Member States may, without infringing the provisions of Directive 2011/95, [38] place beneficiaries of international protection under the obligation, on pain of a fine, to pass a civic integration examination within a given period and themselves to bear the full costs of that examination and the preparation courses for that examination.

The applicant in the main proceedings, of Eritrean nationality, arrived in the Netherlands at the age of 17 and was subsequently recognised as a beneficiary of international protection. When he had reached the age of 18, the Minister van Sociale Zaken en Werkgelegenheid (Minister for Social Affairs and Employment, Netherlands; 'the Minister') informed him that he was bound by the civic integration obligation, which meant that he had to pass, in principle within three years, all of the components of the civic integration examination. That period was extended several times by a total of one year, on the ground that he had resided on a long-term basis in a reception centre for asylum seekers and had undergone training. However, the applicant in the main proceedings did not attend certain courses and examinations and he did not pass those at which he was present.

By a decision of 31 March 2020, the Minister, on the one hand, imposed a fine of EUR 500 on the applicant in the main proceedings, on the ground that he had not passed within the period prescribed the civic integration examination provided for by Netherlands law for beneficiaries of international protection, and, on the other hand, ordered full repayment of the loan of EUR 10 000 that had been granted to him by the Netherlands public authorities in order to enable him to finance the costs of the civic integration programme, on the ground that he had not completed that programme within the period prescribed.

By a decision of 25 February 2021, the Minister declared unfounded the complaint lodged against his decision of 31 March 2020 by the applicant in the main proceedings. The action brought by the latter against the decision of 25 February 2021 was subsequently declared unfounded by the Rechtbank (District Court, Netherlands), by a judgment of 4 November 2021.

On 2 December 2021, that is to say, 1 year and 10 months after the expiry of the civic integration period, the applicant in the main proceedings was relieved of the civic integration obligation because, according to the Minister, he had, at that time, made sufficient efforts to complete the civic integration programme. That relief is, however, without prejudice to his obligation to pay the fine and to repay the loan.

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

The applicant in the main proceedings lodged an appeal before the Council of State, which is the referring court, against the judgment of 4 November 2021. The referring court asks whether Article 34 of Directive 2011/95 [39] precludes the imposition of a civic integration obligation on beneficiaries of international protection, which includes the obligation to pass, on pain of a fine, the examinations concerned, in principle within a three-year period, and the costs of integration programmes from being borne by the persons bound by that obligation.

*Findings of the Court*

In the first place, the Court observes that the wording of Article 34 of Directive 2011/95 does not make it possible to determine whether a Member State may make compulsory participation in an integration programme, or even passing, on pain of a fine, the related examination. However, it follows from the context of that article and from the objectives pursued by it and by that directive that, although the Member States enjoy a margin of discretion in deciding on the content of integration programmes, the practical arrangements for the organisation of those programmes and the obligations that may be imposed on participants in that context, that margin of discretion must not be used in a way which would undermine those objectives or the effectiveness of that directive or which would infringe the principle of proportionality. Consequently, the Member States are required to ensure that the content of those programmes, the practical arrangements for their organisation and the obligations which may be imposed on participants in that context do not disproportionately impede the effective access by those beneficiaries to those programmes or the actual exercise by those persons of the other rights and benefits which they derive from that same directive. [40]

It is incontestable that the acquisition of knowledge of both the language and society of the host Member State promotes the integration of beneficiaries of international protection into the society of the host Member State. In addition, it makes it less difficult for those persons to exercise the rights and benefits which they derive from Directive 2011/95, in particular accessing the labour market and vocational training.

From that perspective, national legislation providing for the obligation to follow such programmes and to pass the related examination is compatible with Article 34 of that directive, as long as it meets the aforementioned conditions. Such legislation, however, would undermine the right conferred on beneficiaries of international protection in Article 34 of Directive 2011/95 and would not enable the objective pursued by that provision to be achieved if it did not take into account the specific circumstances characterising their situation, in particular as regards the level of knowledge required to pass the civic integration examination and accessibility of the courses and material necessary to prepare for that examination. [41]

Thus, the integration measures referred to in Article 34 of Directive 2011/95 must aim not to penalise beneficiaries of international protection confronted with challenges in acquiring the knowledge that is intended to be imparted by means of integration programmes, but to facilitate the integration of those beneficiaries into the society of the Member States according to their individual abilities.

In particular, specific individual circumstances, such as the age, level of education, financial situation or health of the person concerned must be taken into consideration, also with a view to relieving him

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39 Article 34 of Directive 2011/95, headed 'Access to integration facilities', provides: 'In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes'.

40 Those conditions, which govern the exercise by the Member States of their discretion in deciding on the content of the integration programmes referred to in Article 34 of Directive 2011/95, on the practical arrangements for the organisation of those programmes and on the obligations that may be imposed on participants in that context, are hereinafter referred to as 'the aforementioned conditions'.

41 That follows from the very wording of Article 34 of Directive 2011/95 and from recitals 41 and 47 thereof, which emphasise that such an individualised assessment is necessary in order to make effective the exercise by the persons concerned of the rights and benefits which they derive from that directive and, by the same token, to facilitate the rapid and successful integration of those persons.

or her of the obligation to pass an examination such as that at issue in the main proceedings when, owing to those circumstances, that person is unable to take or pass that examination. Consequently, the beneficiary of international protection who would fail the said examination owing to such circumstances should be able to provide evidence of the reasonable efforts that he or she has made to pass the same examination.

In addition, any beneficiary of international protection should be relieved of the obligation to pass that examination if he or she is able to demonstrate, having regard to the living conditions and circumstances characterising his or her stay in the host Member State, that he or she is already effectively integrated into the society of that State.

Furthermore, the knowledge required to pass such an examination should be set at an elementary level, without exceeding what is necessary to promote the integration of beneficiaries of international protection into the society of the host Member State. Thus, account must be taken of the particular situation of those persons, in particular where they are not yet settled on a long-term basis in that Member State.

In any event, Article 34 of Directive 2011/95 precludes failure in such an examination from being systematically penalised by a fine. Such a penalty may be imposed only in exceptional cases, such as those demonstrating, on the basis of objective factors, a proven and persistent lack of willingness to integrate on the part of the beneficiary concerned. In addition, such a fine cannot, in any event, be of such a high amount as to place an unreasonable financial burden on the beneficiary concerned, account being had of his or her personal and family situation.

In the case at hand, the fine provided for by the Netherlands legislation at issue in the main proceedings applies systematically and can reach EUR 1 250. The Court takes the view that such a measure is manifestly disproportionate to the objective pursued by that legislation.

In the second place, the Court holds [42] that Article 34 of Directive 2011/95 precludes national legislation pursuant to which beneficiaries of international protection themselves bear the full costs of civic integration courses and examinations. The fact that those beneficiaries can obtain a loan from the public authorities in order to pay those costs and that they are granted a debt write-off in respect of that loan if they pass, within the period prescribed, their civic integration examination or if, within that period, they are exempted from or relieved of the civic integration obligation is not capable of remedying the incompatibility of that legislation with that Article 34.

While the possibility of taking out a loan in order to meet the costs of the civic integration programme implies a certain taking into account of the individual financial capacity of the beneficiary of international protection, the fact remains that that beneficiary remains, in principle, obliged to bear the – potentially very high – costs of that programme, unless he or she passes the civic integration examination in time or is exempted from or relieved of the obligation to repay the loan taken out. Moreover, as long as the obligation to pass the civic integration examination is incumbent on him or her, uncertainty necessarily surrounds both the total amount of the loan which that beneficiary will ultimately have to repay and the duration of the period during which he or she will remain indebted to the public authorities, which may be very long. In such circumstances, making the beneficiary of international protection bear, in principle, all the costs of the courses and examinations of the civic integration programme undermines the objective of ensuring that that beneficiary integrates into the society of the host Member State effectively by placing an unreasonable burden on him or her which hinders not only the effective access of that beneficiary to the civic integration programme, but also the exercise by the same beneficiary of the other rights and benefits which he or she derives from Directive 2011/95.

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42 After having recalled that the Member States, while enjoying a margin of discretion, are required to ensure that the content of those programmes and the practical arrangements for their organisation and the obligations which may be imposed on participants in that context do not disproportionately impede the effective access by those beneficiaries to those programmes or the actual exercise by those persons of the other rights and benefits which they derive from that directive.

## V. JUDICIAL COOPERATION IN CIVIL MATTERS: BRUSSELS Ia REGULATION

**Judgment of the Court of Justice (Fifth Chamber), 13 February 2025, Athenian Brewery SA and Heineken, C-393/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Special jurisdiction – Article 8(1) – Multiple defendants – Claims 'so closely connected' that it is expedient to hear and determine them together – Article 102 TFEU – Concept of an 'undertaking' – Parent and subsidiary companies – Infringement committed by the subsidiary – Presumption of dominant influence exercised by the parent company – Joint and several liability – Decision of a national competition authority – Actions for compensation

The Court of Justice, hearing a request for a preliminary ruling referred to it by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), develops its case-law concerning the rule of special jurisdiction under Article 8(1) of Regulation No 1215/2012, [43] according to which a person domiciled in a Member State may be sued, where he or she is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are 'so closely connected' that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. The context is an action seeking to have a parent company, domiciled in the Netherlands, and its subsidiary, domiciled in another Member State, held jointly and severally liable to pay compensation for the damage suffered as a result of an infringement, by that subsidiary, of the competition rules, brought by the victim of that infringement before the court in the place where the parent company is domiciled. The Court is asked whether that latter court may, to assess whether there is that close connection and establish its international jurisdiction, rely on the rebuttable presumption that, [44] in the particular case in which a parent company holds, directly or indirectly, all or almost all of the capital in a subsidiary which has committed an infringement of the competition rules, that parent company actually exercises a decisive influence over the conduct of its subsidiary and may be held responsible for the infringement on the same basis as that subsidiary ('the presumption of the parent company's decisive influence and liability').

