COURT OF JUSTICE
OF THE EUROPEAN UNION

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MONTHLY CASE-LAW DIGEST
March 2025

I. VALUES OF THE UNION: RULE OF LAW – INDEPENDENCE OF THE JUDICIARY

Judgment of the Court of Justice (Fifth Chamber), 6 March 2025, D. K. (Withdrawal of cases from a judge), C-647/21 and C-648/21

Link to the full text of the judgment

Reference for a preliminary ruling – Rule of law – Second subparagraph of Article 19(1) TEU – Principle of the irremovability of judges and judicial independence – Resolution of the college of a court withdrawing all cases from a judge – Lack of objective criteria for taking a withdrawal decision – Lack of obligation to state reasons for such a decision – Primacy of EU law – Obligation to disapply such a decision to withdraw cases

Hearing two criminal cases which were subsequently withdrawn from the judge who submitted the present two requests for a preliminary ruling, the Court clarifies the scope and practical application of the concept of 'internal' judicial independence' as recognised by the second subparagraph of Article 19(1) TEU.

As regards Case C-647/21, the Sąd Okręgowy w Słupsku (Regional Court, Slupsk, Poland), which is the referring court, sitting as a single judge, has been seised of an appeal by D.K. against a decision by which he was sentenced, at first instance, to a term of imprisonment.

As regards Case C-648/21, M.C. and M.F. were convicted at first instance. The court of second instance hearing their appeal acquitted M.C. and upheld the conviction of M.F. The Sąd Najwyższy (Supreme Court, Poland), hearing an appeal against the decision at second instance concerning M.C., set aside that decision and referred the case back to the referring court. In that case, the Court sits in a formation of three judges, consisting of the President of the formation, the President of the referring court and a third judge. The request for a preliminary ruling was made by the President of the formation alone, who is the same judge as in Case 647/21.

In September 2021, in proceedings unrelated to the cases in the main proceedings, the judge who submitted the present two orders for reference requested the President of the appellate division of the referring court to replace the President of that court in the formation hearing the case in those proceedings with another judge. She considers that, since that judge was appointed on the basis of a resolution of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') in its new composition, the right to a tribunal previously established by law, within the meaning, inter alia, of Article 19(1) TEU, is infringed. That request was rejected.

In October 2021, in another case, the same judge set aside a judgment of a lower court that had been delivered by a judge who had also been appointed on the basis of a resolution of the KRS in its new composition.

In the same month, the College of the referring court adopted a resolution seeking to withdraw from that judge approximately 70 cases, including the cases in the main proceedings. According to that judge, that resolution was not served on her and she was not aware of the reasons for it. The President of that court also adopted an order transferring her from the appellate division of that court to the first instance division of that court. That order, which entered into force a few days after its adoption merely refers to the need to ensure the proper functioning of both divisions.

In those circumstances, the referring court, which is uncertain as to whether the abovementioned measures are compatible with the second subparagraph of Article 19(1) TEU, asks the Court, in essence, to clarify whether the judge who submitted the present two requests for a preliminary ruling may continue to sit in those two cases. It also asks whether it is required to disregard the College resolution and other subsequent measures.

Findings of the Court

In the first place, the Court states that the second subparagraph of Article 19(1) TEU precludes national legislation under which a body of a national court may withdraw from a judge of that court some or all of the cases assigned to him or her, where that legislation does not lay down the criteria which must guide that body when it takes such a decision to withdraw cases or require a statement of reasons for that decision.

In reaching that conclusion, it states that the rules on allocation and reallocation of cases form part of the concept of a tribunal 'previously established by law', which requires not only a legal basis for the very existence of the court, but also observance of the composition of the bench in each case.

In the present case, it appears that the legislation at issue provides that a change in the composition of a court is permissible where there is a 'lasting obstacle to the court hearing and determining the case in its current composition', without further clarification. Although that legislation provides, in essence, that a judge is to remain seised of cases which have been assigned to him or her despite his or her transfer to another place or secondment to another court, until those cases are closed, it appears that his or her cases may be withdrawn from him or her by decision of the college of the court concerned without setting out criteria in that regard. In addition, according to the same rules, the college of the court may also withdraw cases from a judge in the event of his or her transfer to another division, although that possibility is not accompanied, once again, by any specific criteria. It must therefore be held that such legislation not only does not lay down objective criteria governing the possibility of withdrawing from a judge one or more of his or her cases, but also allows the college of the court concerned to withdraw cases from a judge without giving reasons for such a decision. Moreover, the College resolution by which the cases in the main proceedings were withdrawn from the judge concerned does not appear to be capable of being justified by the transfer order, which states reasons briefly, by which the President of the referring court decided, in October 2021, to transfer the judge concerned to another division of the same court.

Furthermore, the fact that a judge's cases are withdrawn from him or her, where the national legislation concerned does not lay down objective criteria for such a possibility of withdrawal and where it does not require a decision to withdraw cases to include the reasons on which it is based, does not rule out the possibility that that withdrawal was arbitrary, or constitutes a disguised disciplinary penalty. Thus, organisational measures such as those at issue in the main proceedings, the implementation of which is not governed by sufficiently precise criteria and is not subject to an obligation to state adequate reasons, are liable to give rise to doubts as to the possibility that the withdrawal of the cases, followed by a transfer, may have taken place in response to earlier acts of the judge concerned. Therefore, in order to avoid leaving room for the arbitrariness which might result from a non-transparent procedure liable to undermine the principles of independence and irremovability of judges, it is important that the national rules governing the withdrawal of cases lay down clearly stated objective criteria on the basis of which cases may be withdrawn from a judge as well as the obligation to state the reasons for decisions to withdraw cases, in particular where the judge concerned has not given his or her consent.

In the second place, the Court rules that the second subparagraph of Article 19(1) TEU and the principle of the primacy of EU law require a national court to disapply a resolution of the college of that court withdrawing from a judge of that court cases assigned to him or her and other subsequent acts, such as the decisions relating to the reassignment of those cases, where that resolution was adopted in breach of the second subparagraph of Article 19(1) TEU. The judicial bodies responsible for determining and modifying the composition of that formation must disapply such a resolution.

More specifically, in a situation where the national legislation governing the withdrawal of cases is found to be incompatible with the second subparagraph of Article 19(1) TEU, a formation of the court must be justified in continuing, with the same composition, the examination of the main proceedings without the judicial bodies with jurisdiction to determine and modify the composition of the formations of the national court being able to prevent that continued examination.

II. INSTITUTIONAL PROVISIONS: ACTION TO ESTABLISH NON-CONTRACTUAL LIABILITY OF THE EUROPEAN UNION

Judgment of the General Court (Second Chamber), 19 March 2025, Kargins v Commission, T-350/23

Link to the judgment as published in extract form

Non-contractual liability – State aid – Intervention of the Commission as *amicus curiae* before a national court – Unlawfulness of the conduct alleged against the EU institution – Plea of illegality – Sufficiently serious breach of a rule of law intended to confer rights on individuals – Article 29(2) of Regulation (EU) 2015/1589 – Principles of separation of powers, independence of national courts, right to an effective remedy, impartiality and neutrality

By its judgment, the General Court dismisses the action seeking to establish the non-contractual liability of the European Union [1] and seeking compensation for the damage which the applicant claims to have suffered as a result of an allegedly unlawful intervention by the European Commission, as *amicus curia*, in the context of a national dispute pending before the Augstākā tiesa (Supreme Court, Latvia). In doing so, the Court rules on the lawfulness of the mechanism for cooperation between the European Commission and the national courts, provided for in Article 29(2) of Regulation 2015/1589, [2] in the context of the application of the rules on State aid.

In the present case, a former shareholder of AS Parex banka made a deposit with that bank; ownership of that deposit was transferred to the applicant, Mr Kargins. In the context of the banking crisis of 2008, Parex banka was the beneficiary of aid measures, which were the subject of two Commission decisions, adopted in 2010 and 2014 respectively. [3] Under a restructuring plan approved by the Commission, the applicant's deposit was assigned to a new entity.

In 2012, the applicant brought civil proceedings against that entity, seeking repayment of that deposit. A first decision in favour of the applicant was delivered in 2013 and upheld in 2016 by a judgment of the Augstākās tiesas Civillietu tiesu palāta (Supreme Court (Civil Division), Latvia).

The Latvian authorities informed the Commission of the latter judgment, in so far as it was liable to contravene the Commission's decisions adopted in 2010 and 2014. Subsequently, the Commission submitted observations to the national court, as *amicus curiae*, on the basis of Article 29(2) of Regulation 2015/1589.

By judgment delivered in 2018, the Augstākā tiesa (Supreme Court, Latvia) set aside the judgment of 2016. It was in that context that the applicant brought an action before the General Court seeking compensation for the damage which he claims to have suffered as a result of the Commission's intervention in the national judicial proceedings.

Findings of the Court

Against that background, the Court examines, inter alia, the plea of illegality raised by the applicant against Article 29(2) of Regulation 2015/1589.

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1 Based on Article 268 and the second paragraph of Article 340 TFEU.

2 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9). Under Article 29(2) of Regulation 2015/1589, 'where the coherent application of Article 107(1) or Article 108 TFEU so requires, the Commission, acting on its own initiative, may submit written observations to the courts of the Member States that are responsible for applying the State aid rules'.

3 Commission Decision 2011/364/EU of 15 September 2010 on the State aid C 26/09 (ex N 289/09) which Latvia is planning to implement for the restructuring of AS Parex banka (OJ 2011 L 163, p. 28) and Commission Decision (EU) 2015/162 of 9 July 2014 on the State aid SA.36612 (2014/C) (ex 2013/NN) implemented by Latvia for Parex (OJ 2015 L 27, p. 12).

In the first place, the Court finds that Regulation 2015/1589 was adopted on the basis of Article 109 TFEU, which confers a broad power on the Council, in so far as that article provides that the Council may adopt any appropriate regulations for the application of Articles 107 and 108 TFEU.

In so far as both the Commission and the national courts [4] are called upon to apply Articles 107 and 108 TFEU, cooperation mechanisms, such as those provided for in Article 29 of Regulation 2015/1589, enabling, on the one hand, the national courts to ask the Commission for information or opinions on the application of those rules and, on the other hand, the Commission to make written or oral observations before those courts, must be regarded as useful for the purposes of applying those articles of the FEU Treaty.

In the second place, the Court finds that the mechanism provided for in Article 29 of Regulation 2015/1589 is not contrary to Article 267 TFEU. In that regard, it finds that it does not follow from that provision that the Commission's intervention, whether at the request of the national courts or on its own initiative, interferes with or prejudges the possibility, or obligation, for the national courts to refer a question to the Court of Justice for a preliminary ruling under Article 267 TFEU. [5]

First, the mechanism provided for in Article 29 of Regulation 2015/1589 forms part of the spirit of sincere cooperation [6] and represents support for the national courts, since the Commission's observations are not binding on those courts.

Second, the national courts' power or obligation to refer a question for a preliminary ruling under Article 267 TFEU is based on the principles of uniform application and primacy of EU law. Thus, national courts have the power and, in certain circumstances, an obligation, to make a reference for a preliminary ruling once they find, either of their own motion or at the request of the parties, that the substance of the dispute involves a question which falls within the scope of the first paragraph of that article. It is conceivable that a national court, after receiving observations from the Commission, pursuant to Article 29 of Regulation 2015/1589, on an issue relating to the application of Articles 107 and 108 TFEU, may subsequently refer a question to the Court of Justice for a preliminary ruling on that same issue, pursuant to Article 267 TFEU.

Therefore, the mechanisms provided for in Article 267 TFEU and Article 29 of Regulation 2015/1589 are complementary and are not mutually exclusive.

In the third place, the Court considers that the mechanism provided for in Article 29 of Regulation 2015/1589 is not contrary to Article 108 TFEU. Under Article 108(2) TFEU, the Commission may refer the matter directly to the Court of Justice, in infringement proceedings, where a Member State does not comply with a Commission decision finding that State aid is not compatible with the internal market. However, it is not apparent from Article 108 TFEU that the possibility for the Commission to refer the matter directly to the Court of Justice is precluded by the fact that the Commission intervened as *amicus curiae* in national proceedings under Article 29 of Regulation 2015/1589. Similarly, it is not apparent from the latter provision that the right to intervene as *amicus curiae* is conditional on whether or not the Commission can refer the matter to the Court of Justice under the second subparagraph of Article 108(2) TFEU. Accordingly, the Commission's intervention, pursuant to Article 29 of Regulation 2015/1589, is without prejudice to the procedure which the Commission may initiate under Article 108(2) TFEU.

In the last place, the Court finds that the mechanism provided for in Article 29 of Regulation 2015/1589 provides sufficient procedural safeguards. Thus, the Commission's observations are to be submitted in accordance with national procedural rules, including those safeguarding the rights of the parties, and are to respect the independence of national courts. Accordingly, it is the procedural safeguards provided for under national law that are applicable in the context of the national proceedings in question; that law is deemed to comply with Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union.

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4 Under Article 108(3) TFEU.

5 Recital 38 of Regulation 2015/1589.

6 Provided for in Article 4 TEU.

III. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (First Chamber), 13 March 2025, Deldits, C-247/23

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 5(1)(d) – Principle of accuracy – Article 16 – Right to rectification – Article 23 – Restrictions – Data relating to gender identity – Data incorrect from the time of inclusion in a public register – Means of proof – Administrative practice of requesting proof of gender reassignment surgery

Having received a request for a preliminary ruling from the Fővárosi Törvényszék (Budapest High Court, Hungary), the Court of Justice rules on, first, whether the General Data Protection Regulation [7] requires a national authority responsible for keeping a public register to rectify the personal data relating to the gender identity of a natural person where those data are inaccurate and, second, whether a Member State may, by way of an administrative practice, make the exercise of the right to rectification of such data, contained in a public register, conditional upon the production of evidence of, in particular, gender reassignment surgery.

VP, an Iranian national, obtained refugee status in Hungary by relying on their transgender identity. According to the medical certificates produced in support of their application, although VP was born female, their gender identity was male. Following the recognition of their refugee status on that basis, VP was nevertheless registered as female in the asylum register.

In 2022, VP submitted a request to the asylum authority, on the basis of the right of rectification enshrined in Article 16 of the GDPR, seeking (i) rectification of the entry in respect of their gender so that it would state male, and (ii) amendment of their forename in the asylum register. VP annexed the abovementioned medical certificates to that request. By decision of 11 October 2022, that authority rejected VP's request on the ground that VP had not proved that they had undergone gender reassignment surgery.

VP brought an action for annulment of that decision before the referring court. In the light of the absence, in Hungarian law, of a procedure for the legal recognition of a change of gender identity, and harbouring doubts as to the scope of Article 16 of the GDPR in such a context, the referring court asked the Court as to how that article should be interpreted.

