COURT OF JUSTICE
OF THE EUROPEAN UNION

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

Judgment of the Court of Justice (First Chamber), 30 April 2025, Inspektorat kam Visshia sadeben savet, C-313/23, C-316/23 and C-332/23

Link to the full text of the judgment

References for a preliminary ruling – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Effective legal protection in the fields covered by Union law – Judicial body competent to propose the initiation of disciplinary proceedings against judges, public prosecutors and investigating magistrates, with a view to the imposition of disciplinary penalties – Members of the judicial body remaining in office after the expiry of their term of office – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Data security – Access by a judicial body to data relating to the bank accounts of judges and public prosecutors and of their family members – Judicial authorisation for the purpose of lifting banking secrecy – Court authorising the lifting of banking secrecy – Article 4(7) – Concept of 'controller' – Article 51 – Concept of 'supervisory authority'

Ruling on a request for a preliminary ruling from the Sofiyski rayonen sad (District Court, Sofia, Bulgaria), the Court of Justice holds that the principle of judicial independence precludes the practice of a Member State which allows the members of a judicial body competent to propose the initiation of disciplinary proceedings against judges, public prosecutors and investigating magistrates to remain in office beyond the legal duration of their terms of office in the absence of an express legal basis or a time limit for that extension. In addition, the Court clarifies the scope of the concepts of 'controller' and 'supervisory authority', provided for by the General Data Protection Regulation, [1] in the context of disclosure of personal data protected by banking secrecy concerning judges, public prosecutors and investigating magistrates and their family members that is authorised by a national court following a request made by that judicial body.

In May 2023, after the expiry of the period prescribed for the submission, for 2022, of the annual asset declarations of judges, public prosecutors and investigating magistrates and of their families, the Inspektorat kam Visshia sadeben savet (Inspectorate at the Supreme Judicial Council, Bulgaria; 'the Inspectorate') requested the referring court to lift banking secrecy in relation to the bank accounts of several judges and public prosecutors and of their family members. [2]

The referring court states that the Inspectorate was established in 2007, following an amendment to the Bulgarian Constitution, and, as a judicial body, is entrusted with investigating the exercise of undue influence over judges, public prosecutors and investigating magistrates, verifying their asset declarations and identifying possible conflicts of interest and violations of the independence of the judiciary. Furthermore, the referring court states that the terms of office of the members of the Inspectorate, elected by the national parliament for a period of four to five years, came to an end in 2020, without new members having been elected. However, according to the case-law of the Konstitutsionen sad (Constitutional Court, Bulgaria), the members of the Inspectorate are to continue to perform their functions until the election of new members, since maintaining the functions entrusted to the Inspectorate outweighs the risks of abuse by its members.

In those circumstances, the referring court asks whether an extension of the terms of office of the members of the Inspectorate is liable to undermine the guarantees of independence of that authority

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1 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').

2 Pursuant to Article 62(6)(12) of the Zakon za kreditnite institutsii (Law on credit institutions) (DV No 59 of 21 July 2006).

and, if so, what the criteria are for assessing whether and for how long such an extension is permissible.

Furthermore, the referring court is uncertain about the role and obligations of the national courts where they must authorise the Inspectorate to access the personal data of judges, public prosecutors and investigating magistrates. More specifically, it is uncertain whether its activity of authorising the Inspectorate to access personal data covered by banking secrecy comes within the scope of the GDPR and, if so, what impact that would have on the review which it must carry out. In that regard, the referring court asks whether the review which it is required to carry out before authorising the Inspectorate's access to the data at issue should be purely formal and be limited to ascertaining whether the persons in respect of whom the lifting of banking secrecy is sought have the status of persons who are under an obligation to submit a declaration, that is to say, whether they are judges, public prosecutors or investigating magistrates or persons who have a family relationship or another relationship with them, or whether it should rather ensure the security of the data at issue pursuant to the GDPR.

Findings of the Court

The Court considers, in the first place, that the second subparagraph of Article 19(1) TEU, read in the light of the right to effective judicial protection, [3] and more specifically the principle of judicial independence, precludes the practice of a Member State under which the members of a judicial body – who are elected by its parliament for terms of office of a specific duration and are competent to scrutinise the activity of judges, public prosecutors and investigating magistrates in the performance of their functions, to carry out checks in respect of their integrity and the absence of conflicts of interest on their part, as well as to propose to another judicial body the initiation of disciplinary proceedings with a view to the imposition of disciplinary penalties on those persons – continue to perform their functions beyond the legal duration of their term of office as laid down in the Constitution of that Member State, until that parliament elects new members. The foregoing applies where there is no express legal basis in national law containing clear and precise rules such as to circumscribe the performance of those functions and where it is not guaranteed that that extension is, in practice, limited in time.

In that regard, the Court recalls its settled case-law, according to which the requirement of judicial independence [4] means that the disciplinary regime in respect of judges must provide the necessary guarantees in order to prevent its being used as a system of political control of the content of judicial decisions. In that regard, rules which define both conduct amounting to disciplinary offences and the penalties actually applicable, provide for the involvement of an independent body in accordance with a procedure which fully safeguards the right to an effective judicial protection and the rights of the defence, [5] and lay down the possibility of bringing legal proceedings challenging the disciplinary bodies' decisions constitute such guarantees.

It is essential that such bodies should act objectively and impartially in the performance of their duties and, to that end, be free from any external influence. That applies in particular to a judicial body which, like the Inspectorate, has broad powers to scrutinise the activity of judges, public prosecutors and investigating magistrates in the performance of their functions, to carry out checks in respect of their integrity and the absence of conflicts of interest on their part, as well as to propose to another judicial body (in the present case, the Bulgarian Supreme Judicial Council), following such checks, the initiation of disciplinary proceedings with a view to the imposition of disciplinary penalties on those persons. That is why all the rules governing the organisation and operation of such a body, including those governing the procedure for the appointment of its members, must be designed in such a way that there can be no reasonable doubt, in the minds of individuals, that the powers and functions of

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

4 As follows from the second subparagraph of Article 19(1) TEU.

5 Articles 47 and 48 of the Charter.

such a body will not be used as an instrument to exert pressure on, or political control over, judicial activity.

As regards the terms of offices of the members of the Inspectorate, which expired without the national parliament having elected new members, the Court points out that the national legislation does not appear to contain any rule as to whether they may continue to perform their functions beyond the duration of their term of office. While it is true that, in accordance with the case-law of the Constitutional Court, the members of the Inspectorate are to continue to perform their functions until new members are elected, it is also true that that national legislation does not contain any rules such as to circumscribe the performance of those functions extended in that manner or any legal provisions under which a potential deadlock in the process for the appointment of new members of the Inspectorate can be resolved. Thus, the extension of the terms of office of the former members of the Inspectorate appears, in practice, to be capable of continuing indefinitely.

In that context, it is for the Member States alone to decide whether or not to authorise the performance of the functions, beyond the legal duration of their term of office, of members of a judicial body which is competent to scrutinise the activity of judges, public prosecutors and investigating magistrates as well as to propose the initiation of disciplinary proceedings against those persons, in order to ensure continuity in the functioning of that body. However, when opting for such an extension of terms of office, those Member States are required to ensure that the performance of functions after the expiry of the term of office has an express legal basis in domestic law containing clear and precise rules such as to circumscribe that performance. They must also ensure that the conditions and detailed rules to which that performance is subject are designed in such a way as to enable the relevant members of the judicial body to act objectively and impartially in the performance of their duties. Therefore, although, in certain circumstances, the extension of the terms of office may prove necessary, in view of the importance of the functions performed by the judicial body concerned, it is only exceptionally and on condition that it is circumscribed by clear and precise rules excluding, in practice, the possibility that it may be indefinite in its duration, that that extension may be conceivable.

In the second place, the Court finds that disclosure, to a judicial body, of personal data that are protected by banking secrecy and that concern judges, public prosecutors and investigating magistrates as well as their family members, with a view to the verification of the declarations which are submitted by those judges, public prosecutors and investigating magistrates concerning their assets and those of their family members and which are published, constitutes processing of personal data that comes within the material scope of that regulation.

In reaching that conclusion, the Court notes that although the enactment of rules applicable to the status of judges, public prosecutors and investigating magistrates and to the performance of their functions comes within the competence of the Member States, the fact remains that data processing the objective of which is to scrutinise the integrity of judges, public prosecutors and investigating magistrates, and to ascertain whether there are any conflicts of interest on their part, is not covered by the exceptions to the material scope of the GDPR, [6] since it is neither an activity intended to safeguard national security nor an activity which can be classified in the same category. Disclosure to a judicial body of personal data that are protected by banking secrecy and that concern judges, public prosecutors and investigating magistrates as well as their family members constitutes the making available of those personal data to that body.

In the third place, the Court rules on the interpretation of the concepts of 'controller' and 'supervisory authority' within the meaning of the GDPR. [7]

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6 In particular the exception laid down in Article 2(2)(a) of the GDPR, which provides that that regulation does not apply to the processing of personal data 'in the course of an activity which falls outside the scope of Union law'. That exception is intended to exclude from the scope of that regulation the processing of personal data carried out by State authorities in the course of an activity which is intended to safeguard national security or of an activity which can be classified in the same category.

7 Within the meaning of Article 4(7) and Article 51(1) of the GDPR.

As regards the concept of 'controller', the Court considers that that concept does not cover a court having jurisdiction to authorise, at the request of another judicial body, disclosure by a bank to that body of data relating to the bank accounts of judges, public prosecutors and investigating magistrates as well as of their family members.

Under national legislation, the Inspectorate is competent to carry out, inter alia, checks concerning the integrity and absence of conflicts of interest on the part of judges, public prosecutors and investigating magistrates, as well as to verify their asset declarations. To that end, that legislation provides the Inspectorate, first, with the possibility of requesting access to data relating to the bank accounts of judges, public prosecutors and investigating magistrates as well as of their family members, and second, with the power to request prior judicial authorisation in order to access those data, where the data subjects have not given consent to such access. The court considering a request for authorisation of disclosure thus takes action only at the request of the Inspectorate and confines itself to ascertaining whether the conditions of legality laid down by the national law are satisfied. Similarly, it is not that court but the Inspectorate that determines, on the basis of the applicable national rules, the persons whose data it is seeking to access for the purpose of exercising its powers and in relation to whom it submits a request for authorisation to that court. Thus, although the court is to examine whether and to what extent the conditions governing the legality of the processing are satisfied in a given case, it does not determine of its own accord either the purpose of the processing or the persons and data concerned. In those circumstances, it is not that court but the body competent to achieve the purposes pursued that is the controller.

As regards the concept of 'supervisory authority', a court having jurisdiction to authorise disclosure of personal data to another judicial body is not, according to the Court of Justice, covered by that concept where that court is not entrusted by the Member State in which it is situated with monitoring the application of the GDPR in order to protect, in particular, the fundamental rights and freedoms of natural persons in relation to the processing of their personal data.

In the last place, the Court considers that a court having jurisdiction to authorise disclosure of personal data to another judicial body is not required, where an action against a controller has not been brought before it, [8] to ensure of its own motion the protection of the persons whose data are concerned as regards compliance with the provisions of that regulation relating to the security of personal data. The same applies where that body has, in the past, infringed those provisions.

The Court of Justice states that national courts which are not seised of an action brought against a supervisory authority or an action brought against a controller [9] are not required, in the absence of rules expressly conferring supervisory powers on them, to ensure compliance with the substantive provisions of the GDPR. In order to ensure the effectiveness of such an action, the Member States must ensure that the practical arrangements for the exercise of the remedies provided by the GDPR effectively meet the requirements arising from the right to an effective remedy. [10] To do so, the controller, namely the competent judicial body to which access to personal data has been granted, must provide the persons whose data are concerned with the information listed in Article 14 of the GDPR, [11] since that information is necessary to enable those persons to exercise, where appropriate, their right to object to their personal data being processed [12] and their right of action where they suffer damage. [13]

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8 Under Article 79(1) of the GDPR.

9 Article 78(1) and Article 79(1) of the GDPR.

10 Article 47 of the Charter.

11 More specifically, in paragraphs 1 and 2 of that provision.

12 Article 21 of the GDPR.

13 Articles 79 and 82 of the GDPR.

II. FUNDAMENTAL RIGHTS: PRINCIPLES OF LEGALITY AND PROPORTIONALITY OF CRIMINAL OFFENCES AND PENALTIES

Judgment of the Court of Justice (Grand Chamber), 3 April 2025, Alchaster II, C-743/24

Link to the full text of the judgment

Reference for a preliminary ruling – Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part – Surrender of a person to the United Kingdom for criminal prosecution – Risk of breach of a fundamental right – Second sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union – Principle that offences and penalties must be defined by law – Changes, to the detriment of the sentenced person, to the licence regime

Ruling on a request for a preliminary ruling from the Supreme Court (Ireland), and sitting as the Grand Chamber, the Court, under the accelerated procedure and in the context of an arrest warrant issued on the basis of the Trade and Cooperation Agreement concluded with the United Kingdom of Great Britain and Northern Ireland, [14] clarifies the concept of the imposition of a heavier penalty, in the light of the principle that offences and penalties must be defined by law enshrined in the second sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union. [15]

The District Judge of the Magistrates' Courts of Northern Ireland (United Kingdom) issued four arrest warrants against MA for terrorist offences allegedly committed in 2020.

In 2022, the High Court (Ireland) ordered MA to be surrendered to the United Kingdom. MA brought an appeal against that decision before the referring court, which referred a question to the Court of Justice for a preliminary ruling on the interpretation of the TCA, to which the Court responded in *Alchaster*. [16]

In that judgment, the Court stated that, where a person who is the subject of an arrest warrant issued on the basis of the TCA invokes a risk of infringement of Article 49(1) of the Charter in the event of his or her surrender to the United Kingdom, on account of a change to the conditions for release on licence made after the alleged commission of the offence for which that person is being prosecuted, the executing judicial authority must undertake an independent examination as to the existence of that risk before deciding on the execution of that arrest warrant. In the light of that reply, the referring court asked [17] the United Kingdom authorities for further information on the legislation which, in the event of surrender, would be applicable to MA in relation to release on licence.

As is apparent from the response of the District Judge of the Magistrates' Courts of Northern Ireland, according to the legislation applicable in Northern Ireland on the date of the alleged commission of the offences at issue in the main proceedings, a court imposing a determinate prison sentence had to fix a 'custodial period' not exceeding one half of the term of the sentence imposed, at the end of which the sentenced person was automatically entitled to be released on licence. However, under the new legislation applicable from 30 April 2021, including offences committed before that date, a determinate prison sentence for a 'specified terrorism offence' consists of an 'appropriate custodial

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14 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ 2021 L 149, p. 10; 'the TCA').

15 'The Charter'.

16 Judgment of 29 July 2024, *Alchaster* (C-202/24, EU:C:2024:649).

17 Pursuant to Article 613(2) of the TCA.

term', determined by the court, plus a further period of one year, for which the sentenced person is to be subject to licence; the aggregate duration of those periods may not exceed the maximum term of imprisonment provided for. That person may also be eligible for release on licence after having served two thirds of the 'appropriate custodial term' and provided that the Parole Commissioners (United Kingdom) consider that his or her continued imprisonment is not necessary for the protection of society.

Having doubts as to whether those amendments may be regarded as relating solely to the execution of sentences or whether they must, on the contrary, be regarded as retroactively altering the actual scope of the penalty provided for and whether, consequently, the view should be taken that a heavier penalty is being imposed on the person concerned than the one applicable on the day the alleged offences were committed, such as to amount to an infringement of Article 49(1) of the Charter, the national court referred a question to the Court of Justice for a preliminary ruling.

Findings of the Court

As a preliminary point, the Court recalls that Article 49 of the Charter contains, at the very least, the same guarantees as those provided for in Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, [18] which must be taken into account by virtue Article 52(3) of the Charter as a minimum threshold of protection.

For the purposes of applying Article 7 ECHR, a distinction must be drawn between a measure that constitutes a 'penalty' and a measure that concerns the 'execution' or 'enforcement' of the penalty.

A measure relating to the execution of a sentence will be incompatible with the second sentence of Article 49(1) of the Charter only if it retroactively alters the actual scope of the penalty provided for on the date on which the offence at issue was allegedly committed, thus entailing the imposition of a heavier penalty than the one initially provided for. Although that is not the case where that measure merely delays the eligibility threshold for release on licence, the position may be different, in particular, if that measure essentially repeals the possibility of release on licence or if it forms part of a series of measures which have the effect of increasing the intrinsic seriousness of the sentence initially provided for.

Therefore, the fact that national legislation provides, in the case of offences committed before its entry into force, for the extension of the part of a prison sentence which must necessarily be served in custody before release on licence may be ordered cannot, taken in isolation, entail an infringement of the second sentence of Article 49(1) of the Charter.

However, the question referred concerns changes to a licence regime, which also call into question a rule under which such release was to take place automatically once half of the sentence was served. Although that change to the licence regime leads in the present case to a hardening of the detention situation, that fact does not necessarily have to be regarded as entailing the imposition of a heavier penalty, within the meaning of the second sentence of Article 49(1) of the Charter.

That finding stems from the separation between the concept of 'penalty', understood as the sentence handed down or capable of being handed down, and that of measures relating to the 'execution' or 'enforcement' of the penalty. It applies not only to the extension of the eligibility threshold for release on licence, but also to changes to other conditions to which the grant of a release on licence is subject.

Thus, in so far as those changes do not, in essence, repeal the possibility of such release and do not lead to an increase in the intrinsic seriousness of the penalty provided for on the date of the alleged commission of the offences at issue, their application to offences committed before their entry into force does not infringe the second sentence of Article 49(1) of the Charter.

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

As regards the first of those two conditions, it should be noted that the change introduced does not lead in the present case, either in pursuance of the law or in practice, to a repeal, in essence, of the possibility of a release on licence.

As regards the second condition, it does not appear that the change to the licence regime at issue, which does not extend the maximum duration of the prison sentence provided for, has the effect of increasing the intrinsic nature of the penalty initially provided for. The length of the prison sentence to be imposed by the criminal court constitutes, both under the new regime and under the one applicable on the date of the alleged commission of the offences at issue, the maximum period in which the sentenced person could, ultimately, be placed in custody. Both those licence regimes entail the possibility that the person who was eligible for such release may be detained again if his or her conduct justifies revocation of that release. None of those regimes therefore provides that person with a guarantee that he or she will remain free for a predetermined part of the prison sentence imposed by the criminal court.

