COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

Monthly Case-Law Digest
May 2025

I. INSTITUTIONAL PROVISIONS

1. ACCESS TO DOCUMENTS

Judgment of the General Court (Grand Chamber), 14 May 2025, Stevi and The New York Times v Commission, T-36/23

Link to the full text of the judgment

Access to documents – Regulation (EC) No 1049/2001 – Documents relating to the text messages exchanged between the President of the Commission and the chief executive officer of the pharmaceutical company Pfizer – Refusal to grant access – Presumption of veracity attached to the declaration of non-possession of documents – Lack of plausible explanations making it possible to determine the reasons for the non-existence or non-possession – Retention of documents – Principle of good administration

Sitting as the Grand Chamber, the General Court annuls the decision of the European Commission of 15 November 2022 [1] concerning an application for access to all text messages exchanged between the President of the Commission and the chief executive officer of the pharmaceutical company Pfizer between 1 January 2021 and 11 May 2022 ('the contested decision'). The Court specifies, first, the legitimate expectations as to the explanations provided by an institution in the event of rebuttal of the presumption of veracity attaching to its declaration concerning the non-existence or non-possession of the requested documents. Second, it clarifies the Commission's obligations when processing an application for access to documents, in the light of the principle of good administration.

In May 2022, Ms Matina Stevi, a journalist employed by the daily newspaper *The New York Times*, applied to the Commission, on the basis of Regulation No 1049/2001, for access to all text messages exchanged between the President of the Commission and the chief executive officer of the pharmaceutical company Pfizer between 1 January 2021 and 11 May 2022. The Commission stated that it was not in a position to fulfil that request since it did not hold the requested documents. The representative of Ms Stevi and The New York Times Company (applicants) submitted a confirmatory application for access to the documents.

In November 2022, the Commission sent Ms Stevi the contested decision, by which it informed her that, since it did not hold any documents corresponding to the description given in the initial application, it was not in a position to grant that application.

Subsequently, the applicants lodged an action for annulment of the contested decision.

Findings of the Court

In the context of its assessment, the Court first examines the third plea alleging infringement of the principle of good administration, in that the Commission refused to grant the application for access submitted by Ms Stevi, confining itself to declaring that it did not hold the requested documents, without providing any explanation as to why those documents could not be found.

In the first place, the Court recalls that, where an institution states that a document does not exist or that it is not in possession of it in the context of an application for access, the non-existence or non-possession of that document is presumed, in accordance with the presumption of veracity attaching to that statement. The Court specifies that the expression 'possession' or 'holding' cannot be limited

[1] Decision C(2022) 8371 final of the European Commission of 15 November 2022 adopted pursuant to Article 4 of the Implementing Rules to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

to the possession or holding of documents by the institution at the time when it responds to the confirmatory application. The exercise of the right of access to a document would be rendered devoid of purpose if that institution could, in order to escape its obligations, simply claim that the requested documents could not be found. The Court also recalls that the said presumption may be rebutted on the basis of relevant and consistent evidence produced by the applicant for access. Moreover, it states that if that presumption is rebutted and the institution may no longer rely on it, it is for the institution to prove the non-existence or lack of possession of the documents requested by providing plausible explanations enabling the reasons for such non-existence or lack of possession to be established.

In the case at hand, the Court considers that the applicants have produced relevant and consistent evidence demonstrating the existence of the requested text messages. Thus, the applicants have succeeded in rebutting the presumption of non-existence and, consequently, of non-possession of the requested documents.

In the second place, the Court recalls that the effective exercise of the right of access to documents, which stems from the requirement of transparency, requires that the institution concerned, in so far as possible and in a non-arbitrary and predictable manner, draw up and retain documents relating to its activities over time, in accordance with the obligation of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. Likewise, the duty to act diligently, which is inherent in the principle of good administration and which requires the EU administration to act with care and caution, implies that that administration should conduct searches for the documents to which access is requested with all possible care, in order to dispel the doubts which exist and to clarify the situation.

Consequently, where the Commission can no longer rely on the presumption of veracity attaching to its declaration that it is not in possession of the requested documents, it is obliged, in accordance with the principle of transparency and the duty to act diligently, to provide plausible explanations enabling the applicant for access – as well as the Court – to understand why the requested documents, which existed or were supposed to have existed in the past, could not be found.

The Court holds that the Commission did not provide, either in the contested decision or in the present proceedings, any plausible explanation as to why it had not been able to find the requested documents. First, it did not specify which types of searches had allegedly been carried out or which document storage locations might have been consulted. Second, it is not clear from the Commission's explanations whether the requested text messages still exist or whether they have been deleted. Third, the Commission cannot rely solely on the absence of registration in its system for managing the requested documents, on the ground that the requested text messages did not contain important information which was not short-lived or which involved follow-up by it or one of its services, to establish that it did not hold the said documents, without any other explanation as to why the said text messages were not deemed to contain important information which was not short-lived or involving follow-up by it or one of its services.

The Court concludes from this that, by not providing any plausible explanation enabling it to understand why it had been unable to find the requested documents, the Commission failed to fulfil its obligations when processing the application for access to documents. It thus breached the principle of good administration laid down in Article 41 of the Charter of Fundamental Rights. Accordingly, the Court upholds the third plea in law and annuls the contested decision.

