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OF THE EUROPEAN UNION

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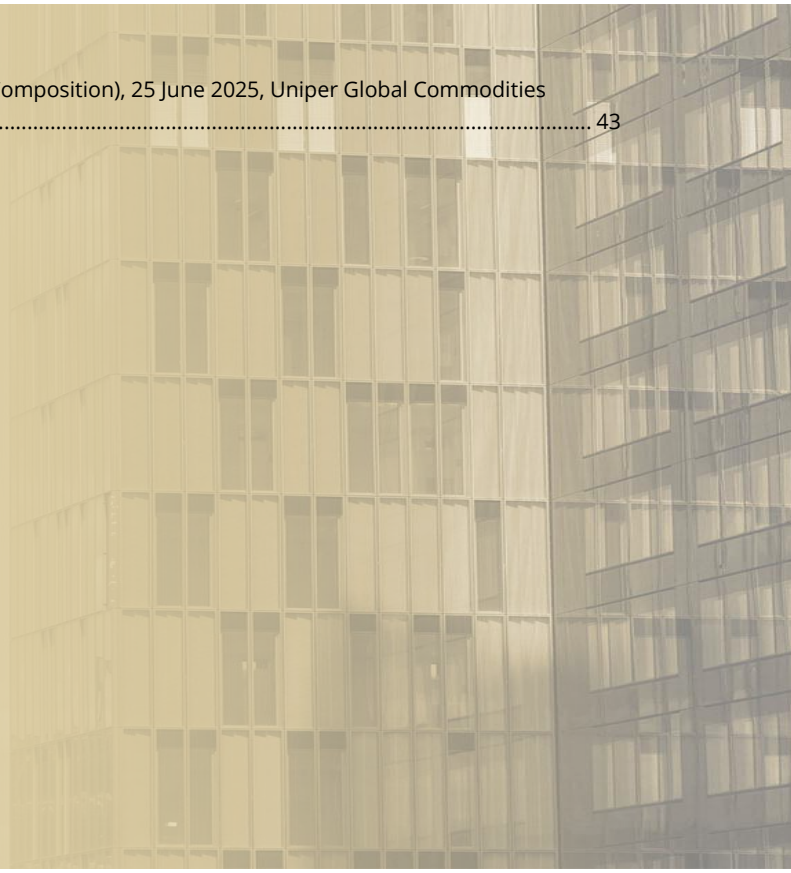

I. INSTITUTIONAL PROVISIONS

1. RIGHT OF PUBLIC ACCESS TO DOCUMENTS

Judgment of the General Court (Seventh Chamber), 4 June 2025, ABLV Bank v ECB, T-100/23

Link to the judgment as published in extract form

Access to documents – Decision 2004/258/EC – Documents relating to the announcement of a United States authority (FinCEN) concerning ABLV Bank – Partial refusal of access – Exception relating to the protection of the confidentiality of information that is protected as such under EU law – Exception relating to the protection of documents for internal use – Exception relating to the protection of exchanges of views between the ECB and the relevant authorities – Sufficiently precise nature of an application for access – Duty of the ECB to provide assistance – Article 6(1) and (2) of Decision 2004/258

By its judgment, the General Court provides clarification in respect of the case-law relating to Article 6(1) and (2) of Decision 2004/258 [1] and the issue of the relationship between those provisions and the time limits set down in Articles 7 and 8 of that decision.

On 25 May 2022, ABLV Bank AS made an application for access to documents to the European Central Bank (ECB). Part of that application concerned, inter alia, documents relating, directly or indirectly, to acts or omissions of the ECB, the Single Resolution Board (SRB), the Finanšu un kapitāla tirgus komisija (Financial and Capital Markets Commission, Latvia), the Financial Crimes Enforcement Network (FinCEN) or any other authority following the FinCEN announcement or prior to the FinCEN announcement, documents relating, directly or indirectly, to Euroclear regarding its role in relation to ABLV Bank and/or its Luxembourg subsidiary, including any communication between the ECB and/or the SRB and Euroclear relating, directly or indirectly, to ABLV Bank and/or its Luxembourg subsidiary, and any other document relating, directly or indirectly, to ABLV Bank and/or its Luxembourg subsidiary.

The ECB considered that that part of the application for access was not sufficiently precise within the meaning of Article 6(1) of Decision 2004/258, and asked ABLV Bank, in accordance with Article 6(2) of that decision, to indicate the specific subject matter or topics of interest to it and a limited timeframe. In addition, the ECB informed ABLV Bank that the processing of that part of the application had been put on hold until its scope was specified.

Subsequently, ABLV Bank made a confirmatory application to the ECB by which it requested that the ECB reconsider its position and complete the list of documents relating to the application for access.

On 8 December 2022, the ECB adopted a confirmatory decision rejecting the application for access to documents ('the contested decision'). ABLV Bank therefore brought an action for annulment of that decision before the Court.

Findings of the Court

In the first place, the Court rules on the plea of inadmissibility claiming that the allegedly unlawful suspension of the processing of the part of the application for access at issue is unrelated to the subject matter of the proceedings. In that regard, it holds that Article 6(1) of Decision 2004/258 does

[1] Decision 2004/258/EC of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) (OJ 2004 L 80, p. 42), as amended, first, by Decision 2011/342/EU of the European Central Bank of 9 May 2011 (OJ 2011 L 158, p. 37) and, second, by Decision (EU) 2015/529 of the European Central Bank of 21 January 2015 (OJ 2015 L 84, p. 64).

not allow the processing of an application for access to be discontinued or, in other words, does not permit a 'suspension' of the time limits set down in Articles 7 and 8 of Decision 2004/258. Those time limits, laid down in the public interest, cannot be varied by the parties.

In the present case, the Court points out that, in the contested decision, the ECB stated that the processing of the part of the application for access at issue had been 'put on hold'. However, that statement did not prevent the ECB from examining the scope of that part of the application in order to conclude that the latter was not sufficiently precise to enable that institution to understand which documents it concerned. In so doing, the ECB considered, in fact, that the part of the application for access at issue did not satisfy the conditions laid down in Article 6(1) of Decision 2004/258, which the applicant is entitled to challenge in the context of the present action against the contested decision. Furthermore, it is apparent from the application and from the defence that the applicant's arguments are intelligible and that the ECB has been able to respond to them. Accordingly, the plea of inadmissibility cannot be upheld.

In the second place, the Court examines, first, whether the part of the application for access which, in the ECB's view, did not satisfy the required conditions was sufficiently precise within the meaning of Article 6(1) of Decision 2004/258 and, second, whether the ECB complied with its duty to provide assistance referred to in Article 6(2) of that decision.

As regards the level of precision of the part of the application for access at issue, the Court recalls that, in accordance with Article 6(1) of Decision 2004/258, the application for access had to be made in a manner that was 'sufficiently precise … to enable the [institution] to identify the document [requested]'. In view of the general wording of the application for access, the ECB was legitimately entitled to request clarification in relation to those categories of documents. Indeed, in the light of the wording of the part of the application for access at issue and, in particular, in the absence of a limited timeframe, it was not possible to ascertain whether that part of the application concerned documents relating to the FinCEN announcement or to other supervisory matters.

As regards the ECB's duty to provide assistance, the Court observes that, according to Article 6(2) of Decision 2004/258, 'if an application is not sufficiently precise, the ECB shall ask the applicant to clarify the application and shall assist the applicant in doing so.' According to the case-law, the verbs 'ask' and 'assist' indicate that whenever the institution to which the application is addressed encounters a lack of clarity in an application for access, for whatever reason, it must contact the applicant in order to define the documents sought as well as possible.

In the present case, the Court finds that the ECB carried out its duty to provide assistance, since it invited ABLV Bank to clarify its application for access by asking it about the subject matter and timeframe of interest to the applicant. However, the latter did not provide the ECB with any meaningful information to enable it to identify specific documents corresponding to that application. Furthermore, since the wording of the part of the application for access at issue was indeed not sufficiently precise in that it did not refer to any particular subject matter or to any specific timeframe, there was no reason to consider that this was a delaying tactic on the part of the ECB.

Thus, the Court concludes, first, that the ECB was correct in considering that the application for access did not satisfy the conditions laid down in Article 6(1) of Decision 2004/258 and, accordingly, could not be regarded as an 'application for access' within the meaning of that provision and, second, that the ECB duly carried out its duty to provide assistance pursuant to Article 6(2) of Decision 2004/258.

2. EUROPEAN OMBUDSMAN

Order of the General Court (Second Chamber), 17 June 2025, Asociación de ciudadanos contra la corrupción y para la defensa del estado de derecho v Ombudsman, T-615/24

Link to the full text of the order

Action for annulment – Decision of the Ombudsman not to open an inquiry following a complaint – Act not open to challenge – Manifest lack of jurisdiction in part – Manifest inadmissibility in part

Hearing an action for annulment, which it dismisses in part on the ground of manifest lack of jurisdiction and in part as being manifestly inadmissible, the General Court rules, for the first time since the adoption of the new Statute of the European Ombudsman in 2021, [2] on whether decisions of the Ombudsman not to open an inquiry following a complaint can be the subject of an action for annulment.

The applicant, the Asociación de ciudadanos contra la corrupción y para la defensa del estado de derecho, is an association under Spanish law, the purpose of which is combating corruption and defending the rule of law.

On 28 August 2024, the applicant submitted a complaint against the European Commission to the Ombudsman. The Ombudsman informed the applicant, by letter of 18 September 2024, that, after examining the complaint, there was insufficient evidence to open an inquiry and that the complaint would be closed. After receiving a request from the applicant, the Ombudsman, by email of 27 September 2024 and by letter of 3 October 2024, reiterated her previous replies and responded to the applicant's request that she launch an inquiry on her own initiative.

The association brought an action for annulment against the decision contained in that letter from the Ombudsman of 3 October 2024.

Findings of the Court

The Court dismisses that action for annulment as manifestly inadmissible in that the contested decision does not constitute a challengeable act for the purposes of Article 263 TFEU.

In that regard, the Court notes that it follows from Article 228 TFEU and Articles 2 to 4 of Regulation 2021/1163 that the Ombudsman is to investigate complaints she receives in respect of instances of maladministration in the activities of the institutions, bodies, offices or agencies of the European Union and to conduct inquiries for which she finds grounds. [3] More specifically, the Ombudsman is to dismiss complaints which are outside the scope of her mandate or which do not comply with certain procedural requirements, [4] where she finds that a complaint is manifestly unfounded, she is to close the file and inform the complainant [5] and, where she finds grounds for it, she may decide to open an inquiry. [6] In that context, she is to inform the complainant as soon as possible of the action taken on the complaint and may propose to the complainant and to the institution, body, office or agency

2 Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom (OJ 2021, L 253 p. 1).