Furthermore, the criterion based on the dangerousness of the sentenced person, as assessed at the time of the possible release on licence, is a standard criterion in prison policies and involves an assessment of a different nature from that which was initially carried out when the sentence was handed down and is therefore linked to the execution of the penalty.

The Court concludes that, in accordance with the second sentence of Article 49(1) of the Charter, the application, to a person who may be sentenced to a determinate term of imprisonment, of a regime under which that person must serve at least two thirds of a fixed custodial period before being eligible for release on licence, such release is conditional upon a specialised authority finding that the continued imprisonment of that person is no longer necessary for the protection of society and that person is necessarily eligible for release on licence one year before the end of the sentence imposed, does not constitute the imposition of a heavier penalty, when, under the rules applicable on the date of the alleged commission of the offences at issue, he or she should automatically have been eligible for release on licence after having served half of that sentence.

III. CITIZENSHIP OF THE UNION

1. DERIVED RIGHT OF RESIDENCE OF A THIRD-COUNTRY NATIONAL FAMILY MEMBERS OF AN EU CITIZEN

Judgment of the Court of Justice (First Chamber), 10 April 2025, État belge (Proof of the relationship of dependency), C-607/21

Link to the full text of the judgment

Reference for a preliminary ruling – Citizenship of the Union – Directive 2004/38/EC – Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States – Article 3 – Beneficiaries – Article 2(2)(d) – Family member – Direct relative in the ascending line of the partner of a Union citizen who is dependent on that Union citizen and/or that partner – Assessment of the condition of being 'dependent' – Relevant date for determining material dependence – Article 10 – Conditions for the issue of a residence card – Declaratory nature of a residence card – Submission of an application for a residence card in the host Member State several years after leaving the country of origin – Effect of a situation of illegal residence under national legislation on the assessment of the condition of being 'dependent'

Ruling on a request for a preliminary ruling in the context of a dispute concerning an application for a residence card submitted by a direct relative in the ascending line of the partner of a European Union

citizen, the Court of Justice provides clarification on the assessment of the condition relating to the relationship of dependency between that direct relative in the ascending line and that citizen or his or her partner, for the purposes of obtaining a derived right of residence under Directive 2004/38. [19]

XXX, of Moroccan nationality, is the mother of a Belgian national residing in Belgium with his partner, Ms N.E.K., who is a Netherlands national and who made a formal declaration of cohabitation with XXX's son in 2005 in Belgium.

Having entered the Belgian territory in July 2011, XXX submitted to the Belgian authorities, in September 2011, an application for a residence card as a direct dependent relative in the ascending line of her son.

That application having been rejected on the ground of an amendment to the Belgian law on family reunification, XXX submitted, in 2015, a second application for a residence card, this time as a family member of Ms N.E.K.

That new application was rejected on the ground, first, that XXX had not provided evidence that the family members being joined had sufficient resources to support her and, second, that the documents proving her relationship of dependency were too old. That rejection and the accompanying order to leave the Belgian territory were confirmed by the Conseil du contentieux des étrangers (Council for Asylum and Immigration Proceedings, Belgium).

A third application for a residence card submitted by XXX in 2017 as a family member of her son's partner was also rejected, the Belgian authorities having taken the view that the documents proving XXX's dependence, which dated from 2010 and 2011, were too old.

By a judgment of August 2019, the Conseil du contentieux des étrangers (Council for Asylum and Immigration Proceedings), taking the view that the documents produced by XXX tended to prove the existence of a situation of financial dependence in 2010 and 2011, but did not make it possible to prove such a situation on the date of her residence card application, in 2017, confirmed that rejection.

Hearing an appeal against that judgment, the referring court decided to question the Court as to the relevant point in time for assessing the condition relating to the relationship of dependency and the possible effect that the applicant's illegal residence in the territory of the host Member State might have on that assessment.

Findings of the Court

As a preliminary point, the Court states that the dependent direct relatives in the ascending line of the partner of a Union citizen residing in a Member State of which he or she is not a national must be regarded, for the purposes of the application of the rights guaranteed by Directive 2004/38, as being the family members of a Union citizen, provided that the registered partnership meets the criteria referred to in Article 2(2)(b) of that same directive. In the case at hand, with the referring court appearing to consider that the declaration of cohabitation made in 2005 constitutes the conclusion of such a partnership, Directive 2004/38 is applicable. Thus, provided that XXX can demonstrate that she is a dependant of the household being joined, within the meaning of Article 2(2)(d) of that directive, she may avail herself of the rights guaranteed by that directive and, in particular, of a right of residence for more than three months under Article 7(2) of that directive.

As to the substance, in the first place, the Court states that, under Directive 2004/38, [20] in order to determine whether the direct relative in the ascending line of the partner of a Union citizen is dependent on that Union citizen and/or that partner, the competent national authority must take into account the situation of that relative in the ascending line in his or her country of origin on the date

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19 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35; OJ 2005 L 197, p. 34; and OJ 2007 L 204, p. 28). More specifically, that condition relating to the relationship of dependency is provided for in Article 2(2)(d) of Directive 2004/38.

20 The Court relies on Article 2(2)(d) of Directive 2004/38, read in conjunction with Article 7(2) and Article 10 of that directive.

on which he or she left that country and joined the said Union citizen in the host Member State, where appropriate on the basis of documents issued before that date, or the situation of that relative in the ascending line in that Member State on the date on which an application for a residence card was submitted, if several years have elapsed between those two dates.

In order to arrive at that conclusion, the Court examines, first of all, the date on which the condition relating to the relationship of dependency referred to in Article 2(2)(d) of Directive 2004/38 must be assessed. In that regard, as regards a situation in which several years separate the departure of the third-country national from his or her country of origin and his or her residence card application, the competent national authority must, in the context of the administrative procedure provided for in Article 10 of Directive 2004/38, provide a residence card to the applicant, a third-country national, after having verified that he or she qualifies for a right of residence for more than three months, [21] in particular that he or she falls within the concept of 'family member' within the meaning of that directive. In such a situation, however, if the competent national authority, when examining the application for a residence card, did not verify that the direct relative in the ascending line of the partner of a Union citizen, who physically joined that partner in the host Member State a few years before the submission of that application, is, at the time that that application is submitted, dependent on that Union citizen and/or partner, [22] there is a risk that that relative in the ascending line will be granted a residence card even though he or she does not satisfy the conditions [23] for entitlement to a right of residence for more than three months and thus to such a residence card. Consequently, when submitting the residence card application, the third-country national must demonstrate that he or she has the status of 'dependent direct relative in the ascending line', within the meaning of Article 2(2)(d) of Directive 2004/38.

Next, the Court states that, in such a situation of elapse of several years between the arrival of the direct ascendant of the partner of the Union citizen in the host Member State and the submission of his or her residence card application, that relative in the ascending line must also furnish proof that he or she is dependent on that citizen and/or that partner on the date of his or her arrival in the territory of the Member State concerned. If the review of the condition relating to the relationship of dependency were limited to the situation of the direct relative in the ascending line in the host Member State on the date of submission of the application for a residence card, that relative in the ascending line could be provided with such a card, even though, on the date on which he or she physically joined the Union citizen, he or she did not satisfy the conditions necessary to qualify for a right of residence for more than three months, which, moreover, would run counter to the objectives pursued by Directive 2004/38. In particular, such a limited review, first, would risk increasing the number of potential beneficiaries of the rights conferred by that directive, thereby contravening the intention expressed by the EU legislature and, second, would entail the risk of circumventing the requirements set by the said directive.

The Court adds that those risks do not exist, however, where the direct relative in the ascending line in question entered the territory of the host Member State and resided there initially on the basis of a right of residence, autonomous or derived, which could be granted under EU law under a provision other than Article 7(2) of Directive 2004/38, or indeed under national law. Accordingly, in such a situation, it is sufficient for that relative in the ascending line to prove that he or she is dependent on the Union citizen and/or the partner of that citizen in that Member State on the date on which his or her application for a residence card is submitted.

Lastly, so far as concerns the means of acceptable proof by which the person concerned can establish that he or she has the status of 'dependent direct relative in the ascending line', [24] Article 10(2)(d) of Directive 2004/38 merely states that, for the residence card to be issued, Member States must

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21 Under Article 7(2) of Directive 2004/38.

22 Within the meaning of Article 2(2)(d) of Directive 2004/38.

23 Article 7(2) of Directive 2004/38.

24 Within the meaning of Article 2(2)(d) of Directive 2004/38.

request documentary evidence that the conditions set out in that Article 2(2)(d), thus including the condition relating to the relationship of dependency, are satisfied. Given the lack of precision as to that means of proof, it must be held that such proof may be adduced by any appropriate means. In that regard, documents issued in the past attesting to the existence of a situation of dependence in the country of origin of that direct relative in the ascending line on the date on which he or she physically joined that Union citizen and that partner cannot be deemed too old.

In the second place, the Court rules that, under Directive 2004/38, [25] a direct relative in the ascending line of the partner of a Union citizen who is able to demonstrate that he or she is, both on the date of his or her residence card application, submitted several years after his or her arrival in the host Member State, and on the date of that arrival, dependent on that Union citizen and/or that partner, enjoys a right of residence derived from the rights enjoyed by a Union citizen, for more than three months, evidenced by the issue of a residence card, if that Union citizen satisfies the conditions set out in Article 7 of that directive. That right of residence cannot be refused on the ground that, under national legislation, that relative in the ascending line resides, on the date of that application, illegally in the territory of that Member State.

On that point, the Court notes, in particular, that Directive 2004/38, although it makes its applicability for direct relatives in the ascending line subject to the relationship of dependency, referred to, in essence, in Article 2(2)(d) thereof, does not make the status of 'family member', within the meaning of that provision, dependent on a condition of 'legal residence' in the host Member State.

2. ACQUISITION OF EU CITIZENSHIP DUE TO ACQUISITION OF NATIONALITY OF A MEMBER STATE

Judgment of the Court of Justice (Grand Chamber), 29 April 2025, Commission v Malta (Citizenship by investment), C-181/23

Link to the full text of the judgment

Failure of a Member State to fulfil obligations – Article 20 TFEU – Citizenship of the Union – Article 4(3) TEU – Principle of sincere cooperation – Principle of mutual trust between the Member States – Grant of the nationality of a Member State – Special relationship of solidarity and good faith – Operation of an investor citizenship scheme – Naturalisation in exchange for predetermined payments or investments – Transactional nature of the naturalisation scheme, which amounts to the 'commercialisation' of Union citizenship

Hearing an action for failure to fulfil obligations, the Court of Justice, sitting as the Grand Chamber, finds that the Republic of Malta has failed to fulfil its obligations under Article 20 TFEU and Article 4(3) TEU by establishing and operating an investor citizenship scheme, which establishes a transactional naturalisation procedure in exchange for predetermined payments or investments and thus amounts to the commercialisation of the grant of the nationality of a Member State and, by extension, that of Union citizenship.

The Maltese Citizenship Act [26] governs the acquisition, withdrawal and renunciation of Maltese citizenship and, in Article 10, lays down the conditions for ordinary naturalisation. An amendment to that act in 2013 established, in parallel to the procedure laid down in Article 10(1) of the Maltese

25 The Court relies on Article 7(2) of Directive 2004/38, read in conjunction with Article 2(2)(d) and Article 10 of that directive.

26 Maltese Citizenship Act (Chapter 188 of the Laws of Malta).

Citizenship Act, the possibility for an applicant to be granted a certificate of naturalisation through participation in an 'individual investor programme' governed by separate conditions and procedures. That investor citizenship scheme was amended in 2020 ('the 2020 investor citizenship scheme').

Under the Maltese rules on citizenship which the action concerns, [27] a certificate of naturalisation as a citizen of Malta may be granted, inter alia, to an alien or stateless person who has rendered exceptional services to the Republic of Malta. Such services comprise, inter alia, various contributions, including those of investors. The conditions which must be satisfied in order for an investor to be able to apply for Maltese nationality are, first, the payment of a contribution of EUR 600 000 or EUR 750 000 to the Maltese Government, second, the purchase of residential property with a minimum value of EUR 700 000 or the lease of such property for an annual rent of at least EUR 16 000 for a minimum period of five years, third, a donation of at least EUR 10 000 to a non-governmental organisation or society, fourth, legal residence in Malta for a period of 36 months, where that period may be reduced if the applicant makes an additional contribution and, fifth, validation of the eligibility of the investor concerned and authorisation to submit an application for naturalisation.

During the pre-litigation procedure, the European Commission noted that such investor citizenship schemes could be considered to exploit the common achievement of Union citizenship in breach of the principle of sincere cooperation between the European Union and the Member States. In its reply to the letter of formal notice of October 2020, the Republic of Malta noted that it had revised the legislative framework applicable to the acquisition of Maltese nationality. The Commission stated, in an additional letter of formal notice, that the 2020 investor citizenship scheme did not change the transactional nature of the 2014 investor citizenship scheme.

On 2 March 2022, the Republic of Malta suspended its 2020 investor citizenship scheme for Russian and Belarusian nationals, while continuing to operate the scheme for citizens of other third countries.

Taking the view that the 2014 and 2020 investor citizenship schemes operated by the Republic of Malta are incompatible with EU law, the Commission initiated an infringement procedure relating solely to the 2020 scheme, based on a single plea in law, alleging infringement of Article 20 TFEU and Article 4(3) TEU.

Findings of the Court

The Court recalls, first of all, that, under Article 9 TEU and Article 20(1) TFEU, every person holding the nationality of a Member State is to be a citizen of the Union. According to those provisions, Union citizenship is to be additional to and is not to replace national citizenship.

Next, it states that, while it is for each Member State, having due regard to international law, to lay down the conditions for the grant and loss of nationality, that competence must be exercised with due respect for EU law.

In that context, there is nothing in the wording or the scheme of the Treaties to support the inference that their authors intended to lay down, as regards the grant of the nationality of a Member State, an exception to the obligation to comply with EU law whereby only significant breaches of the values and objectives of the European Union are liable to entail a breach of EU law when the Member States exercise their powers in the matter. Such an exception cannot be accepted since it would amount to a limitation of the effects attaching to the primacy of EU law, which falls within the essential characteristics of EU law and, therefore, within the constitutional framework of the European Union.

Moreover, according to the wording of Article 3(2) TEU the European Union is to offer its citizens an area of freedom, security and justice without internal frontiers. In addition to the right to move and reside freely within the territory of the Member States, conferred on every Union citizen, the latter also has political rights [28] which ensure his or her participation in the democratic life of the European

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27 Article 10(9) of the Maltese Citizenship Act, as amended by the Maltese Citizenship (Amendment No. 2) Act (Act XXXVIII of 2020) (*The Malta Government Gazette* No 20,452 of 31 July 2020), and the Granting of citizenship for Exceptional Services Regulations, 2020 (Subsidiary Legislation 188.06 of the Laws of Malta) (*The Malta Government Gazette* No 20,524 of 20 November 2020).

28 Referred to in Articles 10 and 11 TEU and given concrete expression in Articles 20, 22 and 24 TFEU.

Union, including the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State.

It is in the light of those various rights that the Court has already held, first, that the provisions relating to Union citizenship are among the fundamental provisions of the Treaties which are part of the framework of a system that is specific to the European Union and which are structured in such a way as to contribute to the implementation of the process of integration that is the *raison d'être* of the European Union itself and thus form an integral part of its constitutional framework.

Union citizenship is thus one of the principal concrete expressions of the solidarity which forms the very basis of that process of integration It is therefore an integral part of the identity of the European Union as a specific legal system, accepted by the Member States on a basis of reciprocity.

Moreover, in accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, it is for each Member State to refrain from any measure which could jeopardise the attainment of the European Union's objectives.

Accordingly, the exercise of the Member States' power to lay down the conditions for granting the nationality of a Member State is not unlimited. Union citizenship is based on the common values contained in Article 2 TEU and on the mutual trust between the Member States as regards the fact that none of them is to exercise that power in a way that is manifestly incompatible with the very nature of Union citizenship.

In that regard, the Court recalls its case-law to the effect that the bedrock of the bond of nationality of a Member State is formed by the special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties.

As regards the establishment of such a particular relationship of solidarity and good faith, it is true that the definition of the conditions for granting the nationality of a Member State does not fall within the competence of the European Union, but within that of each Member State, which has a broad discretion in the choice of the criteria to be applied. Those criteria must nevertheless be applied in compliance with EU law.

A Member State manifestly disregards the requirement for such a special relationship when it establishes and implements a naturalisation scheme based on a transactional procedure between that Member State and persons submitting an application for the grant of nationality, which amounts to commercialisation of the grant of the status of national of a Member State and, by extension that of the status of Union citizen.

In addition, the Member States are required to recognise the effects of the granting to a person, by another Member State, of the latter's nationality with a view to the exercise of the rights and freedoms arising from EU law. Transactional naturalisation, which is granted in exchange for predetermined payments or investments, is not only contrary to the principle of sincere cooperation, but is also liable, by its nature, to call into question the mutual trust which underlies that requirement of recognition. That trust relates to the premiss that the grant of the nationality of a Member State is based on a special relationship of solidarity and good faith justifying the grant of rights resulting, in particular, from the status of Union citizen.

In the present case, the first three conditions laid down by the 2020 investor citizenship scheme tend to indicate that payments or investments for predetermined minimum amounts occupy a key position in that scheme, suggesting that the latter amounts to the commercialisation of the granting of the nationality of a Member State following a transactional procedure. Such a classification is not capable of being called into question by the other conditions to which the grant of Maltese nationality under that scheme is subject, in particular the condition relating to the check of the applicant's eligibility. That check is intended, in essence, to ensure that the implementation of the 2020 investor citizenship scheme does not undermine certain public interest objectives of the Republic of Malta, in particular the public security and national security of that Member State and its internal and external image, and not to assess whether the applicant's situation justifies the grant of Maltese nationality. Moreover, the 2020 investor citizenship scheme was publicly presented by the Republic of Malta as offering primarily the benefits arising from Union citizenship, in particular the right to move and

reside freely in the other Member States. That presentation helps to establish that, by means of that scheme, that Member State established a transactional procedure which amounts to the commercialisation of the grant of the nationality of a Member State, by making use of the rights attaching to Union citizenship for the purpose of promoting that procedure.