2. IMMUNITIES ENJOYED BY MEMBERS OF THE EUROPEAN PARLIAMENT

Order of the General Court (Seventh Chamber), 5 May 2025, EC v Parliament, T-248/24

Link to the full text of the order

Action for annulment – Law governing the institutions – Member of Parliament – Privileges and immunities – Refusal of the Parliament to accede to a request for privileges and immunities to be defended – Member found in the act of committing an offence – Act not open to challenge – Inadmissibility

By its order, the General Court dismisses as inadmissible an action for annulment [2] brought by a Member of the European Parliament against the act by which the European Parliament refused to grant her request for her privileges and immunities to be defended. It thus holds that, where a Member is found in the act of committing an offence, such a refusal is not open to challenge by means of an action for annulment, since it does not produce binding legal effects.

The applicant was a Member of Parliament from 2014 to 2024. As she was not re-elected at the European elections in June 2024, her term of office ended on 16 July 2024. On 9 December 2022, the applicant was arrested in Belgium, where she was detained pending trial for five months, four months of which were spent in prison. Her residence was searched and preventative measures were taken against her without her immunity being waived.

On 1 June 2023, the applicant lodged with the President of the Parliament a request for the defence of her privileges and immunities on the basis of the Rules of Procedure of the Parliament [3] and Protocol No 7 on the Privileges and Immunities of the European Union. [4] In that request, she alleged infringement of her immunity as a result of her arrest on 9 December 2022 and the measures subsequently taken against her.

On 11 March 2024, the President of the Parliament announced in plenary session that the Committee on Legal Affairs, to which the applicant's request had been forwarded, had concluded that that request was inadmissible in direct application of Protocol No 7, under which immunity cannot be claimed when a Member is found in the act of committing an offence.

Findings of the Court

In order to determine whether the act of the Parliament, by which it refused to defend the privileges and immunities of the applicant, is a challengeable act for the purposes of Article 263 TFEU, the Court examines whether that act is capable of producing legal effects.

As a preliminary point, the Court notes that the applicant, who was elected in a Member State other than Belgium and was arrested, detained and prosecuted in Belgium, must be regarded as relying solely on the immunity, or inviolability, provided for in point (b) of the first paragraph of Article 9 of Protocol No 7. [5] In addition, the waiver of the applicant's immunity [6] had not been requested because

---

2 Article 263 TFEU.

3 Rule 5(2) and Rules 7, 8 and 9 of the Rules of Procedure of the Parliament applicable to the ninth parliamentary term (2019-2024) (OJ 2019 L 302, p. 1; 'the Parliament's Rules of Procedure').

4 Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union (OJ 2010 C 83, p. 266; 'Protocol No 7').

5 Under that provision, during the sessions of the Parliament, its Members are to be exempt, in the territory of any Member State other than their own, from any measure of detention and from legal proceedings.

6 The third paragraph of Article 9 of protocol No 7 provides that immunity cannot be claimed when a member is found in the act of committing an offence and cannot prevent the Parliament from exercising its right to waive the immunity of one of its Members.

the authorities argued that this was a case of a Member being found in the act of committing an offence.

In the first place, as regards the immunity provided for in Article 9 of Protocol No 7, the Court distinguishes between two situations.

On the one hand, the Parliament's power to defend immunity may derive from point (a) of the first paragraph of Article 9 of Protocol No 7, [7] in so far as that provision implies that the extent and scope of the immunity enjoyed by Members of the European Parliament in their national territory are determined by the various national laws to which it refers. That implies that, where the law of a Member State provides for a procedure for the defence of the immunity of members of the national parliament, enabling that parliament to intervene with the judicial or police authorities, the same powers are conferred on the Parliament in relation to Members of the European Parliament elected for that State.

On the other hand, point (b) of the first paragraph of Article 9 of Protocol No 7 does not refer to national law and, therefore, cannot be used to establish the Parliament's power to defend the immunity of a Member of the European Parliament. Moreover, the exclusive right of the Parliament to waive the immunity of one of its Members, provided for in the third paragraph of Article 9 of Protocol No 7, cannot be interpreted as conferring on the Parliament exclusive competence to decide, with binding effect, whether or not a Member of the European Parliament enjoyed the immunity provided for in Article 9 of Protocol No 7 in respect of the facts alleged against him or her. Indeed, the negative wording of the third paragraph of Article 9 of Protocol No 7 provides for only two limits to the immunity, or inviolability. First, when a Member is found in the act of committing an offence, that immunity cannot be invoked and thus can still less be defended. Second, that immunity cannot preclude the Parliament's right to waive it.

In the second place, the Court notes that the preservation of the effectiveness of Article 9 of Protocol No 7 cannot result in the division of powers between the European Union and its Member States under the Treaties being disregarded. Yet that would be the case if it were to be inferred from the third paragraph of Article 9 of Protocol No 7 that the Parliament has exclusive competence to determine, with binding effect, whether or not the judicial proceedings brought against a Member of the European Parliament calls his or her immunity into question, whereas that competence lies, in general, primarily with the authorities conducting legal proceedings.