3 Article 228(1), first and second subparagraphs, TFEU.

4 Article 2(4) of the Ombudsman Statute.

5 Article 2(5) of that statute.

6 Article 2(7) and Article 3(1) of that statute.

concerned a solution to address the instance of maladministration to which the complaint relates; if that solution is accepted by that EU institution, body, office or agency, she may close the file. [7] Where an instance of maladministration is found following an inquiry, the Ombudsman is to inform the institution, body, office or agency concerned of the findings of the inquiry and, where appropriate, make recommendations. [8] Following that communication, the institution, body, office or agency concerned has three months to send the Ombudsman a detailed opinion, [9] following which the Ombudsman may close the inquiry and forward to the institution, body, office or agency concerned, and in certain cases to the European Parliament, a report in which she may make recommendations. Lastly, the Ombudsman is to inform the complainant of the outcome of the inquiry, the opinion received and any recommendations made in the report. [10]

It thus follows from those provisions that the Ombudsman merely informs the complainant as soon as possible of the action taken on his or her complaint and that, where she detects an instance of maladministration, after referring the matter to the institution, body, office or agency concerned, she is simply to inform the complainant of the outcome of the inquiry and of the opinion given by the institution, body, office or agency concerned and of any recommendations that they have made.

In particular, after examining a complaint, the Ombudsman does not have the power to take binding measures and the report which she sends to the institution, body, office or agency concerned where she identifies an instance of maladministration does not, by definition, produce any legal effects vis-à-vis third parties, within the meaning of Article 263 TFEU, nor is it binding on the institution, body, office or agency concerned, which is free to decide, in the exercise of the powers conferred on it by EU law, what action to take in that regard.

The Court concludes from this that the Ombudsman's reasoned decision to close the examination of a complaint by taking no further action on it, including where no inquiry has been opened, does not constitute a challengeable act by means of an action for annulment, since such a decision does not produce legal effects vis-à-vis third parties, within the meaning of Article 263 TFEU.

For the same reasons, the Court notes moreover that assuming that the action seeks a declaration, by way of an action for failure to act based on Article 265 TFEU, that the Ombudsman failed to open an inquiry, or to send a report and recommendations to the Commission, such acts cannot be the subject of an action for failure to act under the third paragraph of Article 265 TFEU. The action for failure to act is intended to penalise the failure to adopt a legally binding act. The Ombudsman does not take binding measures in relation to the complainant, or indeed to the institution, body, office or agency concerned.

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7 Article 2(10) of that statute.

8 Article 4(1) of that statute.

9 Article 4(2) of that statute.

10 Article 4(3) of that statute.

II. AGRICULTURE AND FISHERIES

Judgment of the General Court (Seventh Chamber, Extended Composition), 11 June 2025, Spain v Commission, T-681/22

Common Fisheries Policy – Article 9 of Regulation (EU) 2016/2336 – Implementing Regulation (EU) 2022/1614 – Methods and criteria for determining areas where vulnerable marine ecosystems are known to occur or are likely to occur – Establishment of a list of areas where the presence of vulnerable marine ecosystems is proven or probable – Establishment of buffer zones – Plea of illegality – Proportionality

In the context of two actions for the annulment of Implementing Regulation 2022/1614, [11] the General Court, sitting in extended composition with a panel of five judges, sets out the criteria for determining the areas where vulnerable marine ecosystems ('VMEs') are known to occur or are likely to occur, in the light of the principles stemming from Regulation 2016/2336 [12] ('the basic regulation').

Regulation No 1380/2013 [13] on the Common Fisheries Policy (CFP) provides, inter alia, for the adoption of measures for the conservation and sustainable exploitation of marine biological resources. In that context, Article 9(6) of the basic regulation provides for the adoption of implementing acts for the purpose of establishing a list of areas where VMEs are known to occur or are likely to occur ('VME areas'). According to Article 9(9) of the basic regulation, fishing with bottom gears is to be prohibited in such areas.

On 15 September 2022, the European Commission, by means of Implementing Regulation 2022/1614, adopted that list on the basis of two advice documents issued by the International Council for the Exploration of the Sea (ICES).

The Kingdom of Spain, several Spanish companies owning fishing vessels and a fishery producer organisation comprising those companies are requesting that the Court annul that implementing regulation, so far as concerns the establishment of that list. In support of their actions, they allege, first, that the implementing regulation infringes the basic regulation and certain general principles of EU law and, secondly, that Article 9(6) and (9) of the basic regulation is invalid.

By its judgments, the Court dismisses both actions in their entirety.

Findings of the Court

In the first place, the Court examines whether the Commission infringed the basic regulation, the principle of proportionality or the principle of non-discrimination when establishing the list of VME areas, in the context of complaints relating to the impact of certain types of fishing gears, on the one hand, and to the methodology used to delimit the areas, on the other hand.

As regards the types of fishing gears, the Court, first of all, interpreted Article 9(6) of the basic regulation in order to define the criteria for determining VME areas and to determine whether that provision requires an assessment of the significant adverse impacts of fishing in those areas with passive bottom gears, that is to say fishing gears fixed at a specific point of the marine environment. According to the applicants, the Commission should have assessed the impact of such gears, since

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11 Commission Implementing Regulation (EU) 2022/1614 of 15 September 2022 determining the existing deep-sea fishing areas and establishing a list of areas where vulnerable marine ecosystems are known to occur or are likely to occur (OJ 2022 L 242, p. 1).

12 Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002 (OJ 2016 L 354, p. 1).

13 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22).

they have less of a negative impact on VMEs than mobile bottom gears. Moreover, the applicants in Case T-781/22 argue that the identical treatment, without any objective reason, of passive and mobile fishing gears infringes the principle of non-discrimination.

However, Article 9(6) of the basic regulation requires neither such an assessment nor a fisheries management approach or a management approach which includes an assessment of the consequences of the relevant VME protection measures on fishing activities and on economic and social life.

First, it follows from the definitions laid down by the basic regulation and Regulation No 734/2008 [14] that the presence of VMEs is demonstrated or indicated by elements relating to the nature and quantity of species encountered by both mobile and passive gears. Moreover, the proven or probable presence of protected species leads to the classification of the relevant areas as VME areas, so as to ensure their protection against bottom gears in general. An area may therefore be classified as a VME area on account of the significant adverse impacts resulting solely from the use of mobile bottom gears or the use of bottom gears in general, without it being possible to call that classification into question in relation to passive bottom gears. In such circumstances, the establishment of the list of those areas cannot depend on a comparative analysis of mobile and passive gears, even if the latter may pose lower risks than mobile gears.

Secondly, it is also clear from the guidelines of the Food and Agriculture Organisation of the United Nations (FAO), to which the basic regulation refers for the purposes of the annual assessment of VME areas, that the classification of a marine ecosystem as vulnerable does not presuppose an examination of the adverse impacts of passive bottom gears, since that classification is based on the characteristics of the ecosystem itself.

Thirdly, according to a teleological and systemic analysis of Article 9(6) of the basic regulation, it cannot be inferred from that provision that a management approach, which includes the requirement to assess the consequences of VME conservation measures on fishing activities and on economic and social life, should be applied in relation to the establishment of the list of VME areas. On the contrary, such an approach is incompatible with the concept of 'implementing act', since it would amend or supplement the basic regulation in its essential elements concerning the protection of VMEs. The Commission could not, in the context of the powers conferred on it to adopt an implementing regulation, strike a balance between the protection of VMEs and other objectives of the CFP.

Next, in so far as it was appropriate, when drawing up the list of VME areas, to rely on the characteristics of the ecosystems themselves, taking into account the risk of damage associated with the significant adverse impacts resulting, in general, from the use of bottom gears, nor does the absence of analysis by ICES and by the Commission of the detrimental impacts of passive gears constitute a breach of the principle of proportionality. Finally, since the specific type of fishing gears used, whether mobile or passive, does not determine the designation of those areas, nor can the argument that the absence of such an analysis is discriminatory succeed.

With regard to the methodology used to determine the specific VME areas, the Court found no infringement of the basic regulation or of the principle of proportionality. The choice of methodology falls within the broad discretion enjoyed by the Commission as regards the application of the criteria for establishing the list of those areas. In the present case, there is no evidence to suggest that the Commission manifestly exceeded its discretion in using the methodology taken into account by ICES in its advice, or that the Commission has not used the best available scientific and technical information.

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[14] Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (OJ 2008 L 201, p. 8), and in particular Article 2(b) to (d) thereof, concerning the concepts of 'VME', 'significant adverse impacts' and 'bottom gears'.

In the second place, the Court rejects the objection of illegality raised by the applicants. On the one hand, the applicants rely on an infringement of Article 291 TFEU in that Article 9(6) of the basic regulation refers to an implementing act to supplement its essential elements. On the other hand, they claim that the indiscriminate prohibition on fishing with any bottom gears in VME areas provided for in Article 9(9) of that regulation infringes CFP rules, the principle of proportionality and a possible obligation to provide specific reasons for the choices made.

With regard to the question whether Article 9(6) of the basic regulation makes reference to an implementing act in order to supplement its essential, or even non-essential, elements, it should be noted that the implementing acts referred to by that provision merely specify the VME areas and thus give concrete expression *ratione loci* to the protection regime for VMEs adopted by that article. In that regard, the essential elements concerning the definition of and criteria for identifying a VME, the VME indicators and the procedure for establishing the list of such ecosystems are already set out in Article 9 of the basic regulation.

Consequently, the Commission established the list on the basis of sufficiently clear and precise substantive criteria for VMEs, and according to a procedure also defined by the basic regulation, while at the same time enjoying a measure of discretion, in particular when establishing the precise methodology for applying the criteria laid down by the legislature. Moreover, the Commission was acting within the framework of its powers to implement and not to manage the CFP. In that context, it could take into account elements relating to the fishing operations carried out in order to assess the likelihood of the (continued) presence of VMEs.

As regards the indiscriminate prohibition imposed by Article 9(9) of the basic regulation, without taking into account, in particular, its economic and social impact, it follows from Regulation No 1380/2013 that the long-term environmental sustainability of fishing activities involves minimising the impacts of those activities on the marine ecosystem, by applying the precautionary approach to fisheries management as well as the ecosystem-based approach.

In the balancing of the interests involved, which is inherent in the adoption of measures for the conservation of marine biological resources, the legislature enjoys broad discretion. Its choice to adopt such measures is subject to a review by the EU judicature which must be confined to ascertaining whether the measure in question is vitiated by a manifest error or misuse of power or whether the legislature has clearly exceeded the bounds of its discretion. The legislature is not required to carry out a specific and reasoned weighing up of the interest of protecting the marine environment against the interests of persons engaged in fishing activities and the socioeconomic aspects of those activities. In the context of technical measures, the author of the measure is not required to provide a specific statement of reasons for its choice if the contested measure clearly discloses the essential objective pursued, as in the present case.

In the Court's view, it has not been demonstrated that the legislature has clearly exceeded the bounds of its discretion. In particular, the applicants have not provided sufficiently precise and convincing evidence to establish that passive gears were free of adverse impacts on VMEs, thereby excluding, in an ecosystem-based and precautionary approach, the risk, supported by the scientific literature, that those fishing gears pose to VMEs, particularly during their repeated deployment and retrieval.

In view of the foregoing, the EU legislature, exercising its broad discretion in the matter, could consider it necessary, in order to avoid the risk of harmful effects of passive gears, notwithstanding the likely adverse socioeconomic effects, to prohibit fishing with bottom gears in general in VME areas.