Findings of the Court

In the first place, the Court recalls, from the outset, that, according to Article 16 of the GDPR, the data subject has the right to obtain from the controller, without undue delay, the rectification of inaccurate personal data concerning him or her. That provision gives specific expression to the fundamental right enshrined in the second sentence of Article 8(2) of the Charter of Fundamental Rights of the European Union, [8] according to which everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

Next, Article 16 of the GDPR must be read in the light, first, of the principle of accuracy, [9] according to which the processed data must be accurate and, where necessary, kept up to date, and that every

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7 Article 16 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').

8 'the Charter'.

9 Principle set out in Article 5(1)(d) of the GDPR.

reasonable step must be taken to ensure that data which are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay. Second, that provision must also be read in the light of recital 59 of the GDPR, according to which modalities should be provided for facilitating the rectification, at the request of the data subject, of his or her personal data.

In that regard, the Court reiterates its case-law, according to which the assessment of whether personal data is accurate and complete must be made in the light of the purpose for which those data were collected.

Lastly, the Court observes that the objective pursued by the GDPR consists, inter alia, in ensuring a high level of protection of the right of natural persons to privacy with respect to the processing of personal data. In accordance with that objective, any processing of such data must, inter alia, comply with the principle of accuracy, but also satisfy the conditions of lawfulness laid down by that regulation. [10]

In the present case, it is for the referring court to verify the accuracy of the data at issue in the light of the purpose for which they were collected and to assess, in particular, in the light of national law, whether the purpose of collecting those data is to identify the data subject. If that were the case, those data would therefore appear to refer to that person's lived gender identity, and not to the identity assigned to them at birth.

In that regard, a Member State cannot rely on specific provisions of national law, adopted on the basis of Article 6(2) and (3) of the GDPR, in order to limit the right to rectification. First, it is apparent from the GDPR [11] that those specific provisions are intended only to further specify the application of the rules contained in that regulation, and not to derogate from them. Second, the right to rectification may be restricted only in accordance with the conditions set out in Article 23 of that regulation. Thus, a Member State may, in particular, lay down, by way of internal legislative measures, restrictions on that right, in respect of personal data set out in public registers kept for reasons of general public interest. However, in the present case, it does not appear that the Hungarian legislature restricted, whilst complying with the conditions set out in Article 23 of the GDPR, the scope of the right to rectification, or that the asylum authority justified its refusal of the requested rectification by relying on such a statutory restriction.

In any event, a Member State cannot rely on the absence, in its national law, of a procedure for the legal recognition of transgender identity in order to limit the right to rectification. Although EU law does not detract from the Member States' competence in the area of the civil status of persons and the legal recognition of their gender identity, those States must, however, in exercising that competence, comply with EU law. Therefore, national legislation which prevents a transgender person, in the absence of recognition of their gender identity, from fulfilling a requirement which must be met in order to be entitled to a right protected by EU law, such as, in the present case, the right to rectification, must be regarded as being, in principle, incompatible with EU law.

Consequently, the Court concludes that Article 16 of the GDPR must be interpreted as requiring a national authority responsible for keeping a public register to rectify the personal data relating to the gender identity of a natural person where those data are inaccurate, within the meaning of that regulation.

In the second place, the Court finds that Article 16 of the GDPR does not specify which evidence may be required by a controller in order to establish that the personal data which a natural person seeks to have rectified are inaccurate.

In that context, although the data subject, requesting the rectification of those data, may be required to provide relevant and sufficient evidence which, in the light of the circumstances of the particular case, can reasonably be required of that person in order to establish that those data are inaccurate, the Court recalls, however, that a Member State may restrict the exercise of the right to rectification

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10 See Article 6 of the GDPR.

11 See third sentence of recital 10 of the GDPR.

only in compliance with Article 23 of the GDPR. The Court explains that the right to rectification may be subject to restrictions in the context of the keeping of public registers that are kept for reasons of general public interest, in particular in order to ensure the reliability and consistency of those registers.

In the present case, the Member State concerned has adopted an administrative practice whereby the exercise, by a transgender person, of their right to rectification of data relating to their gender identity, contained in a public register, is conditional upon the production of evidence of gender reassignment surgery. Such an administrative practice gives rise to a restriction of the right to rectification.

In that regard, the Court notes, first, that such an administrative practice does not satisfy the requirement that a Member State's law may restrict the scope of the right to rectification only by means of legislative measures.

Second, that administrative practice undermines, inter alia, the essence of the right to the integrity of the person and the right to respect for private life, referred to in Articles 3 and 7 of the Charter respectively. The Court recalls, in that context, that the European Court of Human Rights has held, inter alia, that the recognition of the gender identity of a transgender person cannot be made conditional upon the completion of a surgical treatment not desired by that person. [12]

Third and lastly, such an administrative practice is not, in any event, either necessary or proportionate in order to ensure the reliability and consistency of a public register, such as the asylum register, since a medical certificate, including a psychiatric diagnosis, may constitute relevant and sufficient evidence in that regard.

Thus, the Court concludes that Article 16 of the GDPR must be interpreted as meaning that, for the purposes of exercising the right to rectification of the personal data relating to the gender identity of a natural person that are contained in a public register, that person may be required to provide relevant and sufficient evidence that may reasonably be required of that person in order to establish that those data are inaccurate. However, a Member State may not, under any circumstances, by way of an administrative practice, make the exercise of that right conditional upon the production of evidence of gender reassignment surgery.

IV. JUDICIAL COOPERATION IN CIVIL MATTERS

1. BRUSSELS IIb REGULATION

Judgment of the Court of Justice (Fourth Chamber), 6 March 2025, Anikovi, C-395/23

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) 2019/1111 – Scope – Article 1(1)(b) and (2)(e) – Measure relating to the disposal of the property of a child – Article 7 – Jurisdiction in matters of parental responsibility – Article 10 – Choice of court – Regulation (EU) No 1215/2012 – Scope – Article 1(2)(a) – Exclusion concerning the status or legal capacity of natural persons – Rules on jurisdiction laid down in a bilateral agreement between the Republic of Bulgaria and the Russian Federation concluded before the accession of the Republic of Bulgaria to the European Union – Difference between those rules and the rules laid down in Regulation 2019/1111 – Article 351 TFEU – Concept of 'incompatibility'

12 See, to that effect, ECtHR, 19 January 2019, *X and Y v. Romania*, (CE:ECHR:2021:0119JUD000214516, paragraphs 165 and 167 and the case-law cited).

Hearing a reference for a preliminary ruling, the Court rules, inter alia, on the relations between Regulation 2019/1111 [13] and a bilateral agreement concluded between a Member State before its accession to the European Union and a third State.

In 2023, the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), the referring court, was seised in non-contentious proceedings in order to decide whether, under Bulgarian law, the sale of immovable property belonging in part to two minors of Russian nationality habitually resident in Germany could be authorised in the interest of those minors.

The referring court is uncertain whether the Bulgarian courts have international jurisdiction in such a situation. To that end, it seeks to ascertain whether the judicial authorisation for the sale in question comes within the scope of Regulation No 1215/2012 [14] or that of the Brussels IIb Regulation. In the latter case, it wishes to know, in view of the existence of a bilateral treaty concluded between Bulgaria and the Soviet Union (of which the Russian Federation is the successor State) before the accession of that Member State to the European Union, [15] whether Article 351 TFEU governs the relations between that treaty and the Brussels IIb Regulation where that treaty is not mentioned in Chapter VIII of that regulation and, if so, in what circumstances the Treaty may derogate from the regulation.

Findings of the Court

In the first place, the Court holds that the judicial authorisation sought in the case in the main proceedings comes within the scope of the Brussels IIb Regulation, in so far as that authorisation constitutes a protective measure for the child relating to the administration, conservation or disposal of the child's property in the exercise of parental responsibility within the meaning of that regulation. Consequently, it is the courts of the Member State in which the child is habitually resident at the time the court is seised (in this case, the German courts) which, in principle, have jurisdiction to grant that authorisation.

In the second place, the Court examines the issue of relations between the Brussels IIb Regulation and the Russo-Bulgarian Treaty, in view of the fact that that treaty appears to confer jurisdiction on the Bulgarian or Russian courts.

It states that, since a bilateral treaty such as the Russo-Bulgarian Treaty is not mentioned in the Brussels IIb Regulation, it is Article 351 TFEU [16] which is intended to govern relations between that treaty and that regulation.

The Court recalls that, under the first paragraph of Article 351 TFEU, the provisions of a treaty concluded between a Member State and a third State may derogate from any provision of EU law, whether primary or secondary law, provided, however, that that treaty was concluded before the accession of the Member State to the European Union and that the third State concerned derives from it rights which it can require that Member State to respect.

The Court states that it will be for the referring court in the present case to ascertain, in the first place, whether the Russo-Bulgarian Treaty contains rules which the Russian Federation may require Bulgaria to respect. If so, it will be for the referring court, in the second place, to determine whether that treaty is incompatible with the Brussels IIb Regulation in that those two legal instruments do not provide that the same court has jurisdiction in the circumstances of the dispute in the main proceedings. That check will have to take into account the EU legislature's decision, reflected in that regulation, to make provision, in certain situations, for courts other than those of habitual residence of the child to have

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13 Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ 2019 L 178, p. 1; 'the Brussels IIb Regulation').

14 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').

15 Treaty between the Union of Soviet Socialist Republics and the People's Republic of Bulgaria concerning legal assistance in civil, family and criminal cases, signed at Moscow on 19 February 1975 (*United Nations Treaty Series*, Vol. 1015, No 14855, p. 41; 'the Russo-Bulgarian Treaty').

16 According to that provision, the rights and obligations arising from agreements concluded before the date of accession of a State to the European Union, between one or more Member States on the one hand, and one or more third countries on the other, are not to be affected by the provisions of the Treaties. In that regard, if it is not possible to interpret the agreement in such a way that it is consistent with EU law, the Member States must take all appropriate steps to eliminate the incompatibilities established between those agreements and the Treaties, where necessary by assisting each other to that end and, if necessary, adopting a common attitude.

jurisdiction, but the referring court must, nevertheless, not have recourse to the possibility of recognising that it has jurisdiction under the rules of that regulation with the aim of finding that the Russo-Bulgarian Treaty is compatible with that regulation. If they are found to be incompatible, the referring court will, in the third place, have to examine whether that incompatibility can be avoided by adopting an interpretation of the Russo-Bulgarian Treaty that is consistent with the Brussels IIb Regulation. If that is not possible, the referring court will, in the fourth place, be able to apply the rules of that treaty while disregarding the rules of the Brussels IIb Regulation, with Bulgaria then being required to take the measures necessary to eliminate that incompatibility, as required by the second paragraph of Article 351 TFEU.

2. REGULATION NO 1259/2010 ON THE LAW APPLICABLE TO DIVORCE

Judgment of the Court of Justice (Third Chamber), 20 March 2025, Lindenbaumer, C-61/24

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Enhanced cooperation in the area of the law applicable to divorce and legal separation – Regulation (EU) No 1259/2010 – Article 8(a) and (b) – Concept of 'habitual residence' of the spouses – Status of diplomatic agent of one of the spouses – Vienna Convention on Diplomatic Relations

Hearing a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court of Justice clarifies the concept of 'habitual residence' of the spouses within the meaning of Regulation No 1259/2010, [17] where one of the spouses has the status of diplomatic agent and is assigned to a post in a receiving State.

DL and PQ, who are German nationals, married in 1989. After having lived together for more than 10 years in rented accommodation in Berlin (Germany) ('the family home'), and then for approximately 2 years in Stockholm (Sweden), they moved in September 2019 to Moscow (Russia) to accommodation located in the compound of the German Embassy, within which PQ performs the duties of an Embassy Counsellor.

With a view to returning to Germany, the spouses kept, however, their family home, in which, since September 2019, one of their adult children has resided; some parts of that accommodation were sublet until June 2020.

In January 2020, DL returned to Berlin to undergo surgery and remained in the family home until February 2021. She then returned to Moscow in the accommodation attached to the German Embassy, which she left permanently in May 2021 in order to return to Berlin. She now lives in the family home in Berlin, while PQ continues to live in Moscow.

On 8 July 2021, PQ filed a divorce petition with the Amtsgericht (Local Court, Germany), claiming that he had lived separately from DL since January 2020 and that the separation had become final in March 2021. DL opposed that petition on the ground that the couple had not been separated until May 2021 at the earliest when she returned to Berlin. The petition was dismissed in so far as the period of one year of separation, required by German law, had not expired and that there were no sufficiently serious reasons for pronouncing the divorce immediately.

Hearing an appeal brought by PQ, the Kammergericht (Higher Regional Court, Germany) by contrast pronounced the divorce under Russian law, which it held to be applicable in view of the spouses' last habitual residence, in accordance with Article 8(b) of Regulation No 1259/2010.

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17 Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (OJ 2010 L 343, p. 10).

DL brought an appeal on a point of law before the referring court against the divorce judgment. That court has doubts as to whether the interpretation of the concept of 'habitual residence', in the light of Regulation No 1259/2010, must correspond to that of the same concept in Regulation No 2201/2003. [18] It wonders whether the posting in a State of one of the spouses as a diplomatic agent, the duration of the spouses' physical presence in that State and the degree of social and family integration in that State constitute relevant, or even decisive, factors for establishing the spouses' '[habitual residence]', referred to in Article 8(a) and (b) of Regulation No 1259/2010.

Findings of the Court

The Court finds, first of all, that Regulation No 1259/2010 does not contain a definition of the concept of 'habitual residence' and makes no reference to the law of the Member States for the purpose of determining the meaning and scope of that concept. Consequently, an autonomous and uniform interpretation must be sought taking into account the wording of that provision, its context and the objectives pursued by the rules of which it forms part.

As regards the concept of '[habitual residence]' within the meaning of Article 3(1)(a) of Regulation No 2201/2003, it is characterised, in principle, by two factors, namely, first, the intention of the person concerned to establish the habitual centre of his or her interests in a particular place and, second, a presence which is sufficiently stable in the Member State concerned. In the light of the necessary consistency between the provisions of Regulations No 1259/2010 and No 2201/2003, those factors are required in order to characterise the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010. Such a unitary conception reflects the close relationship between those two regulations governing, inter alia, divorce and legal separation.

A definition of the concept of '[habitual residence]' of the spouses within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, which is characterised, in principle, by those two factors, ensures both the objective of legal certainty and predictability and the necessary flexibility in matrimonial proceedings, while preventing any abuse as regards the choice of the applicable law.

As regards, first, the status of diplomatic agent of one of the spouses, the nature and specificity of the professional activity of a diplomatic agent posted to an external representation in a receiving State militate, in principle, on account of the circumstances inherent in that function, in favour of the absence of habitual residence, within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, of that agent and his or her spouse in that State.

However, although the status of diplomatic agent of one of the spouses constitutes a relevant factor in the examination of the habitual nature of the spouses' residence in the territory of the receiving State, as regards the assessment of the reasons for their presence in that State and the conditions of their stay, that factor is not in itself decisive for the purpose of precluding recognition of the habitual residence of the person concerned and of the members of his or her family in that State. The determination of the spouses' 'habitual residence' must, even in the presence of such a factor, be made on the basis of all the factual circumstances specific to each individual case.