IV. PROTECTION OF PERSONAL DATA

Order of the General Court (Tenth Chamber), 29 April 2025, Meta Platforms Ireland v European Data Protection Board, T-319/24

Link to the full text of the order

Action for annulment – Protection of personal data – Opinion of the European Data Protection Board on valid consent in the context of 'consent or pay' models implemented by large online platforms – Article 64(2) of Regulation (EU) 2016/679 – Act not open to challenge – Inadmissibility – Liability – Damage – Causal link – Action manifestly lacking any foundation in law

By its order, the General Court dismisses as inadmissible the action for annulment [29] brought by Meta Platforms Ireland Ltd ('Meta') against Opinion 8/2024 of the European Data Protection Board ('the EDPB') on valid consent in the context of 'consent or pay' models implemented by large online platforms. It thus finds that that opinion, adopted under the General Data Protection Regulation, [30] is not an act against which such an action may be brought, in the absence of binding legal effects vis-à-vis third parties. The Court also dismisses as manifestly lacking any foundation in law the action for non-contractual liability of the European Union [31] brought by Meta seeking compensation for the damage which it claims to have suffered as a result of that opinion.

On 17 April 2024, at the request of three national supervisory authorities in the field of personal data protection, the EDPB adopted Opinion 8/2024. Those authorities sought to ascertain the circumstances and conditions under which practices implemented by large online platforms, [32] whereby users are offered a choice between consenting to the processing of personal data for behavioural advertising purposes and paying a fee to access the service without their personal data being processed for those purposes ('consent or pay' models), could be considered to satisfy the requirement for valid consent, within the meaning of the GDPR.

In Opinion 8/2024, the EDPB states, in particular, that in order to be valid, the consent requested from users for the processing of their personal data for behavioural advertising purposes must be freely given, specific, informed and unambiguous, and must relate to the processing of data in compliance with the principles of necessity, proportionality, purpose limitation, data minimisation and fairness. According to the EDPB, whether or not a further alternative, free of charge and without behavioural advertising, with, for example, a form of advertising involving the processing of less (or no) personal data, is offered to users by a large online platform could have a substantial impact on the assessment of the validity of that consent. As regards the fee charged to access the paid version of the service, the

29 Article 263 TFEU.

30 Article 64(2) 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').

31 Under Article 268 and the second paragraph of Article 340 TFEU.

32 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ 2022 L 277, p. 1). Article 3(i) of that regulation defines the concept of 'online platform', while Article 33(1) thereof defines the concept of 'very large online platform'.

EDPB states that the amount thereof must not be such as to inhibit data subjects from making a free choice and from refusing to give consent.

In that context, Meta seeks the annulment of Opinion 8/2024 and compensation for the damage which it claims to have suffered as a result of that opinion.

Findings of the Court

In the first place, the Court recalls that an action for annulment under Article 263 TFEU must be available against all acts adopted by the institutions, bodies, offices and agencies of the European Union, whatever their nature or form, which are intended to produce binding legal effects.

As regards, in the present case, Opinion 8/2024, the Court takes the view that it cannot be inferred from the wording thereof that that opinion is intended in itself to produce binding legal effects. That act provides a framework for evaluating the 'consent or pay' models of large online platforms in the light of the rules laid down in the GDPR concerning valid consent. In Opinion 8/2024, the EDPB focuses on the situation in which such a platform does not offer users a free alternative to the option of consenting to the processing of personal data for behavioural advertising purposes. In most cases, that situation is likely to result in the invalidity of such consent. That assessment depends on a number of factors, including whether or not the service in question is an important part of the user's social or professional life and the cost of the paid option. Furthermore, the passages in Opinion 8/2024 containing words such as 'should' and 'should not' appear to be calling for an in-depth consideration of the other options that each large online platform could offer to users, rather than censuring across the board the 'consent or pay' model offered by those platforms.

The Court also points out that the GDPR does not contain any provision requiring supervisory authorities to 'take utmost account' of an opinion of the EDPB on general matters, such as Opinion 8/2024. [33] By contrast, such an obligation [34] does apply to opinions relating to certain specific types of draft decision of the supervisory authorities, [35] which those authorities must communicate to the EDPB during the procedure for the adoption of those decisions. If the supervisory authority concerned does not intend to follow, in whole or in part, such opinions, it must notify the Chair of the EDPB thereof, which triggers the process for the adoption of a binding decision of the EDPB. [36] No such rules are laid down in relation to opinions of the EDPB on general matters, like Opinion 8/2024, which are therefore opinions to which no special authority is attached. Those opinions are not in the nature of an act which is in itself binding, since it is only by means of a subsequent binding decision of the EDPB that the guidelines they contain may, having regard to the EDPB's powers, where appropriate, later become instructions of mandatory application by the supervisory authorities. In the light of the foregoing, the Court holds that Opinion 8/2024 does not produce binding legal effects vis-à-vis third parties or, more particularly, vis-à-vis Meta.

First, even if Meta were in the situation with which Opinion 8/2024 is concerned, in the absence of a full analysis of its case by the competent supervisory authorities, that opinion cannot produce binding legal effects in respect of it. Secondly, the possibility of the EDPB issuing a subsequent binding decision addressed to the competent supervisory authorities tasked with reviewing the 'consent or pay' model used by Meta, a decision that reproduces all or part of the evaluation framework set out in Opinion 8/2024, is not sufficient to consider that decision to be binding from the outset. Accordingly, the Court finds that that opinion is not an act that may be challenged by Meta.

That finding does not constitute a breach of Meta's right to effective judicial protection, [37] since Opinion 8/2024 does not produce binding legal effects in respect of it. The considerations contained in that opinion could affect Meta directly only if they were included in a decision of a supervisory authority or a court of a Member State or another State party to the Agreement on the European

33 Opinion under Article 64(2) of the GDPR.

34 Provided for in Article 64(7) of the GDPR.

35 Opinions under Article 64(1) of the GDPR.

36 Article 64(8) of the GDPR.

37 Article 47 of the Charter of Fundamental Rights of the European Union.

Economic Area (EEA). If that were the case, those decisions may be or will have been assessed by a court meeting the requirements of effective judicial protection.

That finding also cannot be called into question by possible differences in how that act is assessed by the courts of States party to the EEA Agreement that are not members of the European Union and in how it is assessed by the courts of Member States of the European Union. Such a possibility is inherent in the system in place in the EEA Agreement which is based on two pillars of supervision and judicial review, the first applying to Member States of the European Union and the second to the other States party to that agreement. As far as the latter are concerned, the EEA Agreement and the Agreement between the States of the European Free Trade Association (EFTA) on the establishment of a surveillance authority and a Court of Justice [38] provide that a reference may be made to the EFTA Court by a court of those States for an opinion on the interpretation of those rules, thus including the interpretation of the GDPR. The EFTA Court could thus state its view on the extent to which the considerations set out in Opinion 8/2024 are consistent with that regulation. As regards the Member States of the European Union, the Court of Justice could be asked by a court of an EU Member State to assess the validity of that opinion.

In the second place, the Court rejects Meta's claim for compensation for the damage it allegedly suffered as a result of Opinion 8/2024, based on the non-contractual liability of the European Union.

After recalling the three cumulative conditions that must be fulfilled for such liability to be incurred, the Court observes that the condition relating to the existence of actual and certain damage is not satisfied. As regards the damage alleged by Meta, which consists in the reduction in advertising and subscription revenues resulting from the 'requirement', purportedly imposed by Opinion 8/2024, to offer users a free alternative in addition to the choice between consenting to the receipt of behavioural advertising and paying to access the service concerned without receiving such advertising, the Court finds that it is based on a misunderstanding of that opinion. The opinion in question seeks, in essence, only to provide a framework for evaluating the 'consent or pay' models of large online platforms in the light of the rules laid down in the GDPR concerning valid consent and is not intended in itself to produce binding legal effects. Furthermore, the damage alleged by Meta is based on future and uncertain events, since the application of that evaluation framework by the Irish Data Protection Commission acting on its own initiative or the adoption by the EDPB of a binding decision on the matter are mere possibilities.

As regards, for the sake of completeness, the condition relating to the causal link, the Court states that it is not possible to establish a sufficiently direct causal nexus between Opinion 8/2024 and the damage alleged by Meta. In the absence of binding effects, that opinion cannot be the sufficiently direct cause of the potential reduction in revenue that Meta claims to expect. Such damage could be the direct result of intentional conduct on Meta's part or of possible decisions imposed on it, prompting it to offer users a free alternative in addition to a choice between consenting to the receipt of behavioural advertising and paying to access the service concerned without receiving such advertising.

38 Article 108(2) of the EEA Agreement and Article 34 of the Agreement between the EFTA States on the establishment of a surveillance authority and a Court of Justice (OJ 1994 L 344, p. 1).

V. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Third Chamber), 30 April 2025, Galte, C-63/24

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – Refugee status or subsidiary protection status – Directive 2011/95/EU – Article 12(2)(b) – Artide 18 of the Charter of Fundamental Rights of the European Union – Exclusion from being a refugee – Grounds – Commission of a serious non-political crime outside the country of refuge prior to his or her admission as a refugee – Effect of the fact that the sentence has been served

Ruling on a request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the Court of Justice provides clarification relating to the elements which the competent authorities and the competent courts of the Member State concerned must take into account when examining whether the actions of an applicant for international protection are covered by the ground for exclusion from refugee status set out in Article 12(2)(b) of Directive 2011/95 [39] on account of the commission of a serious non-political crime outside the country of refuge.

In February 2022, K.L., a third-country national, submitted an application for asylum and for a temporary residence permit in Lithuania, after having illegally crossed the border between that Member State and Belarus. He stated that he had been wrongfully convicted three times by the authorities of his country of origin, the real reason for those convictions being his activities as part of the political opposition.

The Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos (Migration Department under the Ministry of the Interior of the Republic of Lithuania) found that, although K.L. could be subject to persecution in his country of origin on account of his political opinions and therefore was eligible for refugee status in Lithuania, he had, however, committed acts which had to be classified as a 'serious non-political crime' within the meaning of Lithuanian law. [40]

Consequently, that department rejected K.L.'s application for international protection, while at the same time issuing him with a temporary residence permit, on the ground that his removal to his country of origin, where he may be persecuted, was prohibited.

Since the action against that decision was dismissed, K.L. brought an appeal before the referring court. That court asks whether the competent authorities and the competent courts of the Member State concerned must take into consideration the fact that an applicant for international protection has served the sentence imposed on him or her for the acts he or she committed when examining whether those acts are covered by the ground for exclusion from refugee status set out in Article 12(2)(b) of Directive 2011/95.

Findings of the Court

The Court notes that, since the terms 'serious crime' are not defined by Directive 2011/95, they must be interpreted in accordance with their usual meaning in everyday language, while also taking into

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39 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9). Under Article 12(2)(b) of Directive 2011/95, a third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee.

40 Point 3 of Article 88(2) of the Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties Nr. IX-2206 (Law No IX-2206 of the Republic of Lithuania on the legal status of foreign nationals) of 29 April 2004 (Žin., 2004, No 73-2539), in the version applicable to the dispute in the main proceedings.

consideration the context in which they are used and the objectives pursued by the rules of which they are part.

Thus, in the first place, in accordance with the usual meaning of those terms, although the word 'crime' refers to factual circumstances which have been fixed in the past, namely the point in time when that crime was committed, the qualifying adjective 'serious' adds an element of assessment which may, by contrast, change over time. Consequently, it cannot be ruled out that the assessment of the seriousness of an offence may be different at the time when it was committed and at the time an application for international protection is examined.

In the second place, as regards the contextual interpretation, under Article 18 of the Charter of Fundamental Rights of the European Union, the right to asylum is to be guaranteed with due respect for, inter alia, the rules of the Geneva Convention, [41] which provides the cornerstone of the international legal regime for the protection of refugees, as stated in recital 4 of Directive 2011/95. Accordingly, the provisions of that directive must be interpreted not only in the light of its general scheme but also in compliance with that convention. In the light of the role conferred on the United Nations High Commissioner for Refugees (UNHCR) by that convention, the documents issued by the UNHCR, according to which the fact that an applicant convicted of a serious non-political crime has already served his or her sentence must be taken into account, are particularly relevant. [42]

In the third place, the taking into account of the fact that the applicant for international protection has served the sentence imposed on him or her for the acts he or she committed does not run counter to the dual objective pursued by Article 12(2)(b) of Directive 2011/95. On the one hand, the exclusion from refugee status of a person who has already served his or her sentence cannot be justified by the objective of preventing that person from escaping criminal liability for the crime concerned. On the other hand, as regards the objective of excluding from refugee status individuals deemed to be undeserving of the protection which that status entails, the commission of serious acts at a certain point in a person's life cannot permanently render that person necessarily unworthy of international protection, without taking into consideration, in particular, his or her possible rehabilitation.

It follows that the fact that the applicant for international protection has served his or her sentence must necessarily be taken into account by the competent authority of the Member State concerned in its assessment of all the specific circumstances of the individual case in question. That said, that circumstance in no way precludes, in itself, the application of Article 12(2)(b) of Directive 2011/95.

The fact that the applicant for international protection has served his or her sentence is only one of a number of circumstances which must be taken into account in order to determine whether that applicant is covered by that ground for exclusion. In order to assess the seriousness of the offence in question, the competent authority will have to examine, inter alia, the type of act at issue, the sentence provided for and imposed, the period which has elapsed since the criminal conduct, the conduct of the person concerned during that period and the remorse, if any, expressed.

The Court concludes that, when examining whether the actions of an applicant for international protection who otherwise fulfils the criteria for the grant of refugee status are covered by the ground for exclusion from that status set out in Article 12(2)(b) of Directive 2011/95, the competent authorities and the competent courts of the Member State concerned must take account of the fact that that applicant has served the sentence imposed on him or her for the acts he or she committed, but that fact however does not, in itself, prevent that applicant from being excluded from refugee status under that provision.

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41 Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)).

42 Paragraph 157 of UNHCR Document HCR/1P/4/ENG/REV.4 of February 2019, entitled 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status Refugees', as regards Article 1(F)(b) of the Geneva Convention, the wording of which is similar to that of Article 12(2)(b) of Directive 2011/95.

VI. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN PUBLIC PROSCECUTOR'S OFFICE

Judgment of the Court of Justice (Grand Chamber), 8 April 2025, European Public Proscecutor's Office (Judicial review of procedural acts), C-292/23

Link to the full text of the judgment

Reference for a preliminary ruling – European Public Prosecutor's Office – Regulation (EU) 2017/1939 – Article 42(1) – Procedural measures intended to produce legal effects vis-à-vis third parties – Judicial review, by national courts, in accordance with the requirements and procedures provided for in national law – Scope – Witness summons – National law not permitting direct judicial review of such a measure – Second subparagraph of Article 19(1) TEU – Articles 47 and 48 of the Charter of Fundamental Rights of the European Union – Principles of equivalence and effectiveness

In a request for a preliminary ruling from the Juzgado Central de Instrucción nº 6 de Madrid (Central Court of Preliminary Investigation No 6, Madrid, Spain), the Court of Justice, sitting as the Grand Chamber, clarifies the scope of judicial review, by the national courts, of procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties, and, more specifically, of a decision of that body to summon witnesses.

I.R.O. and F.J.L.R. were directors of a Spanish company which obtained a subsidy to implement a project financed by EU funds. The European Anti-Fraud Office (OLAF) informed the Fiscalía de área de Getafe-Leganés (Public Prosecutor's Office, Getafe-Leganés, Spain) that direct staff costs which that company had claimed in respect of two researchers it had employed to carry out the project, namely Y.C. and I.M.B., had been insufficiently justified. The Public Prosecutor's Office, Getafe-Leganés filed a complaint with a court of first instance, alleging the offence of subsidy fraud. On 20 April 2021, that court initiated a criminal investigation against I.R.O. in the course of which it, inter alia, examined Y.C. as a witness.

By decision of 26 July 2022, the European Delegated Prosecutors handling the case in Spain exercised their right of evocation [43] and initiated an investigation in respect of I.R.O and of F.J.L.R. On 2 February 2023, by a decision taken pursuant to national law, [44] they summoned Y.C. and I.M.B. to appear before them as witnesses. On 7 February 2023, the lawyers representing I.R.O. and F.J.L.R. lodged an appeal before the EPPO against that decision in that it summoned Y.C. to appear as a witness, alleging inter alia that that investigation measure was not useful. On 8 February 2023, that appeal was notified to the referring court.

In that context, the referring court observed that, pursuant to the applicable national legislation, the decision of the EPPO to summon Y.C. and I.M.B. to appear as witnesses is not amenable to appeal. [45] However, Article 42 of Regulation 2017/1939 authorises the judicial review of procedural acts of that body intended to produce legal effects vis-à-vis third parties. Considering that the decision of 2 February 2023 is such an act, that court refers a question to the Court of Justice on the compatibility of such national legislation with EU law.

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43 A right exercised pursuant to Article 27 of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1).

44 Article 43 of Ley Orgánica 9/2021, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea (Organic Law 9/2021 implementing Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')), of 1 July 2021 (BOE No 157, of 2 July 2021, p. 78523; 'the Organic Law').

45 Pursuant to Articles 42 and 43 of the Organic Law, read in conjunction with Article 90 thereof, judicial review of procedural acts of the EPPO is possible only if it is authorised expressly by that organic law. Since witness summonses do not appear amongst the acts in respect of which that organic law authorises such a review, no appeal may be made against that decision.

Findings of the Court

First of all, the Court recalls that Article 42(1) of Regulation 2017/1939 provides that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties should be subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law. [46]

In order to determine whether that provision precludes national legislation that does not allow persons who are the subject of an EPPO investigation to challenge directly before the competent national court a decision by which the European Delegated Prosecutor handling the case concerned summons persons to appear as witnesses, it must be ascertained whether such a decision is covered by the concept of 'procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties'. In that regard, the Court observes that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard not only to the wording of that provision but also to the context in which it occurs and the objectives pursued by the rules of which it is part.