If the authorities conducting legal proceedings find that the acts alleged against a Member of the European Parliament are covered by the immunity provided for in Article 9 of Protocol No 7, they are generally required, if they wish to continue those proceedings, to request the Parliament to waive that immunity. However, under the third paragraph of Article 9 of Protocol No 7, in the case of a Member being found in the act of committing an offence, those authorities are not obliged to request the waiver of immunity, since, in such a case, immunity cannot be invoked. The examination of compliance with the conditions for concluding that a Member was found in the act of committing an offence thus falls within the exclusive competence of those authorities and accordingly does not depend on the Parliament's opinion.

The Court also states that an interpretation of the third paragraph of Article 9 of Protocol No 7 to the effect that the Parliament has the power to decide whether or not legal proceedings brought against a Member of the European Parliament call into question his or her immunity in every case in which an offence is committed by a Member of the European Parliament without exception, including in the event of a Member being found in the act of committing an offence, would deprive the first part of that provision of its effectiveness.

Consequently, the provisions of point (b) of the first paragraph of Article 9 of Protocol No 7, even in conjunction with those of the third paragraph of Article 9 of that protocol, do not confer any power on the Parliament to adopt a decision to defend privileges and immunities. Thus, in the case of a

---

7 Under that provision, Members of the European Parliament enjoy in their national territory the immunities accorded to members of their parliament.

Member being found in the act of committing an offence, a decision to defend privileges and immunities adopted on the basis of the Parliament's Rules of Procedure cannot produce binding effects vis-à-vis third parties. In those circumstances, the contested act, which refuses to defend the applicant's privileges and immunities, does not constitute an act producing binding legal effects either and cannot therefore be challenged by means of an action for annulment.

II. PROCEEDINGS OF THE EUROPEAN UNION: ACTIONS FOR ANNULMENT

Order of the General Court (Seventh Chamber), 23 May 2025, Novis v Commission, T-179/24

Link to the full text of the order

Action for annulment – European System of Financial Supervision – Investigation in respect of an infringement of EU law – Formal opinion of the Commission on actions necessary to comply with EU law – Article 17(4) of Regulation (EU) No 1094/2010 – Actionable measure – Lack of direct concern – Inadmissibility

Hearing an action for annulment, which it dismisses as inadmissible, on the ground that the applicant is not directly concerned, the Court rules for the first time on whether formal opinions issued by the European Commission, addressed to a national authority on the basis of Article 17(4) of Regulation No 1094/2010 [8] and setting out the necessary action to comply with EU law, may be challenged before the EU Courts. On that occasion, the Court clarifies the legal nature of the acts adopted by the European Insurance and Occupational Pensions Authority (EIOPA) and by the Commission on the basis of Article 17 and, thus, whether those acts may be the subject of an action for annulment.

The applicant, Novis Insurance Company, Novis Versicherungsgesellschaft, Novis Compagnia di Assicurazioni, Novis Poisťovňa a.s., is a life insurance company established in Slovakia and subject to the supervision of the Národná banka Slovenska (Slovak National Bank) ('NBS'). EIOPA had carried out an investigation that sought to determine whether the NBS had exercised its supervisory powers over the applicant in accordance with the Solvency II Directive. [9] At the end of that investigation, EIOPA adopted a recommendation, addressed to the NBS, on actions necessary to comply with the Solvency II Directive; [10] that recommendation was the subject of an action for annulment brought by the applicant before the General Court and registered as Case T-204/24.

On 13 September 2022, the Commission adopted a formal opinion, addressed to the NBS, on actions necessary to comply with the Solvency II Directive ('the contested act'). [11] By that formal opinion, the Commission considered that, as long as that national authority had not adopted supervisory action putting an end to the infringements in a structural and sustainable manner, it would remain in breach of EU law. It finds a persistent infringement of EU law by the NBS and sets out the action to be taken

8 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ 2010 L 331, p. 48).

9 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p .1; 'the Solvency II Directive').

10 Under Article 17(3) of Regulation No 1094/2010.

11 Under Article 17(4) of Regulation No 1094/2010.

by the NBS in order to bring that infringement to an end. According to the Commission, this means adopting, with regard to the applicant, within four months, a final decision entailing supervisory action such as to ensure compliance with EU law, such as a decision to withdraw the applicant's authorisation.

Following that formal opinion, the NBS withdrew the applicant's authorisation.

Findings of the Court

Hearing a plea of inadmissibility raised by the Commission, the Court examines, first of all, whether the contested act constitutes an act which may be the subject of an action for annulment under Article 263 TFEU.

The Court observes that actions for annulment are available in the case of measures or provisions which are intended to have binding legal effects. Although that is not, in principle, the case of opinions, the impossibility of bringing an action for annulment against an opinion does not apply if the contested act, by reason of its content, does not constitute a genuine opinion.

In this respect, in order to determine whether an act produces binding legal effects, it is necessary to examine the substance of that act and to assess its effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution, body, office or agency which adopted it. In addition, the subjective criterion relating to the intention of the author of the act may also be taken into consideration.