Judgment of the General Court (Seventh Chamber, Extended Composition), 11 June 2025, Madre Querida and Others v Commission, T-781/22

Common Fisheries Policy – Article 9 of Regulation (EU) 2016/2336 – Implementing Regulation (EU) 2022/1614 – Methods and criteria for determining areas where vulnerable marine ecosystems are known to occur or are likely to occur – Establishment of a list of areas where the presence of vulnerable marine ecosystems is proven or probable – Establishment of buffer zones – Plea of illegality – Proportionality

In the context of two actions for the annulment of Implementing Regulation 2022/1614, [15] the General Court, sitting in extended composition with a panel of five judges, sets out the criteria for determining the areas where vulnerable marine ecosystems ('VMEs') are known to occur or are likely to occur, in the light of the principles stemming from Regulation 2016/2336 [16] ('the basic regulation').

Regulation No 1380/2013 [17] on the Common Fisheries Policy (CFP) provides, inter alia, for the adoption of measures for the conservation and sustainable exploitation of marine biological resources. In that context, Article 9(6) of the basic regulation provides for the adoption of implementing acts for the purpose of establishing a list of areas where VMEs are known to occur or are likely to occur ('VME areas'). According to Article 9(9) of the basic regulation, fishing with bottom gears is to be prohibited in such areas.

On 15 September 2022, the European Commission, by means of Implementing Regulation 2022/1614, adopted that list on the basis of two advice documents issued by the International Council for the Exploration of the Sea (ICES).

The Kingdom of Spain, several Spanish companies owning fishing vessels and a fishery producer organisation comprising those companies are requesting that the Court annul that implementing regulation, so far as concerns the establishment of that list. In support of their actions, they allege, first, that the implementing regulation infringes the basic regulation and certain general principles of EU law and, secondly, that Article 9(6) and (9) of the basic regulation is invalid.

By its judgments, the Court dismisses both actions in their entirety.

Findings of the Court

In the first place, the Court examines whether the Commission infringed the basic regulation, the principle of proportionality or the principle of non-discrimination when establishing the list of VME areas, in the context of complaints relating to the impact of certain types of fishing gears, on the one hand, and to the methodology used to delimit the areas, on the other hand.

As regards the types of fishing gears, the Court, first of all, interpreted Article 9(6) of the basic regulation in order to define the criteria for determining VME areas and to determine whether that provision requires an assessment of the significant adverse impacts of fishing in those areas with passive bottom gears, that is to say fishing gears fixed at a specific point of the marine environment. According to the applicants, the Commission should have assessed the impact of such gears, since they have less of a negative impact on VMEs than mobile bottom gears. Moreover, the applicants in Case T-781/22 argue that the identical treatment, without any objective reason, of passive and mobile fishing gears infringes the principle of non-discrimination.

However, Article 9(6) of the basic regulation requires neither such an assessment nor a fisheries management approach or a management approach which includes an assessment of the consequences of the relevant VME protection measures on fishing activities and on economic and social life.

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15 Commission Implementing Regulation (EU) 2022/1614 of 15 September 2022 determining the existing deep-sea fishing areas and establishing a list of areas where vulnerable marine ecosystems are known to occur or are likely to occur (OJ 2022 L 242, p. 1).

16 Regulation (EU) 2016/2336 of the European Parliament and of the Council of 14 December 2016 establishing specific conditions for fishing for deep-sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic and repealing Council Regulation (EC) No 2347/2002 (OJ 2016 L 354, p. 1).

17 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22).

First, it follows from the definitions laid down by the basic regulation and Regulation No 734/2008 [18] that the presence of VMEs is demonstrated or indicated by elements relating to the nature and quantity of species encountered by both mobile and passive gears. Moreover, the proven or probable presence of protected species leads to the classification of the relevant areas as VME areas, so as to ensure their protection against bottom gears in general. An area may therefore be classified as a VME area on account of the significant adverse impacts resulting solely from the use of mobile bottom gears or the use of bottom gears in general, without it being possible to call that classification into question in relation to passive bottom gears. In such circumstances, the establishment of the list of those areas cannot depend on a comparative analysis of mobile and passive gears, even if the latter may pose lower risks than mobile gears.

Secondly, it is also clear from the guidelines of the Food and Agriculture Organisation of the United Nations (FAO), to which the basic regulation refers for the purposes of the annual assessment of VME areas, that the classification of a marine ecosystem as vulnerable does not presuppose an examination of the adverse impacts of passive bottom gears, since that classification is based on the characteristics of the ecosystem itself.

Thirdly, according to a teleological and systemic analysis of Article 9(6) of the basic regulation, it cannot be inferred from that provision that a management approach, which includes the requirement to assess the consequences of VME conservation measures on fishing activities and on economic and social life, should be applied in relation to the establishment of the list of VME areas. On the contrary, such an approach is incompatible with the concept of 'implementing act', since it would amend or supplement the basic regulation in its essential elements concerning the protection of VMEs. The Commission could not, in the context of the powers conferred on it to adopt an implementing regulation, strike a balance between the protection of VMEs and other objectives of the CFP.

Next, in so far as it was appropriate, when drawing up the list of VME areas, to rely on the characteristics of the ecosystems themselves, taking into account the risk of damage associated with the significant adverse impacts resulting, in general, from the use of bottom gears, nor does the absence of analysis by ICES and by the Commission of the detrimental impacts of passive gears constitute a breach of the principle of proportionality. Finally, since the specific type of fishing gears used, whether mobile or passive, does not determine the designation of those areas, nor can the argument that the absence of such an analysis is discriminatory succeed.

With regard to the methodology used to determine the specific VME areas, the Court found no infringement of the basic regulation or of the principle of proportionality. The choice of methodology falls within the broad discretion enjoyed by the Commission as regards the application of the criteria for establishing the list of those areas. In the present case, there is no evidence to suggest that the Commission manifestly exceeded its discretion in using the methodology taken into account by ICES in its advice, or that the Commission has not used the best available scientific and technical information.

In the second place, the Court rejects the objection of illegality raised by the applicants. On the one hand, the applicants rely on an infringement of Article 291 TFEU in that Article 9(6) of the basic regulation refers to an implementing act to supplement its essential elements. On the other hand, they claim that the indiscriminate prohibition on fishing with any bottom gears in VME areas provided for in Article 9(9) of that regulation infringes CFP rules, the principle of proportionality and a possible obligation to provide specific reasons for the choices made.

With regard to the question whether Article 9(6) of the basic regulation makes reference to an implementing act in order to supplement its essential, or even non-essential, elements, it should be noted that the implementing acts referred to by that provision merely specify the VME areas and thus

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[18] Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (OJ 2008 L 201, p. 8), and in particular Article 2(b) to (d) thereof, concerning the concepts of 'VME', 'significant adverse impacts' and 'bottom gears'.

give concrete expression *ratione loci* to the protection regime for VMEs adopted by that article. In that regard, the essential elements concerning the definition of and criteria for identifying a VME, the VME indicators and the procedure for establishing the list of such ecosystems are already set out in Article 9 of the basic regulation.

Consequently, the Commission established the list on the basis of sufficiently clear and precise substantive criteria for VMEs, and according to a procedure also defined by the basic regulation, while at the same time enjoying a measure of discretion, in particular when establishing the precise methodology for applying the criteria laid down by the legislature. Moreover, the Commission was acting within the framework of its powers to implement and not to manage the CFP. In that context, it could take into account elements relating to the fishing operations carried out in order to assess the likelihood of the (continued) presence of VMEs.

As regards the indiscriminate prohibition imposed by Article 9(9) of the basic regulation, without taking into account, in particular, its economic and social impact, it follows from Regulation No 1380/2013 that the long-term environmental sustainability of fishing activities involves minimising the impacts of those activities on the marine ecosystem, by applying the precautionary approach to fisheries management as well as the ecosystem-based approach.

In the balancing of the interests involved, which is inherent in the adoption of measures for the conservation of marine biological resources, the legislature enjoys broad discretion. Its choice to adopt such measures is subject to a review by the EU judicature which must be confined to ascertaining whether the measure in question is vitiated by a manifest error or misuse of power or whether the legislature has clearly exceeded the bounds of its discretion. The legislature is not required to carry out a specific and reasoned weighing up of the interest of protecting the marine environment against the interests of persons engaged in fishing activities and the socioeconomic aspects of those activities. In the context of technical measures, the author of the measure is not required to provide a specific statement of reasons for its choice if the contested measure clearly discloses the essential objective pursued, as in the present case.

In the Court's view, it has not been demonstrated that the legislature has clearly exceeded the bounds of its discretion. In particular, the applicants have not provided sufficiently precise and convincing evidence to establish that passive gears were free of adverse impacts on VMEs, thereby excluding, in an ecosystem-based and precautionary approach, the risk, supported by the scientific literature, that those fishing gears pose to VMEs, particularly during their repeated deployment and retrieval.

In view of the foregoing, the EU legislature, exercising its broad discretion in the matter, could consider it necessary, in order to avoid the risk of harmful effects of passive gears, notwithstanding the likely adverse socioeconomic effects, to prohibit fishing with bottom gears in general in VME areas.

III. BORDER CHECKS, ASYLUM AND IMMIGRATION: IMMIGRATION POLICY

Judgment of the Court of Justice (Grand Chamber), 3 June 2025, Mirin, C-460/23

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Border controls, asylum and immigration – Directive 2002/90/EC – General offence of facilitation of unauthorised entry, transit and residence – Article 1(1)(a) – Interpretation consistent with the Charter of Fundamental Rights of the European Union – Article 7 – Respect for private and family life – Article 24 – Rights of the child – Article 52(1) – Interference with the essence of fundamental rights – Article 18 – Right to asylum – Person bringing into the territory of a Member State, in an unauthorised manner, minors who are third-country nationals accompanying him or her and over whom he or she exercises actual care

Seised by the Tribunale di Bologna (District Court, Bologna, Italy), the Court of Justice, sitting as the Grand Chamber, clarifies, first, that an interpretation of Article 1(1)(a) of Directive 2002/90 [19] that is consistent with Articles 7 and 24 of the Charter of Fundamental Rights of the European Union ('the Charter') has the result of excluding from the scope of the offence of facilitation of unauthorised entry, within the meaning of Article 1(1)(a), the conduct of a person who, in breach of the rules governing the movement of persons across borders, brings into the territory of a Member State minors who are third-country nationals and are accompanying him or her, and over whom he or she exercises actual care. Second, the Court considers that those articles preclude national legislation criminalising such conduct.

On 27 August 2019, OB, a third-country national, accompanied by two minors, nationals of the same third country, presented herself with false passports at the airport border of Bologna (Italy), upon arrival of a flight from a third country. Those children were her daughter and her niece, with the niece having been entrusted to OB's care following the death of the niece's mother.

On 28 August 2019, OB was arrested and the two children were placed in a care facility. Proceedings were brought against OB before the District Court, Bologna, which is the referring court, for the offence of facilitating the unauthorised entry of third-country nationals, provided for in Article 12(1) of the Consolidated Law on Immigration, [20] which transposes Article 1(1)(a) of Directive 2002/90 into Italian law, [21] as well as for the offence of holding false identity documents, provided for in the Italian Criminal Code. By contrast, OB is not the subject of criminal proceedings for alleged unauthorised entry into Italian territory.