In that context, the Court indicates, in the first place, that, as regards the scope of the concept at issue, Article 42 of Regulation 2017/1939 does not refer to the law of the Member States. Furthermore, that provision is intended, in particular, to provide for a sharing of competences between the national courts and the EU Courts for the purposes of exercising the judicial review of the EPPO's activities. [47] Thus, while Article 42(1) assigns jurisdiction to the national courts to review procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties, Article 42(2) to (8) lists the cases in which the judicial review of the activity of that body is, by contrast, within the jurisdiction of the EU Courts. Therefore, 'procedural acts', within the meaning of Article 42(1) of Regulation 2017/1939, are acts the legality of which is reviewed, in principle, by national courts. [48]

It follows that the concept of 'procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties' is an autonomous concept of EU law which must be interpreted on the basis of uniform criteria. Only such an interpretation is capable of ensuring, throughout the European Union, a coherent division of competences between national courts and the EU Courts for the purpose of exercising judicial review of the activity of the EPPO.

In the second place, the Court examines whether a decision of the EPPO to summon witnesses to appear falls within that concept.

In that regard, first, the expression 'procedural acts' includes, in particular, those acts undertaken by the EPPO in the course of its investigations. [49] It is common ground between the parties that the decision at issue in the main proceedings is a 'procedural act', within the usual meaning given to that expression, and that that act was adopted in the course of an EPPO investigation.

Secondly, as regards the question whether such a decision is a procedural act 'intended to produce legal effects vis-à-vis third parties', that expression corresponds to the criterion used in the first paragraph of Article 263 TFEU to define the scope of acts which may be challenged before the EU Courts by way of an action for annulment provided for by that article. The Court deduces therefrom that, in referring to a criterion analogous to that referred to in the first paragraph of Article 263 TFEU, the EU legislature intended to extend the scope of mandatory judicial review of procedural acts of the EPPO to cover all acts of a procedural nature intended to produce binding legal effects capable of

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46 That provision was adopted on the basis of Article 86(3) TFEU, which allows the EU legislature to determine the specific rules applicable to the judicial review of procedural measures taken by the EPPO in the performance of its functions.

47 See Article 42 of Regulation 2017/1939, read in the light of recitals 86, 87 and 89 thereof.

48 With the exception, however, of procedural acts covered by Article 42(3) of Regulation 2017/1939, and in contrast with decisions relating to protection of personal data and 'administrative decisions' of the EPPO, within the meaning of Article 42(8) of that regulation, which fall within the scope of Article 263 TFEU.

49 See recital 87 of Regulation 2017/1939.

affecting the interests of third parties by bringing about a distinct change in their legal position, including those adopted in the course of a criminal investigation procedure. [50] In addition, in order to determine, in a given case, whether the contested act is intended to produce binding legal effects, it is necessary to examine the substance of the act and to assess its effects in the light of objective criteria.

Consequently, the question whether a decision of a European Delegated Prosecutor to summon a witness to appear is intended to produce binding legal effects capable of affecting the rights of the persons who are the subject of an investigation, such as the applicants in the main proceedings, by bringing about a distinct change in their legal position, cannot be decided in the abstract and in general, but requires an *in concreto* assessment. That assessment must take into account, in particular, the 'third party' status of the person challenging that act, the content of the act, the context within which it was adopted and the powers of the body which ordered it.

In that respect, the judicial review of procedural acts intended to produce legal effects vis-à-vis third parties makes it possible to ensure that the EPPO observes the fundamental rights of persons in respect of whom those procedural acts produce such effects and, inter alia, to verify the respect, by that body, of the right to procedural fairness and the rights of the defence of suspects and accused persons, in accordance with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. [51] In particular, such a review involves ascertaining whether there is compliance with not only the procedural rights of suspects and accused persons laid down by EU law, which are referred to in Article 41(1) of Regulation 2017/1939, but also, in accordance with Article 41(3) thereof, all the procedural rights granted by domestic law applicable to those persons as well as other persons affected by the EPPO's procedures. Since the perimeter of the procedural safeguards granted to the various categories of persons may thus vary depending on the national procedural rules of the Member State concerned, the perimeter of the procedural acts that it is admissible for those persons to challenge before the national courts may, consequently, also vary depending on which national law is applicable. The assessment of the effects of a decision to summon a witness to appear on the rights of persons who are the subject of an investigation therefore depends, to a certain extent, on national procedural rules and the specific context of the criminal investigation in the course of which the EPPO adopted that decision, with the result that national courts competent to carry out the judicial review provided for in Article 42(1) of Regulation 2017/1939 are best suited to carry it out.

It follows that it is for the competent national courts to assess whether a decision of a European Delegated Prosecutor summoning a witness to appear is intended to produce binding legal effects capable of affecting the interests of the persons challenging that decision, such as, in the present case, the persons who are the subject of that investigation, by bringing about a distinct change in their legal position, inter alia by affecting their procedural rights. If that is the case, that decision is subject to review by those courts.

In the third place, as regards the question whether that judicial review must, where appropriate, be carried out by way of a direct appeal against that decision, the Court finds that that the wording of Article 42(1) of Regulation 2017/1939 does not require Member States to provide for that type of remedy. On the other hand, that provision provides that the judicial review is to be carried out 'in accordance with the requirements and procedures laid down by national law'. Therefore, provided that the rights enshrined in Articles 47 and 48 of the Charter are fully guaranteed, that provision does not rule out the possibility that that judicial review may be carried out as an incidental question.

Support for that interpretation is found in recital 88 of Regulation 2017/1939, which states that, as regards the abovementioned review of legality, effective legal remedies should be ensured in

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50 In that context, the term 'third party', used in Article 42 of Regulation 2017/1939, designates a category of persons within which fall not only the 'suspect' and the 'victim', but also 'other interested persons whose rights may be adversely affected by such acts' (see recital 87 of Regulation 2017/1939).

51 'The Charter'.

accordance with the second subparagraph of Article 19(1) TEU. [52] While that provision imposes on Member States the obligation of ensuring that every person is recognised as having the right to challenge before the courts an act adversely affecting him or her which is such as to violate rights and freedoms guaranteed by EU law, it does not require necessarily that the holder of that right must have a direct legal remedy.

Accordingly, the judicial review provided for in Article 42(1) of Regulation 2017/1939 may also take the form of an incidental question, dealt with, in particular, by the criminal trial court, provided that those procedural rules guarantee the right to an effective remedy, which presupposes that the court hearing the dispute has jurisdiction to examine all the questions of law and fact relevant to the resolution of that dispute.

However, by application of the principle of equivalence, where national procedural provisions concerning similar domestic actions provide for the possibility of challenging an analogous decision directly, such a possibility must equally be afforded, in the context of a judicial review provided for in Article 42(1) of Regulation 2017/1939, to persons challenging a decision by which, in the context of an investigation, the European Delegated Prosecutor handling the case concerned summons witnesses to appear, such as the persons who are the subject of that investigation.

VII. JUDICIAL COOPERATION IN CIVIL MATTERS: BRUSSELS REGULATION Ia

Judgment of the Court of Justice (Fourth Chamber), 30 April 2025, Mutua Madrileña Automovilista, C-536/23

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Jurisdiction in matters relating to insurance – Article 11(1)(b) – Article 13(2) – Action brought by an injured party directly against an insurer – Concept of 'injured party' – Official injured in a road traffic accident – Continued remuneration during that official's incapacity to work – Member State acting as the employer subrogated to that official's rights to compensation – Jurisdiction of the courts for the place where the claimant is domiciled – Place where the administrative body employing that official has its seat

Hearing a request for a preliminary ruling from the Landgericht München I (Regional Court, Munich I, Germany), the Court rules on the special rules of jurisdiction which Regulation (EU) No 1215/2012 [53] lays down in matters relating to insurance, where legal proceedings are brought by the employer of a person injured in a road traffic accident, which is subrogated to the rights of that person, against the company insuring the vehicle responsible for that accident.

In March 2020, a federal official, working in Munich (Germany) and domiciled in that city, was injured in a road traffic accident in Spain, involving a vehicle insured by Mutua Madrileña Automovilista. For the period during which that official was unfit for work, her employer, the Federal Republic of Germany, continued to pay her remuneration.

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52 That provision imposes on Member States an obligation to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. According to the Court's case-law, that obligation corresponds to the right to an effective remedy of everyone whose rights and freedoms guaranteed by EU law are violated, as set out in the first paragraph of Article 47 of the Charter.

53 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; also known as 'the Brussels I *bis* Regulation').

Acting in its capacity as employer, the Federal Republic of Germany brought a civil action before the Amtsgericht München (Local Court, Munich, Germany) seeking compensation from Mutua Madrileña Automovilista for the damage incurred as a result of paying remuneration to its employee. Having its seat in Spain, that company pleaded that the court seised lacked international jurisdiction and it disputed the merits of the action.

In February 2022, the Local Court, Munich, declined international jurisdiction, taking the view that the Federal Republic of Germany could not benefit from the special rules of jurisdiction in matters relating to insurance laid down in Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012. The Federal Republic of Germany then appealed to the Regional Court, Munich I.

According to the referring court, it is not disputed that the Federal Republic of Germany intends to bring an action directly against Mutua Madrileña Automovilista and that it initiated legal proceedings under a statutory subrogation of rights. In order to assess the merits of the appeal, that court decided to ask the Court whether a Member State which, as an employer, brings an action directly against an insurer, on the basis of a statutory subrogation to the right to compensation of an official injured in an accident, may rely on the special rules of jurisdiction in matters relating to insurance laid down, in favour of the 'injured party', in Regulation No 1215/2012.

Findings of the Court

In the first place, the Court recalls that, by way of derogation from the general rule that the courts of the place where the defendant is domiciled have jurisdiction, laid down in Article 4(1) of Regulation No 1215/2012, persons domiciled in a Member State may be sued in the courts of another Member State by virtue of the rules set out in Sections 2 to 7 of Chapter II of that regulation. In particular, the provisions of Section 3 of Chapter II of that regulation are intended to correct a certain imbalance between the parties to an action in matters relating to insurance, by ensuring that the weaker party may bring an action against a stronger party before a court of a Member State which is easily accessible. More specifically, according to Article 13(2) of that regulation, the provisions of Article 11 thereof – paragraph 1 of which governs jurisdiction in matters relating to insurance where the insurer is domiciled in a Member State – [54] are applicable where actions are brought by the injured party directly against the insurer, where such actions are permitted.

In the second place, it follows from the case-law that the rules of jurisdiction derogating from the general rule that jurisdiction is based on the defendant's domicile must be interpreted strictly. The Court has already stated that the special rules of jurisdiction in matters relating to insurance laid down in Regulation No 1215/2012 benefit parties having suffered damage, without restricting the category of persons having suffered damage to those suffering it directly. Thus, certain categories of persons subrogated to the rights held by the party directly injured by damage may also rely on the rules of jurisdiction laid down in the combined provisions of Article 13(2) and Article 11(1)(b) of Regulation No 1215/2012 in order to sue an insurer in a court other than that of its domicile, where those subrogated persons may be classified as 'injured parties' within the meaning of Article 13(2) of that regulation.

However, the Court noted that there is no need for a case-by-case assessment of the question whether the person who brought the action against the insurer concerned may be regarded as a 'weaker party' in order to be covered by the concept of 'injured party' within the meaning of that provision. As regards the relationships between professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other, the Court ruled out the application of Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) thereof (or the equivalent provisions of Regulation No 44/2001), [55] in cases where the assignee of the

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54 According to Article 11(1) of Regulation No 1215/2012: 'An insurer domiciled in a Member State may be sued: (a) in the courts of the Member State in which he is domiciled; (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; …'.

55 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; also known as 'the Brussels I Regulation'). More specifically, those 'equivalent provisions' are Article 11(2) read in conjunction with Article 9(1)(b) of Regulation No 44/2001.

rights of the directly injured party is such a professional. The Court took a similar decision with regard to a social security institution acting for the purpose of obtaining reimbursement of benefits provided to the person insured by it who was injured in a road traffic accident.

By contrast, it is apparent from the Court's case-law relating to those equivalent provisions of Regulation No 44/2001, that an employer, to which the rights of its employee have passed in order to be reimbursed for the salary paid to the latter for the duration of a period of incapacity to work, which, solely in that capacity, has brought an action for the damage it has suffered may be regarded as weaker than the insurer that it sues, as a person which has suffered damage, whatever its size and legal form.

As to whether it follows from that case-law that a Member State acting as an employer subrogated to the rights to compensation of a directly injured official, injured in an accident involving an insured vehicle, must itself be recognised as having the status of 'injured party', within the meaning of Article 13(2) of Regulation No 1215/2012, on account of the fact that it continued to pay the remuneration of that official during the official's incapacity to work, with the result that such a State as an employer would be entitled to sue the insurer concerned in the courts for the place where the claimant is domiciled, under Article 11(1)(b) of that regulation, where such direct actions are permitted, the Court notes that the case under consideration is similar to the case that gave rise to the judgment in *MMA IARD*. [56] Accordingly, the considerations adopted by the Court in that judgment can be transposed to the present case. That judgment was delivered in a context and in factual circumstances similar to those which gave rise to the dispute in the main proceedings. That analogy is all the more compelling since the Federal Republic of Germany is acting with a view to compensation, not as a subject of public international law, but solely in its capacity as an employer subrogated to the rights of one of its employees.

Accordingly, pursuant to Regulation No 1215/2012, [57] an employer, which continued to pay the remuneration of its employee during that employee's incapacity to work following a road traffic accident, and which is subrogated to the rights of that employee in respect of the insurer of the vehicle involved in that accident, must be regarded as an 'injured party', including where the applicant is a Member State acting in its capacity as an employer. In that context, the fact that such a Member State also performs the functions of a social security institution is irrelevant, given that the Member State concerned brings its action for compensation solely in its capacity as an employer subrogated to its employee's rights to compensation, and not in its capacity as a social security institution.

In the third place, the Court rejects the referring court's argument that, pursuant to Regulation No 1215/2012, where the claimant who has sued an insurer is a Member State acting in its capacity as an employer subrogated to the rights of its directly injured employee, it is the court for the place where that employee is domiciled which has local jurisdiction. Where Article 11(1)(b) of that regulation, which designates 'the court for the place where the claimant is domiciled', applies, it determines both the international jurisdiction and the local jurisdiction of the court thus designated. Moreover, since the employer subrogated to the rights of its employee, by reason of the fact that it has paid the employee's remuneration, has suffered damage of its own and is therefore itself an 'injured party', it may benefit from the possibility, afforded by that provision, of bringing its action against an insurer before the courts for the place where it is domiciled. Since the subrogated employer is the only one able to rely on the rights to compensation resulting from the subrogation, there is no need to require it to start proceedings before the courts for the place where its employee is domiciled in order to avoid the multiplication of courts having jurisdiction. That also applies where, as in the present case, that subrogated employer is a Member State. As regards the identification of the place where such a Member State which is an employer is domiciled, it is appropriate to use the place where the seat of the administrative body which employs the official concerned, and which, in practice, has suffered the damage linked to the absence of that official, is situated.

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56 Judgment of 20 July 2017, *MMA IARD* (C-340/16, EU:C:2017:576).

57 Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) thereof.

In the light of the foregoing, the Court holds that, pursuant to Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, a Member State acting as an employer subrogated to the rights of an official injured in a road traffic accident, which continued to pay the remuneration of that official during the official's incapacity to work, may, in its capacity as an 'injured party' within the meaning of that Article 13(2), sue the company providing insurance against civil liability resulting from the use of the vehicle involved in that accident not in the courts for the place where the official is domiciled, but in the courts for the place where the administrative body employing that official has its seat, where direct actions are permitted.

VIII. COMPETITION: STATE AID

Judgment of the Court of Justice (Grand Chamber), 29 April 2025, Prezydent Miasta Mielca, C-453/23

Link to the full text of the judgment

Reference for a preliminary ruling – Aid granted by a Member State – Article 107(1) TFEU – Concept of 'State aid' – Selectivity of a tax measure – Criteria for assessment – Determination of the reference framework – Property tax – Exemption for land, buildings and structures forming part of railway infrastructure

Hearing a request for a preliminary ruling from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), the Court of Justice, sitting as the Grand Chamber, refines its case-law concerning the determination of the reference framework in the light of which the selectivity of tax measures must be assessed in order to determine whether they constitute State aid for the purposes of Article 107(1) TFEU, and more specifically with regard to exemption regimes.

The company E. sp. z o.o. ('Company E') owns, on its land, an individual railway siding, and also owns a part of that siding's infrastructure. During 2021, it expressed its intention to make that siding available to a rail carrier, which would carry out transport operations on its behalf.

Company E was of the view that, from the date of making that siding available to that carrier, it would be able to avail itself of the exemption from property tax provided for by the Polish Law on local taxes and charges in respect of the entirety of the land on which the parts of railway infrastructure are established, as well as in respect of land which it was planning to acquire and which is also, in part, equipped with an individual railway siding. In those circumstances, it applied to the Mayor of the Town of Mielec for an advance tax ruling confirming that, from that date, it would be able to avail itself of that exemption.

By an advance tax ruling of 14 June 2021, the Mayor of Mielec ruled out the possibility of Company E availing itself of that exemption. He indicated that, although the company satisfies, from a formal point of view, the conditions laid down by that law, the grant of such an exemption would have the effect of granting that company State aid which has not been subject to the European Commission's preliminary examination procedure.

The Mayor's decision having been confirmed by the Wojewódzki Sąd Administracyjny w Rzeszowie (Regional Administrative Court, Rzeszów, Poland), ruling on the administrative appeal, Company E has brought an appeal on a point of law before the referring court.

That court questions, in essence, whether the exemption at issue in the main proceedings constitutes State aid in the light of, inter alia, the condition relating to a selective advantage. It explains that, although that exemption refers, in principle, to an unlimited group of beneficiaries, it applies only to undertakings which have a certain type of infrastructure at their disposal, which, in practice, benefits

undertakings operating in certain sectors. It therefore questions whether the exemption at issue in the main proceedings gives rise to a situation of 'covert' selectivity.

Findings of the Court

As a preliminary point, the Court recalls that, in the context of analysing tax measures from the point of view of the EU law on State aid, examining the condition relating to a selective advantage means, initially, determining the reference system, that is to say, the 'normal' tax regime applicable in the Member State concerned, and, thereafter, demonstrating that the tax measure in question is a derogation from that system, in so far as it differentiates between operators who, in the light of the objective pursued by the system, are in a comparable factual and legal situation, without this being justified by the nature or general structure of that system.