The breweries Athenian Brewery SA ('AB') and Macedonian Thrace Brewery SA ('MTB'), established in Greece, operate on the Greek beer market. AB is part of the Heineken group, the parent company of which, Heineken NV, established in Amsterdam (Netherlands), sets the strategy and objectives of the group, but does not itself carry on any operational activities in Greece. Between September 1998 and 14 September 2014, Heineken indirectly held approximately 98.8% of the shares in the capital of AB.

By a decision of 19 September 2014, the Greek competition authority found that AB had abused its dominant position on the Greek beer market during the abovementioned period and that that conduct constituted a single continuous infringement of Article 102 TFEU and the Greek law on the protection of competition. Despite MTB's request for Heineken to be included in the investigation, the competition authority stated, in its decision, that there was no evidence of Heineken's direct involvement in the infringements and that the specific circumstances did not support the assumption that Heineken had exercised a decisive influence over AB.

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43 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

44 Recognised in the case-law of the Court.

MTB made an application to the rechtbank Amsterdam (District Court, Amsterdam, Netherlands) for AB and Heineken to be held jointly and severally liable for the abovementioned infringement and, accordingly, ordered jointly and severally to compensate MTB for the entire loss which it had suffered as a result of that infringement.

The District Court, Amsterdam held that it had jurisdiction to decide on the claims brought against Heineken under Article 4(1) of Regulation No 1215/2012, since that company's seat is in Amsterdam. By contrast, it held that it did not have jurisdiction to decide on the claims brought against AB, on the basis that the close-connection requirement for the purposes of Article 8(1) of the same regulation, between the claims brought against Heineken and AB, was not satisfied.

The appeal court set aside the judgment of the District Court, Amsterdam and referred the case back to that court for a new examination and a decision on the merits. That appeal court of appeal held that those companies were in the same factual situation and it could not be excluded with certainty that they formed one and the same undertaking.

AB and Heineken brought an appeal on a point of law before the Supreme Court of the Netherlands, which is the referring court. That court asks, in essence, whether, in the circumstances of the case in the main proceedings, [45] Article 8(1) of Regulation No 1215/2012 precludes the court for the place of residence of the parent company seised of those claims from relying exclusively, in order to establish its international jurisdiction, on the presumption of the parent company's decisive influence and liability.

*Findings of the Court*

The Court notes, first of all, that the rule of special jurisdiction laid down in the abovementioned provision, because it derogates from the principle that jurisdiction be based on the defendant's domicile, must be given a strict interpretation.

Consequently, in order for Article 8(1) of Regulation No 1215/2012 to apply, it is necessary to ascertain whether, between claims brought by the same applicant against various defendants, there is a connection of such a kind that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings. In order for judgments to be regarded as such, there must be a divergence in the outcome of the dispute, which arises in the context of the same situation of fact and law. [46]

It is for the referring court to assess, having regard to all of the relevant facts of the case before it, whether such a situation exists and to satisfy itself that the claims brought against the sole co-defendant whose domicile gives rise to the jurisdiction of the court seised are not intended artificially to satisfy the conditions for the application of Article 8(1) of Regulation No 1215/2012.

The Court may nevertheless provide the points of interpretation of EU law which are useful for the purposes of that assessment. It has thus held that the requirement concerning the existence of the same situation of fact and law must be regarded as satisfied where several undertakings that participated in a single and continuous infringement of EU competition rules, established by a decision of the European Commission, are subject, as defendants, to claims based on their participation in that infringement, despite the fact that the defendants in question have, in different places and at different times, participated in the implementation of the cartel concerned. [47]

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45 Characterised by the fact that Heineken did not itself carry out operations on the Greek beer market, the action brought against it by MTB was based solely on the decisive influence that it exercised over AB's conduct and Heineken disputed having exercised such an influence.

46 Judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, EU:C:2015:335, paragraph 20).

47 Judgment in *CDC Hydrogen Peroxide* (cited above, paragraph 21).

That same finding must also be made in the case of claims based on a company's participation in an infringement of EU competition law brought against that company and against its parent company, in which it is alleged that they together formed one and the same undertaking.

Where it is established that a company and its subsidiary are part of the same economic unit and thus form a single undertaking, within the meaning of EU competition law, it is the very existence of that economic unit which committed the infringement that decisively determines the liability of one or other of the companies making up that undertaking for the anticompetitive conduct of the latter. The concepts of an 'undertaking' and an 'economic unit' automatically entail the application of joint and several liability amongst the entities of which the economic unit is made up at the time that the infringement was committed.

In that regard, the fact that, as in the present case, the joint and several liability of the parent company and its subsidiary for the infringement of EU competition rules was not established in a final Commission decision does not preclude the application of Article 8(1) of Regulation No 1215/2012 to such claims.

In the present case, the referring court has doubts concerning the implications, with respect to the possible application of the abovementioned provision, of the fact, first, that an applicant relies, in support of its claims against a company which participated in an infringement of EU competition law and against the company which holds all or almost all of the capital of the first company, on the presumption of the parent company's decisive influence and liability and, secondly, that the parent company disputes having exercised a decisive influence over its subsidiary and having formed an economic entity with it.

The Court notes, in the first place, that that presumption was developed in the context of challenges, by the undertakings concerned, to Commission decisions finding that they had participated in an infringement of EU competition rules and imposing fines on them under Regulation No 1/2003. [48] In that context, the Court has specified that it is sufficient for the Commission to prove that all or almost all of the capital of a subsidiary is held by its parent company in order for it to be presumed that the parent exercises decisive influence over the commercial policy of that subsidiary. It will thereafter be possible to hold the parent company jointly and severally liable for the payment of the fine imposed on its subsidiary, unless the parent company, which has the burden of rebutting that presumption, adduces sufficient evidence to show that its subsidiary acts independently on the market. [49]

The Court points out that that presumption may also apply in the case of a claim brought by a natural or legal person who alleges that he or she has suffered harm as a result of a company's participation in an infringement of EU competition law, brought against another company which holds all or almost all of the capital of the former. [50]

In the second place, it is apparent from the Court's case-law that, at the stage at which international jurisdiction is determined, the court seised examines neither the admissibility nor the substance of the claim, but identifies only the connecting factors with the State in which that court is situated which are capable of providing a basis for its jurisdiction under Article 8(1) of Regulation No 1215/2012.

Consequently, in a situation such as that in the main proceedings, the court seised may confine itself to verifying that a decisive influence by the parent company over its subsidiary cannot be excluded a priori in order that that court may declare itself competent in so far as permitted under national law.

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

49 Judgment of 26 October 2017, *Global Steel Wire and Others* v *Commission*, C-457/16 P and C-459/16 P to C-461/16 P, EU:C:2017:819, paragraph 84 and the case-law cited).

50 The concept of 'undertaking', within the meaning of EU competition law cannot have a different scope with regard to the imposition of fines by the Commission under Article 23(2) of Regulation No 1/2003 as compared to actions for damages for infringement of EU competition rules.

That will be the case if the applicant relies on the presumption of the parent company's decisive influence and liability. However, verifying that the claim against the parent company is not artificial presupposes that the defendants are able to rely on firm evidence to suggest that the parent company does not hold directly or indirectly all or almost all of the capital of its subsidiary, or that that presumption should nevertheless be rebutted.

In those circumstances, Article 8(1) of Regulation No 1215/2012 does not preclude – in claims for a parent company and its subsidiary to be held jointly and severally liable to pay compensation for the damage suffered as a result of an infringement, by that subsidiary, of the competition rules – the court for the place of residence of the parent company seised of those claims from relying, in order to establish its international jurisdiction, on the presumption of the parent company's decisive influence and liability, provided that the defendants are not deprived of the possibility set out above.

**Judgment of the Court of Justice (Grand Chamber), 25 February 2025, BSH Hausgeräte, C-339/22**

Link to the full text of the judgment

Reference for a preliminary ruling – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 4(1) – General jurisdiction – Article 24(4) – Exclusive jurisdiction – Jurisdiction over the registration or validity of patents – Infringement action – European patent validated in Member States and in a third State – Challenge to the validity of the patent raised as a defence – International jurisdiction of the court hearing the infringement action

Seised of a request for a preliminary ruling from the Svea hovrätt, Patent- och marknadsöverdomstolen (Svea Court of Appeal, Patent and Commercial Court of Appeal, Stockholm, Sweden), the Court of Justice rules on the scope of Regulation No 1215/2012. [51] It finds that a court of the Member State of domicile of the defendant which is seised of an action alleging infringement of a patent granted in another Member State does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity.