As regards, second, the criterion of the duration of the physical presence of the spouses on the territory of a State, the particular situation of diplomatic agents, by reason of the nature of their duties, and of their family members must be taken into account. Those persons often retain a close relationship with the sending State to which they regularly travel. Moreover, since diplomatic agents are generally subject to a principle of rotation, the duration of their stay in the receiving State may be perceived as prima facie temporary, even though it may sometimes be of a significant length in practice. In those particular circumstances, the duration of the spouses' physical presence in the territory of the receiving State does not, in itself, constitute a decisive factor as to the habitual nature of their residence in that State. It cannot be ruled out, in that regard, that the spouses may be present in that territory for a significant period of time while retaining the centre of their interests in the sending State, to which they regularly travel.

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18 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

Third, social integration in a State, whether the receiving State or the sending State, is a relevant factor for the purposes of determining the habitual residence of the spouses. That integration is such as to give concrete expression to the subjective element relating to the intention of the parties concerned to establish the habitual centre of their interests in a particular place. Family ties maintained in the sending State or, on the contrary, those created in the receiving State may also be relevant in the context of the analysis of all the factual circumstances specific to the individual case.

In any event, in accordance with the Court's case-law in relation to Regulation No 2201/2003, which can be transposed to the interpretation of the concept of '[habitual residence]' within the meaning of Article 8(a) and (b) of Regulation No 1259/2010, a spouse who divides his or her time between two Member States may have his or her habitual residence in only one of those States.

The Court concludes that Article 8(a) and (b) of Regulation No 1259/2010 must be interpreted as meaning that the status of diplomatic agent of one of the spouses and his or her assignment to a post in the receiving State preclude, in principle, the 'habitual residence' of the spouses from being considered to be established in that State. The position would be different if, following an overall assessment of all the circumstances specific to the case, including, in particular, the duration of the spouses' physical presence and their social and family integration in that State, it was determined (i) that the spouses intend to establish in that State the habitual centre of their interests and (ii) that there is a sufficiently stable presence in the territory of that State.

V. COMPETITION

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

Judgment of the General Court (Fifth Chamber, Extended Composition), 26 March 2025, UBS Group and UBS v Commission (European Government Bonds), T-441/21, T-449/21, T-453/21, T-455/21, T-456/21 and T-462/21

Link to the judgment as published in extract form

Competition – Agreements, decisions and concerted practices – European Government Bonds sector – Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement – Coordination of prices and bond-trading activities – Exchanges of commercially sensitive information – Single and continuous infringement – Restriction of competition by object – Legitimate interest in finding of infringements – Calculation of the amount of the fine – Basic amount – Proxy for value of sales – Unlimited jurisdiction

The General Court, sitting in extended composition, confirms the decision of the European Commission [19] finding that the banks UBS Group AG and UBS AG ('UBS'), NatWest Group plc, NatWest Markets plc and NatWest Markets NV. ('Natwest'), Natixis, UniCredit SpA and UniCredit Bank AG ('UniCredit'), Nomura International plc and Nomura Holdings, Inc. ('Nomura'), Bank of America N. A. and Bank of America Corporation ('BofA'), and Portigon AG had participated in a cartel in the European Government Bonds ('EGBs') sector. Nevertheless, as a result of errors on the part of the Commission in the determination of the duration of UniCredit's participation in that infringement and in the calculation of the fine to be paid by Nomura, the Court reduces the amount of the fines imposed on those banks.

In 2015, further to an application for leniency submitted by The Royal Bank of Scotland Group plc and The Royal Bank of Scotland plc ('RBS'), which became NatWest, the Commission opened an

19 Commission Decision C(2021) 3489 final of 20 May 2021 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40324 – European Government Bonds) ('the contested decision').

investigation to examine the existence of a cartel on the market for EGBs. EGBs are debt securities allowing Eurozone Member States to raise cash to fund certain expenditures or certain investments, and in particular to refinance existing debt. EGBs are offered for sale for the first time by, or on behalf of, their issuer on the primary market, and are subsequently traded on the secondary market.

On that secondary market, the banks seek to generate revenue by capturing the difference between the bid price and the ask price of EGBs.

Following its investigation, the Commission considered that the traders of several banks, including UBS, Natixis, UniCredit, Nomura, BofA and Portigon ('the applicants'), had collaborated and exchanged information in order to gain competitive advantages when EGBs were issued, placed on the market and traded. Taking the view, moreover, that that conduct formed part of an overall plan pursuing a single anticompetitive objective, the Commission found that the banks concerned had committed a single and continuous infringement of Article 101(1) TFEU by entering into agreements or engaging in concerted practices which had as their object the restriction and/or distortion of competition in the EGB sector within the European Economic Area (EEA).

As regards the fines, the Commission stated that its power to impose fines on BofA and Natixis was time-barred, since their respective involvement in the infringement found had ended more than five years before the start of the investigation. By contrast, fines of EUR 129 573 000, EUR 172 378 000 and EUR 69 442 000 were imposed on Nomura, UBS and UniCredit, respectively. On the other hand, the amount of the fine imposed on Portigon was capped at EUR 0, pursuant to the maximum threshold of 10% of total turnover during the preceding business year, in view of the fact that that bank was gradually ceasing its activities and that Portigon's net turnover in 2020 was negative.

The applicants brought six actions before the Court for annulment of the Commission's decision in so far as it concerns them. UBS, UniCredit and Nomura also asked the Court to reduce the amount of the fine imposed on them, in the exercise of its unlimited jurisdiction under Article 261 TFEU and Article 31 of Regulation No 1/2003. [20]

Findings of the Court

As a preliminary point, the Court examines the applications for the omission of certain data vis-à-vis the public submitted by UniCredit, Nomura, BofA and the Commission. Those applications concerned, inter alia, the names of the employees involved in the conduct complained of, the discussions between the traders in question, excerpts from discussions not referred to in the contested decision and extracts from documents contained in the Court's case file.

In that regard, the Court recalls that the confidential treatment of an item of information is not justified in the case of information which is already public or to which the general public or certain specialist circles have access. In addition, information which was secret or confidential, but which is at least five years old, must, on account of the passage of time, be considered historical and therefore as having lost its secret or confidential nature unless the party relying on that nature shows that that information still constitutes an essential element of its commercial position or of that of interested third parties.

In the light of those principles, the Court decided to anonymise the names of the natural persons referred to in the contested decision and of the experts used by the banks concerned as well as of the companies which employ them.

By contrast, the content of the discussions between the traders of the banks concerned cannot be redacted, since those discussions constitute almost all of the evidence on which the contested decision is based and the messages contained therein reveal, according to the Commission, the anticompetitive nature of the conduct of those banks. Moreover, almost all of those messages appear in the public version of the contested decision and do not, therefore, warrant any protection. The same applies to the names of the bond issuers which Nomura seeks to have omitted.

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[20] 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).

The Court also rejected the application to treat as confidential certain excerpts from the discussions not referred to in the contested decision and certain extracts from documents in the case file, in so far as they relate to evidence reference to which is justified by the requirement to provide an intelligible response to the arguments raised by the applicants.

After ruling to that effect on the applications for the omission of certain data vis-à-vis the public, the Court explains that the applicants' pleas for annulment, which overlap to a large extent, allege:

1. infringement of the rights of the defence;

2. errors on the part of the Commission for having held the applicants liable for the conduct of their traders;

3. errors on the part of the Commission in the characterisation of the conduct at issue as a single and continuous infringement attributable to the applicants;

4. errors on the part of the Commission in the characterisation of that infringement as a restriction by object;

5. errors on the part of the Commission in asserting the existence of a legitimate interest in making a finding of infringement against the banks which were not fined; and

6. errors in determining the amount of the fines imposed.

1. The alleged infringement of the applicants' rights of defence

In support of its action, BofA relies, inter alia, on an infringement of its rights of defence on the ground that the evidence relied on against it in the contested decision is not identical to that set out in the Statement of Objections.

In that regard, the Court finds, however, that the material scope of BofA's participation in the infringement found in the contested decision was narrowed as compared to that envisaged in the Statement of Objections. Since that narrowing of the scope of its participation is favourable to BofA, it cannot, in principle, harm its interests.

Moreover, that narrowing of the material scope of BofA's participation in the infringement likewise did not lead the Commission to find, in the contested decision, an infringement with respect to BofA so different from that set out in the Statement of Objections that it should be treated as a new objection on which that bank should have been able to submit its written and oral observations, in order to ensure that its rights of defence were observed.

The Court also rejects Portigon's complaint that the Commission infringed its rights of defence in amending the Statement of Objections by sending a mere 'Letter of Facts' instead of a supplementary Statement of Objections.

On that point, the Court states that where, during the administrative procedure, the Commission decides to add new objections to those initially raised against the undertakings or where it intends to alter materially the evidence for the infringements in respect of which proceedings are brought, it is required to send a supplementary Statement of Objections to the undertakings concerned. However, where the Commission wishes to rely only on new evidence corroborating the objections already substantiated in the Statement of Objections, it may simply bring this to the attention of the undertakings concerned by a Letter of Facts, in response to which those undertakings may submit written comments within a fixed time limit.

In the present case, it is apparent from the contested decision that, on 12 November 2020, the Commission sent Portigon a Letter of Facts in which, following the replies of the banks concerned to the Statement of Objections of 31 January 2019, it made 'factual additions or corrections concerning certain communications reported in the Statement of Objections and its Annex in support of the objections raised'. The Commission then invited Portigon to submit written comments, which Portigon sent on 8 January 2021.

In the light of that information, the Court finds that the factual corrections and the amendments made by the Commission in its Letter of Facts neither materially altered the evidence for the infringement in respect of which proceedings had been brought nor resulted in the Commission extending the material, temporal or geographic scope of the infringement alleged against, inter alia,

Portigon, in the Statement of Objections. Consequently, none of the corrections or amendments made by the Commission at the time of the Letter of Facts warranted the Commission having to send Portigon a supplementary Statement of Objections.

2. The applicants' liability for the conduct of their traders

As regards the pleas alleging errors on the part of the Commission for having held UniCredit, Nomura and Portigon liable for the conduct of their traders, the Court recalls that an employee performing his or her duties for, and under the direction of, the undertaking for which the employee works is regarded as forming part of the economic unit constituted by that undertaking.

It follows that, for the purposes of a finding of infringement of EU competition law, any anticompetitive conduct on the part of an employee is attributable to the undertaking to which he or she belongs. Therefore, the Commission could legitimately hold Portigon, UniCredit and Nomura liable for the conduct of their respective traders.

In that context, those banks could not criticise the Commission for having taken account of the knowledge of the conduct acquired by their traders prior to joining those banks, in order to characterise that conduct as a single and continuous infringement with an anticompetitive object.

Where an employee makes such knowledge available to the new employer, it may be regarded as knowledge shared by his or her new employer. Moreover, it is settled case-law that the Commission may rely on contacts prior to, or subsequent to, the period of the infringement in order to construct an overall picture and to show the preparatory stages of the cartel as well as to corroborate the interpretation of certain evidence.

Furthermore, the Commission's conclusion as to the applicants' liability for the conduct of their traders is all the more justified since those banks have not lodged a complaint or taken any steps against their traders, despite the fact that those banks submit that they were involved in the conduct at issue without their knowledge.

3. The characterisation of the conduct at issue as a single and continuous infringement attributable to the applicants

After confirming the anticompetitive nature of almost all of the traders' discussions which took place between January 2007 and November 2011, the Court examines the pleas challenging their characterisation as a single and continuous infringement attributable to the applicants.

First, the Court recalls that only conduct forming part of an 'overall plan' pursuing a single anticompetitive objective may be characterised as a single and continuous infringement.

As regards the single nature of the infringement, the Court considers that the Commission rightly found that the single anticompetitive objective pursued by the traders of the banks concerned was to collude or coordinate their strategies for acquiring EGBs on the primary market or trading them on the secondary market and increasing revenues.

Since the Commission has demonstrated to the requisite legal standard that the conduct adopted by the traders in two chatrooms was part of an overall plan in pursuit of a single anticompetitive objective, the Court states that neither the fact that the BofA trader was deliberately excluded from one of the two chatrooms and that BofA suffered detriment by the conduct put into effect, nor the lack of evidence of exchanges between the BofA trader and other traders outside the chatrooms can call that conclusion into question. In addition, several objective factors confirm that those chatrooms were linked and complementary in nature and sought to achieve the aims pursued by the common plan found by the Commission.

As regards the continuous nature of the infringement, the Court endorses the Commission's conclusion that the single infringement was continuous between January 2007 and November 2011. Although it was possible to find gaps between the manifestations of the infringement, the fact remains that the traders regularly continued with their anticompetitive discussions.

As regards whether the single and continuous infringement thus found could be attributed to the applicants, the Court points out, secondly, that that attributability must be assessed in the light of two factors, namely, first, the intentional contribution of the applicants to the common objectives pursued by all the banks concerned and, secondly, their knowledge of the offending conduct planned or put

into effect by those banks in pursuit of the same objectives or the fact that they could reasonably have foreseen it and had been prepared to take the risk.

Having made that clarification, the Court rejects almost all the arguments put forward by the applicants in order to contest both their intentional contribution to the common objectives and their knowledge of all the offending conduct at issue or, as the case may be, their ability to foresee it.

Nevertheless, as regards the beginning of UniCredit's participation in the single and continuous infringement, the Court finds that the Commission erred in determining, as the starting point, the UniCredit trader's first login to the chatroom at issue using the account linked to that bank, which took place on 9 September 2011, even though no anticompetitive discussion took place between 6 September and 26 September 2011. In that regard, the Court states that any knowledge on the part of that trader of the fact that the exchanges that took place in that chatroom could be anticompetitive in nature does not in itself permit the inference that UniCredit began to participate in the single and continuous infringement on the date of that first login.

4. The characterisation of the conduct at issue as a 'restriction by object'

As a preliminary point, the Court points out that, at the stage of assessing the anticompetitive object of a single and continuous infringement, not only the anticompetitive nature of that infringement and the elements of which it is composed, but also the existence of a 'common plan' or an 'overall plan' have been established. At this stage, therefore, all that matters is whether that infringement reveals a sufficient degree of harm to competition, justifying the Commission's not having to investigate their effects nor a fortiori to demonstrate their effects on competition.

In that regard, it follows from the case-law that the assessment of the degree of harm of a single and continuous infringement must be carried out in the light of the objective characteristics of that infringement and without regard to the particular situation of each undertaking which participated in it. The criticisms put forward by the applicants, which are predicated on the assumption that only those discussions that took place during their respective periods of participation in the infringement at issue had to be taken into consideration in order to establish the anticompetitive object of those periods, must therefore be rejected.