As regards the context in which the contested act was adopted and the powers of its author, the Court observes that Article 17 of Regulation No 1094/2010 establishes a 'three-step mechanism' where a national authority is alleged, in its supervisory practices, to have failed to apply or to have applied incorrectly or insufficiently EU law, in particular the Solvency II Directive.

Thus, in the first step, EIOPA investigates, where appropriate, the alleged infringement or non-application of EU law. [12] At the end of that investigation, EIOPA may address to the national authority concerned a 'recommendation setting out the action necessary to comply with Union law'. [13]

In the second step, if the national authority concerned has not complied with EU law within one month from receipt of EIOPA's recommendation, the Commission may issue a 'formal opinion requiring [that authority] to take the action necessary to comply with Union law'. [14]

In the third step, if the national authority concerned does not comply with the formal opinion issued by the Commission within the period of time specified by that opinion and if certain conditions are met, EIOPA may adopt an 'individual decision addressed to [the financial institution concerned] requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice'. [15]

It is thus apparent from the wording of Article 17 of Regulation No 1094/2010 that recommendations issued by EIOPA on the basis of Article 17(3) merely 'set out' the action to be taken, whereas formal opinions issued by the Commission on the basis of Article 17(4) and individual decisions adopted by EIOPA on the basis of Article 17(6) 'require' their respective addressees to take the necessary action.

In addition, the second subparagraph of Article 17(7) of Regulation No 1094/2010 provides that, when taking action in relation to issues which are subject to a formal opinion issued by the Commission or to an individual decision of EIOPA, the national authorities concerned 'shall comply with the formal opinion or the decision, as the case may be'. However, neither that provision nor any other provision of that regulation provides that those authorities are required to comply with recommendations issued by EIOPA.

---

12 Under the first subparagraph of Article 17(2) of Regulation No 1094/2010.

13 Under the first subparagraph of Article 17(3) of Regulation No 1094/2010.

14 Under the first subparagraph of Article 17(4) of Regulation No 1094/2010.

15 Under the first subparagraph of Article 17(6) of Regulation No 1094/2010.

In the light of all the foregoing considerations, the Court holds that recommendations issued by EIOPA on the basis of Article 17(3) of Regulation No 1094/2010 are mere recommendations and are not themselves intended to produce binding legal effects vis-à-vis the national authority concerned or the financial institution concerned. By contrast, formal opinions issued by the Commission on the basis of Article 17(4) of that regulation and individual decisions adopted by EIOPA on the basis of Article 17(6) of that regulation produce binding legal effects vis-à-vis those to whom they are addressed.

In those circumstances, and also taking into account the content of the contested act, its wording and the intention of its author, the Court concludes, in the present case, that the contested act produces binding legal effects vis-à-vis the NBS, in so far as it requires it to adopt, with regard to the applicant, within a period of four months, a final decision entailing supervisory action such as to ensure compliance with EU law. Accordingly, contrary to what the Commission maintains, that act may be the subject of an action for annulment under Article 263 TFEU.

Second, the Court examines whether the applicant has standing to bring proceedings and, in particular, whether it is directly affected by the contested act. The Court observes that the condition that a natural or legal person must be directly concerned by the act being challenged requires two cumulative criteria to be met, namely, first, that the contested act must directly affect the legal situation of that person and, second, that it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules.

In the present case, the contested act requires the NBS to adopt a final decision with regard to the applicant, within four months, entailing supervisory action such as to ensure compliance with EU law. It follows that the contested act leaves no discretion to the NBS as regards the very principle of the adoption of a decision and supervisory action within a specified period.

By contrast, the Court takes the view that the contested act undeniably leaves the NBS a discretion as regards the nature of the supervisory action to be adopted. That act neither requires nor prohibits the NBS from taking specific action. In particular, the Commission did not require the NBS to withdraw the applicant's authorisation. In that context, the NBS's discretion was limited only by the applicable legal provisions, which allow, in certain cases, and require, in other cases, the supervisory authority of the home Member State to withdraw the authorisation of an insurance or reinsurance undertaking.

The Court infers from this that the NBS retained a discretion in defining the action to be taken with regard to the applicant and that, therefore, only the action taken by the NBS could directly affect the applicant. Thus, there is no direct connection between the contested act and the effects of the implementing measures subsequently taken by the NBS with regard to the applicant. The Court concludes that, at the very least, the second cumulative criterion required, under the condition relating to whether the applicant is directly concerned, is not satisfied in the present case, with the result that that condition is not satisfied. Accordingly, it dismisses the action as inadmissible.

Order of the General Court (Seventh Chamber), 23 May 2025, Novis v EIOPA, T-204/24

Link to the full text of the order

Action for annulment – European System of Financial Supervision – Investigation in respect of an infringement of EU law – Recommendation of EIOPA on actions to be taken to comply with EU law – Article 17(3) of Regulation (EU) No 1094/2010 – Act not open to challenge – Inadmissibility

Hearing an action for annulment, which it dismisses as inadmissible, on the ground that there is no actionable measure, the General Court rules for the first time on whether recommendations issued by the European Insurance and Occupational Pensions Authority (EIOPA), addressed to a national

authority on the basis of Article 17(3) of Regulation No 1094/2010 [16] and setting out the action to be taken to comply with EU law, may be challenged before the EU Courts. On that occasion, the Court clarifies the legal nature of the acts adopted by EIOPA and by the Commission on the basis of Article 17 and, thus, whether those acts may be the subject of an action for annulment.