On 29 August 2019, at the hearing to validate her arrest, before the judge responsible for the criminal investigation of the District Court, Bologna, OB stated that she had fled her country of origin in order to escape the death threats from her former partner and that she feared for the physical integrity of the minors accompanying her.

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19 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 17). Article 1 of that directive, entitled 'General infringement', provides in paragraph 1(a) thereof that each Member State must adopt appropriate sanctions on 'any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens'.

20 Decreto legislativo n. 286 – Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero (Legislative Decree No 286 – Consolidated law on the provisions concerning the regulation of immigration and the rules relating to the status of foreigners) of 25 July 1998 (GURI No 191 of 18 August 1998, Ordinary Supplement No 139), in the version applicable to the facts in the main proceedings.

21 And also Article 1(1) of Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ 2002 L 328, p. 1).

The judge responsible for the criminal investigation validated OB's arrest, but refused the request by the Public Prosecutor for her to be remanded in custody.

On 9 October 2019, OB submitted an application for international protection.

It is apparent from the findings of the referring court that the minors were placed under the 'responsibility' and the 'protection' of OB. That court considers that OB's conduct corresponds to the offence provided for in Article 12(1) of the Consolidated Law on Immigration and does not fall within the exception provided for in Article 12(2) thereof. [22] It asks whether such conduct could nevertheless be classified as an act committed for the purposes of 'humanitarian assistance' within the meaning of Article 1(2) of Directive 2002/90, [23] and not fall within the general offence of facilitation of unauthorised entry laid down in Article 1(1)(a) of that directive, since it seeks to facilitate the exercise by the minors concerned of their rights guaranteed by the Charter. [24]

Noting that Directive 2002/90 merely provides for the right, and not the obligation, for Member States to refrain from establishing, as a criminal offence, conduct seeking to assist unauthorised entry into their territory where the aim of that conduct is to provide 'humanitarian assistance', the referring court questions, inter alia, the validity of Article 1 of that directive in the light of the Charter, and the interpretation of the Charter in order to determine whether it precludes the national implementing provisions.

Findings of the Court

The Court recalls that an EU act must be interpreted, as far as possible, in conformity with primary law as a whole and, in particular, with the provisions of the Charter. In the light of the facts in the main proceedings, Articles 7, 18 and 24 of the Charter [25] are of decisive importance in answering the questions referred by the national court. In addition, those questions are based on the premiss that the conduct at issue in the main proceedings falls within the general offence of facilitation of unauthorised entry, as defined in Article 1(1)(a) of Directive 2002/90.

The Court thus examines whether Article 1(1)(a) of Directive 2002/90, read in the light, in particular, of Articles 7, 18 and 24 of the Charter, must be interpreted as meaning that the conduct of a person who, in breach of the rules governing the movement of persons across borders, brings into the territory of a Member State minors who are third-country nationals and are accompanying him or her, and over whom he or she exercises actual care, [26] does not fall within the scope of the general offence of facilitation of unauthorised entry.

On account of its open wording, Article 1(1)(a) of Directive 2002/90 lends itself to different interpretations. Although that provision does not expressly refer to the conduct at issue in the main proceedings, it also does not expressly preclude, as such, an interpretation according to which such conduct falls within the scope of the general offence provided for in that provision.

However, that latter interpretation cannot be accepted.

In the first place, it would be contrary to the objectives of Directive 2002/90. Indeed, conduct such as that of OB does not constitute facilitation of illegal immigration, but stems from the assumption by

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22 That provision states that 'activities of relief and humanitarian assistance provided in Italy in relation to foreign nationals in need, however present on the territory of the State' do not constitute a criminal offence.

23 Under that provision, 'any Member State may decide not to impose sanctions with regard to the behaviour defined in [Article 1(1)(a)] by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned'.

24 Namely, first, of their right to life, physical integrity, liberty and security, as those rights are threatened in their country of origin, second, of their right to respect for family life, in view of the parent-child and family ties between OB and those minors, and, third, of their right to asylum, in connection with the application for international protection submitted by OB.

25 Which enshrine, respectively, the right to respect for family life, the right to asylum and the rights of the child.

26 'Such conduct'.

the person concerned of his or her personal responsibility by virtue of the care that he or she exercises over the minors.

In the second place, having regard to Articles 7 and 24 of the Charter, in the light of which Article 1(1)(a) of Directive 2002/90 must be interpreted, the conduct at issue cannot fall within the scope of the general offence of facilitation of unauthorised entry, including where that person has himself or herself entered that territory in an unauthorised manner.

Any other interpretation would entail a particularly serious interference with the right to respect for family life and the rights of the child, enshrined in the abovementioned articles of the Charter, to such an extent that it would undermine the essence of those fundamental rights within the meaning of Article 52(1) of the Charter.

Indeed, to accept that a person may be punished for merely assisting minors, over whom he or she exercises actual care, to enter the territory of a Member State in an unauthorised manner would undermine the essence of such fundamental rights.

By such conduct, a person such as OB, in principle, merely assumes in concrete terms an obligation inherent to his or her personal responsibility, based on his or her family relationship with those minors, in order to secure the protection and the care necessary for their well-being and development. That person's conduct is the concrete expression of his or her general responsibility towards those minors.

Consequently, if the essence of the rights enshrined in Articles 7 and 24 of the Charter is not to be undermined, Article 1(1)(a) of Directive 2002/90 cannot be intended to ensure that conduct such as that of OB is characterised as 'facilitation of unauthorised entry' into that territory and criminalised on that basis.

In the last place, that interpretation is also necessary in the light of Article 18 of the Charter, [27] which is relevant where, like OB, the person concerned, once he or she has entered the territory of the Member State in question, has made an application for international protection.

In that regard, the right of any third-country national to make an application for international protection on the territory of a Member State, including at its borders or in its transit zones, even if he or she is staying illegally in that Member State, must be recognised, irrespective of the prospects of success of such a claim. When such an application is made, an applicant cannot, in principle, be regarded as staying illegally on the territory of the Member State concerned, so long as no decision has been given on that application at first instance, if the effectiveness of the right to asylum, as guaranteed by Article 18 of the Charter, is not to be compromised. Measures which, without reasonable justification, result in a third-country national being discouraged from submitting his or her application for international protection to the competent authorities are also liable to undermine the effectiveness of the right to asylum.

In the present case, OB enjoys the rights arising from having submitted such an application and cannot be subject to criminal penalties either on account of her own unauthorised entry into Italian territory or on account of the fact that, at the time of that entry, she was accompanied by her daughter and her niece, over whom she exercises actual care.

The Court finds that, in those circumstances, there is no need to examine the validity of Article 1 of Directive 2002/90 or to interpret Article 1(2) thereof, which relates to exemption from criminal liability in cases where the aim of the conduct at issue is to provide humanitarian assistance to the person concerned.

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27 According to that provision, the right to asylum must be guaranteed with due respect for the rules of the Geneva Convention and in accordance with the EU Treaty and the FEU Treaty. The Member States must comply with such rules in the implementation of both Directive 2002/90 and Framework Decision 2002/946.

Furthermore, in the light of the referring court's doubts concerning the compatibility with EU law of the national provision transposing, inter alia, Article 1(1)(a) of Directive 2002/90 into Italian law, the Court recalls that, when implementing the measures transposing a directive, the courts of the Member States must not only interpret their national law in a manner consistent with that directive, but also ensure that they do not rely on an interpretation of the directive that would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles recognised by EU law.

Accordingly, when transposing Article 1(1)(a) of Directive 2002/90, which provision seeks to define precisely the offence of facilitation of illegal immigration, Member States may not establish, in national law, rules that would go beyond the scope of that offence, as defined by that provision, by including conduct not covered by it, in breach of Articles 7 and 24 and Article 52(1) of the Charter.

Moreover, Articles 7 and 24 of the Charter are sufficient in themselves and do not need to be made more specific by provisions of EU or national law to confer on individuals rights which they may rely on as such. Consequently, if the referring court were to find that it is not conceivable to interpret its national law in conformity with EU law, it would be required to ensure within its jurisdiction the judicial protection for individuals flowing from those articles, and to guarantee their full effectiveness by disapplying, if need be, Article 12 of the Consolidated Law on Immigration.

IV. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EPPO

Order of the General Court (Sixth Chamber), 6 June 2025, Research Investments and Others v European Public Prosecutor's Office, T-509/24

Link to the full text of the order

Enhanced cooperation on the establishment of the European Public Prosecutor's Office – Letters from the European Delegated Prosecutor – Article 42(1) to (3) of Regulation (EU) 2017/1939 – Lack of jurisdiction

By its order, the General Court dismisses for lack of jurisdiction the action [28] introduced by Research Investments s. r. o., Areál Zákolany s. r. o. and Simon Cihelník. The applicants requested the annulment of three letters of the Czech European Delegated Prosecutor ('the contested letters'), by which the Czech European Delegated Prosecutor responded to the letters that the applicants had sent to the EPPO. Under the rules on the division of jurisdiction between the EU judicature and the national courts concerning the judicial review of procedural acts of the EPPO, set out in Regulation 2017/1939 [29] and providing for the jurisdiction of the EU judicature, pursuant to Article 263 TFEU, only in respect of decisions of the EPPO to dismiss a case, [30] the Court found that the contested letters could not be considered as such and that, consequently, it has no jurisdiction in respect of the action against the EPPO.

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28 Action for annulment brought on the basis of Article 263 TFEU.

29 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).

30 In so far as they are contested directly on the basis of EU law (Article 42(3) of Regulation 2017/1939).

Following an investigation conducted by the EPPO into alleged offences of subsidy fraud, harm to the financial interests of the European Union and money laundering, the applicants were charged in June 2022 by decision of the Czech European Delegated Prosecutor, and referred to the Czech court having territorial jurisdiction. In August 2024, the applicants sent the EPPO three letters, in which they argued, inter alia, that the EPPO was not competent to prosecute the abovementioned case. In addition, the applicants requested that the EPPO act in accordance with Regulation 2017/1939, [31] by adopting a decision to dismiss the case or to suspend the proceedings, in the absence of which they would be obliged to bring an action before the Court pursuant to Article 265 TFEU or Article 263 TFEU.

By the contested letters, the Czech European Delegated Prosecutor informed the applicants that he regarded their letters as part of their defence in the criminal proceedings pending before the Czech court and that they would be sent to that court. Moreover, the prosecutor stated that Articles 265 and 263 TFEU were not applicable in the present case, because of the rules applicable to the judicial review of procedural measures taken by the EPPO.

In that context, the applicants request the annulment of the contested letters claiming that they amount to '*sui generis* decisions to dismiss a case' the legality of which is to be reviewed by the Court, in accordance with a 'broad' interpretation of Article 42(3) of Regulation 2017/1939.

Findings of the Court

As a preliminary point, the Court notes that under Article 86(3) TFEU, the regulation establishing the EPPO lays down, inter alia, the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions. In that regard, the mechanism provided for by the legislature to ensure the review of procedural acts of the EPPO, provided for in Article 42 of Regulation 2017/1939, is a *sui generis* mechanism, which is intended to ensure effective remedies, in accordance with the second subparagraph of Article 19(1) TEU.