As regards the assessment of the harmfulness of the conduct at issue, the Court finds, in addition, that the Commission was right to show that the discussions between the traders of the banks concerned took the form not only of exchanges of commercially sensitive information, but also of price fixing and customer allocation practices on both the primary and secondary markets for EGBs. Since those practices reveal a particularly high degree of harm to competition, the Commission did not err in characterising them as a 'restriction by object'.

5. The legitimate interest of the Commission in finding the infringement at issue in respect of the banks which were not fined

The Court rejects the pleas calling into question the Commission's legitimate interest in finding the infringement at issue with regard to Natixis and BofA, in respect of which the Commission's power to impose a fine was time-barred.

In that regard, the Court points out that the finding of the infringement at issue in respect of Natixis and BofA was relevant for the purpose of demonstrating the frequency of the collusive discussions between the traders of each bank, the nature of their relationships and the continuous nature of that infringement. Thus, Natixis and BofA cannot validly claim that their identification in the contested decision did not contribute substantially to establishing the infringement at issue or to explaining the scope of the unlawful conduct.

It is true that the Commission could have used evidence relating to the participation of those banks while preserving their anonymity or refraining from finding the infringement at issue against them. Nevertheless, the existence of such a possibility cannot preclude the Commission's legitimate interest in finding that infringement, particularly since the conduct of those banks was particularly serious having regard to the sector concerned and the context of the financial crisis in which that conduct occurred.

In that context, the Court also rejects BofA's argument that, in view of the time which had elapsed between the end of its participation in the infringement at issue at the end of 2008 and the adoption

of the contested decision in May 2021, the Commission should have concluded that it lacked a legitimate interest in finding the infringement against it, on pain of breaching the principles of legal certainty and respect for its rights of defence.

Although the finding of a legitimate interest in finding the infringement at issue must be made in compliance with the general principles of EU law and, in particular, does not authorise the Commission to delay indefinitely the exercise of its powers, the fact remains that a period of only five months elapsed between RBS' formal application for immunity from a fine and the request for information concerning that infringement sent to BofA.

As regards the time which has elapsed since BofA received that request, it is apparent from settled case-law that it is for any undertaking to ensure the proper maintenance of information enabling details of its activities to be retrieved, in order to make the necessary evidence available in the event of legal or administrative proceedings. BofA has failed to indicate the circumstances which prevented it from complying with its obligation of diligence or which rendered difficult the collection of exculpatory evidence.

Similarly, since BofA has not adduced any evidence such as to show that its defence was rendered more complex by the passage of time, the Commission was entitled, without committing any errors, to find the infringement at issue against it.

6. Determination of the amount of the fines imposed on the applicants

In determining the amount of the fines imposed on the applicants, the Commission essentially applied the method set out in the 2006 Guidelines. [21] However, as regards the calculation of the basic amounts, the Commission decided to use a proxy instead of the value of sales provided for in point 13 of those guidelines. As a starting point for the calculation of that proxy, the Commission took the annualised notional volumes and values of EGBs ('the annualised notional amounts') that the banks concerned traded on the secondary market during their individual periods of participation in the infringement at issue. Those annualised notional amounts were then multiplied by an adjustment factor that the Commission constructed using 32 categories of representative EGBs issued by eight issuers.

After rejecting the pleas raised by UBS and Nomura alleging infringement of their rights of defence during the administrative procedure in so far as they were unable to understand the methodology used by the Commission to determine the proxy, the Court examines the various pleas alleging errors in the determination of that proxy.

The Court rejects, first of all, the criticisms of UBS, UniCredit and Nomura that the proxies applied to them bore no correlation to their economic activity, since the annualised notional amounts of EGBs taken into account by the Commission constituted an indicator of volume and not an indicator of price. In that regard, the Court considers that the method for calculating the adjustment factor applied to the notional amounts of each bank concerned enabled the Commission to use, as the proxy, an amount which reflects the activity of the banks concerned.

Nomura is also wrong to argue that the Commission used notional amounts for Nomura that went beyond the scope of its participation in the infringement at issue, with the result that its proxy bore no correlation to its economic activity. The proxy – like the value of sales – cannot be calculated solely on the basis of the transactions which are shown to have been actually affected by that cartel, but may, as in the present case, be calculated on the basis of all the transactions coming within the scope of that cartel.

Contrary to what was submitted by UBS, Directive 86/635 [22] likewise does not preclude the use of notional amounts in the present case, since that directive is in no way intended to impose a specific

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21 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines').

22 Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ 1986 L 372, p. 1).

methodology for determining the value of sales in the context of calculating the fines imposed for infringement of the EU competition rules.

Next, as regards the method of calculating the proxy, the Court recalls that, where the Commission departs from the 2006 Guidelines not in their entirety – as point 37 thereof authorises it to do – but only, as in the present case, from point 13 thereof, it cannot depart from the guiding principles or underlying logic of those guidelines. Thus, in implementing the methodology which it lays down, it is incumbent upon it, inter alia, to ensure that it takes account of the best available figures, subject to detailed review, in law and in fact, by the EU Courts.

In the light of those clarifications, the Court points out that, in the contested decision, the Commission stated its reasons and justified to the requisite legal standard its decision to depart from the methodology set out in point 13 of the 2006 Guidelines and to base its calculation of the basic amount on the proxy used in the present case.

In that context, the Court rejects the arguments that the Commission should have used a methodology based on UBS's, UniCredit's and Nomura's own transaction data, calculated on the basis of the 'net value traded' or, in the alternative, on the 'adjusted net value traded'. Those methodologies are not representative of the economic activity of the banks concerned in connection with the infringement at issue and are therefore not appropriate for the purposes of implementing the 2006 Guidelines in the present case.

The Court also rejects the applicants' criticisms concerning the Commission's use of a selection of 32 categories of EGBs and the use of public data from the Bloomberg platform for the calculation of the adjustment factor.

According to the Court, UniCredit and Nomura likewise cannot criticise the Commission for having annualised the notional amounts traded by UniCredit and Nomura during their respective periods of participation in the infringement, which were less than one year.

In that regard, the Court finds, first, that that annualisation was made necessary by the principles governing the calculation of fines under the 2006 Guidelines, since those guidelines require a proxy to be determined on an annual basis. Second, the annualisation of the notional amounts led the Commission to apply a value that was directly proportional to the actual activity of those banks during their respective periods of participation in the infringement at issue, thus ensuring that the relative weight of each bank in that infringement and the extent of their respective involvement were respected.

By contrast, as regards the determination of the adjustment factor for the annualised notional amounts set in respect of Nomura, the Court finds that the Commission erred in refusing to make use of the precise data which that bank had provided to it for those purposes.

After recalling that it was incumbent upon the Commission to ensure that it took account of the best available figures, the Court points out that the data provided by Nomura constituted complete and reliable figures relating to the distribution of its trading activity between the 32 categories of representative EGBs chosen by the Commission to arrive at the adjustment factor. In so far as, at least for certain categories of representative EGBs constituting a significant proportion of Nomura's trading activity, the weighting of the 32 categories of EGBs applied by the Commission in respect of Nomura differed significantly from that calculated on the basis of the trading activity actually carried out by that bank, the weighting applied by the Commission could not constitute the 'best available figures' for the calculation of the proxy for Nomura.

Moreover, the Commission's use of the data provided by Nomura neither compromised the methodology developed to determine the proxy nor breached the principle of equal treatment, since Nomura was the only bank to provide the Commission, unprompted and voluntarily, with precise data relating to the weighting of the 32 categories of representative EGBs chosen by the Commission.

After thus upholding Nomura's complaint alleging an error of assessment in the determination of the proxy applied to it, the Court rejects, by contrast, UniCredit's complaint alleging a breach by the Commission of the principle that the penalty must be specific to the offender and the offence in setting the rate of the additional amount used for that bank at 17% (and EUR 59 522 445).

On that point, the Court recalls that, in accordance with point 25 of the 2006 Guidelines, the additional amount is calculated irrespective of the duration of an undertaking's participation in the infringement, in order, in particular, to deter undertakings from infringing competition law, even for a short period. Therefore, there was no need for the Commission to take into account the brevity of the period of UniCredit's participation in the infringement, which was less than three months.

Moreover, given that the Commission applied a specific additional amount of 17% of the proxy to UniCredit and not 18% as for all the other banks concerned, in order to take account of the fact that '[UniCredit's] trader was only active on the secondary market', that bank could not criticise the Commission for failing to take account of its specific situation and, therefore, for having breached the principle that penalties must be specific to the offender and the offence.

UniCredit is also wrong to rely on a breach of the principle of proportionality by reason of the specific rate of 17% applied to it as an additional amount.

In the light of all the foregoing, the Court dismisses the actions brought by Natixis, BofA, Portigon and UBS in their entirety. By contrast, it annuls the contested decision in respect of UniCredit in so far as it finds that that bank participated in the infringement at issue from 9 September to 28 November 2011, and not from 26 September to 28 November 2011, and sets the amount of the fine imposed on that bank at EUR 69 442 000. In the exercise of its unlimited jurisdiction, the Court sets the amount of the fine imposed on UniCredit at EUR 65 000 000.

The Court also annuls the contested decision in so far as it sets the amount of the fine imposed on Nomura at EUR 129 573 000. Since the use of the exact weighting data for the 32 categories of EGBs relating to Nomura leads to a reduction in the proxy applied to Nomura, the Court sets the amount of the fine imposed on that bank at EUR 125 646 000.

2. STATE AID

Judgment of the General Court (Third Chamber, Extended Composition), 12 March 2025, PGI Spain and Others v Commission, T-596/22

Link to the full text of the judgment

State aid – Measure to reduce wholesale electricity prices in the Iberian Peninsula – Energy crisis – Decision not to raise objections – No serious difficulties – Principle of non-discrimination – Proportionality – Legitimate expectations

The General Court, ruling in extended composition, has dismissed the action for annulment brought by several Spanish companies against the European Commission's decision [23] which found, following a preliminary examination procedure, that a notified aid measure for the reduction of wholesale electricity prices in the Iberian Peninsula was compatible with the internal market. In that context, the Court endorsed the Commission's conclusion that the examination of the compatibility of that measure with the internal market did not raise serious difficulties necessitating the initiation of the formal investigation procedure provided for in Article 108(2) TFEU.

In 2022, the Kingdom of Spain and the Portuguese Republic notified the Commission of a measure aiming to reduce the wholesale electricity price within their territories by supporting the input costs of fossil fuel technologies ('the notified measure').

That measure was to be financed in part by a contribution imposed on buyers on the wholesale electricity market. Certain of those buyers, however, would be exempt from payment of the

23 Commission Decision C(2022) 3942 final of 8 June 2022 on State aid SA.102454 (2022/N) – Spain and SA.102569 (2022/N) – Portugal – Production cost adjustment mechanism for the reduction of the electricity wholesale price in the Iberian market ('the contested decision').

contribution, including those which had entered into contracts at a fixed price prior to 26 April 2022 ('the exemption from the contribution').

Following its preliminary examination for the purposes of Article 108(3) TFEU, the Commission found that the notified measure was compatible with the internal market having regard to Article 107(3)(b) TFEU.

The applicants brought an action before the Court for annulment of that decision, on the ground that the notified measure raised serious difficulties which warranted the initiation of the formal investigation procedure provided for in Article 108(2) TFEU.

Findings of the Court

The Court began by recalling that, where an applicant seeks the annulment of a Commission decision finding, following a preliminary examination, that a notified aid measure is compatible with the internal market, it is essentially contesting the fact that that decision was adopted without the Commission initiating the formal investigation procedure, thereby infringing its procedural rights. In order to have such an application for annulment upheld, the applicant may invoke any plea capable of showing that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to its classification as aid or to the compatibility of that measure with the internal market.

In the present case, the applicants submitted, inter alia, that there was uncertainty as to the exact determination of which electricity buyers would be eligible for the exemption from the contribution, which demonstrated the existence of serious difficulties requiring the initiation of the formal investigation procedure.

In that regard, the Court observed that, as stated in the contested decision, the notified measure has been introduced in the context of crises on national and international energy markets and, by supporting certain electricity sources, seeks to obtain a reduction in prices on the wholesale market and, as a consequence, on the retail market.

As regards buyers on the wholesale electricity market, it follows from the contested decision that, as beneficiaries of the reduction in prices on that market, they are subject to a contribution covering, in part, the cost of the notified measure, according to the amount of their purchases. Nevertheless, under certain conditions, they may be exempt from payment of that contribution in respect of that part of their electricity purchases subject to contracts for the supply of electricity at a fixed price entered into prior to 26 April 2022. That exemption is temporary, since it is no longer intended to apply when contracts are renewed.

As regards buyers on the retail market, the notified measure makes a distinction according to whether or not such buyers have entered into a regulated contract. With regard to such contracts, the passing on of both the reduction in the price of electricity and the amount of the contribution is mandatory. As regards, on the other hand, unregulated contracts, the authors of the notified measure considered that the passing on of the reduction in the wholesale market price and of the contribution would result from competition on the retail market, given that there was a high number of retail suppliers on the Spanish and Portuguese markets.

In the light of those considerations, the Court rejected as unfounded the ground for complaint alleging uncertainty.

Next, the Court rejected the applicants' line of argument that, by limiting the scope of the exemption from the contribution to direct consumers on the wholesale market, the notified measure is contrary to the principle of non-discrimination, since buyers on the retail market which have entered into financial power purchase agreements, such as the applicants, are in a situation comparable to those direct consumers.

In that regard, the Court noted, first of all, that that criticism is tantamount to criticising the Commission for failing to find that the scope of the exemption from the contribution resulted in a selective advantage being conferred only on buyers on the wholesale market and therefore constituted State aid.

On that issue, the Court found that, admittedly, in its analysis of selectivity, the Commission explicitly decided only the question whether the difference in treatment between buyers on the wholesale market, depending on whether or not they were eligible for an exemption, gave rise to a selective advantage, but did not determine whether such an advantage arose on account of buyers on the retail market being excluded from eligibility for the exemption.

However, it was clear that buyers on the wholesale and retail markets were not in a comparable situation in terms of the way in which the reduction in wholesale market prices and the payment of the contribution was intended to be reflected in the price of electricity, since they purchase electricity on two different markets for which pricing does not follow the same logic. Consequently, the Commission was not required explicitly to decide whether the fact that the scope of the exemption from the contribution is limited solely to buyers on the wholesale market constituted a selective advantage.

Since none of the applicants' pleas were upheld, the Court concludes that they had not demonstrated that the Commission should have identified the existence of serious difficulties requiring the initiation of the formal investigation procedure, and dismissed the action.