The applicant, Novis Insurance Company, Novis Versicherungsgesellschaft, Novis Compagnia di Assicurazioni, Novis Poisťovňa a.s., is a life insurance company established in Slovakia and subject to the supervision of the Národná banka Slovenska (Slovak National Bank) ('the NBS'). EIOPA had carried out an investigation that sought to determine whether the NBS had exercised its supervisory powers over the applicant in accordance with the Solvency II Directive. [17] At the end of that investigation, EIOPA adopted a recommendation, addressed to the NBS, on actions necessary to comply with the Solvency II Directive. [18]

That act finds an infringement of EU law by the applicant and by the NBS and makes two recommendations addressed to the NBS setting out the action to be taken by the NBS in order to bring that infringement to an end. That action consists, in essence, in reviewing, within 45 days, the applicant's situation and adopting, with regard to the applicant, a 'full/integrated' strategy resulting either in the recovery of all infringements or in the withdrawal of its authorisation.

On 13 September 2022, the Commission adopted a formal opinion, addressed to the NBS, on actions necessary to comply with the Solvency II Directive. [19] That opinion was the subject of an action for annulment brought by the applicant before the General Court and registered as Case T-179/24.

Following that formal opinion, the NBS withdrew the applicant's authorisation.

Findings of the Court

Hearing a plea of inadmissibility raised by EIOPA, the Court examines at the outset whether the contested act constitutes an act which may be the subject of an action for annulment under Article 263 TFEU.

The Court observes that actions for annulment are available in the case of measures or provisions which are intended to have binding legal effects. Although that is not, in principle, the case of recommendations, the impossibility of bringing an action for annulment against a recommendation does not apply if the contested act, by reason of its content, does not constitute a genuine recommendation.

In this respect, in order to determine whether an act produces binding legal effects, it is necessary to examine the substance of that act and to assess its effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution, body, office or agency which adopted it. In addition, the subjective criterion relating to the intention of the author of the act may also be taken into consideration.

As regards the context in which the contested act was adopted and the powers of its author, the Court observes that Article 17 of Regulation No 1094/2010 establishes a 'three-step mechanism' where a national authority is alleged, in its supervisory practices, to have failed to apply or to have applied incorrectly or insufficiently EU law, in particular the Solvency II Directive.

Thus, in the first step, EIOPA investigates, where appropriate, the alleged infringement or non-application of EU law. [20] At the end of that investigation, EIOPA may address to the national authority concerned a 'recommendation setting out the action necessary to comply with Union law'. [21]

---

16 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ 2010 L 331, p. 48).

17 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1; 'the Solvency II Directive').

18 Under Article 17(3) of Regulation No 1094/2010.

19 Under Article 17(4) of Regulation No 1094/2010.

In the second step, if the national authority concerned has not complied with EU law within one month from receipt of EIOPA's recommendation, the Commission may issue a 'formal opinion requiring [that authority] to take the action necessary to comply with Union law'. [22]

In the third step, if the national authority concerned does not comply with the formal opinion issued by the Commission within the period of time specified by that opinion and if certain conditions are met, EIOPA may adopt an 'individual decision addressed to [the financial institution concerned] requiring it to take all necessary action to comply with its obligations under Union law, including the cessation of any practice'. [23]

It is thus apparent from the wording of Article 17 of Regulation No 1094/2010 that recommendations issued by EIOPA on the basis of Article 17(3) merely 'set out' the action to be taken, whereas formal opinions issued by the Commission on the basis of Article 17(4) and individual decisions adopted by EIOPA on the basis of Article 17(6) 'require' their respective addressees to take the necessary action.

In addition, the second subparagraph of Article 17(7) of Regulation No 1094/2010 provides that, when taking action in relation to issues which are subject to a formal opinion issued by the Commission or to an individual decision of EIOPA, the national authorities concerned 'shall comply with the formal opinion or the decision, as the case may be'. However, neither that provision nor any other provision of that regulation provides that those authorities are required to comply with recommendations issued by EIOPA.

In the light of all the foregoing considerations, the Court holds that recommendations issued by EIOPA on the basis of Article 17(3) of Regulation No 1094/2010 are mere recommendations and are not themselves intended to produce binding legal effects vis-à-vis the national authority concerned or the financial institution concerned. By contrast, formal opinions issued by the Commission on the basis of Article 17(4) of that regulation and individual decisions adopted by EIOPA on the basis of Article 17(6) of that regulation produce binding legal effects vis-à-vis those to whom they are addressed.

Thus, like recommendations issued by the European Banking Authority on the basis of a provision drafted in terms identical to those of Article 17(3) of Regulation No 1094/2010, [24] such recommendations do not produce binding legal effects, with the result that they cannot be the subject of an action for annulment under Article 263 TFEU.

In those circumstances, and also taking into account the content of the contested act, its wording and the intention of its author, the Court concludes, in the present case, that the contested act does not produce binding legal effects, with the result that it cannot be the subject of an action for annulment. The Court therefore dismisses the action as inadmissible.