BSH is the holder of a European patent which protects an invention in the field of vacuum cleaners. That patent was validated in Sweden and in various other Member States, as well as in the United Kingdom and Türkiye, which gave rise to the grant of national patents from those States.

In February 2020, BSH brought an action against Electrolux alleging infringement of all the national parts of that European patent before the Patent- och marknadsdomstolen (Patent and Commercial Court, Sweden). Electrolux submitted that the claims relating to infringements of the national parts of the patent other than the Swedish part were inadmissible, arguing, under both the Brussels I *bis* Regulation and the Swedish Law on patents, [52] that the foreign patents were invalid and that the Swedish courts therefore did not have jurisdiction to rule on whether they had been infringed.

The Patent- och marknadsdomstolen (Patent and Commercial Court) declared that it had no jurisdiction to hear the action alleging infringement of patents other than the one validated in Sweden. BSH brought an appeal against that decision before the referring court.

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51 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1;'the Brussels I *bis* Regulation').

52 See second subparagraph of Paragraph 61 of the Patentlagen (1967:837) (Law on patents (1967:837)).

That court is uncertain whether Article 24(4) [53] of the Brussels I *bis* Regulation must be interpreted as meaning that a court of the Member State of domicile of the defendant seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State still has jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent. It is also uncertain whether Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that it applies to a court of a third State and, consequently, as conferring exclusive jurisdiction on that court as regards the assessment of the validity of a patent granted or validated in that State.

*Findings of the Court*

In the first place, the Court rules on the respective scopes of the rules governing the jurisdiction of the courts concerned as resulting from Article 4(1) [54] and Article 24(4) of the Brussels I *bis* Regulation. It notes, first of all, that it is apparent from the wording of Article 24(4) of that regulation that the courts of the Member State granting the patent are to have exclusive jurisdiction to hear a dispute concerned with the registration or validity of that patent, irrespective of whether that issue is raised by way of an action or as a defence in an infringement action before a court of another Member State. That is justified by the fact that the grant of patents involves the intervention of the national authorities, and by the fact that those courts, which rule by applying their national law, are best placed to judge them. That concern for the sound administration of justice is all the more important since several Member States have established a special system of judicial protection, allowing only specialised courts to rule on patent disputes.

Where a court of the Member State in which the defendant is domiciled is seised, pursuant to the Brussels I *bis* Regulation, [55] of an action alleging infringement of a patent granted by another Member State, in the context of which the defendant challenges, as its defence, the validity of that patent, that court cannot establish, indirectly, the invalidity of that patent, but must declare that it does not have jurisdiction, in accordance with Article 27 of that regulation, [56] as regards the issue of the validity of that patent, in the light of the rule that the courts of the Member State in which the patent is granted have exclusive jurisdiction, as provided for in Article 24(4) of that regulation.

However, since that rule of exclusive jurisdiction covers only disputes 'concerned with the registration or validity of patents', a court of the Member State of domicile of the defendant seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent.

In the second place, as regards the question whether Article 24(4) of the Brussels I *bis* Regulation must be interpreted as meaning that it applies to a court of a third State and therefore confers exclusive jurisdiction on that court as regards the assessment of the validity of a patent granted or validated in that State, the Court observes that the subject of the wording of that provision is the exclusive jurisdiction of the courts of the Member States and that the regime laid down by the

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53 Article 24 of the Brussels I *bis* Regulation: 'The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties: ... (4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place. Without prejudice to the jurisdiction of the European Patent Office [(EPO)] under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State; ...'

54 Article 4(1) of the Brussels I *bis* Regulation: states that 'subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

55 Under Article 4(1) of the Brussels I *bis* Regulation.

56 Article 27 of the Brussels I *bis* Regulation: 'Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.'

Brussels I *bis* Regulation is a system of jurisdiction internal to the European Union which pursues objectives specific to it, such as the proper functioning of the internal market and the establishment of an area of freedom, security and justice. Since Article 24(4) of that regulation cannot be regarded as applicable in a situation in which the patents concerned are granted or validated not in a Member State but in a third State, [57] that provision does not apply to a court of a third State and, consequently, does not confer any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated in that State.

However, although the jurisdiction in principle of the court of the defendant's domicile laid down in Article 4(1) of the Brussels I *bis* Regulation may be restricted, both by special rules [58] and by general international law, it does not appear that any restriction provided for by the latter needs to be taken into consideration in the present case.

As regards general international law, the Court recalls that a measure adopted by virtue of the powers of the European Union, such as the Brussels I *bis* Regulation, must be interpreted, and its scope limited, in the light of the rules and principles of general international law, which are binding upon the EU institutions. In that regard, the jurisdiction of the court of the defendant's domicile to rule in a dispute which is connected, at least in part, with a third State, is not contrary to the international law principle of the relative effect of treaties.

Moreover, that jurisdiction must be exercised without infringing the principle of non-interference. In the exercise of its powers, the grant by a State of a national patent, which confers on its holder exclusive intellectual property rights within that State, follows from the national sovereignty of that State. Where a judicial decision concerning a patent affects the existence or content of those exclusive rights, only the courts having jurisdiction in that State may give such a decision.

By contrast, the court of the Member State of domicile of the defendant which is seised, on the basis of Article 4(1) of the Brussels I *bis* Regulation, of an infringement action in the context of which the issue of the validity of a patent granted or validated in a third State is raised as a defence does have jurisdiction to rule on that issue if no restriction is applicable. Since the decision sought in that regard has only *inter partes* effects, it is not such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended.

The Court concludes in that regard that Article 24(4) of the Brussels I *bis* Regulation must be interpreted as not applying to a court of a third State and, consequently, as not conferring any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated by that State.

**Judgment of the Court of Justice (First Chamber), 27 February 2025, Società Italiana Lastre, C-537/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 25(1) – Agreement conferring jurisdiction – Assessment of the validity of the agreement – Imprecise and asymmetric nature – Applicable law – Concept of 'null and void as to its substantive validity'

57 See, to that effect, judgment of 8 September 2022, *IRnova* (C-399/21, EU:C:2022:648, paragraph 35).

58 Article 73 of Brussels I *bis* Regulation.

Hearing a request for a preliminary ruling from the Cour de cassation (Court of Cassation, France), the Court of Justice interprets Article 25(1) and (4) of Regulation No 1215/2012 [59] and clarifies the criteria with regard to which the validity of an agreement conferring jurisdiction must be assessed where allegations of the imprecision or asymmetry of that agreement are raised, as well as the conditions for the validity of such an agreement pursuant to which one of the parties to the agreement may bring proceedings before the sole court that it designates, whereas the other party may bring proceedings before any court with jurisdiction.

For a project commissioned by two natural persons, Agora SARL, a company governed by French law, concluded a contract for the supply of panelling with Società Italiana Lastre SpA (SIL), a company governed by Italian law. That contract included an agreement conferring jurisdiction ('the agreement conferring jurisdiction at issue'), which stipulated that the court of Brescia (Italy) would have jurisdiction over any dispute arising from or related to it. However, SIL reserved to itself the right to bring proceedings against the purchaser 'before another competent court in Italy or elsewhere'.

After finding defects in the execution of the project in question, the owners of the project sued Agora and SIL for liability and compensation before the tribunal de grande instance de Rennes (Regional Court, Rennes, France). Agora brought an action on a guarantee against SIL, which, on the basis of the agreement conferring jurisdiction at issue, opposed that action on a guarantee on grounds of the lack of international jurisdiction of the French court. That argument having been rejected by a decision at first instance, which was upheld on appeal, SIL brought an appeal on a point of law before the Cour de cassation (Court of Cassation), the referring court.

That court, having doubts in respect of two questions relating to the validity of the agreement conferring jurisdiction at issue, decided to make a reference to the Court for a preliminary ruling. Its first question concerns whether, when assessing the validity of an agreement conferring jurisdiction, complaints alleging the imprecision or asymmetry of that agreement, must be examined in the light of autonomous criteria relating to causes of that agreement being 'null and void as to its substantive validity' defined by the law of the Member States in accordance with Article 25(1) of the Brussels Ia Regulation, or in the light of autonomous criteria which are derived from that article. In the second hypothesis, it wonders whether the agreement conferring jurisdiction in the present case is valid in the light of that article.

*Findings of the Court*

As regards the first question, referring to the criteria in the light of which allegations of the imprecision or asymmetry of an agreement conferring jurisdiction must be examined, the Court recalls, first of all, that the Brussels Ia Regulation does not define the concept of 'null and void as to its substantive validity', nor does it refer to the laws of the Member States for the definition of that concept. Therefore, an autonomous and uniform interpretation of that concept must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the objectives pursued by the legislation of which it forms part.

In that regard, it points out, in the first place, that, according to its usual meaning in everyday language, the term 'substantive' is used, in judgments and in procedural documents, to indicate that after having examined issues of jurisdiction, formal requirements and admissibility, the court addresses the very issues which relate to the subject matter of the proceedings, namely questions of fact or of law which the court must decide at the request of parties. However, since the first sentence of Article 25(1) of the Brussels Ia Regulation provides that the courts that the parties have agreed are to have jurisdiction shall have jurisdiction 'unless' the agreement conferring jurisdiction is 'null and void as to its substantive validity' under the law of the Member State whose courts are designated, that provision is merely indicates which national law applies as regards whether, notwithstanding the

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59 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1; 'the Brussels Ia Regulation').

fact that all of the conditions of validity laid down in that article are satisfied, such an agreement is null and void on other grounds under that national law.