Consequently, it is unambiguously apparent from paragraphs 1 and 2 of Article 42 that the exclusive jurisdiction to hear and determine procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties is conferred on national courts, [32] apart from the exceptions laid down in Article 42(3) and (8), of that regulation, and that it is only by way of preliminary ruling that the Court of Justice of the European Union is called upon to rule on (i) the validity of those acts in the light of provisions of EU law and (ii) the interpretation or validity of provisions of Regulation 2017/1939. [33]

As regards the exceptions to the exclusive competence of national courts, laid down in Article 42(1) of Regulation 2017/1939, paragraph 3 of that article expressly provides for the jurisdiction of the EU judicature, under Article 263 TFEU, only in respect of decisions of the EPPO to dismiss a case, in so far as they are contested directly on the basis of EU law. [34]

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31 The applicants refer, in that regard, to Article 22(1) and (3), to Article 25(3)(a) and to Article 39 of Regulation 2017/1939.

32 Article 42(1) of Regulation 2017/1939 provides, inter alia, that procedural acts of the EPPO that are intended to produce legal effects vis-à-vis third parties are subject to review by the competent national courts in accordance with the requirements and procedures laid down by national law.

33 Article 42(2) of Regulation 2017/1939 states that the Court of Justice of the European Union has jurisdiction, in accordance with Article 267 TFEU, to give preliminary rulings (i) concerning the validity of procedural acts of the EPPO, in so far as such a question of validity is raised before any court or tribunal of a Member State directly on the basis of EU law, (ii) concerning the interpretation or validity of provisions of EU law, including Regulation 2017/1939, and (iii) concerning the interpretation of Articles 22 and 25 of that regulation in relation to any conflict of competence between the EPPO and the competent national authorities.

34 Furthermore, Article 42(8) of Regulation 2017/1939 provides for the judicial review by the Court of Justice of the European Union in accordance with Article 263 TFEU of decisions of the EPPO that affect the data subjects' rights under Chapter VIII of that regulation and of decisions of the EPPO which are not procedural acts, such as decisions of the EPPO concerning the right of public access to documents, or decisions dismissing European Delegated Prosecutors adopted pursuant to Article 17(3) of that regulation, or any other administrative decisions.

In the present case, however, the contested letters cannot be regarded, even implicitly, as decisions to dismiss the case. [35] Consequently, the Court does not have jurisdiction to review their legality under Article 42(3) of Regulation 2017/1939.

That conclusion is not called into question by the applicants' arguments relating to a broad interpretation of the latter provision, according to which the contested letters constitute '*sui generis* decisions to dismiss a case'.

Recourse to a broad interpretation is possible only in so far as it is compatible with the wording of the provision at issue and even the principle of interpretation in conformity with a rule of superior binding force cannot serve as the basis for an interpretation that is *contra legem*. Even if the contested letters were equivalent to *sui generis* decisions to dismiss a case, which has not been demonstrated in the present case, the 'broad' interpretation of Article 42(3) of Regulation 2017/1939 would result in acts which do not fall within the scope of the cases referred to in Article 39 of that regulation being classified as a '*sui generis* decision to dismiss a case', which would undermine the system of judicial review provided for in Article 42 of that regulation.

V. COMPETITION: STATE AID

Judgment of the General Court (First Chamber, Extended Composition), 25 June 2025, Fachverband Spielhallen and LM v Commission, T-510/20 RENV

Link to the full text of the judgment

State aid – Tax treatment of operators of public casinos in Germany – Levy on the profits – Deductibility of the amounts paid in respect of that levy from the tax base for corporation and trade tax – Decision not to raise any objections – No serious difficulties – Concept of 'State aid' – Selective nature

Sitting in extended composition, the General Court upholds the decision of the European Commission that the evidence examined in respect of the tax treatment of operators of public casinos in the Land of North Rhine-Westphalia (Germany) does not constitute State aid. [36] In so doing, the General Court examines in detail the analysis of the selective nature of the tax measure at issue.

In North Rhine-Westphalia, the gambling activities offered in casinos were governed, until 2020, by the Spielbankgesetz NRW (Law on casinos in the Land of North Rhine-Westphalia; 'the Law on Casinos'). In accordance with that law, the income generated by the casinos was subject to two different tax systems. On the one hand, gambling-related income was subject to a specific tax system consisting of a tax on casinos. On the other hand, non-gambling related income was subject to a normal tax system consisting of trade tax and income or corporation tax.

Paragraph 14 of the Law on Casinos provided that 75% of the annual profits declared by operators of public casinos – whether gambling-related or not – was to be paid to the Land of North Rhine-Westphalia. However, in the event that the remaining quarter of those profits exceeded 7% of the

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35 Within the meaning of Article 39 of Regulation 2017/1939.

36 Commission Decision C(2019) 8819 final of 9 December 2019 on State aid SA.44944 (2019/C) (ex 2019/FC) – Tax treatment of public casinos operators in Germany and SA.53552 (2019/C) (ex 2019/FC) – Alleged guarantee for public casinos operators in Germany (Wirtschaftlichkeitsgarantie) ('the contested decision').

sum of share capital, reserves and mutual funds, all of the profits were to be paid to the Land of North Rhine-Westphalia ('the levy on the profits').

The part of the levy on the profits deriving from non-gambling related income was nevertheless deductible from the tax bases for trade tax and income or corporation tax as 'costs associated with commercial transactions'.

In 2016, a trade association of 88 operators of gambling machines, and LM, an operator of gambling machines ('the applicants'), brought a complaint before the Commission. They claimed, inter alia, that the tax deductibility of the part of the levy on the profits deriving from non-gambling related income ('the measure at issue') constituted State aid within the meaning of Article 107(1) TFEU.

After corresponding with the applicants, the Commission decided not to initiate the formal investigation procedure provided for in Article 108(2) TFEU with regard to the measure at issue, on the ground that it did not confer any selective advantage and did not, therefore, fall within the scope of Article 107(1) TFEU.

The applicants brought an action for annulment of that decision, which was dismissed by order of the General Court as manifestly lacking any foundation in law. [37] Nevertheless, on appeal, the Court of Justice set aside that order and referred the case back to the General Court for it to examine it as to the substance. [38]

Findings of the Court

In support of their action, the applicants complained that the Commission had infringed their procedural rights by refusing to initiate the formal investigation procedure despite it being unable, at the end of the preliminary examination stage, to overcome all of the serious difficulties raised by the assessment of the measure at issue. According to the applicants, the existence of those serious difficulties is demonstrated, first, by the Commission's error in determining the applicable reference system for the purpose of examining the selective nature of the measure at issue and, second, by the Commission's failure to ascertain whether that measure derogated from that reference system.

As a preliminary point, the Court notes that, in order to classify a national tax measure as 'selective' within the meaning of Article 107(1) TFEU, it is for the Commission, after having identified the reference system, that is, the 'normal' tax system applicable in the Member State concerned, to demonstrate that the tax measure at issue is a derogation from that reference system, in so far as it differentiates between operators who, in the light of the objective pursued by that system, are in a comparable factual and legal situation, without being justified by the nature or general structure of the system in question.

In the present case, the reference system identified in the contested decision consists of the relevant taxes applicable to all undertakings, namely trade tax and income or corporation tax. Since that reference system was determined following an objective examination of the content, the structure and the specific effects of the applicable rules resulting from an interpretation of the relevant provisions of national tax law provided by Germany in the exchange of arguments, the Court finds that the Commission complied with all of the requirements arising from the case-law in that regard.

The Court, moreover, validates the Commission's analysis that the 'principle of the deductibility of costs associated with commercial transactions' from the tax base for the taxes at issue formed part of the reference system. In pointing out that that analysis was based on the interpretation of national tax law provided by Germany, the Court considers that the applicants failed to demonstrate that the Commission had erred in that regard.

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37 Order of 22 October 2021, *Fachverband Spielhallen and LM* v *Commission* (T-510/20, EU:T:2021:745).

38 Judgment of 21 September 2023, *Fachverband Spielhallen and LM* v *Commission* (C-831/21 P, EU:C:2023:686).

Accordingly, the Court rejects the complaint that the Commission encountered serious difficulties in determining the reference system applicable to the present case.

As regards, next, the complaint that the Commission failed to ascertain whether the measure at issue derogated from that reference system, the Court observes that the applicants' arguments seek to dispute the classification of the levy on the profits as a specific tax that may be deducted and to allege, in the alternative, that, even if it were to be classified as tax, it would be comparable to certain taxes whose non-deductibility is expressly provided for by German tax law.

In that regard, the Court notes that the question of whether the levy on the profits is a specific deductible tax falls within the interpretation of the relevant national provisions which constitute the reference framework. The same applies to the argument raised by the applicants in the alternative.

As regards the classification of the levy on the profits as a specific deductible tax, it is apparent from the documents before the Court that the Commission relied on the interpretation of the relevant national provisions given by Germany in the exchange of arguments. Since the interpretation proposed by that Member State was compatible with the wording of those provisions, it follows from the case-law that the Commission was in principle required to accept it. Since the applicants have not put forward any argument concerning the existence of a contrary administrative practice on the part of the German authorities, the Court concludes that they have not demonstrated that the Commission encountered serious difficulties as regards the classification of the levy on the profits as a specific tax.

As regards the complaint that the levy on the profits is a tax comparable to other taxes whose non-deductibility is provided for by German law, the Court observes that it must be ascertained whether the measure at issue constitutes a derogation from the reference system, inasmuch as it differentiates between operators who, in the light of the objective assigned to the German tax system, are in a comparable factual and legal situation, that is to say, in particular, between operators subject to the levy on the profits and those subject to non-deductible taxes cited by the applicants.

In the light of, first, the explanations given in the contested decision and, second, the clarification provided by the Commission and Germany in response to the Court's questions, the Court considers that the Commission was entitled to find, in the contested decision, that the deductibility of the levy on the profits did not derogate from the general rules on taxation under the normal tax system constituting the reference framework, with the result that the measure at issue did not involve the grant of a selective advantage as provided for in Article 107(1) TFEU.

Since the applicants' complaints have thus been rejected, the Court concludes that the applicants are not justified in claiming that the Commission encountered serious difficulties in the examination of the selectivity of the measure at issue.

Furthermore, that conclusion cannot be called into question by the applicants' arguments alleging that the measure at issue was adopted in breach of national constitutional rules. The concept of 'State aid' is an objective concept which must be examined in the light of the effects caused by the aid measure at issue, and not in the light of other factors such as the lawfulness of the measure by which the aid is granted. Similarly, the alleged breach of constitutional law has no bearing on the definition of the reference framework or on the existence of a derogation for the purpose of assessing the selective nature of the measure at issue as provided for in Article 107 TFEU.

In the light of the foregoing and after having rejected the other complaints put forward by the applicants, the Court dismisses the action for annulment in its entirety.