---

20 Under the first subparagraph of Article 17(2) of Regulation No 1094/2010.

21 Under the first subparagraph of Article 17(3) of Regulation No 1094/2010.

22 Under the first subparagraph of Article 17(4) of Regulation No 1094/2010.

23 Under the first subparagraph of Article 17(6) of Regulation No 1094/2010.

24 See, to that effect, judgment of 25 March 2021, Balgarska Narodna Banka (C-501/18, EU:C:2021:249, paragraphs 79 and 80).

III. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Fifth Chamber), 8 May 2025, Zimir, C-662/23

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – Directive 2013/32/EU – Article 4(1) and point (b) of the third subparagraph of Article 31(3) – Procedures for granting international protection – Extension by the determining authority of the six-month examination period – Large number of applications for international protection lodged simultaneously – Concept – Consideration of other circumstances

On a request for a preliminary ruling from the Raad van State (Council of State, Netherlands), the Court of Justice specifies the conditions under which the authority responsible for an application for international protection may make use of the option, provided in point (b) of the third subparagraph of Article 31(3) of Directive 2013/32, [25] to extend the six-month period laid down for the examination of such an application. That extension is permitted when a large number of third-country nationals simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within that six-month time limit.

On 10 April 2022, X, a Turkish national, lodged an application for international protection in the Netherlands. On 21 September 2022, the competent Netherlands authority adopted a decree [26] extending by nine months the statutory six-month time limit laid down for the examination of applications for the grant of temporary asylum residence permits. On 13 October 2022, X served a notice of default on that authority for failure to take a decision within the six-month time limit. With no response from that authority in the two weeks following that notice of default, X brought an action before the rechtbank Den Haag (District Court, The Hague, Netherlands).

In January 2023, the District Court of the Hague declared X's action well founded and held that the competent authority had unlawfully extended the time limit for the examination of applications for the grant of temporary asylum residence permits. Furthermore, it ordered that authority to conduct an initial hearing with the applicant within eight weeks of the date of the judgment and to take a decision on X's application within eight weeks of that hearing, failing which a penalty payment would be imposed.

Taking the view that point (b) of the third subparagraph of Article 31(3) of the Procedures Directive allows the time limit for examining applications for international protection to be extended not only in the event of a sudden increase in the number of applications, where they are lodged simultaneously, but also in the event of a gradual increase, in order to ensure an adequate and complete examination of those applications, the competent Netherlands authority brought an appeal against that judgment before the Council of State.

The Council of State harbours doubts as to whether the six-month extension of the decision period is lawful and has decided to refer the matter to the Court for a preliminary ruling. It is uncertain, first, as to whether the Procedures Directive allows the decision-making period to be extended where the number of asylum applications increases only gradually. Second, it asks whether the difficulty in practice to conclude the procedure for the examination of applications for international protection within the six-month time limit referred to in that directive can result from circumstances other than a large number of applications lodged simultaneously.

---

25 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180 p. 60) ('the Procedures Directive').

26 Besluit houdende wijzthe van de Vreemdelingencirculaire 2000 (Decree amending the circular on foreign nationals of 2000).

Findings of the Court

In the first place, the Court states that the six-month time limit laid down for the examination of applications for international protection, referred to in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, may be extended by nine months by the determining authority in the event of a significant increase in the number of those applications, within a short period, compared to the normal and foreseeable trend in the Member State concerned, which excludes a situation characterised by a gradual increase in the number of those applications over an extended period.

That provision allows Member States to extend the six-month time limit for the examination of applications for international protection where three cumulative conditions are satisfied, namely (i) the applications for international protection must be lodged 'simultaneously', (ii) those applications must be lodged by 'a large number' of third-country nationals or stateless persons, and (iii) it must then be 'very difficult in practice to conclude the procedure within the six-month time limit'.

Accordingly, first of all, in the absence of a definition of the meaning and scope of the term 'simultaneously' in the Procedures Directive, that term must be interpreted as synonymous with the expression 'concomitantly', which implies, in principle, that a large number of applications are lodged at the same time. Since applications for international protection are in practice rarely lodged at exactly the same time, in order not to deprive point (b) of the third subparagraph of Article 31(3) of any useful effect, the word 'simultaneously' must be understood as meaning 'within a short period'. In contrast, that provision is not intended to cover a gradual increase in the number of such applications over a prolonged period.

Next, the existence of applications lodged by 'a large number' of third-country nationals or stateless persons must be assessed in the light of the usual and foreseeable flow of those applications in the Member State concerned, since the directive does not contain any criteria allowing such a number to be quantified. In order for there to be 'a large number' of applications for international protection lodged 'simultaneously', the determining authority must determine, on the basis of a comparative analysis of numerical data, whether there has been a significant increase in the number of those applications within a short period in relation to the normal and foreseeable trend in the Member State concerned.