The Court specifies that the determination of the reference framework is of particular importance in the case of tax measures, because the existence of an economic advantage for the purposes of Article 107(1) TFEU may be established only when compared with 'normal' taxation.

In that regard, the Court also observes that, outside the spheres in which EU tax law has been harmonised, it is the Member State concerned which determines, by exercising its own competence in the matter of direct taxation, the characteristics constituting the tax, which define, in principle, the reference system or the 'normal' tax regime in the light of which the examination of the condition of selectivity must be carried out. That determination of the characteristics constituting the tax includes the basis of assessment and the taxable event, but also any exemptions to which that tax is subject.

It follows that a general and abstract exemption to which a direct tax is subject, such as the exemption at issue in the main proceedings, is normally not to be classified as 'State aid', as that exemption must be presumed to be inherent in the 'normal' tax regime. Thus, it cannot, as a general rule, confer a selective advantage for the purposes of Article 107(1) TFEU.

Such a finding is derived from the autonomy which the Member States are recognised as having in the area of direct taxation, as that autonomy means that those States have the possibility of making use of the tax classifications, and in particular of the tax exemptions, which they consider the most suitable for achieving the objectives of general interest which are pursued by those States – whether or not those objectives are tax-related – and which, as the case may be, constitute, when taken together, the objective of the relevant reference framework. In view of the Commission's broad discretion to regard certain aid as compatible with the internal market, if the exercise of such discretion were required to cover any general and abstract tax exemption, there would be a risk of such an assessment systematically replacing the Member States' assessment in the matter, thereby encroaching on their fiscal autonomy.

However, the fact that a general and abstract exemption to which a direct tax is subject is regarded as forming part of the 'normal' tax regime is without prejudice to the possibility of finding that the reference framework itself, as it results from national law, is incompatible with the EU law on State aid, because the tax system at issue has been configured according to manifestly discriminatory parameters intended to circumvent that law.

In addition, such an exemption cannot be regarded as falling within the 'normal' tax regime where the conditions established by the relevant legislation for benefiting from that exemption are connected, in law or in fact, with one or more specific characteristics of the only category of undertakings capable of benefiting therefrom, those characteristics being inextricably linked to the nature of those undertakings or the nature of their activities, permitting the consideration that those undertakings form a consistent category of undertakings.

The fact that only a consistent category of undertakings may benefit from a tax exemption is such as to substantiate the potentially discriminatory and anticompetitive nature of that exemption, even if the reference framework itself has not been configured according to manifestly discriminatory parameters. This is the case, inter alia, for general and abstract tax exemptions which are reserved, in law or in fact, for undertakings which have a certain capital structure, which are active in a particular geographical or economic sector, which are smaller or which, on the contrary, have significant financial resources, or which do not employ any staff in the national territory.

By contrast, where the conditions laid down by a tax exemption regime are not connected, in law or in fact, with specific characteristics of the only category of undertakings capable of benefiting therefrom which are inextricably linked to the nature of those undertakings or the nature of their activities, that regime falls within the 'normal' tax regime. The conditions for granting such a tax exemption appear to be neutral from the point of view of competition, as the fact that some undertakings satisfy those conditions, while others do not, is not relevant in the light of the rules on State aid.

This means, inter alia, that a tax exemption the application of which is dependent on undertakings' results does not appear, as such, to be selective. The same is true as regards tax exemptions the application of which is subject to, for example, a certain recruitment policy or certain environmental measures.

It is in the light of all those considerations that the referring court must examine whether the property tax exemption at issue in the main proceedings is such as to confer a selective advantage on the beneficiaries of that exemption for the purposes of Article 107(1) TFEU.

In that regard, the Court notes, first of all, that the legal property tax regime constitutes the normal tax regime and, thus, the reference framework applicable in this instance.

Next, subject to verification by the referring court, the exemption at issue in the main proceedings forms part of that reference framework. That exemption is granted to persons subject to property tax on the condition that they own land, a building or a structure forming part of railway infrastructure which is made available to rail carriers. That condition does not appear to be connected, in law or in fact, with one or more specific characteristics of the undertakings benefiting from that exemption, which would enable all of those undertakings to be grouped together within a single consistent category.

On the contrary, that exemption appears to be based on a neutral criterion and appears to be capable of being obtained by any taxpayer who satisfies that condition, regardless of whether or not the taxpayer concerned carries out an economic activity. Thus, the category of beneficiaries of the exemption at issue in the main proceedings appears to resemble a disparate whole, comprising both non-economic operators and undertakings, it being possible, moreover, for the latter to have very different legal forms, to be of very different sizes, and to operate in very diverse sectors or to carry on very diverse economic activities.

Moreover, that reference framework appears to have its own legal logic, with its own objectives, the property tax regime pursuing not only a budgetary purpose but also, through the tax exemption at issue, an objective of an environmental nature.

Lastly, it is not apparent from any of the documents before the Court that that reference framework has been configured according to manifestly discriminatory parameters intended to circumvent the EU law on State aid.

Accordingly, subject to verification by the referring court, the property tax exemption provided for by the Polish Law on local taxes and charges does not appear to be a measure which confers a selective advantage on the undertakings benefiting from that exemption.

IX. APPROXIMATION OF LAWS: PUBLIC PROCUREMENT

Judgment of the Court of Justice (Grand Chamber), 29 April 2025, Fastned Deutschland, C-452/23

Link to the full text of the judgment

Reference for a preliminary ruling – Concessions – Concessions awarded to an in-house entity – Directive 2014/23/EU – Article 43(1)(c) – Modification of the concession on a date on which the concessionaire no longer has the status of an in-house entity – Modification 'the need' for which was 'brought about' by unforeseeable circumstances – Directive 89/665/EEC – Indirect review of the initial award of a concession

Ruling on a request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), the Court, sitting as the Grand Chamber, gives clarification on Directive 2014/23 [58] by providing the referring court with assessment criteria regarding the modification of concession without a new award procedure, where that concession was initially awarded, without a competitive tendering procedure, to an in-house entity and the modification of the subject matter of that concession is carried out on a date on which the concessionaire no longer has the status of an in-house entity.

Die Autobahn GmbH des Bundes, the defendant in the main proceedings, is a private company and is the inalienable property of the Federal Republic of Germany. The Bundesministerium für Verkehr und digitale Infrastruktur (Federal Ministry of Digital and Transport, Germany) entrusted it with the planning, construction, operation, maintenance, financing and asset management of the German federal motorways with effect from 1 January 2021.

Originally, the operator of ancillary service facilities, such as service stations and restaurants, across more than 400 service areas within the German motorway network, was the Gesellschaft für Nebenbetriebe der Bundesautobahnen mbH, created by the Federal Republic of Germany in 1951. In 1994, that company was renamed Tank & Rast AG, with the Federal Republic of Germany remaining as the sole shareholder of the company. In the same year, Tank & Rast acquired Ostdeutsche Autobahntankstellengesellschaft mbH.

Between 1996 and 1998, the Federal Republic of Germany concluded, without a prior call for tenders, approximately 280 concession contracts for the operation of service facilities ancillary to German federal motorways with Tank & Rast for a maximum period of 40 years. In return, the concessionaire has to pay a fee that is proportionate to its turnover.

In 1998, the German authorities initiated a procedure to privatise Tank & Rast, which, following changes in the company name, gave rise to the current concessionaires, namely Autobahn Tank & Rast GmbH and Ostdeutsche Autobahntankstellen GmbH.

Between 1999 and 2019, Autobahn Tank & Rast and Ostdeutsche Autobahntankstellen were awarded approximately 80 further concessions, 19 of which, they claim, were awarded following calls for tender. That is how those companies became the concessionaires for approximately 90% of all existing ancillary service facilities.

On 28 April 2022, Die Autobahn des Bundes concluded with Autobahn Tank & Rast and Ostdeutsche Autobahntankstellen a supplement to all of the approximately 360 concession contracts concerned, pursuant to which they are responsible for the construction, maintenance and operation of fast-charging operational infrastructure in the service areas concerned, which also involves an obligation to make available a specific number of recharging points on each site.

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58 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).

Die Autobahn des Bundes published a notice concerning that modification in the *Supplement to the Official Journal of the European Union*, according to which the waiver of an invitation to tender was justified in the light of Paragraph 132 of the Law against restrictions on competition. [59] The provision of fast-charging infrastructure constitutes a complementary supply of services, which became necessary under the concession contracts concerned, that being something which was not foreseeable on the date on which they were concluded.

Fastned and Tesla, which operate charging infrastructure for electric vehicles, applied to the Vergabekammer des Bundes (Federal Public Procurement Board, Germany) seeking the opening of a review procedure in respect of that modification; in the order that it issued, that board refused to grant that application.

Fastned and Tesla brought an action against that order before the referring court, which decided to ask the Court whether the scope of Article 72(1)(c) of Directive 2014/24 [60] also includes public contracts previously awarded to in-house entities, outside the scope of that directive, but to which the conditions of in-house procurement no longer apply at the time of the contract modification.

Findings of the Court

As a preliminary point, the Court finds that the dispute in the main proceedings concerns concession contracts, and not public contracts, and that, in that context, that court is in fact asking the Court about the interpretation of Article 43(1)(c) of Directive 2014/23, which lays down the conditions under which a concession may be modified, without a new award procedure, for reasons relating to the materialisation of circumstances which a diligent contracting authority could not foresee. [61]

In response to that question, the Court states, in the first place, that, if the conditions laid down in that provision of Directive 2014/23 are satisfied, a concession can be modified without a new award procedure, even where that concession was initially awarded, without a competitive tendering procedure, to an in-house entity and the modification of the subject matter of that concession is carried out on a date on which the concessionaire no longer has the status of an in-house entity. To exclude such cases from the scope of that provision would limit the flexibility offered by that provision for adapting a concession during its term to external circumstances which the contracting authorities could not foresee when that concession was initially awarded on a ground which is not apparent from either the wording or the context of that provision and which, in those circumstances, cannot be regarded as reflecting the intention of the EU legislature.

The wording of Article 43(1)(c) of Directive 2014/23 does not contain any indication that a concession cannot be modified without a new award procedure, as a result of unforeseeable circumstances materialising, where it was initially awarded to an in-house entity without a competitive tendering procedure and the modification concerned occurs on a date on which the concessionaire entity no longer has the status of in-house entity. Nor does such a conclusion follow from the context of that provision.

In the second place, the Court concludes that Article 43(1)(c) of Directive 2014/23 does not require the Member States to ensure that the national courts review, indirectly and on application, the lawfulness of the initial award of a concession in the context of an action for annulment of a modification of that concession, where that action is brought after the expiry of any time limit laid down by national law pursuant to Directive 89/665 [62] for challenging that initial award by an operator showing an interest in being awarded solely the part of that concession which is the subject of that modification. Specifically,

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59 Gesetz gegen Wettbewerbsbeschränkungen (Law against restrictions on competition) of 26 June 2013 (BGBl. 2013 I, p. 1750), in the version applicable to the dispute in the main proceedings.

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

61 The wording of Article 43 of Directive 2014/23 is essentially identical to that of Article 72(1)(c) of Directive 2014/24.

62 Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

the setting of reasonable time limits for bringing proceedings, outside of which any actions will be time-barred, such as those laid down by national law in application of Directive 89/665, is intended to ensure, in the interests of legal certainty, that, after those time limits have expired, it is no longer possible to challenge a decision of the contracting authority or to raise an irregularity in the award procedure.

In the third place, the Court finds that, where contracting authorities are faced with unforeseeable external circumstances, they must have a certain degree of flexibility in order to be able to adapt the concession to those circumstances without a new award procedure.[63] In that regard, it specifies that 'the need' for modification of a concession is 'brought about', within the meaning of Article 43(1)(c) of Directive 2014/23 if those unforeseeable circumstances require the initial concession to be adapted in order to ensure that the proper performance of the obligations arising from it may continue. Such a modification cannot, however, be justified, under Article 43(1)(c) of Directive 2014/23, where it changes the overall nature of that concession. That is the case, in particular, where the works to be executed or the services to be provided are replaced by something different or where the type of concession is fundamentally changed.

In the case in the main proceedings, it is therefore for the referring court to determine, first, whether the materialisation of circumstances that were unforeseeable at the time of the award of the initial concession brings about a need for the modification of that concession in order to preserve the proper performance of the obligations arising from that concession and, second, whether the works or services covered by the extension of the subject matter of that concession, having regard to their scope or their specificities in relation to the works or services which were the subject of the same concession, do not entail a change in the overall nature of that concession. In accordance with Article 43(1)(c) of Directive 2014/23, it is also for the referring court to ensure compliance with the condition that, in principle, the increase in the amount of the contract concerned may not exceed 50% of the amount of the initial concession contract.

If the referring court were to conclude that the modification at issue in the main proceedings does not satisfy all the conditions laid down in Article 43(1)(c) of Directive 2014/23, it would still have to examine whether that modification is capable of satisfying those set out in Article 43(1)(b) of that directive. In order to do so, that court should, inter alia, verify that the works or services covered by that modification could not, from an economic and technical point of view, and without causing significant inconvenience or duplication of costs for the contracting authority, be the subject of a separate concession awarded following a competitive tendering procedure.

X. ECONOMIC AND MONETARY POLICY: SINGLE RESOLUTION MECHANISM

Judgment of the General Court (Eighth Chamber, Extended Composition), 9 April 2025, Hypo Vorarlberg Bank v SRB (2016 ex ante contributions), T-336/20

Link to the judgment as published in extract form

Economic and Monetary Union – Banking union – Single Resolution Mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Decision of the SRB on the calculation of the 2016 *ex ante* contributions – Duty to state reasons – Right to be heard – Principle of legal certainty – Right to effective judicial protection – Principle of non-retroactivity – Plea of illegality

63 See recital 76 of Directive 2014/23.

Hearing an action for annulment, which it dismisses, the General Court, after rejecting several pleas of illegality that were put forward, rules, inter alia, on whether the calculation of the annual target level of the ex ante contributions to the Single Resolution Fund (SRF) for the 2016 contribution year complies with the statutory cap provided for each contribution year during the initial period for the establishment of the SRF.

Hypo Vorarlberg Bank, the applicant, is a credit institution established in Austria. By decision of 15 April 2016, the Single Resolution Board (SRB) had set the ex ante contributions to the Single Resolution Fund (SRF) ('the ex ante contributions'), for 2016 ('the 2016 contribution period'), of the institutions concerned by that regulation, including the applicant. Subsequently, a decision of 20 May 2016 had supplemented the earlier decision by correcting the calculation of the ex ante contributions of the institutions for the 2016 contribution period. On 19 March 2020, the SRB had adopted Decision SRB/ES/2020/16 ('the decision of 19 March 2020'), by which it had replaced the two decisions referred to above for the purpose of remedying the procedural flaws and the defective statement of reasons of the initial decisions, which the Court had found and which had led to the annulment of those decisions as regards, inter alia, the applicant. Lastly, on 7 December 2022, the SRB adopted the contested decision, by which it withdrew and replaced the decision of 19 March 2020, the purpose of that decision being to remedy the defective statement of reasons of the decision of 19 March 2020 which the SRB had found to exist, further to judgments and orders of the Court, concerning the calculation of the ex ante contributions for the 2017 contribution period.

In its action, the applicant put forward pleas of illegality in respect of provisions of Regulation No 806/2014 and Implementing Regulation 2015/81 and also objected to the contribution methods chosen by the SRB as to the determination of the target level and the annual contribution cap for the 2016 contribution period.

Findings of the Court

The Court starts by rejecting the procedural arguments set out concerning several pleas of illegality raised by the applicant.

First, the Court – before which the applicant, in a statement of modification, put forward several pleas of illegality, accepted in another judgment, against Regulation No 806/2014 and Implementing Regulation 2015/81 – examines whether Article 86 of the Rules of Procedure allows raising for the first time, in its statement of modification, any new plea in law, without any limitation. In that regard, upon bearing in mind that, in the light of the principle of the unalterability of proceedings, Article 86 of the Rules of Procedure must be interpreted strictly, the Court held that Article 86 of the Rules of Procedure does not mean that an applicant may raise for the first time, in a statement of modification, a plea of illegality even when the matters of fact and of law on which it is based were already known at the time of lodging the application and they have not been amended in the measure replacing or amending the measure initially contested.

In the present case, the applicant had put forward the pleas of illegality, against Article 8(1), (4) and (5) of Implementing Regulation 2015/81 and Article 70(7) of Regulation No 806/2014, solely in the statement of modification. Accordingly, the Court ascertains whether the applicant was already aware, at the time of lodging the application, of the matters of fact and of law on which the pleas of illegality put forward were based and whether or not they were therefore amended in the measure replacing or amending the measure the annulment of which was initially sought.

On that point, the Court finds that the contested decision does not reveal any new factor that is material as regards the application and the interpretation of the contested provisions. Thus, the Court holds that the matters of fact and of law on which the pleas of illegality are based were already known at the time of lodging the application and were not amended in the contested decision. Accordingly, it rejects the pleas of illegality on the ground that they were out of time.

Secondly, the Court rejects the argument, relied on by the applicant at the hearing, that the illegality of Regulation No 806/2014 and Implementing Regulation 2015/81 should, in any event, be regarded as a matter of public policy, which the Court is required to raise of its own motion, on the ground that it had upheld the plea of illegality raised by the applicant, in another case, against, first, Article 70(7) of Regulation No 806/2014 and, consequently, Implementing Regulation 2015/81, as an act devoid of

legal basis, and, secondly, Article 8(1)(g), of Implementing Regulation 2015/81, on the ground that, by adopting it, the Council had exceeded its implementing powers.

In that regard, the Court recalls that the inapplicability of a provision found indirectly in the context of a plea of illegality acquires the force of res judicata only with regard to the parties to the dispute. Accordingly, the raising of a plea of illegality of its own motion on the ground that, in another case, the Court upheld a similar plea, would be tantamount to disregarding Article 277 TFEU, from which it is clear that the inapplicability of a provision, found indirectly in the context of a plea of illegality, applies only inter partes. Although it follows from the case-law that the lack of competence of the authority which adopted the measure adversely affecting a party is a ground involving a matter of public policy which must be raised by the Court of its own motion, it does not apply in the present case, in so far as the plea in law at issue does not concern the possible lack of competence of the authority which adopted the measure adversely affecting a party, but concerns the alleged lack of competence of the author of the act of general application on the basis of which the measure adversely affecting a party was adopted. According to the case-law, the Court cannot of its own motion raise the question of the possible illegality of the act of general application on the basis of which the measure adversely affecting a party was adopted, since such an illegality is not a matter of public policy. Accordingly, the Court cannot raise of its own motion, in the present case, the illegality of either Regulation No 806/2014 or Implementing Regulation 2015/81.