As regards, in the second place, the context of the legislation, outside the reference to the concept of 'null and void as to its substantive validity', Article 25(1) of the Brussels Ia Regulation lays down, in the first and third sentences, conditions for the substantive and formal validity for agreements conferring jurisdiction. That concept refers, therefore, to the general causes of nullity of a contract, namely those which vitiate consent, such as error, deceit, violence or fraud, and incapacity to contract, causes which, unlike the conditions of validity pertaining to the agreement conferring jurisdiction themselves, are not governed by the Brussels Ia Regulation but by the law of the Member State whose courts are designated.

In the third place, that interpretation is consistent with the objectives pursued by the Brussels Ia Regulation, in particular that of legal certainty which requires that the national court seised may easily decide on its own jurisdiction, without being obliged to examine the merits of the case.

In the fourth place, that interpretation is appropriate given the origins of Article 25(1) of the Brussels Ia Regulation.

In the present case, as regards, next, the assessment of whether an agreement conferring jurisdiction is sufficiently precise, the Court finds that, in accordance with Article 25(1) of the Brussels Ia Regulation, the validity of such an agreement requires the sufficiently precise identification of the objective factors agreed by the parties for the designation of the court or the courts to which they wish to submit disputes which have arisen or which may arise between them. In addition, the imposition of the requirement of precision necessarily assists in the attainment of the objectives of foreseeability, transparency and legal certainty, pursued by that regulation. That requirement for precision must therefore be examined having regard to autonomous criteria which are derived from that Article 25 as interpreted by the Court.

Lastly, as regards the assessment of the alleged asymmetry of an agreement conferring jurisdiction, in accordance with Article 25(4) of the Brussels Ia Regulation, such an agreement conferring jurisdiction has no legal force, inter alia, if it is contrary to the conditions for validity set out in Articles 15, 19 and 23 of that regulation. According to those latter articles, an agreement conferring jurisdiction retains its validity if it permits the weaker party to an insurance contract, a consumer contract or an employment contract to bring proceedings before courts other than those which are, in principle, competent pursuant to the provisions of Sections 3 to 5 of Chapter II of that regulation. By contrast, pursuant to Article 25(4), such an agreement is null and void if it provides for an exclusion of jurisdiction for the benefit of the insurer, co-contractor, consumer or employer. The assessment of whether an agreement conferring jurisdiction is asymmetric must be examined in the light of autonomous criteria which are derived from that Article 25 as interpreted by the Court.

The Court concludes therefrom that, when assessing the validity of an agreement conferring jurisdiction, complaints alleging the imprecision or asymmetry of that agreement, must be examined not in the light of criteria relating to matters which cause that agreement to be 'null and void as to its substantive validity' defined by the laws of the Member States, but in the light of autonomous criteria which are derived from Article 25(1) of the Brussels Ia Regulation.

As regards the second question, relating to the validity of an agreement conferring jurisdiction pursuant to which one of the parties thereto may only bring proceedings before the sole court that it designates whereas the other party may bring proceedings before, in addition to that court, any other competent court, the Court holds, in the first place, that the first sentence of Article 25(1) of the Brussels Ia Regulation cannot be interpreted as meaning that the parties must necessarily designate the courts of a single and the same Member State. To impose such a limit would be contrary to the freedom of choice of the parties.

Furthermore, the courts with jurisdiction pursuant to the provisions of Chapter II of the Brussels Ia Regulation confirm the fact that the parties may, in certain situations, bring proceedings before the courts of several Member States, including that of the defendant's domicile, but also the place of performance of the contractual obligation, the place where the harmful event occurred or the domicile of another defendant.

In the second place, the courts of the Member States or States that are parties to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [60] designated in the present case are, on the one hand, a particular court and, on the other hand, other courts which have jurisdiction pursuant to the provisions of Chapter II, Sections 1 and 2 of the Brussels Ia Regulation as well as of Title II, Sections 1 and 2 of that convention. An agreement conferring jurisdiction which designates with sufficient precision those courts satisfies the requirement of precision resulting from Article 25(1) of that regulation and the objectives of foreseeability, transparency and legal certainty, set out in recitals 15 and 16 of that regulation. That would amount to, in fact, a reference to the general rules of jurisdiction provided for by that regulation and that convention.

However, if, in referring to 'another competent court … elsewhere', the agreement conferring jurisdiction at issue must be interpreted as meaning that it also designates one or several courts of one or more States which are not Members of the European Union or parties to the Lugano II Convention, it would be contrary to the Brussels Ia Regulation on the ground that it would not be consistent with those objectives.

In the third place, as regards the validity of an agreement conferring jurisdiction which confers greater rights on one party than on the other, the asymmetric nature of such an agreement is not such as to call into question its validity on the basis of the requirements set out in Article 25 of the Brussels Ia Regulation, save in the cases expressly prohibited by that regulation. That article is based on the principle of the parties' freedom of choice, to which the EU legislature has given priority. In addition, Articles 15, 19 and 23 of that regulation, to which Article 25(4) refers, explicitly permit the conclusion of agreements conferring jurisdiction which are asymmetric in favour of the weaker party to an insurance contract, a consumer contract or an employment contract. Thus, the asymmetric nature of such an agreement does not render it unlawful, if the parties have freely consented to it.

The Court concludes therefore that, in those circumstances, an agreement conferring jurisdiction, such as that in the main proceedings, is valid, in so far as, first, it designates courts of one or several States which are either Members of the European Union or parties to the Lugano II Convention, secondly, it identifies objective factors which are sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, and, thirdly, it is not contrary to the provisions of Articles 15, 19 or 23 of that regulation and does not derogate from an exclusive jurisdiction pursuant to Article 24 thereof.

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60 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007 ('the Lugano II Convention'), the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1).

## VI. COMPETITION: ABUSE OF A DOMINANT POSITION (ARTICLE 102 TFEU)

**Judgment of the Court of Justice (Grand Chamber), 25 February 2025, Alphabet and Others, C-233/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Competition – Dominant position – Article 102 TFEU – Digital markets – Digital platform – Refusal of an undertaking in a dominant position which has developed a digital platform to allow access to that platform by a third-party undertaking which has developed an app, by ensuring that platform is interoperable with that app – Assessment of whether access to a digital platform is indispensable – Effects of the conduct at issue – Objective justification – Need for the undertaking in a dominant position to develop a template for a category of apps in order to allow access – Definition of the relevant downstream market

Ruling on a request for a preliminary ruling, the Court of Justice, sitting as the Grand Chamber, clarifies the conditions under which the refusal by an undertaking in a dominant position to ensure its digital platform is interoperable with a third-party application may be abusive and have anticompetitive effects. It also clarifies the circumstances which may be relied on as an objective justification for such a refusal and the obligations on the dominant undertaking where such a refusal is not justified.

Google LLC is a subsidiary of Alphabet Inc., which controls Google Italy Srl, established in Italy. In 2015, Google launched Android Auto, which allows users of mobile devices running the Android OS operating system to access apps on those devices directly on the screen of the infotainment system of a motor vehicle.

In 2018, Enel X Italia Srl, a company in the Enel group, which manages more than 60 % of the charging stations available for electric motor vehicles in Italy, requested Google to take the actions necessary to ensure that JuicePass, its electric car charging application, would be interoperable with Android Auto.

Faced with Google's refusal, Enel X Italia brought the matter before the Italian competition authority. In a 2021 decision, the Italian competition authority found that Google's conduct consisting of obstructing and delaying making the JuicePass app available on Android Auto constituted an abuse of a dominant position within the meaning of Article 102 TFEU and imposed a fine of more than EUR 100 million on Alphabet, Google and Google Italy.

Those companies brought an action against that decision before the Italian administrative court. That action having been dismissed, they brought an appeal before the Consiglio di Stato (Council of State, Italy), which decided to put questions to the Court regarding the interpretation of the concept of 'abuse of a dominant position', within the meaning of Article 102 TFEU, where there was a refusal of access such as that at issue in the present case.

*Findings of the Court*

After declaring the request for a preliminary ruling to be admissible, the Court examines, in the first place, whether the refusal by a dominant undertaking which has developed a digital platform to ensure interoperability with an app developed by a third-party undertaking, at the latter's request, is capable of constituting an abuse of a dominant position even though that platform is not

indispensable for the commercial operation of that application on a downstream market within the meaning of the case-law stemming from the judgment in *Bronner*. [61]

The Court first recalls that Article 102 TFEU punishes conduct on the part of undertakings in a dominant position such as practices having the effect of hindering, through means other than competition on the merits, the maintenance or growth of competition in a market in which the degree of competition is already weakened, precisely because of the presence of one or more undertakings in a dominant position.

In that context, the Court of Justice held, in the judgment in *Bronner*, that a refusal to grant access to infrastructure developed and owned by a dominant undertaking for the purposes of its own business may constitute an abuse of a dominant position provided not only that that refusal is likely to eliminate all competition in the market in question on the part of the entity requesting access and that such a refusal is incapable of being objectively justified, but also that the infrastructure, in itself, is indispensable to carrying on that undertaking's business, inasmuch as there is no actual or potential substitute in existence for that infrastructure.