Finally, the condition relating to the existence of practical difficulties in concluding, within six months, the processing of a large number of such applications lodged at the same time, must be assessed in the light of the obligations incumbent on the Member States under Article 4(1) of the Procedures Directive. [27] In that regard, in the event of a gradual increase in the number of applications for international protection over a prolonged period, the Member State concerned is required to take measures, in accordance with that provision, to adapt its capacity to process those applications. Accordingly, the duration of the period to be taken into consideration cannot exceed the time needed by a Member State to increase the means made available to the determining authority and to have sufficient capacity to resume processing of those applications. The time needed must therefore be assessed in the light of the time required to recruit and train competent personnel to process applications for international protection received in an adequate and complete manner.

In the second place, the Court states that the difficulty, in practice, of concluding the procedure for the examination of applications for international protection within the six-month time limit, pursuant to point (b) of the third subparagraph of Article 31(3), cannot result from circumstances other than a large number of applications lodged simultaneously, such as a significant backlog of applications or insufficient personnel at the determining authority.

---

27 That provision provides, first, that Member States are to designate for all procedures an authority which will be responsible for an appropriate examination of applications in accordance with that directive and, second, that they are to ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with that directive.

If circumstances other than the large number of applications for international protection lodged simultaneously were accepted to justify an extension of the time limit for examination, that would undermine the Member State's obligations under Article 4(1) of the Procedures Directive.

However, in the case of a significant increase in the number of those applications within a short period in relation to the normal and foreseeable trend in the Member State concerned, it cannot be expected that that Member State will be able immediately to meet the additional personnel needs within the prescribed six-month time limit. In such a situation, Member States must have the necessary time to ensure that the human resources of the determining authority are strengthened. In that regard, point (b) of the third subparagraph of Article 31(3) of the Procedures Directive provides for the possibility of extending the time limit for the examination of applications by a period not exceeding a further nine months.

Consequently, the number of applications for international protection awaiting processing at the time when the significant increase in the number of applications lodged simultaneously occurs cannot in itself constitute a circumstance justifying an extension under that provision. When the number of applications remains continuously high over an extended period, the Member State in question is obliged to provide the determining authority with appropriate means to ensure that it has sufficient processing capacity, in accordance with Article 4(1) of that directive.

IV. APPROXIMATION OF LAWS: EUROPEAN UNION TRADEMARK

Judgment of the General Court (Seventh Chamber), 7 May 2025, RTL Group Markenverwaltung v EUIPO – Örtl (RTL), T-1088/23

Link to the full text of the judgment

EU trade mark – Revocation proceedings – EU figurative mark RTL – Lack of genuine use of the mark – Article 58(1)(a) of Regulation (EU) 2017/1001 – Submission of facts and evidence for the first time before the Board of Appeal – Article 95(2) of Regulation 2017/1001 – Article 27(4) of Delegated Regulation (EU) 2018/625 – Misuse of rights

In its judgment, the Court alters the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO). It provides clarifications on issues relating to the abusive nature of an application for revocation, the exercise by the Board of Appeal of EUIPO of its discretion as regards a refusal to take into account evidence produced for the first time before it other than in the written submissions provided for by Delegated Regulation 2018/625, [28] genuine use of a mark in respect of advertising, promotional and marketing services by an undertaking belonging to a group providing, inter alia, services for the broadcasting of advertisements, and the impact of the reputation of a mark on the assessment of whether that mark has been put to genuine use in connection with other goods or services.

Since 2016, RTL Group Markenverwaltungs GmbH, the applicant, has been the proprietor of the figurative EU mark RTL in respect of various goods and services. [29] In 2021, Marcella Örtl, the

28 Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430 (OJ 2018 L 104, p. 1).

29 The goods and services were in Classes 3, 6, 8, 9, 12, 14, 16, 18, 20, 21, 24, 25, 28, 30, 32, 33, 35, 38, 41, 42, 43 and 45 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

intervener, filed an application for a declaration of revocation [30] on the ground that that mark had not been put to genuine use in connection with the goods or services in respect of which it was registered within a continuous period of five years. The Cancellation Division of EUIPO partially upheld the application in respect of some goods and services.

Hearing an appeal brought by the applicant, the Board of Appeal of EUIPO, first, declared the application for revocation admissible and, secondly, partially annulled the Cancellation Division's decision in so far as that decision had declared the contested mark to be revoked, inter alia, in respect of a subcategory of 'advertising, marketing and promotional services', namely the 'broadcasting of television, radio and electronic media advertising' services, [31] and dismissed the appeal as to the remainder. By its action brought before the General Court, the applicant sought the annulment or, alternatively, the alteration of that decision.

Findings of the Court

In the first place, the Court observes that the grounds for revocation aim to protect the public interest underlying them, which explains why the applicant is not required to demonstrate an interest in bringing proceedings. That analysis is borne out by recital 24 of Regulation 2017/1001 and by the purpose of Article 63(1)(a) of that regulation, which is to allow the broadest possible range of people to challenge an EU trade mark which has not been put to genuine use for a given period of time without requiring them to demonstrate an interest in bringing proceedings. Since an application for revocation may be submitted by 'any natural or legal person' for no use or insufficient use of a mark, the question of whether there has been a misuse of rights is not relevant for the purposes of analysing the admissibility of such an application. Likewise, neither the admissibility or validity of an application for revocation are subject to good faith on the part of the applicant for a declaration of revocation since the revocation for non-use of a mark during the five-year period is a legal consequence imposed by Regulation 2017/1001. [32]

While the applicant relies, in that regard, on the *Sandra Pabst* case, [33] the Court notes that that case was characterised by exceptional circumstances, which are absent in the present case. Unlike the *Sandra Pabst* case, the intervener is not a company that had been artificially established for the sole purpose of filing multiple applications for revocation. Furthermore, the applicant has not demonstrated that the application for revocation, in the present case, was doomed to fail and therefore served only to place an undue burden on it or to put pressure on it. On the contrary, the fact that the intervener intended to use a mark which is likely to cause confusion with the contested mark demonstrates the latter's actual interest in the register of marks being updated in so far as concerns the extent of the monopoly held by the applicant on the contested mark.