The Court then moves on to reject, on the merits, the pleas put forward by the applicant.

First, as regards the dynamic nature of the target level, the Court concludes, as it had already done in its case-law, that Article 69(1) of Regulation No 806/2014 must be interpreted as meaning that the amount of the final target level, provided for by that provision, must be determined in the light of the amount of covered deposits forecast for the end of the initial period.

Secondly, as regards the determination of the annual target level for the 2016 contribution period at 1/8 of 1.05% of covered deposits in the year preceding the 2016 contribution period, namely in 2015, it is apparent both from the decision of 19 March 2020 and from the contested decision that the SRB applied such a coefficient for the 2016 contribution period. Therefore, pursuant to Article 86 of the Rules of Procedure, the General Court notes that the matters of fact and law on which the present complaint is based were known to the applicant at the time of lodging the application and that they were not amended in the contested decision and holds that complaint inadmissible on the ground that it was out of time.

Thirdly, as regards exceeding the 12.5% cap under Article 70(2) of Regulation No 806/2014, the Court finds that no recital of the decision of 19 March 2020 contained information on the amount of the final target level. Similarly, the SRB has not submitted to the Court any evidence that that information was apparent from publicly accessible material before the application was lodged. By contrast, the contested decision set out, for the first time, in recital 83 thereof, the amount of the final target level estimated during the 2016 contribution period, stating that it amounted to EUR 56 billion ('the forecast final target level'). It was therefore only on the basis of that new factor, namely the amount of the forecast final target level, which was set out for the first time in the contested decision, that the applicant was able to verify whether the 12.5% cap had been complied with, with the result that that complaint is admissible.

As regards the substance, the Court holds that the first and fourth subparagraphs of Article 70(2) of Regulation No 806/2014 must be interpreted as meaning that compliance with the 12.5% cap must be verified in the light of the amount of the ex ante contributions actually due by all of the institutions authorised in the territories of all of the participating Member States. In the present case, while according to recital 84 of the contested decision, the amount of the annual target level was EUR 7 007 654 704, the sum of the ex ante contributions actually due by those institutions, for the 2016 contribution period, was EUR 6 423 923 918. That amount is apparent from the first page of Annex II to the contested decision, from which it is also apparent that that amount takes into account both the 'deduction of 2015 contributions' and the 'adjustments for data restatements and revisions (in accordance with [Article] 17(3) and (4) of [Delegated Regulation 2015/63])'.

In those circumstances, it must be held that the contested decision set the amount of the ex ante contributions due by all of the institutions authorised in the territories of all of the participating

Member States at an amount which does not exceed the cap of 12.5% of the forecast final target level during the 2016 contribution period, as provided for in the first and fourth subparagraphs of Article 70(2) of Regulation No 806/2014.

Judgment of the General Court (Eighth Chamber, Extended Composition), 30 April 2025, Banco Cooperativo Español v SRB (2016 ex ante contributions), T-499/20

Link to the full text of the judgment

Economic and Monetary Union – Banking union – Single Resolution Mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Decision of the SRB on the calculation of the 2016 *ex ante* contributions – Exclusion of certain liabilities from the calculation of the *ex ante* contributions – Article 5(1)(a), (b) and (f) of Delegated Regulation (EU) 2015/63 – Plea of illegality – Principle of non-retroactivity – Non-contractual liability – Sufficiently serious breach of a rule of law intended to confer rights on individuals – Unjust enrichment

Hearing an action for annulment, which it dismisses, the General Court rules, in particular, first, on a plea of illegality in respect of Article 5(1) of Regulation 2015/63, [64] which lists the conditions necessary for a liability to be excluded from the calculation of *ex ante* contributions, on the ground that that article does not allow for certain liabilities of the applicant to be excluded from the calculation of its contribution. Second, it rules on the head of illegality alleging infringement of the principle of legal certainty, in so far as the Single Resolution Board (SRB) set the date from which the contested decision took effect at a date before its adoption. Furthermore, the Court rejects the claims for compensation put before it, both as regards the alleged unjust enrichment of the SRB and as regards non-contractual liability.

The applicant, Banco Cooperativo Español, S.A., is a credit institution established in Spain, created in 1990 by a number of rural savings banks, which are its shareholders. The rural savings banks are cooperative credit institutions that provide financial services in rural areas. The applicant heads the network comprising those rural savings banks and provides banking services to individuals and businesses, including the rural savings banks. One of the principal services provided to the latter is cash pooling. A cash pooling agreement concluded between the applicant and the rural savings banks provides that the rural savings banks transfer funds to the applicant to be invested on the interbank market or the money market. That agreement also provides for a guarantee that the rural savings banks will bear any loss or liability arising from the activity on the interbank market that the applicant performs on their behalf.

On 7 December 2022, the SRB adopted the contested decision [65] on the calculation of the 2016 *ex ante* contributions to the Single Resolution Fund of Banco Cooperativo Español, S.A., Hypo Vorarlberg Bank AG (formerly Vorarlberger Landes- und Hypothekenbank AG) and Portigon AG. That decision withdrew and replaced an earlier decision on the same matter of 19 March 2020, [66] in order to remedy the failure to state reasons for the latter identified by the SRB as a result of the various

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

65 Decision SSRB/ES/2022/79 of the SRB of 7 December 2022 withdrawing Decision SRB/ES/2020/16 of the SRB of 19 March 2020 on the calculation of the 2016 *ex ante* contributions of Banco Cooperativo Español, S.A., Hypo Vorarlberg Bank AG (formerly Vorarlberger Landes- und Hypothekenbank AG) and Portigon AG to the Single Resolution Fund and calculating their 2016 *ex ante* contributions to the Single Resolution Fund ('the contested decision').

66 Decision SRB/ES/2020/16 on the calculation of the applicant's *ex ante* contribution for the 2016 contribution period ('the decision of 19 March 2020').

judgments of the Court of Justice [67] relating to the calculation of the amount of the *ex ante* contributions for the 2017 contribution period. Furthermore, the decision of 19 March 2020 had been adopted in order to remedy the procedural defects and the failure to state reasons – identified by the General Court in a number of judgments – affecting two initial decisions, [68] which that decision withdrew and replaced. [69]

Findings of the Court

In the first place, as regards the alleged illegality of Article 5(1) of Delegated Regulation 2015/63, that provision lists the conditions necessary for a liability to be excluded from the calculation of *ex ante* contributions.

By its plea of illegality, the applicant submitted that if that article of Delegated Regulation 2015/63 had to be interpreted as not permitting liabilities such as those generated in the course of the activities that it undertakes on behalf of the rural savings banks to be excluded from the calculation of its *ex ante* contribution, that provision would infringe Article 103(2) of Directive 2014/59, [70] Article 70(2) and (6) of Regulation No 806/2014, [71] Article 16 of the Charter of Fundamental Rights of the European Union and the principle of proportionality, since under those rules the European Commission was required, at the time it adopted that delegated regulation, to ensure that the regime for excluding liabilities enables such liabilities to be excluded from the calculation of *ex ante* contributions.

The Court notes that, under Article 103(7) of Directive 2014/59, the Commission is empowered to adopt delegated acts in order to specify the notion of 'adjusting [*ex ante*] contributions in proportion to the risk profile of institutions'. It should be recalled that the specific nature of the *ex ante* contributions consists in ensuring, according to an insurance-based logic, that the financial sector provides adequate financial resources for the Single Resolution Mechanism to be able to fulfil its functions, while encouraging the adoption, by the institutions concerned, of less risky methods of operation. Since the Commission is responsible for drawing up rules for adjustment of the *ex ante* contributions in proportion to the risk profile of the institutions in pursuit of two linked objectives: to ensure that account is taken of the different risks to which the activities of the banking or, more broadly, financial institutions give rise; and to encourage those institutions to adopt less risky methods of operation, a task which entails complex assessments and evaluations on its part, it has broad discretion. Accordingly, since review by the Courts of the European Union must therefore be limited to verifying whether the exercise of the discretion afforded to the Commission has been vitiated by a manifest error or a misuse of powers, or whether the Commission has manifestly exceeded the limits of that discretion, it is for the applicant to demonstrate that Article 5(1) of Delegated Regulation 2015/63 is vitiated by such defects.

First, in accordance with the insurance-based logic of the system of *ex ante* contributions, each institution is subject to an obligation to pay *ex ante* contributions, and all its liabilities are to be taken into account, in principle, for the purposes of calculating those contributions, apart from own funds

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

68 Decisions of the Executive Session of the SRB of 15 April 2016 on the 2016 *ex-ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2016/06) and of 20 May 2016 on the adjustment of the 2016 *ex-ante* contributions to the Single Resolution Fund, supplementing the Decision of the Executive Session of the SRB of 15 April 2016 on the 2016 *ex-ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2016/13) ('the initial decisions').

69 Judgments of 28 November 2019, *Banco Cooperativo Español* v *SRB* (T-323/16, EU:T:2019:822); *Hypo Vorarlberg Bank* v *SRB* (T-377/16, T-645/16 and T-809/16, EU:T:2019:823); and *Portigon* v *SRB* (T-365/16, EU:T:2019:824).

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

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

and covered deposits. [72] Consequently, any exception to that principle must be interpreted strictly. Moreover, the *ex ante* contributions are adjusted according to the risk profile of the institutions. [73]

Admittedly, the 'risk exposure of the institution' is one of the eight criteria that the Commission must take into account when it adopts the delegated act in order to specify the notion of 'adjusting [*ex ante*] contributions in proportion to the risk profile of institutions'. [74] However, none of those criteria is given precedence over the others and the manner in which the Commission must take that exposure into account is not specified. In addition, although the Commission must take into account [75] the fact that the institution belongs to an institutional protection scheme ('IPS'), [76] which is defined as a 'contractual or statutory liability arrangement which protects those institutions and in particular ensures their liquidity and solvency to avoid bankruptcy where necessary', no other categories of commercial or contractual affiliation are mentioned as having to be taken into consideration by the Commission.

Second, the applicant cannot argue that the activities which it undertakes on behalf of the rural savings banks pose only a low risk. The method of determining the basic annual contribution should be further specified in the case of groups, in order to reflect the interconnectedness of the group entities and to avoid the double counting of intragroup exposures. For the purpose of calculating the basic annual contribution of a group entity, the total liabilities to be taken into consideration do not include the liabilities arising from any contract concluded by that group entity with any other entity which is part of the same group. However, such exclusion is only possible where each group entity is established in the European Union, is included in the same consolidation on a full basis and is subject to an appropriate centralised risk evaluation, measurement and control procedure, and where there are no current or foreseen material practical or legal impediments to the prompt repayment of the relevant liabilities when due. The foregoing prevents liabilities from being excluded from the basis of calculation of the *ex ante* contributions if there are no guarantees that intragroup lending exposures would be covered in the event of a deterioration in the financial health of the group.

The Court recalls that Article 5(1)(a) of Delegated Regulation 2015/63 did not seek to eliminate entirely all forms of double counting of liabilities and that it ruled out such a practice only in so far as there were sufficient guarantees that intragroup lending exposures would be covered where the financial health of the group deteriorated.

In that regard, as regards the clause of the cash pooling agreement which provides that the rural savings banks 'jointly provide a guarantee against any loss' to the applicant as a result of the investments it makes on the interbank market using the funds received, and the 'permanent and binding' nature of that agreement, the Court notes that, according to that agreement, any of the rural savings banks may withdraw unilaterally with effect from expiry of the second month from the date on which the applicant's board of directors receives notice. In contrast, Regulation No 575/2013, [77] lays down, inter alia, a requirement to give notice of at least 24 months before termination of an agreement creating an IPS. [78] Moreover, the network that the applicant forms together with the shareholder rural savings banks does not constitute a single consolidation on a full basis and is not subject to an appropriate centralised risk evaluation, measurement and control procedure, and its situation therefore differed both from that of groups and from that of IPSs.

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72 Under Article 103(2) of Directive 2014/59 and in Article 70(2) of Regulation No 806/2014.

73 In accordance with Article 103(2) of Directive 2014/59 and Article 70(2) of Regulation No 806/2014.

74 In accordance with Article 103(7) of Directive 2014/59.

75 In accordance with Article 103(7)(h) of Directive 2014/59.

76 Within the meaning of Article 5(1)(b) of Delegated Regulation 2015/63.

77 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013, L 176, p. 1).

78 Article 113(7)(f) of Regulation (EU) No 575/2013.

In any event, Delegated Regulation 2015/63 provides for an exclusion of liabilities from the calculation of the *ex ante* contribution of each institution not on a case by case basis but only on the basis of certain categories of liabilities that are defined objectively, generally and in the abstract. Although networks of rural savings banks exist in more than one Member State, the contractual and regulatory conditions in which they operate can vary widely from one to another. Accordingly, the argument put forward on the basis, inter alia, of the specific features of the applicant's individual situation supposedly resulting from the cash pooling agreement, cannot render Article 5(1) of Delegated Regulation 2015/63 unlawful.

The Court finds in consequence that the applicant has failed to demonstrate that there were sufficient guarantees that the lending exposures relating to the activities undertaken by it on behalf of the rural savings banks would be covered in the event of a deterioration in the financial health of the network comprising, in the present case, itself and the shareholder rural savings banks.

Third, the Court rejects the applicant's arguments that there is 'an obvious parallel' between its situation and the situations referred to in Article 5(1)(a), (b) and (f) of Delegated Regulation 2015/63.

First of all, the intragroup liabilities arising from transactions entered into by an institution with a different institution which is part of the same group can only be excluded from the calculation of *ex ante* contributions if the conditions listed in Article 5(1) of Delegated Regulation 2015/63 are met. It flows from the applicable definitions of 'group', 'subsidiary' and 'parent undertaking' that a relationship of parent undertaking and subsidiary cannot be demonstrated by the mere existence of economic relations which reflect a partnership between a number of institutions, where no one of those institutions controls the other members of the grouping that it comprises together with those institutions. In the present case, the applicant has not established that the commercial and contractual relations between it and the rural savings banks were characterised by the same degree of control as that existing in a group within the meaning of Article 5(1)(a) of Delegated Regulation 2015/63.

Next, Article 5(1)(b) of Delegated Regulation 2015/63 relates to institutions which are members of an IPS [79] and which have been allowed by the competent authority to apply Article 113(7) of Regulation No 575/2013, through an agreement entered into with another institution which is a member of the same IPS. An 'IPS' is an arrangement that meets the cumulative requirements listed in that provision. Nevertheless, the applicant has not demonstrated that requirements equivalent to those cumulative requirements exist in the context of the relations between it and the rural savings banks.

Last, the Court holds that the same is true of the purported parallel between the applicant's situation and the situation referred to in Article 5(1)(f) of Delegated Regulation 2015/63, relating to promotional loans granted by promotional banks.

In the second place, as regards the plea alleging infringement of the principle of legal certainty, because the SRB set as the starting point of the contested decision a date prior to the date of its adoption, the Court finds that the contested decision took effect as of the date on which the first of the initial decisions came into effect, the latter decisions having themselves been replaced by the decision of 19 March 2020, likewise with effect from the same date. Neither the contested decision nor the judgments and orders that formed the basis of its adoption changed the scope of the applicant's obligation to pay an *ex ante* contribution for the 2016 contribution period, as it had been determined by the second of the initial decisions and as it had existed for that contribution period. The only new elements introduced by the contested decision were to be found in a more extensive statement of reasons for the calculation of the applicant's *ex ante* contribution for the 2016 contribution period.

First, as regards whether the purpose to be achieved by the contested decision required it to take effect as from a date prior to its adoption, the Court finds that the purpose of adopting the contested decision with effect from 15 April 2016 was to ensure that the applicability of the contested decision

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79 Within the meaning of point 8 of Article 2(1) of Directive 2014/59.

coincided with the time at which the applicant's obligation to pay an *ex ante* contribution for the 2016 contribution period had come into being, thereby avoiding an outcome contrary to the applicable legislation. In order to achieve that legitimate objective in the public interest, that decision had to take effect as of a date prior to the date of its adoption, that is to say, as of the same date as the decision of 19 March 2020 which it replaced.

Second, the Court finds there to be nothing to suggest that any institution has given the applicant precise, unconditional and consistent information capable of creating a legitimate expectation that the applicant would be subject to payment of its *ex ante* contribution for the 2016 contribution period only from a later date, when a new decision had been adopted. Accordingly, the applicant's legitimate expectations were duly respected in the circumstances of the present case.

In addition, Article 266 TFEU requires the institution whose act has been annulled only to take the necessary measures to comply with the judgment annulling that act. In the present case, in order to adopt a new decision, the SRB had to respect the formal requirements that had been infringed during the procedure to adopt the contested decision. That fact was not capable of creating any expectation on the part of the applicant that the contested decision would not be effective on a date prior to the date of the decision that it was intended to replace or that the applicant would not be subject to payment of the *ex ante* contribution for the 2016 contribution period only from a later date, when a new decision had been adopted.

In the third place, as regards the claims for compensation, the Court holds at the outset that the applicant is not entitled to bring an action for unjust enrichment in respect of the SRB, in so far as, since the annulment of the first initial decision by the Court, the SRB has not repaid the applicant its *ex ante* contribution. The Court notes that such an action is distinct from the rules governing non-contractual liability in the strict sense in so far as it requires merely proof of enrichment on the part of the defendant for which there is no valid legal basis and of impoverishment on the part of the applicant which is linked to that enrichment. In the present case, as the Court noted, the applicant remained liable, from 15 April 2016, to pay its *ex ante* contribution for the 2016 contribution period and, having regard to the date as of which the decision of 19 March 2020 and the contested decision took effect, there was no duty on the SRB, in order to prevent unjust enrichment, to repay to the applicant all or part of its *ex ante* contribution for the 2016 contribution period.