In that regard, the Court of Justice points out that the imposition of those conditions was justified by the specific circumstances of the *Bronner* case, which consisted in a refusal by a dominant undertaking to give a competitor access to infrastructure which it had developed for the needs of its own business, to the exclusion of any other conduct.

To require an undertaking in a dominant position, on account of its refusal being abusive, to contract with a competitor in order to allow it access to that infrastructure is especially detrimental to its freedom of contract and its right to property. In addition, if such access were granted too easily, a dominant undertaking would be less inclined to invest in efficient facilities and the development of high-quality products and services, in the interest of consumers, and other undertakings would have no incentive to develop competing facilities.

By contrast, where an undertaking in a dominant position has developed infrastructure with a view to enabling third-party undertakings to use that infrastructure, the condition laid down by the Court of Justice in the judgment in *Bronner*, relating to whether that infrastructure is indispensable for carrying on the business of the entity applying for access, does not apply, since it is not justified by the preservation of the freedom of contract and the right to property of the undertaking in a dominant position, or by the need to provide that undertaking with an incentive to invest. The fact of requiring an undertaking in a dominant position to provide access to infrastructure developed with a view to it being used by third-party undertakings does not fundamentally alter the economic model which applied to the development of that infrastructure.

In the present case, subject to verification by the referring court, it appears that the digital platform was not developed by the undertaking owning that platform solely for the needs of its own business, since access to that digital platform was open to third-party undertakings. Therefore, the refusal to allow access to that digital platform is capable of constituting an abuse of a dominant position, even though that platform is not indispensable for the commercial operation of the app concerned on the downstream market, but is such as to make it more attractive to consumers.

In the second place, the Court holds that, even if both the undertaking which requested a dominant undertaking to ensure interoperability with its digital platform and competitors of the first undertaking continued to be active on the market concerned and grew their position on that market, even though they did not benefit from such interoperability, that fact is not in itself such as to indicate that the refusal by the dominant undertaking to act on that request was incapable of having anticompetitive effects.

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61 Judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569).

The Court recalls that the conduct of an undertaking in a dominant position may be characterised as abuse provided that it is demonstrated that, by methods other than competition on the merits, that conduct has the actual or potential effect of restricting competition by excluding equally efficient competitors from the market or markets concerned, or by hindering their growth on those markets.

However, that characterisation does not require it to be proved that the desired result of such conduct intended to drive the undertaking's competitors from the market concerned has been achieved. Therefore, a competition authority may find an infringement of Article 102 TFEU by demonstrating, on the basis of tangible evidence, that the conduct at issue was actually capable of having anticompetitive effects.

The maintaining of the same degree of competition on the market concerned, or even the growth of competition on that market, does not necessarily mean that the conduct at issue is incapable of having anticompetitive effects. In particular, the Court notes the question of whether such conduct is abusive does not depend on the ability of competitors to mitigate such effects.

The Court examines, in the third place, the objective justifications which may be relied on as a basis for a refusal of access such as that at issue and any obligations on the dominant undertaking where such a refusal is not justified. It observes in that regard that a refusal to ensure a third-party application is interoperable with the digital platform of an undertaking in a dominant position may be objectively justified where to grant such interoperability would compromise the integrity or security of the platform concerned, or where other technical reasons would make interoperability impossible.

If that is not the case, the undertaking in a dominant position is required to ensure interoperability within a reasonable period, taking into account both the difficulties encountered by that undertaking in that development and the needs of the third-party undertaking, and in return for, depending on the circumstances, appropriate financial consideration, which must be fair and proportionate, having regard to the actual cost of development and the right of the undertaking in a dominant position to derive an appropriate benefit from it.

In the fourth and final place, the Court finds that, in order to assess whether there is an abuse consisting of a refusal, by an undertaking in a dominant position, to ensure that a third-party app is interoperable with its digital platform, a competition authority may confine itself to identifying the market on which that refusal is capable of having anticompetitive effects, namely the downstream market, even if that market is merely a potential market. Such identification does not necessarily require a precise definition of the product and geographic market in question, in particular where the downstream market is developing or is evolving rapidly, so that its scope is not fully defined at the time when the allegedly abusive conduct is implemented.

# VII. APPROXIMATION OF LAWS

## 1. TELECOMMUNICATIONS

**Judgment of the Court of Justice (Fifth Chamber), 13 February 2025, Verbraucherzentrale Berlin (Concept of initial commitment period), C-612/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 2002/22/EC (Universal Service Directive) – Electronic communications networks and services – Universal service and users' rights – Consumer protection – Contracts concluded between a consumer and an undertaking providing electronic communications services – Facilitating change of provider – Article 30(5) – Initial commitment period – Concept

Hearing a request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), the Court of Justice rules on the question whether, in essence, the

concept of 'initial commitment period' in the Universal Service Directive [62] covers both the duration of the initial contract concluded between a consumer and a provider of electronic communications services and that of a subsequent contract concluded between the same parties, such that that subsequent contract may not impose a commitment period exceeding 24 months, including when it was signed and put into effect before the expiry of the initial contract.

The dispute in the main proceedings is between Verbraucherzentrale Berlin eV, a consumer protection association, and Vodafone GmbH, a provider of telecommunications services, including in the field of mobile telephony, concerning a commercial practice put in place by that provider with regard to consumers.

In the present case, two existing customers had each concluded an initial contract with Vodafone for a fixed commitment period. During 2018, before the expiry of their contracts, each of those two customers had wished to change their subscription plan in order to purchase, at a reduced price, a new mobile telephone at a higher monthly rate.

To that end, customer No 1 had signed an addendum to that customer's initial contract in which it was stated that it was a 'new contract', concluded 'before the end of the commitment period' and that a new commitment period of 24 months would begin to run from the first day following the expiry of the commitment period of the initial contract. That customer immediately received the agreed mobile telephone and Vodafone immediately applied the new rate provided for in that addendum. Customer No 2, for that customer's part, had signed a document entitled 'Contract Extension' in which a commitment period of 26 months was set. In that regard, Vodafone had made it clear to that customer that the remaining term of the initial contract which the customer had signed and which had not yet expired should be added to the minimum contractual period of 24 months.

Hearing the dispute in the main proceedings, the referring court considered that the addendum and the document signed by customers No 1 and No 2 respectively should have entered into force and been executed from the date of their signature. Nevertheless, that court is uncertain as to the interpretation of the concept of 'initial commitment period', the scope of which is disputed in Germany. According to a first point of view, that concept concerns only the initial contracts concluded between a customer and a provider of communication services and not their extensions. According to a second point of view, 'initial commitment period' should be taken to mean any commitment period, it being understood that the consumer must in any event be able to terminate the contract on expiry of the contractual period not exceeding 24 months.

*Findings of the Court*

The Court is of the opinion that an interpretation of Article 30 of the Universal Service Directive as meaning that the expression 'initial commitment period' refers only to that of the initial contracts concluded between the parties concerned and not to that of subsequent contracts concluded between the same parties would lead to making it more difficult, potentially for long periods, for those consumers to change provider and, as the case may be, depriving them of the possibility to take full advantage of competition in the field concerned.

By contrast, the Court notes that an interpretation of the concept of 'initial commitment period' according to which there can be no distinction between the initial contract and the subsequent contract concluded between the same parties is consistent with the main objective of Article 30 of the Universal Service Directive, namely that of facilitating an informed change of provider for consumers, when it is in their interests, in order to ensure they take full advantage of the competitive environment.

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62 Within the meaning of Article 30(5) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11).

In particular, first, although by deciding to enter into a new contract with the same service provider, the consumer displays confidence in that service provider, that should not, however, in the light of that objective, lead to preventing that consumer from changing service provider if a more attractive offer were to present itself.

Second, consumer protection is one of the objectives pursued by that directive. Although, when deciding to commit again to the same service provider at the end of an initial contractual period, the consumer does indeed have some experience of the commercial practices of the other party to the contract, the fact remains that that experience may prove to be irrelevant if the new commitment entered into involves, on either side, services of a different nature from those covered by the initial contract. Accordingly, the level of protection that consumers should be entitled to cannot be lower when a consumer agrees to amendments to a contract binding that consumer to a service provider than when that consumer enters into such a contract for the first time with a new service provider.

That is a fortiori the case in a situation, where the subsequent contract concluded between the parties concerned contains amendments concerning essential terms in relation to the initial contract concluded between those parties, such as those relating to pricing, the content or the nature of the services concerned.

Admittedly, the elimination of any legal, technical or practical obstacles which might make it difficult for consumers to change service providers does not go so far as to preclude the imposition of reasonable minimum contractual periods in consumer contracts. However, an interpretation of Article 30(5) of the Universal Service Directive allowing a service provider to impose, in respect of a new commitment entered into with one of its subscribers, a longer duration than the maximum commitment period imposed by that provision cannot be regarded as consistent with the objectives pursued by the EU legislature which, by that provision, set a time limit which must not be exceeded.

Accordingly, the Court rules that the concept of 'initial commitment period' referred to in Article 30(5) of the Universal Service Directive covers both the duration of the initial contract concluded between a consumer and a provider of electronic communications services and that of a subsequent contract concluded between the same parties and such that that subsequent contract may not impose a commitment period exceeding 24 months, including when it was signed and put into effect before the expiry of the initial contract.