VI. APPROXIMATION OF LAWS: EUROPEAN UNION TRADEMARK

Judgment of the General Court (Eighth Chamber, Extended Composition), 25 June 2025, Comité interprofessionnel du vin de Champagne and INAO v EUIPO – Nero Lifestyle (NERO CHAMPAGNE), T-239/23

Link to the full text of the judgment

EU trade mark – Opposition proceedings – Application for the EU word mark NERO CHAMPAGNE – Earlier PDO 'Champagne' – Relative ground for refusal – Article 8(6) of Regulation (EU) 2017/1001 – Article 103(2)(a) and (c) of Regulation (EU) No 1308/2013 – Trade mark that contains a PDO – Products complying with the product specification of the PDO – Obligation to state reasons – Article 94 of Regulation 2017/1001

By its judgment, the General Court rules, first, on Article 103(2)(a)(ii) of Regulation No 1308/2013, [39] concerning the unprecedented issue of the possible exploitation of the reputation of a protected designation of origin (PDO) when a trade mark that contains that PDO limits its registration to products complying with the specification of the PDO at issue and to services referring to such products and, secondly, on Article 103(2)(c) of Regulation No 1308/2013 as to the possibility that a trade mark that contains a PDO may convey false or misleading indication.

On 19 February 2019, Nero Lifestyle Srl, filed with the European Union Intellectual Property Office (EUIPO) an application for registration of the word sign NERO CHAMPAGNE as an EU trade mark in respect of various products and services. [40] Several months later, on 2 August 2019, the Comité interprofessionnel du vin de Champagne and the Institut national de l'origine et de la qualité (INAO), the applicants, filed a notice of opposition to registration of the mark applied for based on the PDO 'Champagne', registered in the European Union for wine since 18 September 1973.

The Opposition Division of EUIPO partially upheld the opposition on the basis of Article 103(2)(c) of Regulation No 1308/2013 in respect of some services and rejected the opposition in respect of the other goods and services.

By decision of 17 February 2023 ('the contested decision'), the Board of Appeal of EUIPO, upon hearing the applicants' appeal, partially annulled the Opposition Division's decision in so far as it had rejected the opposition in respect of the some services and, consequently, upheld the opposition in respect of those services. However, it rejected the opposition in respect of the other goods and services relating to products complying with the specification of the PDO 'Champagne'.

It is in that context that the General Court heard an application for annulment and alteration of the Board of Appeal's decision in so far as it had rejected the opposition.

Findings of the Court

In the first place, the Court notes that Article 102(1) of Regulation No 1308/2013 does not prohibit, as a matter of principle, a trade mark from containing or consisting of a PDO. Registration of such a mark is to be refused or invalidated only in two situations, namely, if the PDO does not comply with the product specification concerned, or if its use falls under Article 103(2) of that regulation. The latter

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39 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

40 More specifically, it covered goods and services in Classes 33, 35 and 41 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

article provides an exhaustive list of practices against which PDOs are protected. In particular, Article 103(2)(a)(ii) is intended to protect PDOs against any direct or indirect commercial use thereof in so far as that use exploits the reputation of the PDO.

Thus, it is apparent from a joint reading of Article 102(1) and Article 103(2) of Regulation No 1308/2013 that those provisions do not preclude registration of a trade mark that contains or consists of a PDO as such, except where such registration falls within the scope of one of the situations set out above.

In the second place, the Court rules on the 'limitation theory' [41] that the Board of Appeal applied in the contested decision. According to that theory, it is presumed, in essence, that a mark which includes a PDO cannot, as a matter of principle, exploit the reputation of that PDO when that mark is exclusively registered in respect of products complying with the specification of that PDO and in respect of services referring to such products.

However, the Court points out that the contested decision lacks clarity in its application of that 'limitation theory', particularly as regards the nature of the presumption that the reputation of the PDO was not exploited. The Court therefore structures its reasoning around two possible scenarios: first, that it is a non-rebuttable presumption and, secondly, that it is a rebuttable one.

As regards the first possibility, the Court notes that the Board of Appeal found that Article 103(2) of Regulation No 1308/2013 did not apply since the mark applied for covered products that were in conformity with the specification of the PDO and services relating to such products. However, the situations listed in Article 103(2) of that regulation do not cover products which do not comply with the specification. Article 103(2)(a)(ii) does not specify that it applies only to the use of the PDO in question for comparable products or for goods and services not complying with the specification of that PDO. Thus, nothing in the wording of Article 103(2)(a)(ii) and (b) to (d) of that regulation indicates that the situations provided for therein cannot apply to the use of a PDO in respect of products complying with the specification of that PDO.

Accordingly, the Court finds that Article 103(2)(a)(ii) of Regulation No 1308/2013 may be relied on in order to oppose registration of a mark that contains or consists of a PDO, despite the fact that the products and services relating to such products, covered by the mark applied for, are in conformity with the specification of the PDO in question. In that regard, the Board of Appeal should have carried out an analysis in order to assess whether the mark applied for exploited the reputation of that PDO, namely whether the use of that PDO sought to take undue advantage of its reputation.

Therefore, the Court finds that the Board of Appeal, by introducing a non-rebuttable presumption, made an error of law in the interpretation of Article 103(2)(a)(ii) of Regulation No 1308/2013.

As regards the possibility that the presumption that the reputation of the PDO was not exploited is rebuttable, the Court notes that it can be presumed that a trade mark that contains or consists of a PDO, registered solely in respect of products complying with the specification of that PDO or for related services, will not unduly exploit the reputation of that PDO, within the meaning of Article 103(2)(a)(ii) of Regulation No 1308/2013, since it will only be deemed to be used, on the market, in respect of products complying with the quality standards relating to that PDO or in respect of services relating to such products. However, that presumption may be overturned when it can be demonstrated, on the basis of concrete, substantiated and consistent elements, that a given trade mark is likely unduly to exploit the reputation of a PDO, even if it only covers products complying with

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41 That theory originates in EUIPO's Guidelines for Examination of European Union Trade Marks (Part C (Opposition), Section 6 (Geographical Indications), point 3.1.3 (Limits to the scope of protection of GIs on relative grounds)). According to those guidelines, 'where the specification of a [trade mark] application is limited, in relation to goods identical to the product covered by the [PDO or PGI], to goods in conformity with the specification of the relevant [PDO or PGI], the function of the [PDO or PGI] in question is safeguarded in relation to those products. This is because the [trade mark] application only covers products from the particular geographic origin and the special qualities connected therewith. Consequently, an opposition against [a trade mark] application that has been appropriately limited will not succeed.'

the specification of that PDO or related services. It is then for the adjudicating bodies of EUIPO to ascertain whether such elements allow that presumption to be rebutted.

Consequently, the Court states that, to the extent that the contested decision is interpreted as introducing a rebuttable presumption, it is not tainted by an error of law. However, it is appropriate to examine whether the Board of Appeal set out, to a sufficient legal standard, the reasons that led it to conclude that that presumption had not been rebutted in the present case.

The Court notes that various elements indicating that the trade mark applied for was likely to exploit the reputation of the PDO 'Champagne' were raised at the stage of the administrative procedure. Those elements include, in particular, the outstanding reputation of the PDO 'Champagne', the fact that the mark applied for is a word mark, which can therefore be used in many different ways on the market, including in a manner contrary to the objectives of the PDO, and, moreover, the arguments relating to the labelling of the goods marketed by Nero Lifestyle.

Thus, the Court finds that, by failing to sufficiently explain how the elements produced were not capable of overturning the presumption in the present case, the Board of Appeal failed to fulfil its obligation to state reasons.

Therefore, the Court annuls the Board of Appeal's decision in so far as the latter dismissed the appeal brought before it.

In the last place, the Court examines whether the mark applied for, which contains the PDO 'Champagne' in its name, can be perceived as conveying a false or misleading indication within the meaning of Article 103(2)(c) of Regulation No 1308/2013.[42] First, it points out that the word 'nero' is used in the name of several well-known Italian grape varieties and in the name of multiple grapevine varieties. Consequently, the relevant public could be misled into thinking that the mark applied for evokes the grape variety of the champagne in question.

Secondly, the word 'nero' will be understood by the relevant Italian-speaking public as meaning 'black'. Thus, the relevant public could be misled, as to the colour of the Champagne wine marketed under the mark applied for, into thinking that it is a new variety of champagne, namely a 'black champagne', even though, under the specification of the PDO, a champagne can only be white or rosé.

Accordingly, the Court finds that the Board of Appeal made an error of assessment in finding that the mark applied for did not fall within the scope of Article 103(2)(c) of Regulation No 1308/2013.

Thus, the Court exercises its power of alteration and upholds the opposition in respect of the goods and services at issue, including 'Wine complying with the specifications of the [PDO] "Champagne"' included in Class 33.

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42 Article 103(2)(c) of Regulation No 1308/2013 is intended to protect PDOs and protected geographical indications (IGP) against 'any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packing of the product in a container liable to convey a false impression as to its origin'.

VII. ECONOMIC AND MONETARY POLICY

1. PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS

Judgment of the General Court (Tenth Chamber), 4 June 2025, Baltic International Bank v ECB, T-551/23

Economic and monetary policy – Prudential supervision of credit institutions – Specific supervisory tasks assigned to the ECB – Decision to withdraw a credit institution's authorisation – Infringement of national legislation on the prevention of money laundering and the financing of terrorism – Article 83(2) of Regulation (EU) No 468/2014 and Article 4(3) of Regulation (EU) No 1024/2013 – Scope of the ECB's assessment of the circumstances justifying withdrawal – Competence of the national competent authorities and of the ECB within the Single Supervisory Mechanism (SSM) – Conditions for withdrawal – Obligation to state reasons – Right to good administration

Hearing an action for annulment, which it dismisses, the General Court clarifies the division of competences between the national competent authorities (NCAs) and the European Central Bank (ECB) within the Single Supervisory Mechanism (SSM) and, more specifically, the scope of the ECB's review in the context of its assessment to decide to withdraw a bank's authorisation.

The applicant, Baltic International Bank SE, is a credit institution established in Latvia and subject to direct prudential supervision by the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia; 'the FCMC').

On 9 March 2016, the FCMC adopted Decision No 61 on the imposition of sanctions on Baltic International Bank, [43] which the applicant did not challenge. On 29 November 2019, the FCMC adopted Decision No 191 on the imposition of sanctions and measures on Baltic International Bank, [44] which, however, the applicant did challenge. That decision was upheld by Decision No 255 of the FCMC of 22 December 2022 upholding Decision No 191, [45] which the applicant challenged before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia). Furthermore, on 12 December 2022, the FCMC adopted Decision No 215 on the non-application of a resolution measure to the applicant [46] and Decision No 216 on the suspension of the provision of financial services and the appointment of an authorised representative for the applicant. [47]

On 30 December 2022, the FCMC submitted to the ECB a proposal for a decision on the withdrawal of the authorisation of a supervised credit institution in relation to the applicant ('the proposal for a decision'). On 10 March 2023, the ECB adopted a decision withdrawing the authorisation issued to the applicant as a credit institution. [48] That decision was based on three grounds, alleging: first, that the applicant had committed serious breaches over a long period of time, and was still in breach, as at the date of the decision's adoption, of the Latvian legislation on the prevention of money laundering and the financing of terrorism; second, that it had breached, over a long period of time, its obligation to establish effective internal control systems, as laid down in the Latvian legislation on credit

43 Lēmums Nr. 61 par sankciju piemērošanu AS « Baltic International Bank » ('Decision No 61').

44 Lēmums Nr. 191 par sankciju un pasākumu noteikšanu AS « Baltic International Bank » ('Decision No 191').

45 Lēmums Nr. 255 par Finanšu un kapitāla tirgus komisijas padomes 29.11.2019. lēmuma Nr. 191 atstāšanu par negrozītu.

46 Lēmums Nr. 215 par noregulējuma darbības nepiemērošanu Baltic International Bank SE ('Decision No 215').

47 Lēmums Nr. 216 par finanšu pakalpojumu sniegšanas apturēšanu un pilnvarnieku iecelšanu Baltic International Bank SE ('Decision No 216').