As regards the action seeking to hold the European Union liable on the basis of non-contractual liability, the Court finds that the applicant has failed to establish the existence of a sufficiently serious breach of a rule of law. It states that, in contrast to the cases that gave rise to the judgments in *Commission* v *Printeos* and in *Commission* v *Deutsche Telekom*, [80] in the present case the applicant remained liable, from 15 April 2016, for the *ex ante* contribution levied on it for the 2016 contribution period. In addition, both the contested decision and the decision of 19 March 2020 came into effect, without any breach of the principle of legal certainty, as of a date prior to the date on which they were adopted, with the effect that no default interest would be payable for the period from 23 June 2016, the date on which the applicant paid its *ex ante* contribution for the 2016 contribution period, to the date on which one of those decisions was adopted. The SRB was therefore not obliged to reimburse any of the *ex ante* contributions, together with interest on them.

80 Judgments of 20 January 2021, *Commission* v *Printeos* (C-301/19 P, EU:C:2021:39), and of 11 June 2024, *Commission* v *Deutsche Telekom* (C-221/22 P, EU:C:2024:488).

XI. CONSUMER PROTECTION: PROVISION OF FOOD INFORMATION TO CONSUMERS

Judgment of the Court of Justice (Fifth Chamber), 30 April 2025, Novel Nutriology, C-386/23

Link to the full text of the judgment

Reference for a preliminary ruling – Consumer protection – Regulation (EC) No 1924/2006 – Nutrition and health claims made on foods – Article 10(1) and (3) – Specific conditions applicable to health claims – Articles 13 and 14 – Lists of authorised health claims – Article 28(5) and (6) – Transitional measures – Advertising promoting a food supplement using health claims relating to botanical substances contained in that supplement – Health claims the evaluation of which has been suspended by the European Commission – Applicability of Regulation No 1924/2006

Hearing a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court of Justice rules on the applicability of Regulation No 1924/2006 [81] and, in particular, of Article 10 thereof to health claims relating to botanical substances [82] the examination of which for the purposes of a possible inclusion in the lists of claims authorised by that regulation [83] had not yet been completed by the European Commission.

Novel Nutriology markets a food supplement which it advertised on its website. To that end, it used health claims relating to the 'saffron extract' and the 'melon juice extract', which are contained in that food supplement. In the present case, it was alleged that the saffron extract improved mood and that the melon juice extract reduced feelings of stress and fatigue.

Taking the view that those claims are prohibited under Article 10 of Regulation No 1924/2006, VSW, a trade association defending the commercial interests of its members, brought an action seeking to prohibit Novel Nutriology from promoting the food supplement in question by means of the abovementioned health claims. Following the upholding of that action by the court of first instance, Novel Nutriology brought an appeal. Since that appeal was dismissed, Novel Nutriology brought an appeal on a point of law before the referring court.

The referring court is uncertain whether Article 10(1) and (3) of Regulation No 1924/2006 is applicable to health claims relating to botanical substances, given that neither the European Food Safety Authority (EFSA) nor the Commission has completed the examination of those claims for the purposes of their possible inclusion in the lists of authorised health claims. The referring court notes that the German courts are divided as to the applicability of Article 10(3) of Regulation No 1924/2006 to claims relating to botanical substances. However, according to a predominant interpretation, that provision is applicable to botanical substances only where a reference to the general benefits of such a substance is accompanied by a specific health claim which may be used under the conditions laid down by the provisions on transitional measures in that regulation. [84]

Findings of the Court

In the first place, the Court points out that Article 10(1) of Regulation No 1924/2006 lays down a prohibition in principle of health claims, with the exception of those included in the lists of authorised

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81 Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9, and corrigendum OJ 2007 L 12, p. 3), as amended by Regulation (EC) No 109/2008 of the European Parliament and of the Council of 15 January 2008 (OJ 2008 L 39, p. 14).

82 Recitals 10 and 11 of Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health (OJ 2012 L 136, p. 1).

83 Those lists of health claims are provided for in Articles 13 and 14 of Regulation No 1924/2006 ('the lists of authorised claims').

84 As defined in Article 28(5) and (6) of Regulation No 1924/2006.

claims. It also states that Article 10 of Regulation No 1924/2006 draws a distinction between two categories of health claims, namely, on the one hand, specific health claims [85] and, on the other hand, 'general' health claims [86] constituting a reference to general benefits for overall good health. Thus, the use of a specific health claim is permitted only if it is included in the lists of authorised health claims, whereas any general health claim must be accompanied by such a specific claim.

In the second place, the Court states that the inclusion of specific health claims in the lists of authorised claims is subject to various authorisation procedures intended, inter alia, to ensure that those claims are scientifically substantiated. As regards, in particular, health claims describing or referring to psychological or behavioural functions, such as those at issue in the main proceedings, the Court states that the use of such claims is permitted by Regulation No 1924/2006 [87] provided that they are based on generally accepted scientific evidence and are well understood by the average consumer. Accordingly, the requirement that those claims be included in the list provided for in Article 13 of Regulation No 1924/2006 is justified by the need to ensure that such health claims made in commercial communications relating to foods are scientifically substantiated and are well understood.

In the third place, the Court finds that, under Article 13 of Regulation No 1924/2006, [88] the Commission was required to consult EFSA with a view to adopting, by 31 January 2010 at the latest, the list of authorised health claims provided for in that article. However, the evaluation of health claims relating to botanical substances has been suspended and the list of such claims has not yet been drawn up. Under Regulation No 536/2013, [89] health claims the consideration of which has not yet been completed may continue to be used, in accordance with the transitional measures provided for in Article 28 of Regulation No 1924/2006. [90] That provision covers health claims which describe or refer to psychological or behavioural functions provided that they were used in accordance with the national provisions applicable before the date of entry into force of that regulation. Where such claims have not been the subject of an evaluation or authorisation in a Member State, they may continue to be used provided that an application was submitted in accordance with that regulation before 19 January 2008. In the present case, one of the two claims at issue was the subject of a late application, while no application was submitted for the other claim. In that context, the use of the claims at issue in the main proceedings cannot be permitted under the transitional regime provided for in Article 28 of Regulation No 1924/2006. In so far as those claims can be used only under Article 10 of that regulation, that use cannot be permitted until the Commission has completed its examination of those claims. That interpretation is supported by the purpose of Regulation No 1924/2006. The aim of that regulation is to ensure the effective functioning of the internal market while ensuring a high level of consumer protection, [91] in particular against misleading claims, and the protection of health. In the light of the foregoing, the Court considers that Article 10(1) and (3) of Regulation No 1924/2006 precludes a food business operator from using health claims relating to botanical substances until the Commission has completed the examination of such claims for the purposes of their inclusion in the lists of authorised health claims. This may be different, however, if the use of such claims was permitted under the transitional measures provided for by that regulation.

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85 Article 10(1) of Regulation No 1924/2006.

86 Article 10(3) of Regulation No 1924/2006. Under that provision, any reference to general, non-specific health benefits of a nutrient or food must be accompanied by a specific health claim included in the lists provided for in Article 13 or 14 of that regulation.

87 More specifically, Article 13(1)(b), read in the light of recital 24 of Regulation No 1924/2006.

88 Article 13(3) of Regulation No 1924/2006.

89 Recital 9 of Commission Regulation (EU) No 536/2013 of 11 June 2013 amending Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children's development and health (OJ 2013 L 160, p. 4).

90 Article 28(5) and (6) of Regulation No 1924/2006.

91 Article 1(1) of Regulation No 1924/2006.

That conclusion is not called into question either by the principle of freedom to conduct a business [92] or by the principle of equal treatment.

As regards the principle of the freedom to conduct a business, the Court considers that the prohibition on promoting foods containing botanical substances by means of health claims which describe or refer to psychological or behavioural functions, which have not been evaluated and authorised in advance in accordance with Regulation No 1924/2006, and which are also not authorised under the transitional measures provided for by that regulation, ensures a fair balance between that principle and the objective of protecting human health, without disproportionately impairing the legitimate right of economic operators in the food sector to pursue their entrepreneurial activity.

In reaching that conclusion, the Court states, first, that the application of Article 10(1) and (3) of Regulation No 1924/2006 to health claims relating to botanical substances which describe or refer to psychological or behavioural functions does not adversely affect the very substance of that principle. In that regard, it notes that the requirement that those specific health claims have been authorised in advance and that they are included in the lists of authorised claims referred to in Regulation No 1924/2006 does not prevent food business operators marketing foods containing botanical substances from placing such foods on the market entirely. That requirement relates solely to the prohibition on promoting them by means of health claims which have not been evaluated and authorised in advance in accordance with that regulation. Next, the transitional regime provided for in Article 28 of Regulation No 1924/2006 grants food business operators the possibility of using such claims, subject to compliance with the conditions laid down in that provision.

Second, the Court points out that the prohibition on promoting foods containing botanical substances by means of health claims which have not been evaluated and authorised in advance in accordance with Regulation No 1924/2006 meets, inter alia, the objective of protecting human health and that that objective takes precedence over economic interests.

As regards the principle of equal treatment, [93] the Court points out that, in view of the objective of achieving a high level of consumer and human health protection to which Regulation No 1924/2006 contributes, the comparison of food business operators wishing to use health claims in order to promote the foods which they market must be established in the light of the scientifically substantiated nature of such claims. Accordingly, all food business operators must comply with the provisions contained in Article 10(1) and (3) of that regulation.

In the light of the foregoing, the Court concludes that Article 10(1) and (3) of Regulation No 1924/2006 does not permit, in the context of commercial advertising of a food supplement composed of botanical substances, until the Commission has completed the examination of health claims relating to botanical substances for the purposes of their inclusion in the lists of authorised health claims, the use of specific health claims relating to such substances and describing or referring to psychological or behavioural functions. The same is true of references to general, non-specific benefits of such a substance for overall good health or health-related well-being, unless such a reference is accompanied by a specific health claim included in those lists. The use of specific health claims relating to botanical substances is, however, possible if it is permitted under Article 28(6) of that regulation.

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92 Article 16 of the Charter of Fundamental Rights of the European Union.

93 Article 20 of the Charter of Fundamental Rights of the European Union.

XII. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the General Court (First Chamber, Extended Composition), 2 April 2025, Timchenko v Council, T-297/23

Common foreign and security policy – Restrictive measures adopted in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Restrictions on entry into the territories of the Member States – List of persons, entities and bodies subject to restrictions on entry into the territories of the Member States – Maintenance of the applicant's name on the lists – Obligation to state reasons – Definition of 'leading businesspersons operating in Russia' – Article 2(1)(g) of Decision 2014/145/CFSP – Article 3(1)(g) of Regulation (EU) No 269/2014 – Plea of illegality – Error of assessment – Right to be heard – Citizenship of the Union – Freedom of movement – Right to property – Proportionality

In these judgments, the General Court dismisses the actions for annulment brought by Mr and Mrs Timchenko against the acts by way of which their names were maintained, in March 2023, [94] then in September of the same year, [95] by the Council of the European Union on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. These two cases afford the Court the opportunity, inter alia, to rule on the lawfulness of criterion (g), as amended, of Decision 2014/145, which allows the Council to take restrictive measures against leading businesspersons operating in Russia [96] and on the concept of association with regard to two members of a not-for-profit foundation.

These judgments arise 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 name of G.N. Timchenko, a businessperson of Russian and Finnish nationalities, was maintained on the lists at issue as a leading businessperson operating in Russia, on the grounds that he is responsible for supporting actions or policies which undermine the territorial integrity, sovereignty and independence of Ukraine, [97] for providing financial or material support for, and benefitting from Russian decision-makers responsible for the annexation of Crimea and the destabilisation of Ukraine. [98] The name of his spouse, E.P. Timchenko, was also maintained on those lists on the grounds that she is associated with her husband and benefits from Russian decision-makers responsible for the annexation of Crimea and the destabilisation of Ukraine.

In support of his action for annulment, G.N. Timchenko relies, in particular, on an error of assessment on the part of the Council as to the application, to him, of the criteria of association and of 'leading businesspersons'; moreover, he raises a plea of illegality of the latter criterion as amended in 2023.

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94 Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 134), and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 1).

95 Council Decision (CFSP) 2023/1767 of 13 September 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 104), and Council Implementing Regulation (EU) 2023/1765 of 13 September 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 3).

96 Article 2(1)(g) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine(OJ 2014 L 78, p. 16), as amended by Decision 2023/1094 ('criterion (g), as amended').

97 Article 2(1)(a) of Decision 2014/145/CFSP.

98 Article 2(1)(d) of Decision 2014/145/CFSP.

His spouse, E.P. Timchenko, relies, for her part, on a manifest error of assessment as to the application, to her, of the criterion of association.

Findings of the Court

As regards, in the first place, the plea of illegality raised by G.N. Timchenko with regard to the first part of criterion (g), as amended, of Decision 2014/145, according to which the Council established a presumption of interdependence between leading businesspersons and the Russian Government, the Court observes, first, that the amendment to criterion (g) does not concern the definition of the concept of 'leading businesspersons' per se. The sole purpose of that amendment was to widen the scope of restrictive measures so that they may apply to all leading businesspersons, including those who are not involved in an economic sector providing a substantial source of revenue to the Russian Government. The Court finds, next, that the widening of that criterion is intended to exploit the influence that leading businesspersons are likely to exert on the Government of the Russian Federation, so that it might alter its policy with regard to Ukraine.

Finally, the Court recalls, first, that the adoption of a criterion for inclusion on the lists at issue is an act of general application intended to attain an objective covered by the common foreign and security policy and, second, that the Council has broad discretion in so far as concerns the adoption of such criteria. In such circumstances, the Council is not required to adduce evidence to establish the existence of interdependence between the Russian Government and leading businesspersons for the purpose of adopting the first part of criterion (g), as amended. The mere fact of belonging to the category of leading businesspersons operating in Russia is sufficient to justify the adoption of the necessary restrictive measures on the basis of the first part of criterion (g), as amended. Accordingly, by adopting an objective, autonomous and sufficient criterion which serves to justify the inclusion of persons on the lists at issue, which necessitates, inter alia, proof that two cumulative requirements have been met, the Council has not established any presumption.

In so far as concerns, in the second place, the alleged breach of the principle of legal certainty by the first part of criterion (g), as amended, the Court finds, first, that the condition relating to business operations in Russia is sufficiently circumscribed and defined as not to infringe the principle of legal certainty. The provisions of the first part of criterion (g), as amended, are moreover sufficiently clear, precise and foreseeable as to determine the persons to whom those provisions are intended to apply. Next, they form part of a legal framework that is clearly delimited by the objectives pursued by the legislation governing the restrictive measures at issue. Finally, it cannot be argued that that criterion does not comply with the principle of legality inasmuch as the first part of criterion (g), as amended, was introduced by an act of general application adopted under Article 29 TEU.

In the light, in the third place, of the alleged breach of the principle of proportionality, the Court observes that the Council's approach, which consists in widening the circle of persons subject to the restrictive measures at issue, having regard to the worsening of the situation in Ukraine, in order to achieve the objectives pursued, is based on the progressive impairment of rights according to the effectiveness of the measures. By adopting criterion (g), as amended, the Council aims to exploit the influence that that category of persons likely to exert on the Russian regime by pushing them to put pressure on that government so that it might alter its policy with regard to Ukraine. The adoption of the first part of criterion (g), as amended, was therefore appropriate in order to achieve the objectives pursued by the restrictive measures, and necessary in order to implement the objectives referred to in Article 21 TEU.

In so far as concerns, in the fourth and last place, the plea alleging error of assessment under criterion (a) of Decision 2014/145, the Court finds that the items of evidence adduced by the Council show that Bank Rossiya, in which the applicant is a shareholder through the companies Volga Group and Transoil, made investments in various areas in Crimea, which contribute to the implementation of the policy of annexation of that region of Ukraine by the Russian Federation. In that connection, the Court observes that even with 10.323% of the shares in Bank Rossiya, the applicant is that bank's second biggest shareholder. Furthermore, as the items of evidence adduced by the Council show, Bank Rossiya is known for being a banking institution that is very close to the entourage of Mr Putin. In the light of the foregoing, the Court finds that G.N. Timchenko can be regarded as supporting

actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine within the meaning of criterion (a).

Lastly, in so far as concerns the spouse of G.N. Timchenko, the Court finds, in the light of the items of evidence adduced by the Council, that, as a founder and member of the board of trustees of the Timchenko Foundation, E.P. Timchenko is fully involved in the administration thereof. It notes, moreover, that G.N. Timchenko involved Volga Group undertakings in the activities of the foundation, by providing the latter with financial and logistical support, along with support in maintaining relationships, during the health crisis linked to the COVID-19 pandemic. On an operational level, that businessperson thus created synergies between the undertakings in his group and the foundation in order to supplement the actions of Russia's public services. In the light of the institutional roles played by Mr and Mrs Timchenko in the foundation and their investment in the operation thereof, the Court finds that there exists an association between the two spouses, within the meaning of the relevant provisions of Decision 2014/145.

Judgment of the General Court (First Chamber, Extended Composition), 2 April 2025, Timchenko v Council, T-298/23

Common foreign and security policy – Restrictive measures adopted in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Restrictions on entry into the territories of the Member States – List of persons, entities and bodies subject to restrictions on entry into the territories of the Member States – Maintenance of the applicant's name on the lists – Obligation to state reasons – Article 2(1)(a) and (d) of Decision 2014/145/CFSP – Article 3(1)(a) and (d) of Regulation (EU) No 269/2014 – Error of assessment – Right to be heard – Citizenship of the Union – Freedom of movement – Right to property – Proportionality

In these judgments, the General Court dismisses the actions for annulment brought by Mr and Mrs Timchenko against the acts by way of which their names were maintained, in March 2023, [99] then in September of the same year, [100] by the Council of the European Union on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. These two cases afford the Court the opportunity, inter alia, to rule on the lawfulness of criterion (g), as amended, of Decision 2014/145, which allows the Council to take restrictive measures against leading businesspersons operating in Russia [101] and on the concept of association with regard to two members of a not-for-profit foundation.

These judgments arise 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 name of G.N. Timchenko, a businessperson of Russian and Finnish

99 Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 134), and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 1).

100 Council Decision (CFSP) 2023/1767 of 13 September 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 104), and Council Implementing Regulation (EU) 2023/1765 of 13 September 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 3).