## 2. MEDICINAL PRODUCTS FOR HUMAN USE

**Judgment of the Court of Justice (Fifth Chamber), 27 February 2025, Apothekerkammer Nordrhein, C-517/23**

Link to the full text of the judgment

Reference for a preliminary ruling – Medicinal products for human use – Directive 2001/83/EC – Article 86(1) – Concept of 'advertising of medicinal products' – Article 87(3) – Advertising of prescription-only medicinal products – Advertising of a pharmacy's entire range of medicinal products – Vouchers corresponding to a certain sum of money or a percentage reduction for the subsequent purchase of other products – Price reductions and payments with immediate effect – Free movement of goods – Article 34 TFEU – Freedom to provide services – Electronic commerce – Directive 2000/31/EC – Article 3(2) and (4)(a) – Restriction – Justification – Consumer protection

Hearing a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court clarifies the concept of 'advertising of medicinal products', within the meaning of Directive 2001/83, [63] in the context of advertising measures offered by a pharmacy when its customers purchase prescription-only medicinal products.

DocMorris is a Netherlands mail-order pharmacy that supplies prescription and non-prescription medicines to customers in Germany. Since 2012, it has used various advertising measures to promote the purchase of prescription-only medicinal products forming part of its entire product range.

Taking the view that those advertising measures infringed the fixed-price system that applies to prescription-only medicinal products, Apothekerkammer Nordrhein (Professional Association of Pharmacists of the North Rhine region, Germany) obtained, in the years 2013 to 2015, provisional measures for the cessation of those advertising measures. The latter took the form, in essence, of price reductions and payments or vouchers for the subsequent purchase of non-prescription medicinal products or other health and care products.

After the annulment, in March 2017, of almost all of those interim measures, DocMorris brought an action for damages against the Professional Association of Pharmacists of the North Rhine region, on the ground that those measures, in the context of which high fines had been imposed on it, were unjustified. After it was dismissed by the first instance court, that action was upheld on appeal.

Hearing an action for judicial review of that judgment brought by the Professional Association of Pharmacists of the North Rhine region, the referring court asks whether the advertising measures, which concern the purchase of prescription-only medicinal products, forming part of a pharmacy's entire range of products, come within the concept of 'advertising of medicinal products' within the meaning of Article 86(1) of Directive 2001/83 or whether, on the contrary, they are intended solely to influence the choice of pharmacy from which a customer purchases such medicinal products, that choice falling outside the scope of that directive. It also asks whether that directive precludes an interpretation of the relevant provisions of the national legislation on the advertising of medicinal products [64] to the effect that advertising measures promoting the purchase of prescription-only medicinal products in the form of price reductions and payments of an exact amount with immediate effect are authorised, whereas those giving rise to a reward of between EUR 2.50 and EUR 20 per medical prescription or taking the form of vouchers for the subsequent purchase of other products are prohibited.

*Findings of the Court*

In the first place, the Court clarifies the concept of 'advertising of medicinal products', within the meaning of Article 86(1) of Directive 2001/83, in the context of advertising measures that promote the purchase of prescription-only medicinal products.

In that regard, it highlights from the outset that it is the purpose of the message which determines whether or not an advertising measure comes within that concept. An advertising measure designed to promote the prescription, supply, sale or consumption of medicinal products thus comes within that concept. However, that is not the case where a measure seeks to influence not the customer's choice of a given medicinal product but the choice, taken at a later stage, of the pharmacy from which that customer would purchase that medicinal product.

In the present case, in order to determine whether an advertising measure promoting the purchase of prescription-only medicinal products from a pharmacy's entire product range falls within the

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63 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 (OJ 2011 L 174, p. 74).

64 The first sentence of Paragraph 7(1) of the Gesetz über die Werbung auf dem Gebiete des Heilwesens (Heilmittelwerbegesetz) (Law on the advertising of medicinal products; 'the national legislation at issue in the main proceedings').

concept of 'advertising of medicinal products', it is necessary to distinguish the measures according to whether the advertising message is limited to prescription-only medicinal products or whether that message also relates to non-prescription medicinal products.

As regards, on the one hand, the advertising measures taking the form of price reductions and payments of an exact amount with immediate effect, and the measure giving rise to a reward of between EUR 2.50 and EUR 20 per medical prescription (which must also be regarded as giving rise to a payment), the Court finds that the message of those advertising measures relates to unspecified prescription-only medicinal products, without concerning other types of medicinal products.

Thus, since the decision to prescribe such medicinal products is the sole responsibility of the doctor, who is required to carry out his or her functions objectively, [65] that message does not promote the prescription or consumption of unspecified prescription-only medicinal products. In so far as concerns the patient, when he or she receives a medical prescription, the only choice that remains to be made, with regard to the prescription-only medicinal product, is that of the pharmacy from which he or she will buy that medicinal product. Accordingly, the advertising measures in the form of price reductions and payments of an exact amount with immediate effect, and the measure giving rise to a reward of a certain amount per medical prescription do not come within the concept of 'advertising of medicinal products', within the meaning of Article 86(1) of Directive 2001/83, since they concern the choice of the pharmacy from which a patient purchases a prescription-only medicinal product.

As regards, on the other hand, advertising measures in the form of vouchers for the subsequent purchase of non-prescription medicinal products or other health and care products, the Court observes that these measures encourage the purchase of such medicinal products. In the absence of an obligation to have recourse to a prescribing doctor, the recipient of the vouchers, attracted by the economic advantage those vouchers offer, may use them to obtain non-prescription medicinal products at a reduced price. As a result, by promoting the consumption of such medicinal products, those advertising measures come within the concept of 'advertising of medicinal products' within the meaning of Article 86(1) of Directive 2001/83.

In the second place, in so far as an advertising measure giving rise to a reward of between EUR 2.50 and EUR 20, without it being possible to know the exact amount of that reward, does not come within the concept of 'advertising of medicinal products' and is prohibited by the national legislation at issue in the main proceedings, [66] the Court examines the compatibility of that legislation with other provisions of EU law. More specifically, since it is not clear from the documents before the Court whether such an advertising measure is implemented solely by means of physical media or whether, by contrast, it is carried out both via the website of the pharmacy and by means of physical media, the Court assesses the compatibility of that national legislation with, first, Article 34 TFEU and, second, the relevant provisions of Directive 2000/31. [67]

On the matter of the compatibility of the national legislation at issue in the main proceedings with Article 34 TFEU, the Court recalls that such legislation must be regarded as governing a selling arrangement, which can fall outside the scope of that provision of the TFEU if it satisfies the twofold condition that it applies to all relevant traders operating within the national territory and it affects in the same manner, in law and in fact, the marketing of domestic products and that of products from other Member States. [68]

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65 Pursuant to recital 50 of Directive 2001/83.

66 First sentence of Paragraph 7(1) of the national legislation at issue in the main proceedings.

67 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

68 Judgment of 15 July 2021, *DocMorris* (C-190/20, EU:C:2021:609, paragraphs 35, 37, 38).

As regards the first of those conditions, the Court notes that the national legislation at issue in the main proceedings applies without distinction to all pharmacies which sell medicinal products on German territory, whether they are established in that territory or in another Member State. As regards the second condition, the Court observes that price competition is likely to be a more important parameter of competition for mail-order pharmacies than for traditional pharmacies and that an advertising measure giving rise to a reward of between EUR 2.50 and EUR 20 per medical prescription seeks to establish price competition with traditional pharmacies. Accordingly, the Court concludes that that national legislation which prohibits such an advertising measure has a greater impact on pharmacies established in a Member State other than the Federal Republic of Germany, which could impede market access for products from other Member States more than those from the Federal Republic of Germany, with the result that such a prohibition constitutes a measure having an equivalent effect to quantitative restrictions.

As regards the compatibility of the national legislation at issue in the main proceedings with Directive 2001/83, the Court points out that, pursuant to that directive, [69] Member States are to ensure medicinal products are offered for sale at a distance to the public by means of information society services in accordance with a series of conditions set out therein. However, this obligation is without prejudice to national legislation prohibiting the offer for sale at a distance of prescription medicinal products to the public by means of such services. Therefore, where the Member State of destination authorises such an offer, which appears to be the case here, that Member State may not, so far as relates to such services, restrict the free movement of information society services from another Member State. [70] In the present case, the prohibition of an advertising measure such as the one imposed by the national regulation at issue in the main proceedings, is such as to restrict the possibility for a pharmacy established in another Member State to make itself known to potential customers in that first Member State and must, therefore, be regarded as a restriction on the freedom to provide information society services.

However, the Court states that the prohibition of the advertising measure provided for in the national legislation at issue in the main proceedings comes, subject to verification by the referring court, within the scope of consumer protection, which constitutes an overriding reason in the public interest capable of justifying an obstacle to the free movement of goods. First, as regards the objective of the protection of consumers, that legislation helps to avoid the risk of consumers overestimating the amount of the reward in question, a risk which may be significant for consumers who purchase highly priced medicinal products or who, suffering from a chronic disease, have to buy them regularly. Second, that legislation does not go beyond what is necessary to attain that objective, in so far as it prohibits the advertising measure in question, which establishes a range for the amount of the reward, without an average consumer, who is reasonably well informed and reasonably observant and circumspect, being able to calculate the exact amount of that reward.