VI. FISCAL PROVISIONS: EXCISE DUTIES

Judgment of the Court of Justice (Fifth Chamber), 13 March 2025, Alsen, C-137/23

Link to the full text of the judgment

Reference for a preliminary ruling – Taxation – Excise duties – Directive 2003/96/EC – Taxation of energy products and electricity – Exemption of energy products used as fuel – Article 14(1)(c) – Navigation within EU waters – Article 15(1)(f) – Navigation on inland waterways – Directive 95/60/EC – Fiscal marking of gas oils and kerosene – Gas oil, to which fiscal marking has not been applied in accordance with EU law, intended for use for the propulsion of a vessel – Refusal to apply the exemption from payment of excise duty – Principle of proportionality

Hearing a reference for a preliminary ruling, the Court interprets Directive 2003/96, [24] read in conjunction with Directive 95/60, [25] and specifies the conditions under which a Member State may refuse the benefit of an exemption from excise duty for gas oil supplied for use as fuel for navigation for commercial purposes on EU inland waterways. It examines, more specifically, whether national legislation may refuse the benefit of the exemption from excise duty on the ground that fiscal marking has not been applied to that gas oil in accordance with the requirements of EU law, even though, first, it is established that that gas oil is used for the abovementioned purpose and, second, there is no evidence capable of giving rise to suspicions of tax evasion, avoidance or abuse. It considers such legislation to be incompatible with EU law.

X, who resides in Germany, is the owner of a motor tanker which he uses to transport mineral oils on behalf of third parties by inland waterway within the European Union in return for payment ('the tanker'). The tanker is fitted with two bunker tanks used to hold fuel intended for its propulsion.

In 2016, during an inspection carried out while the tanker was on the Amsterdam-Rhine Canal, in the Netherlands, inspectors took samples of the gas oil stored in the bunker tanks; an analysis of those samples indicated, in particular, the presence of a quantity of 'Solvent Yellow 124' marker in that gas

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24 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51), as amended by Council Directive 2004/75/EC of 29 April 2004 (OJ 2004 L 157, p. 100, and corrigendum OJ 2004 L 195, p. 31).

25 Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (OJ 1995 L 291, p. 46).

oil lower than the minimum marker content required, by the national legislation, for the release of gas oil for consumption exempt from excise duty.

Taking the view that the gas oil concerned did not, therefore, satisfy all the conditions required for the application of the excise duty exemption, the Inspecteur van de Belastingdienst/Douane (Inspector of the Tax and Customs Administration) ('the Inspector'), issued a tax adjustment notice relating, inter alia, to the excise duty payable in respect of the gas oil that had been found to be present in the bunker tanks.

Hearing the appeal brought by the Inspector against a judgment at first instance concerning that adjustment notice, the Gerechtshof Arnhem Leeuwarden (Court of Appeal, Arnhem-Leeuwarden, Netherlands) held that such a tax adjustment had been correctly imposed on X.

X brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which is the referring court.

The referring court points out that the national legislation seeks, in particular, to implement Directive 2003/96, which makes the benefit of the exemption from excise duty on mineral oils subject to certain conditions. However, that national legislation provides that, in order to benefit from that exemption, gas oil must contain an identification marker consisting of 6 to 9 grams of the 'Solvent Yellow 124' marker per 1 000 litres, and that a sufficient quantity of colouring must be added to the gas oil in order to give it a visible, permanent red colour.

The referring court is uncertain whether such a requirement, which reflects the fiscal marking obligation incumbent on the Member States under Directive 95/60, [26] is capable of affecting the application of the exemption from excise duty provided for in Directive 2003/96. Admittedly, the application of a fiscal marker enables the competent authorities to check in a simple and effective manner whether mineral oils are being used for the purposes referred to in the provisions providing for the exemption from excise duty. However, once it is certain that the mineral oils concerned are being used for purposes which are a condition for benefiting from an exemption from excise duty, and no loss of tax revenue has been established, the refusal to apply that exemption could go beyond what is necessary to prevent the improper use of those oils.

The referring court is uncertain, in those circumstances, whether such national legislation is compatible with Directive 2003/96, read in conjunction with Directive 95/60. [27]

Findings of the Court

The Court recalls, first of all, that the use of an energy product as fuel for navigation on EU inland waterways is covered by Article 15(1)(f) of Directive 2003/96, a provision under which Member States may in particular apply, under fiscal control, total or partial exemptions or reductions in the level of taxation, inter alia, to energy products supplied for use as fuel for navigation on inland waterways other than in private pleasure craft. In that regard, the Court observes that the exemption or reduction in the level of taxation applicable to the energy products concerned is granted according to the use for which they are intended, and that that option is limited to energy products which are used as fuel for navigation on EU inland waterways for commercial purposes, namely uses where a vessel is directly used for the supply of services for consideration. The Court points out, next, that the general scheme of Directive 2003/96 is based on the principle that energy products are taxed in accordance with their actual use and that that principle cannot be called into question by the discretion afforded to the Member States in the exercise of that option.

Lastly, the Court finds that the marking obligation incumbent on the Member States under Directive 95/60, although intended to make it possible to monitor and, where appropriate, penalise the use of energy products, which are exempted or subject to a reduced rate of excise duty, for purposes for which EU law neither requires nor allows any possibility of derogation from excise duty, thereby

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26 Read in conjunction with Commission Implementing Decision 2011/544/EU of 16 September 2011 on establishing a common fiscal marker for gas oils and kerosene (OJ 2011 L 241, p. 31).

27 Under Article 1 of Directive 95/60, read in the light of the third recital thereof, the Member States are required to apply a fiscal marker, inter alia, to gas oil which is not taxed at the full rate.

avoiding distortions of competition between the economic operators concerned, cannot have the effect of allowing Member States to make compliance with fiscal marking requirement a precondition for the exemption from, or application of a reduced rate of, excise duty.

It would be otherwise only if the operator concerned intentionally participated in tax evasion which has jeopardised the operation of the system of taxation of energy products and electricity or if failure to comply with the fiscal marking requirement has the effect of preventing the production of conclusive evidence that the gas oil has been used for the purposes of the application of a reduced level of taxation or exemption.

VII. APPROXIMATION OF LAWS

1. COPYRIGHT

Judgment of the Court of Justice (First Chamber), 6 March 2025, ONB and Others, C-575/23

Link to the full text of the judgment

Reference for a preliminary ruling – Approximation of laws – Intellectual property – Copyright and related rights – Performers engaged under an administrative law statute – Assignment of related rights by means of a regulatory act – Directive 2001/29/EC – Article 2(b) and Article 3(2) – Rights of reproduction and of making available to the public – Directive 2006/115/EC – Articles 7 to 9 – Rights of fixation, broadcasting, communication to the public and distribution – Directive (EU) 2019/790 – Articles 18 to 23 – Fair remuneration in exploitation contracts – Article 26 – Application in time – Concepts of 'acts concluded' and 'rights acquired'

Ruling on a request for a preliminary ruling from the Conseil d'État (Council of State, Belgium), the Court of Justice rules on the possibility for Member States to limit, by means of a regulatory act, the exercise of the related rights of performers engaged under an administrative law statute.

On 1 June 2021, the Belgian State adopted the Royal Decree concerning the related rights of artistic personnel of the Belgian National Orchestra (Belgian National Orchestra; ONB) ('the Royal Decree of 1 June 2021'), which entered into force on 4 June 2021.

Before that royal decree was adopted, the exploitation of the related rights of the musicians of the ONB was negotiated on a case-by-case basis within a consultative committee. Between 2016 and 2021, the ONB and the trade union delegations of the musicians of that orchestra held negotiations in order to reach an agreement on fair remuneration by the ONB for the performances of those musicians. Since those negotiations were not successful, the Belgian State adopted that royal decree. According to the terms of that decree, the performer is to assign to the ONB, in return for compensatory allowances, the related rights which concern any performances carried out in the context of his or her service to that orchestra. The right of communication to the public and the rights of reproduction and distribution which the musicians of the ONB hold are thus assigned for the entire duration of the related rights and worldwide.

A number of musicians brought an action before the Conseil d'État (Council of State) for annulment of the Royal Decree of 1 June 2021, on the ground that the provisions of that royal decree infringed EU law, in particular Directive 2019/790. [28]

In those circumstances, the Conseil d'État (Council of State) decided to refer questions to the Court of Justice for a preliminary ruling seeking to ascertain, in essence, whether the provisions of that

[28] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92).

directive preclude the assignment, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without their prior consent.

Findings of the Court

As a preliminary point, the Court recalls that, in the context of a request for a preliminary ruling, it is for the Court to extract from all the information provided by the national court the elements of EU law which require interpretation, having regard to the subject matter of the dispute.

In the present case, although the questions referred for a preliminary ruling by the Conseil d'État (Council of State) concern only the interpretation of provisions of Directive 2019/790, the Court finds that that directive is based upon, and complements, the rules laid down, inter alia, in Directives 2001/29 [29] and 2006/115, [30] certain provisions of which [31] are relevant for answering the questions referred.

In the first place, the Court ascertains whether the Royal Decree of 1 June 2021 is excluded from the scope *ratione temporis* of Directive 2019/790 by virtue of it being adopted and entering into force before the expiry of the period for transposing that directive. In that regard, it observes, first, that that directive applies to all works and other subject matter protected by national copyright law from 7 June 2021. [32] Secondly, noting that the application of Directive 2019/790 is, under Article 26(2) thereof, 'without prejudice to acts concluded and rights acquired before 7 June 2021', the Court finds that that directive is not intended to apply to acts of exploitation occurring before 7 June 2021 and in respect of which rights were validly acquired before that date.

In the present case, the Court is of the opinion that the Royal Decree of 1 June 2021, in so far as it was validly adopted, is capable of having generated for the ONB, between its entry into force and the date of expiry of the period for transposing Directive 2019/790, rights which do not fall within the scope *ratione temporis* of that directive. That being the case, the Court notes that that royal decree did not exhaust its legal effects on the date of its entry into force. That royal decree is intended regularly to produce its effects on the performances of the performers concerned throughout the duration of its application, including after the expiry of the period for transposing Directive 2019/790.

The Court accordingly concludes that that directive is applicable *ratione temporis* to the assignment, effected by the Royal Decree of 1 June 2021, of the related rights of the musicians of the ONB concerning performances carried out after 7 June 2021.

In the second place, the Court examines whether the concept of 'performer', referred to by Directives 2001/29, 2006/115 and 2019/790, covers musicians of an orchestra engaged under an administrative law statute.

At the outset, the Court notes that, in the absence of a different intention expressed by the EU legislature, the concept of 'performer' must be given the same meaning in the respective contexts of those directives.

As regards the interpretation of that concept, the Court notes, first of all, that the wording of the provisions of Directives 2001/29, 2006/115 and 2019/790 does not formally exclude from its scope performers engaged under an administrative law statute.

Next, as regards the context of those provisions, the Court recalls that the provisions of the directives in force in the field of intellectual property must be interpreted in the light of international law, and in particular of the treaty law which they are intended to implement. Article 2(a) of the World Intellectual

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

30 Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

31 The provisions referred to by the Court are Article 2(b) and Article 3(2)(a) of Directive 2001/29 ('the provisions of Directive 2001/29') and Article 3(1)(b), Article 7(1), Article 8(1) and Article 9(1)(a) of Directive 2006/115 ('the provisions of Directive 2006/115').

32 Date of expiry of the period for transposing Directive 2019/790, set by Article 29(1) of that directive.

Property Organisation (WIPO) Performances and Phonograms Treaty (WPPT) [33] lays down no condition which would have the effect of excluding from its scope performers engaged under an administrative law statute.

Lastly, the Court takes the view that such an interpretation is supported by the objectives pursued by Directives 2001/29, 2006/115 and 2019/790. Those directives provide, in essence, that any harmonisation of related rights must take as a basis a high level of protection, while taking into account the need to adapt that protection to new economic realities and to guarantee an adequate income for performers who tend to be in the weaker contractual position.

In those circumstances, the Court finds that performers engaged under an administrative law statute are covered by the concept of 'performer' within the meaning of the provisions of Directives 2001/29, 2006/115 and 2019/790.

In the third place, the Court determines whether the provisions of Directives 2001/29 and 2006/115 preclude the assignment, by means of a regulatory act, of the related rights of performers engaged under an administrative law statute, without their prior consent.

First, the Court notes that the protection conferred by the provisions of Directives 2001/29 and 2006/115 must be given a broad scope. Consequently, that protection is not limited to the enjoyment of the rights guaranteed by those provisions, but also extends to the exercise of those rights.

Secondly, the Court observes that the rights guaranteed to performers by those provisions are of a preventive nature, in the sense that any use of their performances requires their prior consent. It follows that those provisions preclude, in the absence of prior consent from the rightholders, the assignment, by means of a regulatory act, of the exclusive rights referred to in those directives, unless such an assignment is covered by one of the exceptions or limitations provided for by those directives. [34] In the Court's view, the circumscribed exceptions to and limitations on the rights of performers, as provided for by those directives, do not permit the general compulsory assignment of all the related rights of a category of performers.

Thirdly, the Court finds that that interpretation is supported by the international context of which the protection of the related rights of performers forms part and by the objectives pursued by Directives 2001/29 and 2006/115. In particular, as regards the protection of performers, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention, [35] which has indirect effects within the European Union. That convention states that the protection which it provides for performers must, in principle, include the possibility of preventing the broadcasting, communication to the public or reproduction of a fixation of their performance without their prior consent. While it is true that that convention contains exceptions and limitations to the exclusive rights of the holders of related rights, none of its provisions permits a general compulsory assignment of those rights. Nor is such an assignment authorised by the provisions of the WPPT.

In the light of those considerations, the Court rules that the provisions of Directives 2001/29 and 2006/115 preclude national legislation which provides for the assignment, by means of a regulatory act, for the purpose of exploitation by the employer, of the related rights of performers engaged under an administrative law statute, in respect of the performances carried out in the context of their service to that employer, without the prior consent of those performers, such as that effected by the Royal Decree of 1 June 2021.

In those circumstances, the Court finds that there is no longer any need to examine whether Articles 18 to 23 of Directive 2019/790 also preclude that assignment.

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33 WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996 and approved on behalf of the European Community by Council Decision 2000/278/EC of 16 March 2000 (OJ 2000 L 89, p. 6). Under Article 2(a) of the that treaty, the concept of 'performers' refers to all persons 'who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore'.

34 Article 5 of Directive 2001/29 and, in particular, Article 10 of Directive 2006/115.

35 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in Rome on 26 October 1961.

2. COMMUNITY DESIGNS

Judgment of the General Court (Second Chamber), 12 March 2025, Lidl v EUIPO – Liquidleds Lighting (LED light bulbs), T-66/24

Link to the full text of the judgment

Community design – Invalidity proceedings – Registered Community design representing a LED light bulb – Disclosure of the earlier design not taken into account – Article 7(2) of Regulation (EC) No 6/2002 – Requirements – Burden of proof

By its judgment, the General Court dismisses the applicant's action and clarifies the requirements for the application of the exception according to which disclosure of a Community design by the designer or his or her successor in title is not taken into account within the 12 months prior to the application for registration, as laid down in Article 7(2) of Regulation No 6/2002. [36]

Liquidleds Lighting Corp., the intervener, has been the proprietor of a Community design representing a LED light bulb since 2017. In 2021, Lidl Vertriebs GmbH & Co. KG, the applicant, filed an application for a declaration of invalidity of that design with the European Union Intellectual Property Office (EUIPO) on the basis of two earlier designs. In its decision, the Invalidity Division of EUIPO did not, however, grant that application.