101 Article 2(1)(g) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine(OJ 2014 L 78, p. 16), as amended by Decision 2023/1094 ('criterion (g), as amended').

nationalities, was maintained on the lists at issue as a leading businessperson operating in Russia, on the grounds that he is responsible for supporting actions or policies which undermine the territorial integrity, sovereignty and independence of Ukraine, [102] for providing financial or material support for, and benefitting from Russian decision-makers responsible for the annexation of Crimea and the destabilisation of Ukraine. [103] The name of his spouse, E.P. Timchenko, was also maintained on those lists on the grounds that she is associated with her husband and benefits from Russian decision-makers responsible for the annexation of Crimea and the destabilisation of Ukraine.

In support of his action for annulment, G.N. Timchenko relies, in particular, on an error of assessment on the part of the Council as to the application, to him, of the criteria of association and of 'leading businesspersons'; moreover, he raises a plea of illegality of the latter criterion as amended in 2023. His spouse, E.P. Timchenko, relies, for her part, on a manifest error of assessment as to the application, to her, of the criterion of association.

Findings of the Court

As regards, in the first place, the plea of illegality raised by G.N. Timchenko with regard to the first part of criterion (g), as amended, of Decision 2014/145, according to which the Council established a presumption of interdependence between leading businesspersons and the Russian Government, the Court observes, first, that the amendment to criterion (g) does not concern the definition of the concept of 'leading businesspersons' per se. The sole purpose of that amendment was to widen the scope of restrictive measures so that they may apply to all leading businesspersons, including those who are not involved in an economic sector providing a substantial source of revenue to the Russian Government. The Court finds, next, that the widening of that criterion is intended to exploit the influence that leading businesspersons are likely to exert on the Government of the Russian Federation, so that it might alter its policy with regard to Ukraine.

Finally, the Court recalls, first, that the adoption of a criterion for inclusion on the lists at issue is an act of general application intended to attain an objective covered by the common foreign and security policy and, second, that the Council has broad discretion in so far as concerns the adoption of such criteria. In such circumstances, the Council is not required to adduce evidence to establish the existence of interdependence between the Russian Government and leading businesspersons for the purpose of adopting the first part of criterion (g), as amended. The mere fact of belonging to the category of leading businesspersons operating in Russia is sufficient to justify the adoption of the necessary restrictive measures on the basis of the first part of criterion (g), as amended. Accordingly, by adopting an objective, autonomous and sufficient criterion which serves to justify the inclusion of persons on the lists at issue, which necessitates, inter alia, proof that two cumulative requirements have been met, the Council has not established any presumption.

In so far as concerns, in the second place, the alleged breach of the principle of legal certainty by the first part of criterion (g), as amended, the Court finds, first, that the condition relating to business operations in Russia is sufficiently circumscribed and defined as not to infringe the principle of legal certainty. The provisions of the first part of criterion (g), as amended, are moreover sufficiently clear, precise and foreseeable as to determine the persons to whom those provisions are intended to apply. Next, they form part of a legal framework that is clearly delimited by the objectives pursued by the legislation governing the restrictive measures at issue. Finally, it cannot be argued that that criterion does not comply with the principle of legality inasmuch as the first part of criterion (g), as amended, was introduced by an act of general application adopted under Article 29 TEU.

In the light, in the third place, of the alleged breach of the principle of proportionality, the Court observes that the Council's approach, which consists in widening the circle of persons subject to the restrictive measures at issue, having regard to the worsening of the situation in Ukraine, in order to achieve the objectives pursued, is based on the progressive impairment of rights according to the

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[102] Article 2(1)(a) of Decision 2014/145/CFSP.

[103] Article 2(1)(d) of Decision 2014/145/CFSP.

effectiveness of the measures. By adopting criterion (g), as amended, the Council aims to exploit the influence that that category of persons likely to exert on the Russian regime by pushing them to put pressure on that government so that it might alter its policy with regard to Ukraine. The adoption of the first part of criterion (g), as amended, was therefore appropriate in order to achieve the objectives pursued by the restrictive measures, and necessary in order to implement the objectives referred to in Article 21 TEU.

In so far as concerns, in the fourth and last place, the plea alleging error of assessment under criterion (a) of Decision 2014/145, the Court finds that the items of evidence adduced by the Council show that Bank Rossiya, in which the applicant is a shareholder through the companies Volga Group and Transoil, made investments in various areas in Crimea, which contribute to the implementation of the policy of annexation of that region of Ukraine by the Russian Federation. In that connection, the Court observes that even with 10.323% of the shares in Bank Rossiya, the applicant is that bank's second biggest shareholder. Furthermore, as the items of evidence adduced by the Council show, Bank Rossiya is known for being a banking institution that is very close to the entourage of Mr Putin. In the light of the foregoing, the Court finds that G.N. Timchenko can be regarded as supporting actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine within the meaning of criterion (a).

Lastly, in so far as concerns the spouse of G.N. Timchenko, the Court finds, in the light of the items of evidence adduced by the Council, that, as a founder and member of the board of trustees of the Timchenko Foundation, E.P. Timchenko is fully involved in the administration thereof. It notes, moreover, that G.N. Timchenko involved Volga Group undertakings in the activities of the foundation, by providing the latter with financial and logistical support, along with support in maintaining relationships, during the health crisis linked to the COVID-19 pandemic. On an operational level, that businessperson thus created synergies between the undertakings in his group and the foundation in order to supplement the actions of Russia's public services. In the light of the institutional roles played by Mr and Mrs Timchenko in the foundation and their investment in the operation thereof, the Court finds that there exists an association between the two spouses, within the meaning of the relevant provisions of Decision 2014/145.

Judgment of the General Court (First Chamber), 30 April 2025, SBK Art v Council, T-102/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures taken in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Inclusion and maintenance of the applicant's name on the list – Concept of 'association' – Article 2(1), *in fine*, of Decision 2014/145/CFSP – Article 3(1), *in fine*, of Regulation (EU) No 269/2014 – Obligation to state reasons – Rights of the defence – Error of assessment – Proportionality – Plea of illegality

In its judgment, the General Court dismisses the action for annulment brought by the applicant company against the acts by way of which its name was included, on 16 December 2022, [104] and then

[104] Council Decision (CFSP) 2022/2477 of 16 December 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 322 I, p. 466) and Council Implementing Regulation (EU) 2022/2476 of 16 December 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 322 I, p. 318).

maintained, in 2023 [105] and 2024, [106] by the Council of the European Union, on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. This case affords the Court the opportunity, inter alia, to rule on the horizontal issue of the application of the derogations provided for in Regulation No 269/2014 [107] to the sale of a company established outside the European Union which holds frozen funds in the European Union.

This judgment arises in the context of a package of restrictive measures adopted by the European Union in response to the military aggression launched by the Russian Federation against Ukraine on 24 February 2022. The applicant is a limited liability company governed by Russian law and established in Russia whose name was included on the lists at issue as an entity associated [108] with Sberbank, a company included on those lists as an entity financially supporting the Government of the Russian Federation and as an entity involved in an economic sector providing a substantial source of revenue to it.

In support of its action for annulment, the applicant alleges, inter alia, that the Council made an error of assessment as regards the application of the association criterion.

Findings of the Court

As a preliminary point, it should be noted that the applicant claims that it ceased to be a subsidiary of Sberbank on 31 October 2022, when it was sold by the subsidiaries of Sberbank which owned it to an Emirati investor. It therefore maintains that, on the dates on which its name was included and maintained on the lists at issue, [109] it was no longer a subsidiary of Sberbank.

The applicant does not deny that it was established in 2021 for the purpose of holding the depositary receipts and convertible bonds held by Sberbank in the Netherlands-based Fortenova Group TopCo, receipts and bonds that Sberbank transferred to the applicant on 5 April 2022. However, the Council submits that the sale has no effect in the European Union, since it was not authorised by a competent national authority in accordance with the derogation provided for in Article 6b(2b) of Regulation No 269/2014. The depositary receipts and convertible bonds held by the applicant were frozen immediately upon the inclusion of Sberbank's name on the lists at issue, on 21 July 2022, pursuant to Article 2 of Regulation No 269/2014.

The Court finds in that regard that, in accordance with the definition of 'freezing of funds' set out in Article 1(f) of Regulation No 269/2014, the depositary receipts and convertible bonds held by the applicant could no longer – as from the inclusion of Sberbank's name on the lists at issue – be moved or altered in any way that would have resulted in any change in their ownership or any other change that might have enabled them to be used. Those funds and economic resources could therefore be released only if Sberbank were removed from the lists at issue or if one of the derogations provided

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105 Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 134) and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 75 I, p. 1); Council Decision (CFSP) 2023/1767 of 13 September 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 104) and Council Implementing Regulation (EU) 2023/1765 of 13 September 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 3).

106 Council Decision (CFSP) 2024/847 of 12 March 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 2024/847) and Council Implementing Regulation (EU) 2024/849 of 12 March 2024 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 2024/849).

107 Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6).

108 Article 2(1) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Decision (CFSP) 2022/329.

109 Namely 16 December 2022 and on the date of adoption of the maintaining acts in 2023 and 2024.

for in Regulation No 269/2014 were applied, in particular the derogation specifically laid down for Sberbank in Article 6b(2b) of that regulation, as amended by Regulation 2022/330. [110]

In the present case, the Court observes, first of all, that no authorisation was sought from the competent national authority of the Netherlands in connection with the sale of the applicant to the Emirati investor. It then points out that that sale would result in the transfer of funds located within the territory of the European Union and that, in the light of the scope of Article 17 of Regulation No 269/2014, that regulation was therefore applicable to the sale in question.

As regards the derogation referred to in Article 6b(2b) of Regulation No 269/2014, the Court finds that that derogation applies to the sale of proprietary rights directly or indirectly owned by Sberbank in a legal person, entity or body established in the European Union, such as the relevant depositary receipts and convertible bonds in Fortenova Group TopCo.

Moreover, the derogations are intended to define clearly the situations in which the entities included on the lists at issue may apply to the competent national authorities for authorisation to sell frozen assets and, in so doing, are intended to ensure the effectiveness of the restrictive measures. Accordingly, the ownership of frozen funds cannot be transferred by natural or legal persons whose name is included on the lists at issue to other persons outside the European Union, without recourse to a derogation. If such a transfer were possible, the effects of the restrictive measures would be rendered nugatory. It follows that the transfer by Sberbank to an Emirati investor of the depositary receipts and convertible bonds held within the European Union by the applicant in Fortenova Group TopCo and frozen since the inclusion of Sberbank's name on the lists at issue, without authorisation from a competent national authority, is contrary to the provisions of Regulation No 269/2014 and must be regarded as having no effect under EU law.

Therefore, against that background, the fact that the applicant continues to hold the depositary receipts and convertible bonds in Fortenova Group TopCo – receipts and bonds that were frozen following the inclusion of Sberbank's name on the lists at issue – demonstrates the existence of common interests between the applicant and Sberbank.

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[110] Article 6b(2b) of Regulation No 269/2014: 'By way of derogation from Article 2, the competent authorities of a Member State may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources to the entity listed under entry number 108 in Annex I, after having determined that the funds or economic resources are necessary for the completion, by 31 October 2022, of an ongoing sale and transfer of proprietary rights directly or indirectly owned by that entity in a legal person, entity or body established in the Union.' See also, in that regard, Article 2(15) of Decision 2014/145, as amended by Decision (CFSP) 2022/329.

XIII. BUDGET AND SUBSIDIES OF THE EUROPEAN UNION: OWN RESOURCES

Judgment of the General Court (Tenth Chamber, Extended Composition), 9 April 2025, Czech Republic v Commission, T-329/23

Link to the full text of the judgment

Own resources of the European Union – Financial liability of the Member States – Obligation for Member States to make own resources available to the Commission – Payment to the Commission of amounts corresponding to non-recovered own resources – Import duties – Imports of textiles, footwear and sunglasses from Asia – Customs value – No undervaluation – No obligation to lodge a security before release – Unjustified enrichment on the part of the European Union

Hearing an action for unjust enrichment of the European Union, which it upholds, the General Court rules on a novel question concerning, first, the examination of an action brought by a Member State on the basis of alleged unjust enrichment of own resources in the area of customs and, second, the taking into consideration of a statistical value as the basis for calculating the customs value of the goods.

Following the abolition, as from 1 January 2005, of all quotas on imports of textiles and clothing from countries which are members of the World Trade Organisation (WTO), the European Union was exposed to a very large quantity of imports of textiles and footwear from Asia, and in particular from China, and to a risk of an undervaluation of the customs value of those imports. In response to that risk, the priority control action [111] 'Discount' ('PCA Discount'), to which all Member States had subscribed, provided for more in-depth customs controls and targeted imports of certain textile products, footwear and sunglasses from China, Thailand and Vietnam with a low customs value. In the context of that action, risk thresholds were set. They allowed Member States' customs authorities to detect particularly low values declared on import and, consequently, imports at a significant risk of their customs value being undervalued. To that end, 20 Integrated Tariff of the European Union codes were created and, for each of those codes, a 'cleaned average price' ('CAP') was determined by the European Commission. Next, an average was calculated for the entire European Union based on the arithmetical average of the CAPs of all the Member States, and abnormally high or low values were excluded. Finally, the 'lowest acceptable price' ('the LAP'), corresponding to 50% of the CAP, was calculated and used as a risk threshold.

From 10 to 14 November 2014, the Commission undertook an inspection mission to the Czech Republic relating to the Czech Republic's implementation of the PCA Discount. Following that mission, the Commission sent the Czech authorities a report in which it expressed reservations on the implementation of that operation. Specifically, it concluded that there had been no effective verification of all the customs declarations concerned and that all the goods had been released without a request for a security, despite there being reasonable doubts that the customs value of those goods had been undervalued. According to the Commission, that had resulted in a loss of traditional own resources of the European Union for which the Czech authorities were responsible, which was equal to the difference between the customs duty calculated on the basis of the declared customs value and the customs value calculated on the basis of the LAP. Throughout the exchanges between the Czech Republic and the Commission, in which the Commission did not accept the evidence provided by that Member State, the Commission regularly insisted that the Czech Republic make available to the EU budget, first, the difference between the customs duty calculated on the basis of the declared customs value and the duty calculated on the basis of the LAP, then, the difference between the customs duty calculated on the basis of the declared customs value and the

[111] Pursuant to Article 13(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1; 'the Community Customs Code').

duty calculated on the basis of the CAP (rather than the LAP). Although it objected on a number of occasions, the Czech Republic, subject to conditions, made available to the EU budget the amounts resulting from the calculations of the differences referred to above. On 22 June 2020, a partial set-off of the sum paid was made in favour of the Czech Republic.

On 15 June 2023, the Czech Republic brought the present action alleging unjust enrichment of the European Union.

Findings of the Court

In the first place, the Court recalls the rules of evidence applicable to an action for damages based on unjust enrichment of the European Union. According to the case-law of the Court of Justice, in an action of that nature brought by a Member State which has made available to the Commission an amount of the European Union's own resources, expressing reservations as to the validity of the Commission's position, it is for the General Court to assess, in particular, whether the impoverishment of the Member State having the status of an applicant, which is equivalent to making that amount available to the Commission, and the corresponding enrichment of the Commission, are justified by the Member State's obligations under EU law governing the European Union's own resources or, on the contrary, whether no such justification exists. [112]

Accordingly, it is for the Member State to demonstrate that it was not required, under the EU rules governing the system of own resources, to make available to the Commission the amount of own resources which are the subject of the dispute and that it has complied with those obligations. The burden of proof thereby placed on the Member State does not, however, mean that the Commission may confine itself to stating, in a general manner and without supporting evidence, that the matters raised in that context by the Member State are insufficient.

In the second place, as regards the relevance of the statistical value as a basis for estimating the customs value, the Court notes that the Commission submits, in essence, that, as long as the declared customs value is below the LAP, it is unacceptable and, consequently, that the lodging of a security must be requested by the national authorities before release. The Court finds that such a situation, according to which any customs value below the LAP must in principle be rejected, irrespective of the extent of the doubts remaining, or not, after verifications and checks carried out by the customs authorities, fails to have regard to the margin of discretion enjoyed by the Member States in carrying out customs controls and the customs legislation which lays down a specific procedure in the event of a challenge to the declared customs value.

Consequently, the Court finds that a statistical value, such as the LAP, can only be used as a risk analysis tool, that is to say, a tool for detecting on the basis of risk profiles those imports likely to be undervalued which require verification, not for determining their customs value.

In the third and last place, in the context of an assessment of the Czech customs authorities' actual possibilities to determine a higher customs value, the Court examines whether, by applying the secondary methods [113] in order to determine the customs value, those authorities could have arrived at a higher customs value which was higher than the transaction value [114] and whether, therefore, lodging a security before the release of the goods concerned would have contributed to protecting the financial interests of the European Union.

In that context, it should be recalled that the objective of a security is to enable the customs authorities, first, to authorise the release of the goods while continuing to examine them and the documentation accompanying them and, second, to prevent the situation where a potential customs debt resulting from such an examination is no longer recoverable. It follows that it is only where the customs authorities of a Member State have information enabling them to calculate an amount of

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112 See, to that effect, judgment of 9 July 2020, *Czech Republic* v *European Commission* (C-575/18 P, EU:C:2020:530, paragraph 83).

113 Laid down in Articles 30 to 31 of the Community Customs Code.

114 Under Article 29 of the Community Customs Code.

customs duties higher than that collected on the basis of the declared customs value and, therefore, to establish an additional entitlement to own resources in favour of the European Union that lodging a security contributes to protecting the financial interests of the European Union. In that regard, the Court notes that a statistical value, such as the LAP, is not used to assess the customs value of the goods, not even in the context of determining the value by the residual method.

Therefore, and given that the Community Customs Code [115] and the case-law rule out the use of arbitrary or fictitious customs values, the Court finds that there is nothing in the file to support the conclusion that the application of the residual method [116] would have resulted in the collection of an additional amount of customs duties and thereby of the own resources of the European Union.

Therefore, the Court concludes that the Czech Republic was not required, under the EU rules governing the system of own resources, to make available to the Commission the amount of own resources which is the subject matter of the dispute, ordering the Commission to repay that amount to the Member State concerned.

115 Article 30(2) of the Community Customs Code.

116 As provided for in Article 31 of the Community Customs Code.