48 Decision ECB-SSM-2023-LV-1 WHD-2022-0014 of the ECB of 10 March 2023 on the withdrawal of the authorisation of a supervised credit institution.

institutions; third, that it had breached its obligation to develop and implement a prudent strategy and prudent policies and procedures allowing it to manage its risks, including the timely identification, assessment, analysis and monitoring of its risks, as referred to in the latter legislation.

By judgment of 24 March 2023, the Ekonomisko lietu tiesa (Economic Court, Latvia) declared the applicant to be in liquidation. On 6 April 2023, the applicant submitted a request for review of the decision of 10 March 2023 to the Administrative Board of Review of the ECB. That decision was replaced, on 3 July 2023, by the contested decision, the content of which is identical to the original decision.

Findings of the Court

In the first place, with regard to assessing the applicant's compliance with the legislation on anti-money laundering and countering the financing of terrorism ('AML/CFT'), the applicant claims, in essence, that the ECB did not itself undertake the assessment which it was required to carry out, rather it based that assessment on decisions taken by the FCMC, which the applicant regards as being open to challenge, and on acts previously adopted in the context of the national administrative procedure, which the applicant was unable to contest before the national court.

In that regard, the Court observes that [49] the competent authorities may withdraw the authorisation granted to a credit institution where that credit institution commits one of the breaches set out in Article 67(1) of Directive 2013/36. That includes, inter alia, where [50] an institution is found liable for a serious breach of the national provisions adopted pursuant to Directive 2005/60. [51] However, the ECB is to apply national law where that law transposes the relevant directives. [52]

In addition, the Court recalls that, in the light of the ECB's broad discretion, in the case of measures relating to the prudential supervision of a credit institution, the judicial review carried out by the Courts of the European Union of the contested decision does not involve it taking the place of the author of that decision, but seeks to ascertain that the decision is not based on materially incorrect facts and that it is not vitiated by an error of law, manifest error of assessment or misuse of powers. It is in those circumstances that the Court examines the assessment made by the ECB of the first ground for withdrawal of the authorisation.

According to the first ground for withdrawal of the authorisation, the ECB held that, since 2012, the applicant had repeatedly and persistently breached several legal requirements in the field of AML/CFT. In that respect, the Court observes first of all that the contested decision does not simply reproduce the position contained in the FCMC's proposal for a decision, rather the ECB carried out its own assessment based on a whole series of items of information taken from a number of decisions adopted by the FCMC, as well as other documents drawn up nationally, including inspection reports and supervisory activities. It therefore considers that the ECB was entitled to take into account, inter alia, Decisions Nos 61 and 191, in which the breaches committed by the applicant are described. The fact that those documents were drawn up by the FCMC cannot prevent the ECB from taking them into account or from carrying out its own assessment on the basis of the information which they contain.

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49 Pursuant to Article 18(f) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

50 Under Article 67(1)(o) of Directive 2013/36.

51 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15). That directive was repealed and replaced by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60 (OJ 2015 L 141, p. 73).

52 In accordance with Article 4(3) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the [ECB] concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63; 'the Basic SSM Regulation').

Furthermore, the Court states that the ECB has the power to withdraw an authorisation on the basis of breaches found by the NCAs.

More specifically, with regard, firstly, to Decisions Nos 61 and 191, the Court observes that the first of those decisions was not contested by the applicant and was therefore final. Accordingly, the ECB was perfectly entitled to take it into account in the contested decision, particularly since the authorisation could have been withdrawn, in the present case, solely taking account of Decision No 61.

In addition, given not only the importance of the prudential rules aimed at combatting money laundering and terrorist financing but the special responsibility of credit institutions in that respect and the need to act as quickly as possible in response to breaches of those rules, the Court explains that a national administrative decision finding a credit institution liable for serious breaches of the national provisions adopted under Directive 2005/60 is sufficient grounds for withdrawing authorisation. The fact that certain infringements found were corrected and can no longer justify a withdrawal of authorisation would undermine the objective of safeguarding the European banking system.

Secondly, even though Decision No 191 had been the subject of proceedings challenging it at the national level, [53] those proceedings would have automatically entailed the suspension solely of the effects of the part relating to the fine imposed, leaving the remainder of the decision unaffected. The Court concludes that the ECB was therefore entitled to take account of the findings made in that decision.

Thirdly, as regards the argument that the ECB should have found that, given the failure to adopt the national regulatory acts establishing the criteria of seriousness for AML/CFT breaches, the breaches that the FCMC found the applicant to have committed could not be taken into account, the Court recalls that, although the Member States remain competent to implement such provisions in the field of AML/CFT, [54] the ECB has exclusive competence to withdraw authorisation, for all credit institutions, irrespective of their size, since the Basic SSM Regulation [55] lays down, as a condition for the withdrawal of authorisation, the existence of one or more grounds justifying withdrawal under Article 18 of Directive 2013/36. In that context, the Single Supervisory Mechanism centralises functions relating to prudential supervision with the ECB, while providing for decentralised execution by the NCAs of the participating Member States, under the supervision of the ECB, to which they provide their cooperation and assistance. In those circumstances, it is for the NCAs to establish the facts constituting breaches of the AML/CFT legislation, with the ECB carrying out the legal assessment establishing whether those facts and the breaches found on the basis of the proposal for a decision justify withdrawal of authorisation and the assessment of proportionality.

Fourthly, as for the argument relating to Decision No 191 that none of the inspection reports contain the alleged findings upon which the contested decision seeks to rely, the Court observes that the ECB was not obliged to check all the findings made by the FCMC and was perfectly entitled to carry out its assessment of the withdrawal of the authorisation on the basis, inter alia, of the breaches found in Decision No 191.

Lastly, as regards the assessments which purportedly call into question the presumption of the applicant's innocence, the Court finds, first, that the contested decision is the product of an administrative procedure separate from the criminal proceedings initiated against the applicant. Second, while reference is indeed made to the initiation of those criminal proceedings, that reference is made primarily to draw attention to the consequences of those proceedings for the property rights of certain shareholders. In addition, the initiation of the criminal proceedings is mentioned to

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53 Under Article 80 of the Latvian AML/CFT Law.

54 As explicitly provided for in recital 28 of the Basic SSM Regulation.

55 In Article 14(5) of the Basic SSM Regulation.

illustrate the potential consequences of that breach, which is unconnected with the question of whether or not the applicant complied with its obligations under the relevant criminal provisions.

Therefore, taking the view that the ECB did not err in relying on the ground that the applicant has been found liable for a serious breach of the national provisions in the field of AML/CFT, [56] the Court does not uphold the first two pleas in law.

In the second place, notwithstanding the dismissal of the pleas in law concerning the first ground for withdrawal and although, to justify withdrawing authorisation, it is sufficient that one of the breaches referred to in Article 67(1) of Directive 2013/36 has been committed, for the sake of completeness, the Court examines and dismisses the third plea in law, which seeks to challenge the merits of the second and third grounds for withdrawal relied on by the ECB.

Firstly, the Court rejects the complaint based on the alleged failure to provide adequate reasons for the two other grounds [57] and finds that the applicant participated in the procedure which led to the adoption of the contested decision, with the result that it was therefore aware of the context in which that decision was adopted and that the reasons why the authorisation was withdrawn can be understood.

Secondly, with regard to the merits of the second ground, the Court finds that the ECB decided to withdraw the authorisation on account of the applicant's persistent failure to comply with the obligation laid down in national law [58] to establish an effective system of internal control in the context of the activities of credit institutions which must be tailored to the risks involved. In addition, in the present case, the ECB observed that, since 2018, the applicant had had a high-risk business model, which the applicant did not contest. Furthermore, the applicant was the subject of two on-site inspections. At the end of the first inspection, deficiencies were identified in the internal control system for risk management. On completion of the second inspection, it was observed inter alia that those shortcomings had not been remedied and that the applicant had not established criteria or limits for the management of its risks, with the result that it continued to have persistent inadequate practices. The Court concludes that the ECB did not err in considering that the relevant provisions had been infringed.

Thirdly, as regards the third ground for withdrawal relied on by the ECB, the Court takes the view that, even assuming that the ECB somehow erred in its assessment in relation to one or other of the factors relied on by the ECB, or even all of them, there is no basis for considering that the conclusion reached by the ECB would have been different without those alleged errors. For that to be the case, such errors, considered individually or jointly, would have to have been decisive in the demonstration of the third ground. However, given the number of other findings made in the context of the exchanges between the FCMC and the applicant regarding the strategy adopted by the applicant in order to safeguard its financial situation, and in particular in view of the fact that it is established that the applicant had recorded losses since 2017, was unable to restore its profitability and took excessive risks, the Court holds that the ECB was entitled to rely on the third ground to justify withdrawing the authorisation.

In the third place, the Court examines the alleged infringement of the principle of good administration. With regard, first of all, to the question of whether the ECB should have reviewed Decisions Nos 215 and 216, first, it observes that the first of those two decisions was adopted in the context of a resolution procedure separate from the procedure for withdrawal of the authorisation which led to the contested decision. That resolution procedure falls primarily within the sphere of competence of the NCAs, whereas the procedure for withdrawal of authorisation, while it begins with

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56 Within the meaning of Article 67(1)(o) of Directive 2013/36.

57 Article 34(1) and (2) of the Latvian Law on credit institutions.

58 Article 34(1) of the Latvian Law on credit institutions.

investigations by the NCA, ends with a decision by the ECB. Second, although the contested decision does refer to Decision No 216, the Court finds that that reference is made as part of a summary of the facts and background, and that it cannot be inferred from the reference that the contested decision is based both on Decision No 216 and on Decision No 215 to justify the withdrawal of the authorisation. The declaration that an institution is failing or likely to fail adopted by the FCMC is part of a separate procedure from that leading to the withdrawal of authorisation. In any event, while, in taking its decision, the ECB is required [59] to take into account inter alia its assessment of the circumstances justifying withdrawal, this does not mean that it has to consider any other decision adopted by the NCAs within the scope of their competences. Thus, the ECB is competent to withdraw an authorisation on the basis of the findings made by the NCAs.

Next, as regards the alleged infringement of the right of access to the compliance assessment in the context of the adoption of Decision No 215, the Court observes that the applicant's argument concerns a procedure separate from that leading to the withdrawal of the authorisation, and dismisses it as ineffective.

Lastly, as for the allegedly insufficient time limit to exercise the right to be heard, the Court recalls that the applicant was granted nine working days in total to provide its comments on the draft of the contested decision. It is not disputed that the draft decision at issue contained only two documents not previously seen by the applicant. In that regard, the party to an ECB supervisory procedure is, in principle, to be given the opportunity to provide its comments in writing within a time limit of two weeks following receipt of a statement setting out the facts, objections and legal grounds on which the ECB intends to base the supervisory decision. [60] In particular circumstances, [61] and in certain situations, [62] the ECB may shorten the time limit to three working days, inter alia in the case of a decision withdrawing authorisation. In view of the legislation in force, the possibility of shortening the time limit and the fact that the applicant had not previously seen just two of the documents attached to the draft decision, the Court holds that the ECB did not infringe the applicant's right to be heard.