Likewise, the Board of Appeal of EUIPO dismissed the appeal brought by the applicant against that latter decision, on the ground that, first, disclosure of the first earlier design was covered by the scope of the exception provided for in Article 7(2) of Regulation No 6/2002 and that, second, the applicant had not demonstrated disclosure of the second earlier design.

The applicant therefore brought an action for annulment before the Court against the decision of the Board of Appeal.

Findings of the Court

In the first place, the Court rules on the application of the exception provided for in Article 7(2) of Regulation No 6/2002. It notes that that exception applies both in relation to the requirement for protection relating to the novelty of a design [37] and to the requirement for protection relating to its individual character. [38] In that regard, it observes that if the lack of novelty means that an identical design has been disclosed, the lack of individual character means that a design producing the same overall impression on the informed user has been disclosed. It is therefore only where the exception at issue is applied in the examination of novelty that disclosure which is likely not to be taken into account concerns an earlier design identical to the contested design. Although lack of individual character may also follow from disclosure of an identical earlier design, the requirement relating to individual character does not, as such, require the lack of disclosure of an identical earlier design but that of an earlier design producing the same overall impression. Therefore, the application of Article 7(2) of Regulation No 6/2002, in connection with Article 6 of that regulation, does not require that the earlier design, disclosure of which is likely not to be taken into account, be identical to or the same as the contested design.

Such an interpretation is apparent from the wording of that article, its context and the aims of Regulation No 6/2002. First, the Court finds that the wording of that article does not use the word 'identical', nor does it refer to the concept of 'identity', and that the expression 'same design' is not included in that provision either. Thus, that wording is confined to establishing an admittedly close link between a registered design and an earlier design disclosed by the designer or his or her

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

37 For the purposes of Article 5 of Regulation No 6/2002.

38 For the purposes of Article 6 of Regulation No 6/2002.

successor in title during the grace period. That wording does not make it possible to rule out the possibility that such a link may validly exist both in the case where those designs are identical and in the case where they produce the same overall impression.

Second, as regards the context, the Court states that Article 7(2) of Regulation No 6/2002 and recital 20 of that regulation refer to the examination both of the novelty and of the individual character of the contested design. For the purpose of examining the individual character of the contested design, a disclosure which is likely not to be taken into account concerns a design which produces the same overall impression as the contested design.

Third, the Court observes that the exception provided for in that article seeks to protect the interests of the designer and his or her successor in title and to encourage innovation and development of new products and investment in their production. The pursuit of those aims would, however, be undermined if, after having tested a design in the market place, the designer or his or her successor in title, who wishes to rely on the grace period, was, in any event, required to apply for registration of the design as it was initially tested in the market place, without being able to take into account the specific results of that test, in order to make any necessary adjustments to the design to ensure its commercial success, and without therefore being able to apply for registration of a design which, although not identical, would produce the same overall impression as the one initially tested in the market place. Moreover, by registering a design which is not identical to the design tested in the market place, the designer or his or her successor in title would run the risk of having his or her own disclosure of that earlier design, during the grace period, relied upon against him or her.

In addition, the Court observes that the question relating to the disclosure of the earlier design is a preliminary question the resolution of which is necessary in order to assess whether the designs at issue are identical or produce the same overall impression. It is not necessary to compare one design with another to establish both the novelty and the individual character of the first design, unless the second has been made available to the public and unless taking account of that disclosure is not excluded pursuant to Article 7(2) of Regulation No 6/2002. Accordingly, the Court disregards the applicant's arguments relating to the comparison of the contested design with the earlier design.

In the second place, as regards the issue of the burden of proof, the Court notes that it is for the applicant for a declaration of invalidity to demonstrate that the contested design does not fulfil the requirements for protection and, in particular, that it was actually disclosed before the date of filing of the application for registration. Nevertheless, for Article 7(2) of Regulation No 6/2002 to be applicable, the owner of the design that is the subject of the application for invalidity must establish that he or she is the designer of the design upon which that application is based or his or her successor in title, that that design has been disclosed by himself or herself or by a third person and that that disclosure took place during the grace period. In the present case, it was therefore, first, for the applicant to demonstrate that the contested design did not meet the requirements for protection and, next, for the intervener to rely on the exception provided for in Article 7(2) of Regulation No 6/2002 and to demonstrate that the requirements for the application of that exception have been met. Accordingly, the Court finds that, by examining the observations submitted by the applicant to rebut the application of that exception, the Board of Appeal has not transferred the burden of proof to the applicant, but applied the general principle of protection of the rights of the defence and, more specifically, Article 62 of Regulation No 6/2002.

Furthermore, the Court states that the possibility for the applicant of properly submitting observations is not subject to the condition that the explanations and evidence adduced by the intervener to justify the application of Article 7(2) of Regulation No 6/2002 satisfy a particular level of credibility and consistency. On the contrary, it is by its observations that the applicant may bring to the attention of the bodies of EUIPO the reasons why, according to the applicant, the explanations and evidence of the intervener are not credible or consistent. In addition, although the Board of Appeal appeared to suggest that the party which sought to rebut the application of the exception provided for in Article 7(2) of Regulation No 6/2002 should submit supporting evidence, that indication cannot be understood as requiring that such a party necessarily submits evidence in support of its observations. It may confine itself, as the case may be, to making observations on the explanations and evidence produced by the party which relies on the application of that exception.

3. PUBLIC PROCUREMENT

Judgment of the Court of Justice (Fifth Chamber), 20 March 2025, Anib and Others, C-728/22 to C-730/22

Link to the full text of the judgment

References for a preliminary ruling – Directive 2014/23/EU – Concessions for the activity of managing games and collecting bets – Article 43 – Modification of a concession during its performance – National legislation providing for the payment by concessionaires of a monthly fee payable in respect of the extension of the duration of the validity of the concessions – Compatibility – Article 5 – Obligation on Member States to confer on the contracting authority the power to initiate, at the request of a concessionaire, a procedure to modify the operating conditions of a concession, where unforeseeable events not attributable to the parties have a significant impact on the operating risk of the concession – None

Hearing three references for a preliminary ruling from the Consiglio di Stato (Council of State, Italy), the Court examines the compatibility with EU law of the Italian 'technical extension' scheme by which certain concessions for the activity of managing games and collecting bets were extended without issuing a new call for tenders.

The appellants in the main proceedings are undertakings operating bingo halls and two professional groups of undertakings in that business sector. They brought actions before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) against, in certain cases, the refusal by the Agenzia delle Dogane e dei Monopoli (Customs and Monopolies Agency, Italy; 'the ADM') of requests for the immediate suspension of the monthly fee payable under the technical extension scheme until such time as the economic and financial balance of those concessions prevailing before the COVID-19 pandemic had been restored and, in other cases, a measure adopted by the ADM to increase the monthly fee payable by the concessionaires under the technical extension scheme.

The technical extension scheme was introduced for concessions which had expired in order to allow concessionaires to continue to carry on their activities on a temporary basis in return, inter alia, for the introduction of a monthly fee, the amount of which was subsequently increased several times, in particular by Law No 205/2017. [39]

The Regional Administrative Court, Lazio dismissed the actions as unfounded, having regard in particular to case-law of the Corte costituzionale (Constitutional Court, Italy) finding that the national legislation was in line with the Italian Constitution.

The appellants in the main proceedings brought an appeal against those judgments before the referring court which, harbouring doubts as to whether the national legislation concerned was compatible with EU law, therefore made a reference to the Court for a preliminary ruling.

Findings of the Court

In the first place, the Court finds that Directive 2014/23 [40] applies *ratione temporis* to contracts awarded before its entry into force where a legislative extension of those contracts introduces new obligations for private contracting parties after the deadline for transposing that directive. Since it

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39 Legge n. 205 – Bilancio di previsione dello Stato per l'anno finanziario 2018 e bilancio pluriennale per il triennio 2018-2020 (Law No 205 on the estimated State budget for the financial year 2018 and the plurennial budget for the three-year period 2018-2020), of 27 December 2017 (GURI No 302 of 29 December 2017, Ordinary Supplement No 62) ('Law No 205/2017').

40 Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1).

provides that it must be transposed by 17 April 2016 at the latest, the directive is applicable to any modification to a concession contract made after that date.

In the present case, Law No 205/2017 introduced modifications consisting of renewing the technical extension scheme and broadening it so that it also covered concessions expiring in 2017 and 2018, while increasing the amount of the monthly fee. While some of the obligations referred to by that law were also present in the technical extensions adopted previously, the fact remains that the modification of concession contracts made pursuant to that law extended all those obligations and, more generally, the technical extension scheme to which concessionaires are currently subject. Such modifications were adopted after the deadline for transposing Directive 2014/23. Therefore, that directive applies to all of the aspects of the technical extension scheme.

In the second place, the Court rules on whether it is open to the national legislature to extend unilaterally the duration of a concession in return for various obligations, including the payment of a flat-rate fee.

First of all, the Court recalls that Article 43 of Directive 2014/23 exhaustively harmonises the situations in which, in the event of a modification of the terms of the concession, it is either necessary or unnecessary to organise a new procedure for awarding concessions.

Next, it points out that it is not apparent from that provision that it covers only modifications made following a negotiation between the concessionaire and the contracting authority, to the exclusion of modifications imposed unilaterally by legislative means.

In addition, the Court states that it is following an assessment of all the effects of a modification of the terms for the performance of a concession that it is necessary to determine whether that modification comes within one of the situations envisaged in Article 43(1) or (2) of that directive.

In the present case, after ruling out the other situations referred to in Article 43(1) of Directive 2014/23, the Court finds, in the first place, that a modification that intended to extend the duration of a concession the consideration for which is the introduction, first, of an obligation to pay a monthly fee, the amount of which is subsequently increased, second, of a prohibition banning the transfer of premises and, third, of an obligation to accept those extensions in order for the concessionaire concerned to be authorised to participate in any procedure to be awarded those concessions again in the future, makes the character of that concession substantially different from that initially envisaged and, in the second place, that, consequently, such an amendment cannot come within the situation referred to in Article 43(1)(e) of Directive 2014/23.

The Court then moves on to examine whether that modification may nevertheless come within the situation envisaged in Article 43(2) of Directive 2014/23. On that point, it finds that, in order for that to be the case, that extension of the duration of the concession, itself increased by the conversion, into units of time, of any other effects of that modification on the factors taken into account in order to determine the initial value of that concession, must not represent more than 10% of the initial duration of that concession.

Lastly, the Court adds that, if the referring court were to find in the case in the main proceedings that Article 43 of Directive 2014/23 precludes such a modification, an applicant cannot base an argument on that finding in order to require that only the provisions by which the national legislature increased the amount of the fee be disapplied. As the increase in the amount of the fee is indissociable from the extension of the concession since it is the increase that is the consideration for the extension, the act of disapplying only that increase would have the effect of modifying the balance of the concession in favour of the concessionaire.

In the third place, the Court provides details on the power of the contracting authority to initiate an administrative procedure.

In that regard, the fact that Directive 2014/23 defines the concept of 'service concession' as a contract in respect of which the concessionaire concerned is deemed to have assumed the operating risk of that service under normal operating conditions cannot serve as the basis for requiring Member States to grant contracting authorities the power to initiate, at the request of a concessionaire, an administrative procedure with the aim of modifying the conditions for operating a concession where

unforeseen and unforeseeable events not attributable to the parties have a significant influence on the operating risk of that concession.

Further, although Article 43 of Directive 2014/23 refers to the situation of a modification the need for which has been brought about by circumstances which a diligent contracting authority or contracting entity could not foresee, it does so solely in order to make clear that a new award procedure is not necessary, without imposing an obligation on the contracting authority to initiate a procedure for modifying the concession.

That conclusion is supported by the fact that the objective of Article 43 of that directive is to clarify the conditions under which modifications to a concession during its performance require a new award procedure by listing a limited number of situations in which the opening of a new award procedure is not necessary, and not to require Member States to provide that a concession must necessarily be capable of being modified in each of those situations.

VIII. CONSUMER PROTECTION: UNFAIR TERMS

Judgment of the Court of Justice (Fifth Chamber), 20 March 2025, Arce, C-365/23

Link to the full text of the judgment

Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Scope – Article 2(b) – Article 3(1) – Article 4(2) – Article 5 – Article 6(1) – Article 8a – Pre-formulated standard contract – Contract between a supplier providing services for development and career support for sportspersons and a 'rising star' sportsman of minor age represented by his parents – Term establishing the obligation to pay to that supplier remuneration equal to 10% of the income received by that sportsman over the following 15 years – Charter of Fundamental Rights of the European Union – Articles 17 and 24 – Right to property – Rights of the child

Hearing a reference for a preliminary ruling from the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia), the Court of Justice clarifies the scope of the concept of 'consumer' and defines the criteria for assessing the unfairness of a contractual term, within the meaning of Directive 93/13, [41] in the context of a contract for services for sports development and career support for a sportsperson concluded between a supplier and a 'rising star' sportsman of minor age, represented by his parents, requiring him to pay remuneration equal to 10% of the net income received over the 15 years following the conclusion of that contract.

A is a company which offers sportspersons services to support the development of their professional skills and careers. On 14 January 2009, C, a minor who was then 17 years old, represented by D and E, his parents, concluded a contract with A for services for sporting development and career support in the field of basketball for a period of 15 years. Under that contract, concluded at a time when C was not yet a professional sportsman, he undertook to pay A remuneration equal to 10% of all the net income which he would receive throughout the duration of the contract, plus the value added tax applicable in Latvia, provided that the amount of that income was at least EUR 1 500 per month.

On 29 June 2020, A, taking the view that the remuneration provided for in the contract for the services rendered to C had not been paid, brought an action before the Latvian courts seeking an order that C and his parents pay to it the sum of EUR 1 663 777.99, corresponding to 10% of C's income from contracts concluded with sports clubs.

41 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 (OJ 2011 L 304, p. 64).

Both the court of first instance and the appeal court dismissed A's claim on the ground that the contract did not comply with national consumer protection rules. Those courts found, inter alia, that the term requiring C to pay remuneration equal to 10% of his income throughout the duration of the contract was unfair.

A brought an appeal on a point of law before the referring court. That court has doubts as to whether Directive 93/13 is applicable to the field of sport. It also asks whether the term at issue in the main proceedings may be regarded as being drafted in plain, intelligible language and whether it creates a significant imbalance in the parties' rights and obligations within the meaning of that directive. [42]

Findings of the Court

In the first place, the Court notes that Directive 93/13 is a general directive for consumer protection, intended to apply in all sectors of economic activity. That directive defines the contracts to which it applies by reference to the capacity of the contracting parties, according to whether or not they are acting for purposes relating to their trade, business or profession. Accordingly, a contract for services for development and career support for a sportsperson, concluded between a supplier carrying on an activity in the field of development for sportspersons and a 'rising star' of minor age, represented by his parents, who, when that contract was concluded, did not pursue the sport in question professionally and, therefore, had the status of 'consumer', falls within the scope of Directive 93/13. [43] That status must be assessed at the time when the contract is concluded. Accordingly, a minor who has concluded such a contract retains that status, regardless of whether his or her career progresses to that of a professional sportsperson over the course of the contract, whether he or she was regarded as a 'rising star' sportsperson in the sporting discipline in which he or she has become a professional sportsperson, or whether he or she has had access to potentially important information in that discipline.