Accordingly, the Court concludes that Article 34 TFEU and Article 3(4)(a) of the Directive on electronic commerce [71] do not preclude national legislation which, in order to protect consumers, prohibits an advertising measure by which customers of a mail-order pharmacy are offered a reward of between EUR 2.50 and EUR 20 per medical prescription, without it being possible to know the exact amount of that reward.

In the third place, the Court rules that Article 87(3) of Directive 2001/83 does not preclude national legislation which prohibits advertising measures promoting the purchase of unspecified prescription-only medicinal products by offering vouchers corresponding to a certain sum of money or a

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69 Specifically, Article 85c(1) of the Directive on electronic commerce.

70 Article 3(2) of Directive 2001/83.

71 Pursuant to Article 3(4)(a) of the Directive on electronic commerce, Member States may, under certain conditions, restrict the freedom to provide certain information society services from another Member State.

percentage reduction for the subsequent purchase of other products, such as non-prescription medicinal products.

Those advertising measures, although directed at the purchase of prescription-only medicinal products, promote only the consumption of non-prescription medicinal products. Even though advertising of such medicinal products is permitted, [72] Member States must prohibit, in order to prevent risks to public health, the inclusion, in advertising of such medicinal products directed at the general public, of material which is of such a nature as to promote the irrational use of such medicinal products.

In the present case, by using the vouchers in question, the consumer may obtain, at a reduced price, products from the entire range of products of the pharmacy concerned, and choose, for example, between buying non-prescription medicinal products and purchasing other consumer products, such as health and care products. The treatment, by the advertising measures in question, of non-prescription medicinal products in the same way as other consumer products offered by a pharmacy is liable to lead to the irrational and excessive use of non-prescription medicinal products since, first, it conceals the very particular nature of those medicinal products, the therapeutic effects of which distinguish them substantially from other goods and, second, it distracts the consumer from an objective evaluation of the need to take those medicinal products. As a result, a prohibition such as the one provided for by the national legislation at issue in the main proceedings meets the essential aim of safeguarding public health, inasmuch as it prevents the use of advertising material that encourages the irrational and excessive use of non-prescription medicinal products.

## VIII. ECONOMIC AND MONETARY POLICY: SINGLE RESOLUTION MECHANISM

**Judgment of the General Court (Tenth Chamber, Extended Composition), 12 February 2025, de Volksbank v SRB (2018 ex ante Contributions), T-406/18**

Link to the full text of the judgment

Economic and Monetary Union – Banking Union – Single Resolution Mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Decision of the SRB on the calculation of the *ex ante* contributions for the 2018 contribution period – Articles 4, 14 and 16 of Delegated Regulation (EU) 2015/63 – Principle of good administration

Hearing an action for annulment, which it upholds, the General Court rules, for the first time, on the methodology used by the Single Resolution Board (SRB) to calculate the *ex ante* contributions of institutions subject to that system and the components of that calculation in the event of a merger between two credit institutions.

The applicant, de Volksbank NV, formerly SNS Bank NV, is a credit institution established in the Netherlands.

In 2016, the group comprising SNS Bank and its two subsidiaries was restructured, as a result of which, on 31 December 2016, those two subsidiaries were absorbed by SNS Bank; on 1 January 2017, SNS Bank was renamed de Volksbank ('the 2016 merger'). That absorption led to the withdrawal of

72 Article 88(2) of Directive 2001/83.

the banking authorisations of those two subsidiaries, leaving the applicant, in 2017, as the only institution falling within the scope of Regulation No 806/2014. [73]

By decision of 12 April 2018, [74] the SRB determined the *ex ante* contributions to the SRF ('the *ex ante* contributions'), [75] for 2018, of the institutions covered by the provisions of that regulation, which included the applicant. By letter of 23 April 2018, De Nederlandsche Bank NV (DNB, Bank of the Netherlands), in its capacity as the national resolution authority, ordered the applicant to pay its *ex ante* contribution for 2018, as determined by the SRB.

On 8 August 2022, the SRB adopted the contested decision, [76] by which it withdrew and replaced the initial decision in respect of certain institutions, including the applicant, in order to remedy the failure to state reasons for the latter decision, in the light of various decisions of the Court of Justice. [77] In order to calculate the applicant's net liabilities and, accordingly, its basic annual contribution, the SRB used, first, the amount of the applicant's total liabilities as at 31 December 2016, thereby relying on data subsequent to the 2016 merger, and, second, the average amount of its covered deposits, calculated quarterly, in 2016, that amount therefore being determined on the basis of data which largely pre-dated that merger ('the methodology used by the SRB'). It is in that context that, in the light of the methodology used by the SRB, the applicant, in support of its action for annulment of the contested decision, complained in particular that the SRB had used data relating to different points in time for the purpose of calculating its *ex ante* contribution.

*Findings of the Court*

As a preliminary point, the General Court recalls that it is apparent from Article 4(1) of Delegated Regulation 2015/63 [78] that it is for the SRB to determine the *ex ante* contribution of each institution on the basis of information provided by that institution and, specifically, by means of the latest approved annual financial statements which were available, at the latest, on 31 December of the year preceding the contribution period ('year N-1'), provided together with the opinion submitted by the statutory auditor or audit firm. Moreover, it states that, in view of the time required in order to finalise such financial statements, that information relates, as a general rule, to the penultimate year preceding the contribution period concerned or, in exceptional circumstances, to an accounting year which began during that penultimate year and was closed during year N-1 (those two periods being referred to as 'reference year N-2').

As regards the SRB's use of data relating to different points in time for the purpose of calculating the applicant's net liabilities and therefore its *ex ante* contribution, the Court examines whether, when the SRB takes into account the average amount of covered deposits, calculated quarterly, for reference year N-2 with a view to calculating the net liabilities, it may at the same time take into account, for the purposes of that calculation, the amount of total liabilities, as it stands at the end of reference year N-2, and not the average amount of total liabilities calculated quarterly, which also includes the amount of covered deposits.

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

74 Decision SRB/ES/SRF/2018/03 of the SRB of 12 April 2018 on the calculation of the 2018 *ex ante* contributions to the Single Resolution Fund (SRF) ('the initial decision').

75 In accordance with Article 70(2) of Regulation No 806/2014.

76 Decision SRB/ES/2022/46 of the SRB of 8 August 2022 withdrawing Decision SRB/ES/SRF/2018/03 of the SRB of 12 April 2018 on the 2018 *ex ante* contributions to the SRF ('the contested decision').

77 Judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB* (C-584/20 P and C-621/20 P, EU:C:2021:601), and orders of 3 March 2022, *SRB* v *Hypo Vorarlberg Bank* (C-663/20 P, not published, EU:C:2022:162) and *SRB* v *Portigon and Commission* (C-664/20 P, not published, EU:C:2022:161).

78 Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

In that regard, the Court observes that neither Delegated Regulation 2015/63 nor Directive 2014/59 nor Regulation No 806/2014 contains specific requirements concerning the SRB's obligation, in determining the net liabilities, to take into account the amount of total liabilities at the end of reference year N-2 or their average amount during that year. Consequently, Delegated Regulation 2015/63 [79] confers discretion on the SRB as regards the relevant point in time for determining the amount of total liabilities for the purpose of calculating the net liabilities.

However, in the exercise of such discretion, the Court states, first, that the principle of good administration [80] imposes on the institutions and bodies of the European Union the duty to examine carefully and impartially all the relevant aspects of the individual case. Second, with specific regard to the matter concerned, the basic annual contribution, as provided for in Directive 2014/59 and Regulation No 806/2014, [81] is based on a pro rata amount of the net liabilities of each institution with respect to the net liabilities of the other institutions. Such a ratio reflects the general scheme of the *ex ante* contribution system, whereby the basic annual contribution must above all reflect the size of each institution according to its liabilities. [82]

Thus, the size of an institution represents a first indicator of the risk posed by it, since the larger an institution is, the more likely it is that, in the case of distress, the SRB would consider it in the public interest to resolve that institution and to make use of the SRF to ensure an effective application of the resolution tools. It is in that context that the Court has previously held that the basic annual contribution must reflect the size of the institutions in order to ensure that adequate financial resources are provided for the Single Resolution Mechanism for the purposes of the efficient application of the resolution tools. In those circumstances, it is for the SRB to calculate the basic annual contributions in such a way that reflects, in a sufficiently precise manner, the size of the institutions concerned and the associated risk according to their liabilities, so that the institutions with significant liabilities pay higher *ex ante* contributions than the institutions with more limited liabilities – subject to the adjustment of those contributions in the light of the relevant risk indicators – and the institutions are encouraged to adopt less risky methods of operation by reducing, inter alia, the amount of their net liabilities.

Although the methodology used by the SRB may, as a general rule, reflect, in a sufficiently precise manner, the size of the institutions concerned, the situation may be different in certain specific cases where the total liabilities and covered deposits of a given institution undergo a significant change in the course of reference year N-2, going beyond the normal fluctuations of such liabilities during the year. Such a change may result, inter alia, from an alteration in the structure of that institution, such as that produced following a merger or absorption. When confronted with such a specific situation, it follows from the principle of good administration that the SRB is required to examine carefully and impartially all the relevant aspects of the individual case in the exercise of its discretion.