Accordingly, the Court rejects the applicant's submission concerning the inadmissibility of the application for revocation due to the alleged abusive nature of that application.

In the second place, the Court recalls the case-law regarding EUIPO's discretion for the purposes of taking into account facts and evidence which are submitted or produced late [34] and stresses that taking into account such facts and evidence must result from an objective, reasoned exercise of that discretion, which it is for the Court to review.

The Court finds that, in the present case, the applicant produced observations and evidence late, with the result that the Board of Appeal had to exercise its discretion in order to decide whether or not it was appropriate to take them into account when making the decision it was called upon to make.

---

30 On the basis of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

31 The other goods and services in respect of which the Cancellation Division's decision was annulled were 'Optical storage discs' in Class 9 and 'On-line social networking services; On-line dating services' in Class 45.

32 See Article 58(1)(a) and Article 64(2) of Regulation 2017/1001.

33 The case that gave rise to the decision of the Grand Board of Appeal of 1 February 2020 (Case R 2445/2017-G, 'the *Sandra Pabst* case').

34 Provided for in Article 95(2) of Regulation 2017/1001 and governed by Article 27(4) of Delegated Regulation 2018/625.

Such an objective, reasoned exercise of that discretion is lacking in the present case, in so far as the Board of Appeal rejected those elements on the sole ground that they had not been produced with one of the written submissions referred to in Delegated Regulation 2018/625, [35] without having examined whether the conditions referred to in Article 27(4) of that regulation were satisfied. The examination of the admissibility of the observations and evidence produced for the first time before the Board of Appeal cannot be limited to the facts and evidence produced with the written submissions referred to in Delegated Regulation 2018/625 since such a limitation does not follow either from Article 95(2) of Regulation 2017/1001 or from Article 27(4) of Delegated Regulation 2018/625.

Consequently, the Board of Appeal made an error in excluding from its examination the observations and evidence produced late by the applicant without exercising the discretion conferred on it.

In the third place, the Court examines whether the evidence submitted by the applicant, relating to the activities of the companies in the group to which it belongs, demonstrates the use of the contested mark not only in respect of the subcategory of broadcasting of advertising services, as noted by the Board of Appeal, but also beyond that subcategory, in respect of the category of 'advertising, promotion and marketing' services as a whole.

First of all, it notes that the applicant demonstrated that the companies in the group to which it belonged had provided advertisers with services relating to the creation and production of advertisements, in particular, television advertisements. Thus, it submitted evidence in relation to services involving a creative contribution from those companies in the design of the advertisements, which were not limited to the mere broadcasting of advertising content created by a third party.

Next, it finds that it follows from the evidence produced by the applicant that the latter offered advertisers its services in the field of advertising strategy development in the media it owns, by offering them the possibility of participating in promotional operations created by the group to which it belongs.

Lastly, it rules that, in view of the evidence produced, the companies in the group to which the applicant belongs provided consultancy services relating to the marketing of television advertising, which fall within the scope of consultancy and specialised support services for undertakings seeking to promote their products and services and develop their advertising strategies.

In those circumstances, the Court finds that the evidence produced by the applicant demonstrates that the group to which it belongs provided, under the contested mark and during the relevant period, third parties with advertising, promotion and marketing services, which were not limited to the broadcasting of advertisements but aimed to actively contribute to the development of an advertising strategy for those third parties. Accordingly, it alters the contested decision by rejecting the application for revocation of the contested mark in respect of the advertising, promotion and marketing services in Class 35.

In the last place, the Court states that the very wording and purpose of Article 58(1)(a) of Regulation 2017/1001 make preservation of the rights connected with an EU trade mark conditional on the mark being actually used. It would not be justifiable if a mark which is not used were to obstruct competition and restrict the free movement of goods and the freedom to provide services. Furthermore, the EU Courts have held that the provisions relating to the extended protection conferred on an EU trade mark that has a reputation in the European Union pursue a different objective from those which require proof of genuine use, with the result that those two types of provisions must therefore be interpreted independently. Therefore, assuming that the contested mark in the present case has a reputation in the media sector, that fact alone does not demonstrate that that mark has been put to genuine use in respect of the goods and services in question. Furthermore, neither the unitary character of the EU trade mark nor recital 7 of Delegated Regulation

35 Articles 22, 24 and 26 of Delegated Regulation 2018/625.

2018/625, which concerns only procedural rules, can be usefully relied on by the applicant for the purpose of interpreting the substantive provisions of Regulation 2017/1001.