In the second place, the Court points out that a term providing for the payment by a young sportsperson of 10% of the income received over the 15 years following the conclusion of that contract for the provision of services for development and career support in a particular sport, specified in the contract, is relevant for the purposes of determining both the main subject matter of the contract and the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other. It follows that such a term falls within the scope of Article 4(2) of Directive 93/13 and that a national court may, in principle, assess whether it is unfair only if it reaches the conclusion that it is not drafted in plain, intelligible language. However, in so far as that directive expressly provides for the possibility of adopting or retaining more stringent provisions in the area covered by that directive, [44] it does not preclude national legislation which authorises judicial review of the unfairness of such a term even where it is drafted in plain, intelligible language.

In the third place, the Court considers that a term in a contract which merely provides for the payment by a young sportsperson of 10% of the income received over the 15 years following the conclusion of that contract in exchange for the provision of services for development and career support for a sportsperson, without providing the consumer, before the conclusion of the contract, with all the information necessary to enable him or her to assess the financial consequences of the commitment undertaken by him or her, is not drafted in plain, intelligible language. Such a term can, in itself, be regarded as enabling the person concerned to assess what might be the possible financial consequences for him or her only if it describes precisely the income concerned. It is for the referring court to ascertain, first, whether the information provided in the contract at issue concerning that income meets such a degree of precision and, second, whether, on the date of conclusion of that contract, the person concerned had, as regards both the nature of the services provided by the supplier and the basis for calculating the amount of the remuneration to be paid in return, all the

42 Articles 3 and 5 of Directive 93/13.

43 Article 2(b) of Directive 93/13.

44 Article 8 of Directive 93/13.

information necessary to enable him or her to assess the financial consequences of the commitment undertaken by him or her.

In the fourth place, the Court recalls that, in the assessment of whether a contractual term which has not been individually negotiated is unfair, it is for the national court to assess, having regard to all the circumstances of the case, first, the possible failure to observe the requirement of good faith and, second, the possible existence of a significant imbalance to the detriment of the consumer. The Court states that such an imbalance is not created by a term in a contract which provides for the payment by a young sportsperson of remuneration equal to 10% of the income received over the 15 years following the conclusion of that contract in exchange for the provision of services for development and career support for that sportsperson, merely because that term does not establish a link between the value of the service provided and its cost to the consumer. The existence of such an imbalance must be assessed in the light, in particular, of the rules applicable in national law in the absence of an agreement between the parties, fair and equitable market practices on the date of conclusion of the contract in the matter of remuneration in the field of sport concerned and all the circumstances attending the conclusion of that contract, as well as all the other terms of that contract or of another contract on which it is dependent.

In the fifth place, the Court rules that Directive 93/13 precludes a national court which has found a term in a contract concluded between a seller or supplier and a consumer [45] to be unfair from reducing the amount payable by the consumer to the extent of the costs actually incurred by the supplier in the performance of that contract. That power would contribute to eliminating the dissuasive effect on sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court.

In the last place, the Court finds that, where a contractual term stipulates that, in exchange for the provision of services for development and career support for a sportsperson, a consumer undertakes to pay remuneration equal to 10% of the income received over the 15 years following the conclusion of that contract, the fact that the consumer was a minor at the time that contract was concluded and that that contract was concluded by the minor's parents on his or her behalf is relevant for the purposes of assessing whether that term is unfair. In that regard, the referring court is required, when applying Directive 93/13, to respect the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, which include the right to property and the rights of the child. [46] More specifically, that court must take into account the best interests of the child, but that cannot prevent it from also taking into consideration the fact that C's parents themselves had knowledge of the world of professional sport or the fact that C was 17 years old on the date on which that contract was concluded.

IX. ENERGY

Judgment of the Court of Justice (Fifth Chamber), 6 March 2025, Alajärven Sähkö and Others, C-48/23

Link to the full text of the judgment

Reference for a preliminary ruling – Internal market for electricity – Directive (EU) 2019/944 – Article 57(4) and (5) – Independence of national regulatory authority in the exercise of its duties and powers – Policy guidelines issued by a Member State – Legislative amendment aimed at reducing electricity distribution

45 Pursuant to Article 3(1) of Directive 93/13.

46 Articles 17 and 24 of the Charter of Fundamental Rights.

prices – Decision concerning methods for monitoring electricity system operation charges taken by the regulatory authority concerned following that amendment – Account taken of the *travaux préparatoires* relating to the law that introduced that amendment

Hearing a reference for a preliminary ruling from the markkinaoikeus (Market Court, Finland), the Court of Justice gives a ruling on the scope of the obligation of Member States to respect the independence of national regulatory authorities in the performance of the tasks conferred upon them by Directive 2019/944 on common rules for the internal market for electricity. [47]

By a number of decisions adopted in December 2021 ('the contested decisions'), the Finnish regulatory authority amended the methods for monitoring electricity system operation charges it had fixed in 2015, for the period between 1 January 2022 and 31 December 2023. According to the explanations provided in those decisions, that authority made that amendment on its own initiative following the entry into force of Law 730/2021, [48] which extended the implementation period of certain requirements relating to construction and maintenance of the electricity system.

In that regard, the markkinaoikeus (Market Court) states that it is apparent from the *travaux préparatoires* for Law 730/2021 that its purpose was to bring about a reduction in electricity distribution prices, without, as such, containing provisions specifically governing electricity transmission or distribution tariffs or the calculation methods thereof.

Two Finnish undertakings, electricity system operators, brought an action before the markkinaoikeus (Market Court), seeking annulment of the contested decisions in so far as they changed the methods for monitoring electricity system operation charges. Referring to the connection between Law 730/2021 and the contested decisions, those undertakings submit, inter alia, that the Finnish regulatory authority did not adopt those decisions independently, in accordance with the requirements laid down in that regard by Directive 2019/944.

In view of that complaint, the markkinaoikeus (Market Court) decided to ask the Court, in essence, whether, given the connection between the entry into force of Law 730/2021 and the adoption of the contested decisions by the Finnish regulatory authority, Article 57(4) and (5) and Article 59 of Directive 2019/944 precluded national legislation such as Law 730/2021.

Findings of the Court

As a preliminary point, the Court observes that, under Article 57(4) of Directive 2019/944, Member States are to guarantee the independence of the regulatory authority in the performance of the regulatory tasks conferred upon it by that directive and related legislation. In addition, under Article 57(5)(a) of that directive, in order to protect the independence of the regulatory authority, Member States are to ensure that that authority can take autonomous decisions, independently of any political body.

In that context, the Court finds, first, that the independence of regulatory authorities must be guaranteed both as regards economic actors and public entities, be they administrative bodies or political bodies and, in the latter case, as regards both the government and the national legislature.

Second, the Court states that the powers reserved to the regulatory authorities are executive powers that are based on the technical and specialist assessment of factual realities and, in the exercise of those powers, those authorities are subject to principles and rules established by an equally detailed legislative framework at EU level, which limit their discretion and prevent them from making political choices.

Although, according to the wording of Article 59(1)(m) of Directive 2019/944, it is indeed for the regulatory authorities to ensure compliance with rules governing network security and reliability and

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47 Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ 2019 L 158, p. 125).

48 Laki sähkömarkkinalain muuttamisesta (730/2021) (Law amending the Law on the electricity market (730/2021); 'Law 730/2021').

to assess past performance, there is nothing in that wording to suggest that it falls within their competence to establish those rules.

In that regard, as is apparent from recital 87 of that directive and as provided for by the second paragraph of Article 194(2) TFEU, Member States have the right to determine the conditions for exploiting their energy resources. Consequently, Member States are free to adopt their own rules relating to the national electricity market, except as regards the duties and powers of the national regulatory authorities provided for by that same directive.

In that perspective, the exercise by a Member State of its powers to establish its national energy policy may have repercussions on the costs of operating the electricity system. Moreover, the mere fact that a Member State seeks, through the adoption of rules, to lower electricity distribution prices is not, as such, incompatible with Article 57(4) and (5) of Directive 2019/944.

That said, in view of Article 57(4) and (5) of Directive 2019/944, national regulatory measures which include detailed provisions specifically establishing the factors which are at the discretion of the national regulatory authority, such as tariff levels of the electricity system or the specific methods for calculating them, cannot be permitted.

However, the fact that the national legislature adopted a law amending the requirements relating to security of supply and that, as a result, those tariffs were modified by the regulatory authority, does not per se call into question the independence of that authority's exercise of its powers.

In the light of those considerations, the Court holds that the answer to the questions referred is that Article 57(4) and (5)(a) of Directive 2019/944, read in conjunction with Article 59 thereof, must be interpreted as not precluding national legislation whose purpose, as indicated in the *travaux préparatoires* relating thereto, is, inter alia, to influence electricity distribution prices without, as such, containing provisions specifically governing electricity transmission or distribution tariffs or the calculation methods thereof, but the effect of the entry into force of which has been that the national regulatory authority has changed its methods for monitoring electricity system operation tariffs before the expiry of the monitoring period ongoing on the date of that entry into force.

X. EUROPEAN CIVIL SERVICE: PSYCHOLOGICAL HARASSMENT

Judgment of the General Court (Fourth Chamber, Extended Composition), 12 March 2025, Semedo v Parliament, T-349/23

Link to the full text of the judgment

Law governing the institutions – Member of Parliament – Psychological harassment – Decisions of the President of the Parliament finding that an accredited parliamentary assistant suffered psychological harassment and imposing on a Member the penalty of forfeiture of entitlement to the subsistence allowance for 10 days – Right to be heard – Rights of the defence

Hearing an action brought by Ms Monica Semedo, a former Member of the European Parliament, the General Court, sitting in extended composition, annuls the decisions of the President of the Parliament by which the President found that certain acts which the applicant was alleged to have engaged in constituted psychological harassment within the meaning of Article 12a(3) of the Staff Regulations of Officials of the European Union and imposed on her a penalty consisting in the forfeiture of entitlement to the subsistence allowance for a period of 10 days. It is against that backdrop that the Court clarifies the case-law relating to respect for the rights of the defence in the context of a harassment complaint against a Member of Parliament and, more specifically, as regards that Member's access to the witness statements and written evidence relied on to determine that harassment had occurred.

In March 2022, the Advisory Committee dealing with harassment complaints concerning Members of Parliament ('the Committee') notified the applicant that an investigation had been initiated against her

as a result of a complaint lodged by her former accredited parliamentary assistant ('the complainant') and sent her a summary of the complainant's allegations as well as the non-confidential evidence submitted by him.

In November 2022, the Committee adopted its report on the complaint and its recommendations ('the Committee's report'), in which it concluded that the acts alleged by the complainant constituted psychological harassment and recommended that a penalty be imposed on the applicant consisting in the forfeiture of entitlement to the subsistence allowance for a period of 20 days.

In December 2022, the President of the Parliament sent the applicant an anonymised version of the Committee's report and invited her to submit written observations on that report. In January 2023, the applicant submitted her observations in which she asked, inter alia, to be provided with a copy of the Committee's entire file, including the various witness statements which could not be anonymised. However, the applicant was not given access to that information. In April 2023, the President of the Parliament adopted the contested decisions.

It was against that background that the applicant brought an action before the Court for annulment of those decisions.

Findings of the Court

In the first place, on the matter of the applicant's access to witness statements, the Court recalls that, in a procedure intended to determine whether harassment has occurred, the general principle of respect for the rights of the defence means that, with due regard to any requirements of confidentiality, the person against whom allegations have been made must, prior to the adoption of the decision adversely affecting him or her, receive all documents in the file, both inculpatory and exculpatory, concerning that harassment and be able to state his or her views on them. In order to be able effectively to submit his or her observations, the person accused of harassment is entitled to disclosure of a summary, at the very least, of the statements made by the various persons consulted during the investigation procedure, as those statements were used by the Committee in its report in order to make recommendations to the President of the Parliament, and such a summary should have been disclosed while respecting, if necessary, the principle of confidentiality.

The Court notes that, in the present case, the applicant was sent a non-confidential version of the Committee's report containing a summary of the statements of the witnesses, but that summary did not reflect the substance of the witness statements taken during the investigation. First, the witnesses' differences in perception are not apparent from that document. Secondly, there are a number of discrepancies between the content of that document and the summary of the witness hearings set out in a confidential annex to the Committee's report. Therefore, the Parliament failed to observe the applicant's rights of defence.

In the second place, on the matter of the applicant's access to written evidence, the Court states that, in order to be able to defend him or herself, the person against whom allegations have been made must have the opportunity to ascertain the detailed content of the documents in the file serving as the basis for those allegations in the decisions concerning him or her.

Although the applicant did not dispute that she was in possession of the emails and messages constituting the written evidence relied on to determine that harassment had taken place, in so far as she was the author of those exchanges, not all of the documents in the file serving as the basis for the allegations against her were disclosed to her during the administrative procedure. The Court infers from this that the applicant's rights of defence were not observed in that regard.

To conclude, the applicant had no access either to a summary reproducing the substance of the witness statements taken by the Committee or to the documents in the file serving as the basis for the allegations against her, even though that information was taken into consideration in order to find that harassment had occurred and to impose a penalty. The Court therefore holds that she was deprived of the chance of being better able to defend herself and that that irregularity inevitably affected the content of the contested decisions.

XI. COMMON COMMERCIAL POLICY: ANTI-DUMPING

Judgment of the General Court (Seventh Chamber, Extended Composition), 19 March 2025, LG Belgium v Commission, T-356/22

Link to the judgment as published in extract form

Dumping – Import of superabsorbent polymers originating in the Republic of Korea – Regulation (EU) 2022/547 – Definitive anti-dumping duty – Article 3(2), (3), (5), (6) and (7) of Regulation (EU) 2016/1036 – Article 9(4) of Regulation 2016/1036 – Determination of injury – Examination of the effect of the imports on prices for like products sold on the EU market – Analysis of price undercutting – Application of the product control number method – Causal link – Attribution and non-attribution analysis – Other known factors – Amount of anti-dumping duty – Rights of the defence – Principle of sound administration

In dismissing the action brought by LG Chem, Ltd. against Commission Implementing Regulation 2022/547 imposing a definitive anti-dumping duty on imports of superabsorbent polymers ('SAP') originating in the Republic of Korea, [49] the General Court brings some clarification as to which factors are to be taken into account in order to determine the injury margin and anti-dumping duty rate.