Consequently, where an institution submits to the SRB specific, quantified and verifiable data, from which it is apparent that, as a result of a substantial alteration in its structure in the course of reference year N-2, its total liabilities and the amount of its covered deposits underwent a significant change, with the result that the methodology for calculating the net liabilities no longer reflects its size in a sufficiently precise manner, it is for the SRB to take such aspects into account in order to ensure that the calculation of the net liabilities of the institution concerned complies with the requirements referred to previously.

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79 Specifically, Article 4(1) and Article 14(1) of Delegated Regulation 2015/63.

80 As enshrined in Article 41 of the Charter of Fundamental Rights of the European Union.

81 Article 103(2) of Directive 2014/59 and point (a) of the second subparagraph of Article 70(2) of Regulation No 806/2014.

82 As is apparent from the *travaux préparatoires* relating to Directive 2014/59 and from recital 5 of Delegated Regulation 2015/63.

In the present case, the Court observes, first of all, that the effect of the 2016 merger between the applicant and the absorbed subsidiaries was that, on 31 December 2016, the amount of the applicant's total liabilities increased significantly, since it included – in contrast to the first three quarters of 2016 – the amounts of the total liabilities and covered deposits of its former subsidiaries.

Next, in order to calculate the applicant's net liabilities and its basic annual contribution, the SRB used the amount of total liabilities on the basis of the data as at 31 December 2016, whereas, in respect of the amount of covered deposits subtracted from the amount of total liabilities, it took into account the average amount of the applicant's covered deposits, calculated quarterly, in 2016.

As regards the covered deposits that were subtracted from the amount of total liabilities in the context of calculating the applicant's net liabilities, the methodology used by the SRB took the 2016 merger into account only partially. By contrast, as regards the determination of the amount of the applicant's total liabilities, the SRB relied solely on the statement of its total liabilities as at 31 December 2016, that is to say, on the amount resulting from the 2016 merger. It therefore did not take into account the amounts of the applicant's total liabilities at the end of the first three quarters of 2016, which did not include the total liabilities of the absorbed subsidiaries.

It follows from those factors that the calculation of its total liabilities – the first component of the calculation of the net liabilities – was based entirely on the applicant's situation following the 2016 merger, whereas the calculation of the amount of its covered deposits – the second component of that process – which then had to be subtracted from the total liabilities, was based to a very large extent on the applicant's situation prior to that merger. Therefore, given the extent to which all those liabilities were modified as a result of the 2016 merger, such a calculation of the net liabilities did not reflect, in a sufficiently precise manner, the size of the applicant and, accordingly, the associated risk. Thus, the SRB did not take into account all the relevant aspects of the individual case in the exercise of its discretion, in order to ensure that the calculation of the applicant's net liabilities complied with the requirements referred to previously.

Consequently, the Court holds that the SRB exercised its discretion, in the context of calculating the applicant's basic annual contribution, in a manner that infringes Article 4(1) of Delegated Regulation 2015/63 [83] and the principle of good administration, and annuls the contested decision to the extent that it concerns the applicant.

## IX. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

**Judgment of the General Court (First Chamber, Extended Composition), 26 February 2025, Melnichenko v Council, T-498/22**

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – Restrictions on entry into the territory of the Member States – List of persons, entities and bodies subject to the freezing of funds and economic resources and subject to restrictions on entry into the territory of the Member States – Inclusion and maintenance of the applicant's name on the list – Concept of

83 As interpreted in accordance with Article 103(2) of Directive 2014/59 and point (a) of the second subparagraph of Article 70(2) of Regulation No 806/2014.

'association' – Article 2(1), *in fine*, of Decision 2014/145/CFSP – Plea of illegality – Error of assessment – Fundamental rights – Proportionality

In its judgment, the General Court dismisses the action for annulment brought by Ms Aleksandra Melnichenko against the acts by way of which her name was included, in June 2022, [84] then maintained, in September 2022, [85] and in March and April 2023, [86] by the Council of the European Union, on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The applicant being a national of a Member State, the present case allows the General Court to specify the conditions for limiting the right to freedom of movement of Union citizens by clarifying, inter alia, the relationship between the relevant provisions of the EU Treaty, the FEU Treaty and the Charter of Fundamental Rights of the European Union ('the Charter') where restrictions on that freedom were adopted in the context of the Common Foreign and Security Policy (CFSP).

This judgment arises in the context of a series of restrictive measures adopted by the European Union following the military aggression launched by the Russian Federation against Ukraine on 24 February 2022. The applicant's funds and economic resources were frozen on the ground that she is associated with a person whose name was included on the list at issue, as a leading businessperson involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine. [87]

In support of her action, the applicant alleges, inter alia, infringement of her right to move freely within the territory of the Member States, enshrined in Article 45(1) of the Charter.

*Findings of the Court*

First of all, the Court notes that, in accordance with Article 52(2) of the Charter, rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties, in this case Article 20(2)(a) TFEU and Article 21 TFEU. Thus, according to Article 21(1) TFEU, the right to move and reside freely within the territory of the Member States is subject to the limitations and conditions laid down in the Treaties and by the measures

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84 Council Decision (CFSP) 2022/883 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 153, p. 92), and of Council Implementing Regulation (EU) 2022/878 of 3 June 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 153, p. 15) (together, 'the initial acts').

85 Council Decision (CFSP) 2022/1530 of 14 September 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 239, p. 149) and Council Implementing Regulation (EU) 2022/1529 of 14 September 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 239, p. 1) (together, 'the September 2022 maintaining acts').

86 Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75I, p. 134) and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75I, p. 1) (together, 'the March 2023 maintaining acts'); Council Decision (CFSP) 2023/811 of 13 April 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 101, p. 67) and Council Implementing Regulation (EU) 2023/806 of 13 April 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 101, p. 1) (together, 'the March and April 2023 maintaining acts').

87 See Article 2(1)(a) and (g) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision (CFSP) 2022/329 of 25 February 2022 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 50, p. 1), and Article 3(1)(a) and (g) of Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Council Regulation (EU) 2022/330 of 25 February 2022 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 51, p. 1).

adopted to give them effect. Since those qualifications also include the EU Treaty and the measures adopted to give it effect, limitations on the exercise of the right to freedom of movement and of residence of Union citizens enshrined in Article 45(1) of the Charter may be imposed by acts in the field of the CFSP, such as the contested acts.

However, in order to comply with EU law, limitations on the exercise of the right enshrined in Article 45(1) of the Charter must be provided for by law, respect the essence of that right, refer to an objective of general interest, recognised as such by the European Union, and not be disproportionate. [88]

In the present case, the Court finds, in the first place, that the limitations on the applicant's right to move freely within the territory of the Member States resulting from the contested acts are provided for by law since they are set out in acts which are, inter alia, of general application [89] and which have a clear legal basis in EU law. [90]

The Court notes, in the second place, that the limitations at issue respect the essence of the applicant's right to move freely within the territory of the Member States. In accordance with Article 1(2) of Decision 2014/145, as amended, those limitations comply first of all with the principle of international law according to which a State cannot refuse its own nationals the right to enter its territory and remain there. Next, the lists at issue are to be periodically reviewed so that the names of persons who no longer meet the listing criteria are removed from the lists. [91] Last, those limitations do not call into question that right as such, since they have the effect of temporarily suspending it for certain persons, under specific conditions and on account of their individual situation.

In the third place, in the context of the examination of proportionality, the Court notes, first, that the limitations at issue are suitable for attaining the objective of general interest pursued by the CFSP, [92] namely to exert pressure on the Russian authorities so that they bring an end to their actions and policies destabilising Ukraine.

Second, it states that the applicant has not demonstrated that the Council was entitled to consider adopting measures which were less restrictive but just as appropriate as those provided for. Furthermore, it recalls that the application of the restrictive measures at issue is subject to an exemption mechanism which authorises the Member States to grant exemptions from the measures imposed, inter alia, where a person's travel is justified on grounds of urgent humanitarian need. [93] Accordingly, in the light of the importance of the objectives pursued by those measures, the limitations at issue are not manifestly disproportionate. Having regard to the foregoing, the Court finds that the limitations at issue comply with the conditions set out in Article 52(1) of the Charter.

In the light of that finding, the Court also rejects the applicant's argument based on her derived right to reside in a Member State in order to ensure enjoyment of the right of residence of her young children. [94] That argument cannot usefully be relied on, since the applicant has an autonomous right to move and reside freely within the territory of the Member States, and the limitation of that autonomous right is regarded as justified.

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88 Article 52(1) of the Charter.

89 Decision 2014/145, as amended, and Regulation No 269/2014, as amended.

90 Article 29 TEU and Article 215 TFEU.

91 Article 6 of Decision 2014/145, as amended.

92 Article 21(2)(b) and (c) TEU.

93 Article 1(6) of Decision 2014/145, as amended.

94 Judgment of 19 October 2004, *Zhu and Chen* (C-200/02, EU:C:2004:639, paragraph 46).

Last, in so far as the applicant relies on the precarious situation of her children in order to demonstrate the allegedly disproportionate nature of the limitation on her own right to move freely within the territory of the Member States, the Court rejects that argument as unsubstantiated, while recalling the obligation of the national authorities to interpret the provisions of Decision 2014/145 concerning humanitarian derogations, in the light of Article 24(2) of the Charter, taking into account the best interests of the child.