LG Chem is a Korean exporting producer of SAP, which exports them, inter alia, to the European Union. After the European Superabsorbent Polymer Coalition lodged a complaint with the European Commission, the latter adopted the contested regulation, introducing an anti-dumping duty of 13.4% on imports into the European Union of SAP manufactured by LG Chem. That company brought an action for annulment of that regulation.

Findings of the Court

In support of its action, LG Chem claimed, inter alia, that the methodology used by the Commission in the contested regulation had infringed Article 9(4) of the basic regulation. [50]

The Court begins by observing that, under that provision, which lays down the 'lesser duty rule', the amount of the anti-dumping duty must be lower than the margin of dumping established if that lesser duty is adequate to remove the injury caused to the Union industry.

In the present case, the Commission applied Article 7(2c) of the basic regulation and calculated the injury margin by comparing the price of the dumped imports with a target sales price of the Union industry. That price represents the price the Union industry could reasonably expect to charge in the EU market in the absence of the dumped imports.

In that regard, the Court notes that the use of that method came within the Commission's margin of discretion. The use of a target price instead of the actual sales price of the Union industry in order to determine the injury margin makes it possible to take into account the downward pressure exerted by the dumped imports on the sales prices of the Union industry.

That said, it is also apparent from the case-law that, in order to ensure that the amount of the anti-dumping duty imposed in accordance with Article 9(4) of the basic regulation does not exceed that which is necessary to counter the injurious effects of the dumped imports, that amount should not take into account injurious effects caused by factors other than those imports.

On that point, LG Chem submitted that the Commission failed to take due account of the injurious effects caused by factors other than Korean imports, namely, on the one hand, the SAP price formula and the impact of the investments of the Union industry and, on the other, imports from Türkiye and Japan.

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49 Commission Implementing Regulation (EU) 2022/547 of 5 April 2022 imposing a definitive anti-dumping duty on imports of superabsorbent polymers originating in the Republic of Korea (OJ 2022 L 107, p. 27; 'the contested regulation').

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

First, as regards the SAP price formula and the impact of the investments of the Union industry, the Court notes that LG Chem has failed to demonstrate that such factors contributed to the injury suffered by the Union industry. Consequently, the applicant may not criticise the Commission for having failed to disregard the alleged injurious effects of those factors.

Second, as regards the imports from Türkiye and Japan, LG Chem has failed to establish that the methodology used by the Commission was not appropriate for determining the suitable level of duty that would enable the injury caused to the Union industry by the dumped imports to be eliminated. In that regard, the Court notes that, by ensuring that the injury margin expresses only the difference between the weighted average import price and a Union industry target price calculated in accordance with Article 7(2c) of the basic regulation, the Commission ensured that any injury caused by other factors was not attributed to the dumped imports.

The Court concludes that LG Chem has failed to establish that the Commission made manifest errors of assessment and infringed Article 9(4) of the basic regulation in applying its method for calculating the injury margin and anti-dumping duty rate.

Since none of the pleas put forward by LG Chem has been upheld, the Court dismisses the action in its entirety.

XII. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the General Court (Fourth Chamber), 19 March 2025, BSW – management company of "BMC" holding v Council, T-1042/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Inclusion of the applicant's name on the list – Support for the Lukashenko regime – Benefit derived from the Lukashenko regime – Undertaking belonging to the State – Error of assessment – Right to property – Freedom to conduct a business

In its judgment, the General Court dismisses the action for annulment brought by AAT Byelorussian Steel Works – management company of 'Byelorussian Metallurgical Company' holding (BSW – management company of 'BMC' holding) against the acts by which the Council of the European Union included that company in August 2023 [51] on the list of persons and entities subject to restrictive measures in view of the situation in Belarus and involvement of Belarus in the Russian aggression against Ukraine. It supplements the case-law concerning the consideration – as a factor capable of demonstrating the support provided by that undertaking to the regime – of tax payments to the State by a public undertaking wholly owned by that regime.

That judgment has been delivered in the context of a series of restrictive measures adopted by the European Union since 2004 in view of the situation in Belarus with regard to democracy, the rule of law and human rights and the involvement of Belarus in the Russian aggression against Ukraine. The applicant, one of the largest undertakings in the country, is active in the field of iron and steel products. Its funds and economic resources have been frozen on the ground that it benefited from

[51] Council Implementing Decision (CFSP) 2023/1592 of 3 August 2023 implementing Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2023 L 195I, p. 31) and Council Implementing Regulation (EU) 2023/1591 of 3 August 2023 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ 2023 L 195I, p. 1).

and supported the regime of President Lukashenko [52] and was responsible for the repression of civil society. [53]

Findings of the Court

As regards the plea alleging error of assessment, the Court considers that the Council did not err in finding, at the time Decision 2023/1592 and Regulation 2023/1591 were adopted, that the applicant was a substantial source of revenue for the Lukashenko regime, and for the Belarusian State which profited directly from that revenue, and that, consequently, it supported the Lukashenko regime within the meaning of Article 4(1)(b) of Decision 2012/642.

The Court notes that, in reaching the view that the applicant supports the regime, the Council took into account, inter alia, the considerable amounts of tax paid by the applicant to the Belarusian State. While it has already been held that the Council cannot infer 'support for the regime' from the mere payment of taxes, the Court observes that the situation in the present case is different. The case in question [54] concerned support for the regime by natural persons and private legal persons, who are subject to the obligation to pay taxes as a 'legal obligation applicable to all Belarusian taxpayers'. In the present case, the applicant is a State-owned legal person, whose entire capital is held by the Republic of Belarus.

Furthermore, the Court states that the classification as a tax or dividend on the basis of which the sums are paid to the government is not decisive for the purpose of identifying 'support for the government'. Both cases involve sums paid to the State by a public entity pursuant to State legislation imposing that payment. To exclude such payments from that concept of 'support for the government', on the sole ground that the sums due are classified as taxes, could make it possible to circumvent the EU rules. Clearly, an increase in the rate of tax on profits made by such entities could be put in place in return for a reduction in the amount of the dividends which national legislation requires State-owned companies to pay to the State.

In those circumstances, the State may dispose of the applicant's income and profits by using both instruments of public law, such as taxes, and instruments derived from property law, such as dividends. The form in which the applicant's resources will be transferred to the State also depends on the State, as legislator and owner. So far as concerns the resources received to support the regime, it is of little importance whether the State receives them in the form of taxes paid by a State-owned undertaking or of dividends, that is to say, a share of the profits of that undertaking after tax.

Moreover, as is apparent from the grounds for including the applicant's name on the lists at issue, the applicant 'is a unique [State] enterprise in the metallurgical industry in Belarus and among the largest companies in the country' and, 'as such, it is a substantial source of revenue for the Lukashenk[o] regime'. It follows that all revenue or profits generated by the applicant are likely to be paid to the State, irrespective of the form such support may take.

In the light of the foregoing, the Court finds that, in the case of an undertaking the entire capital of which is held by the State, the payment of dividends, as well as taxes, may be taken into consideration in order to establish whether it is a substantial source of revenue for the regime in the context of the analysis of possible support for that regime. It notes, in that regard, that the applicant has paid, in 2021, income tax in the amount of 11 600 000 United States dollars (USD), contributions to the social protection fund in the amount of USD 27 900 000, and real estate and land tax in the amount of USD 6 780 000.

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52 See Article 4(1)(b) of Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1) and Article 2(1) and (5) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1), as amended by Council Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1).

53 See Article 4(1)(a) of Decision 2012/642 and Article 2(4) of Regulation No 765/2006.

54 Judgment of 6 October 2015, *Chyzh and Others* v *Council* (T-276/12, not published, EU:T:2015:748, paragraph 169).

Judgment of the General Court (First Chamber, Extended Composition), 26 March 2025, A2B Connect and Others v Council, T-307/22

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures adopted in view of Russia's actions destabilising the situation in Ukraine – Temporary prohibition of broadcasting and suspension of authorisations for the broadcasting of content by certain media outlets – Temporary prohibition of advertising for products or services in content produced or broadcast by certain media outlets – Competence of the Council – Freedom of expression and of information – Proportionality – Obligation to state reasons

In its judgment, the General Court dismisses the action for annulment brought by the applicant companies against the acts by which the Council prohibits any operator established in the European Union, first, from broadcasting any content, and from enabling, facilitating or contributing to the broadcasting, by the legal persons, entities or bodies listed in the annexes to the contested decisions, of any content; and, second, from advertising products or services in content broadcast by those persons, entities or bodies. [55] The present case allows the Court, inter alia, to rule on the conditions for recognition of its jurisdiction to examine the legality of decisions adopted in the context of the common foreign and security policy (CFSP) in respect of applicants subject to those prohibitions.

The present 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 applicants, who are established in the Netherlands and whose names are not on the lists annexed to the contested acts, are providers of internet services to individuals and to businesses.

In support of their action, the applicants claim a lack of competence on the part of the Council to adopt the contested acts and an infringement of the rights to freedom of expression and information [56] and to good administration [57] guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

Examining of its own motion whether it has jurisdiction to examine the legality of the contested acts, the Court finds, in the first place, that it is only necessary to rule on the legality of the contested regulations. In that regard, it notes, first of all, that, in accordance with the second paragraph of Article 275 TFEU, it is the individual nature of measures adopted on the basis of provisions relating to the CFSP which permits access to the Courts of the European Union. A decision providing for restrictive measures may be considered to be an individual measure if the person concerned is referred to by name in that decision. Since the applicants' names do not appear either in the body of Decision 2014/512, as amended, or in Annex IX thereto, as amended, the Court finds that the contested decisions are not restrictive measures against the applicants. The restrictive measures at issue must, in fact, be understood as being of general application as regards the applicants – since the latter are among the entities belonging to the general and abstract category of 'operators' that are prohibited from broadcasting content from the 'legal persons, entities or bodies' listed in Annex IX to

55 Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 65, p. 5), Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 65, p. 1), Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 153, p. 128) and Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2022 L 153, p. 53).

56 Article 11 of the Charter.

57 Article 41 of the Charter.

Decision 2014/512, as amended – and as being of individual application as regards those persons, entities and bodies.

Accordingly, the applicants cannot rely on the fact that the restrictive measures at issue are individual measures in relation to the media outlets identified in the body of Decision 2014/512, as amended, as a basis for the Court's jurisdiction to hear their action for annulment. On the other hand, the Court must ensure the full review of the legality of European Union acts, such as the contested regulations, which have been adopted on the basis of Article 215 TFEU.

As regards, in the second place, whether the Council was competent to adopt the regulations concerned, the Court notes, first, that, under Article 215(2) TFEU, a precondition for ascertaining whether the Council was competent to adopt the contested regulations is that it must have been competent to adopt the contested decisions, which confer on it the power to adopt those regulations, and, second, that, in its relations with the wider world, the European Union is to uphold and promote its values and interests and contribute to the protection of its citizens [58] and to peace, security and the strict observance of international law. The Court then observes that the combined effects of Articles 21 and 23, Article 24(1) and Article 25, the first subparagraph of Article 28(1) and Article 29 TEU are that the concept of 'approach of the Union' can lend itself to a broad interpretation, such that Article 29 TEU may be the basis for adopting, inter alia, decisions providing for measures capable of directly affecting the legal position of individuals. Moreover, the Council has broad discretion to determine the persons and entities which will be subject to the restrictive measures that the European Union adopts in the field of the CFSP. Accordingly, the Council could therefore correctly consider that, in response to the international crisis caused by the Russian Federation's aggression against Ukraine, suitable measures to respond to the serious threat to peace on the borders of the European Union and to the violation of international law could include a prohibition of the broadcasting of the content of certain media outlets under the control of the leadership of the Russian Federation, on the ground that they supported that aggression by continuous and concerted propaganda actions targeting civil society in the European Union and neighbouring countries, and a prohibition on advertising products or services in any content produced or broadcast by the media outlets concerned.

The Court observes on that point that, since the propaganda and disinformation campaigns conducted by those media outlets are capable of undermining the foundations of democratic societies and are an integral part of the arsenal of modern warfare, the restrictive measures at issue are integral to the pursuit by the European Union of the objectives assigned to it in Article 3(1) and (5) TEU. Since the actions in question constitute, in that regard, a significant and direct threat to the public order and security of the European Union, those measures, by seeking to safeguard the values, fundamental interests, security and independence of the European Union and to preserve peace, are, therefore, directly linked to the aims of the CFSP. [59]

Furthermore, the Court notes that the fact that the national regulatory authorities have competence to penalise an audiovisual media outlet for inappropriate editorial content does not preclude the competence conferred on the Council to adopt restrictive measures designed to prohibit, provisionally and reversibly, the broadcasting of certain media content. The competence attributed to the national administrative authorities by domestic law does not pursue the same objectives, is not based on the same values and cannot guarantee the same results as uniform and immediate intervention throughout the territory of the European Union, such as the intervention that can be undertaken under the CFSP.

Last, the Court notes that the adoption of the contested acts cannot be called into question by the fact that the European Union is able to intervene, in the field of audiovisual services, on the basis of other categories of competences governed by the FEU Treaty. [60] The implementation of the policies listed in Articles 3 to 6 TFEU is not to affect the application of the procedures and the extent of the

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58 Article 3(5) TEU.

59 Article 21(2)(a) and (c) TEU.

60 Article 4(2) TFEU.

powers of the institutions laid down by the Treaties for the exercise of the Union's competences under the CFSP. [61]

As regards, in the third place, the alleged infringement of the right to good administration, the Court holds that the Council stated sufficient reasons for the contested regulations. It recalls in that regard that, in the case of provisions of general application, the statement of reasons may be limited to indicating, first, the overall situation which led to their adoption, and, second, the general objectives which they are intended to achieve, and that there is no obligation on the Council under EU law to disclose the documents relating to its decision-making process.

As regards, in the fourth and last place, the alleged infringement of freedom of expression and information, in particular of freedom to impart information, the Court recalls that the rights and freedoms enshrined in Article 11 of the Charter are not absolute rights, but must be considered in relation to their function in society. Accordingly, even assuming, first, that internet service providers, such as the applicants, may be regarded as holders of an autonomous right to freedom to impart information, and, second, that the temporary prohibition on contributing to the broadcasting of content from the media outlets subject to the restrictive measures at issue and the prohibition on advertising products or services in content broadcast by those outlets could constitute interference with the exercise of that freedom, the Court notes that limitations may be allowed on the exercise of the rights enshrined by the Charter. [62]

In the present case, the Court finds, in the light of the nature and purpose of the prohibitions at issue, that it was appropriate for the Council to take internet service providers, such as the applicants, into consideration in the same way as any of the means of content transmission or distribution, as operators that are expected to ensure the application, and therefore the effectiveness, of those prohibitions in the territory of the European Union.

Last, the Court holds that the applicants cannot rely, in support of their action for annulment, on the right of the users of their services to receive information, since the applicants do not themselves hold that right.

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61 In accordance with the second paragraph of Article 40 TEU.

62 Article 52(1) of the Charter.