2. BANKING UNION – SINGLE RESOLUTION MECHANISM

Order of the General Court (Third Chamber, Extended Composition), 11 June 2025, DZ Bank v SRB, T-477/23

Link to the full text of the order

Action for annulment – Economic and monetary policy – Banking union – Single Resolution Mechanism for credit institutions and certain investment firms (SRM) – Regulation (EU) No 806/2014 – Directive 2014/59/EU – Joint decision on the determination of minimum requirements for own funds and eligible liabilities – Jurisdiction of the General Court – Lack of direct concern – Inadmissibility

Hearing an action for annulment, which it dismisses, the General Court rules for the first time on the nature of a joint decision of a resolution college, composed, inter alia, of the Single Resolution Board

59 Pursuant to Article 83(2) of Regulation (EU) No 468/2014 of the [ECB] of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the [ECB] and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1).

60 First subparagraph of Article 31(3) of the SSM Framework Regulation.

61 Third subparagraph of Article 31(3) of the SSM Framework Regulation.

62 The situations are set out in Articles 14 and 15 of the Basic SSM Regulation.

(SRB) and the national authority of a Member State outside the banking union, relating to the determination of the minimum requirements for own funds and eligible liabilities ('MREL'), and on the admissibility of an action brought against such a decision.

The applicant, DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt am Main, is the parent company of the DZ Bank Gruppe group, a financial group of cooperative banks in Germany. Within the banking union, the applicant has subsidiaries in Germany and Luxembourg and, outside of that union, a subsidiary in Hungary.

In 2017, the SRB established a resolution college for the applicant and its subsidiaries, [63] to which belong, in particular, the SRB, as president of that college and as the group-level resolution authority, and the Magyar Nemzeti Bank (National Bank of Hungary), as resolution authority of the Hungarian subsidiary.

On 8 December 2022, the SRB provisionally approved a draft decision on the determination of the MREL for the applicant's group to be examined by the resolution college. After the SRB consulted the applicant and received its observations, the resolution college concluded, at the end of its examination, that that draft should not be amended. As the group-level resolution authority, the SRB sent the final version of the draft to the resolution college, within which a consensus was reached. That version was then submitted to the respective internal approval processes of the SRB and the National Bank of Hungary, thus resulting in Joint Decision RC/JD/2022/22 of 6 April 2023 determining the MREL for the applicant and five of its subsidiaries ('the contested decision'). Concurrently, on 5 April 2023, the SRB adopted Decision SRB/EES/2022/215, fixing the MREL for the entities of the group headed by the applicant falling within its competence. That decision instructs the national resolution authorities to implement those MREL and to ensure their maintenance.

The contested decision was signed by the Chair of the SRB and contains a comment to the effect that the representatives of the relevant authorities have given their written agreement to the joint decision on the MREL. Annex I to the contested decision contains a written agreement, dated 6 April 2023 and signed by the Governor of the National Bank of Hungary, stating that the latter agrees to the joint decision proposed and transmitted by the SRB on 24 March 2023.

On 14 April 2023, the German resolution authority, namely the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority) (BaFin), was notified of Decision SRB/EES/2022/215 of the SRB of 5 April 2023, which it then implemented by a decision of 26 May 2023 addressed to the applicant.

By letter of 17 May 2023, the Luxembourg resolution authority, namely the Commission de surveillance du secteur financier (Financial Sector Supervisory Commission) (CSSF), informed the subsidiary DZ Privatbank of the implementation of the MREL determined by Decision SRB/EES/2022/215 and notified it of that decision.

By email of 22 May 2023, the SRB, as the group-level resolution authority, sent the applicant, as the parent company of the EU group, the contested decision, together with the joint decision on the group resolution plan and a summary of that plan.

The applicant then brought two separate appeals, [64] against the contested decision and against Decision SRB/EES/2022/215, before the SRB's Appeal Panel. The Appeal Panel dismissed those appeals on the ground that the first was unfounded and that the second was inadmissible.

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63 In accordance with Article 88 of 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).

64 Under Article 85(3) of 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).

The applicant brought two separate actions for annulment before the Court directed against the contested decision and the decision of the Appeal Panel. [65] In the present case, the SRB submits a plea of inadmissibility, based, inter alia, on the fact that the applicant is not an addressee of the contested decision and that it is not directly and individually concerned by it, with the result that it does not have standing to bring proceedings.

Findings of the Court

In the first place, the Court examines the applicant's status as an addressee of the contested decision. It rejects the applicant's argument that that status is a result of the SRB's obligation [66] to communicate the joint decisions after their adoption.

The joint decision is provided to 'the resolution entity by its resolution authority'. [67] As regards the parent company of the EU group that is not itself a resolution entity of the same resolution group, the joint decision is to be provided to it [68] by the resolution authority of the resolution entity.

It follows that the second subparagraph of Article 45h(1) of Directive 2014/59 does not provide that the author of the joint decision – namely, in the present case, the SRB and the Hungarian resolution authority, as co-authors of that decision – is to notify it to the entities concerned, but entrusts different resolution authorities, within their respective powers, with 'providing' that decision. In the present case, it is only by email of 22 May 2023 that the SRB, as the group-level resolution authority, [69] sent the applicant, as the parent company of the EU group, the contested decision, whereas the national resolution authorities were already informed before that date.

In the second place, the Court recalls the two cumulative criteria to be fulfilled in order for an action for annulment brought by a natural or legal person who is not an addressee of the act to be admissible, namely that the contested measure must, first, directly affect the legal situation of the individual and, secondly, leave no discretion to its addressees who are entrusted with the task of implementing it, without the need for intermediate rules.

As regards the first criterion, the Court examines the substance of the act in question and assesses 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 institution that adopted the act. As regards the joint decision relating to a cross-border group within the meaning of Article 2(1)(27) of Directive 2014/59, the Court takes particular account of the system established by the EU legislature in order to determine the MREL for each entity of the group within the European Union.

In the present case, the contested decision and Decision SRB/EES/2022/215 determine the MREL for the entities of the group to which the applicant belongs. However, although the contested decision represents the agreement concluded in the context of the European Union as a whole between the SRB and the Hungarian resolution authority, namely the National Bank of Hungary, pursuant to Directive 2014/59, Decision SRB/EES/2022/215, adopted on the basis of Regulation No 806/2014, gives concrete expression to that agreement within the banking union alone.

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65 Case registered under the number T-116/24.

66 Laid down in point (a) of the second subparagraph of Article 45h(1) of Directive 2014/59 and in Article 92(1) of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ 2016 L 184, p. 1).

67 According to point (a) of the second subparagraph of Article 45h(1) of Directive 2014/59.

68 In accordance with point (c) of the second subparagraph of Article 45h(1) of Directive 2014/59.

69 In accordance with point (c) of the second subparagraph of Article 45h(1) of Directive 2014/59.

Thus, the contested decision has a binding effect only on the resolution authorities 'concerned', [70] that is to say those that committed to mutually binding obligations by adopting the joint decision. The present case concerns the SRB and the Hungarian resolution authority.

The Court concludes from this that the adoption of the contested decision does not, in itself, have any legal effect within the banking union other than the obligation that the SRB imposes on itself vis-à-vis the Hungarian resolution authority to apply the MREL that it negotiated with that authority.

By contrast, as regards Decision SRB/EES/2022/215, the Court notes that, first, the SRB is to determine the MREL that the resolution entities and resolution groups are required to meet at all times [71] and that, secondly, the SRB is to address its determination to the national resolution authorities, [72] which are to implement the instructions of the SRB. [73] In the present case, the Court states that, by adopting Decision SRB/EES/2022/215, which, in its second citation, refers, inter alia, to Articles 12 to 12k and 29 of Regulation No 806/2014, the SRB adopted a decision under the abovementioned articles by which it determined, within the banking union, the MREL for the group to which the applicant belongs.

Consequently, since the contested decision does not directly affect the applicant's legal situation, the Court upholds the plea of inadmissibility submitted by the SRB based on the applicant's lack of standing to bring proceedings.

VIII. CONSUMER PROTECTION: UNFAIR TERMS

Judgment of the Court of Justice (Grand Chamber), 24 June 2025, GR REAL, C-351/23

Link to the full text of the judgment

Reference for a preliminary ruling – Consumer protection – Unfair terms in consumer contracts – Directive 93/13/EEC – Article 6(1) – Article 7(1) – Consumer credit contract – Contract secured by a charge over immovable property constituting the consumer's family home – Early recovery of the loan – Extrajudicial sale by auction of that immovable property – National legislation allowing that sale to be made without prior verification, by a court, of the debt concerned – Grounds for the annulment of that sale excluding the existence of unfair terms – Effectiveness of the protection afforded to consumers – Articles 7 and 47 of the Charter of Fundamental Rights of the European Union

Seised of a request for a preliminary ruling by the Krajský súd v Prešove (Regional Court, Prešov, Slovak Republic), the Court of Justice, sitting as the Grand Chamber, rules on the protection offered to consumers by Directive 93/13, [74] read in the light of the fundamental rights to accommodation and effective judicial protection, [75] in the context of a dispute between two consumers, on the one hand,

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70 In accordance with Article 45h(7) of Directive 2014/59.

71 According to Article 12(1) of Regulation No 806/2014.

72 According to Article 12(5) of Regulation No 806/2014.

73 In accordance with Article 29 of Regulation No 806/2014.

74 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

75 Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), relating to respect for private and family life, guarantees the right to accommodation, while Article 47 of the Charter provides for the right to effective judicial protection.

and, on the other, the successful bidder for the family home of those consumers, concerning (i) the eviction of the latter from that home following its acquisition by the successful bidder and (ii) a counterclaim by which those consumers challenged the lawfulness of the transfer of ownership of that immovable property. The Court also examines the conditions under which extra-judicial proceedings for the enforcement of a mortgage, once initiated, should continue in order for those fundamental rights, and the requirements provided for by Directive 93/13, to be observed.

On 7 April 2011, PO and RT, the defendants, concluded a loan contract with a Slovak credit institution ('the bank') for EUR 63 000 repayable in monthly instalments. The final payment under that loan contract was due to be made on 20 January 2030. A term contained in the general conditions applied by the bank provided for early repayment in the event of a delay in payment. The loan contract provided for a mortgage on the family home of those defendants.

On 3 November 2016, on account of a delay in payment of those monthly instalments by the defendants, the bank declared the loan immediately payable and requested those defendants to pay in its entirety the remainder of the sum due under that loan contract. It also lodged an application for enforcement of the mortgage by means of an extrajudicial sale by auction of the immovable property concerned.

On 21 April 2017, the defendants in the main proceedings brought an action before the Okresný súd Prešov (District Court, Prešov, Slovak Republic), seeking that the bank be ordered to abstain from enforcing that mortgage and, by way of an interim measure, the suspension of enforcement of that mortgage until the main proceedings had been definitively concluded.

On 25 April 2017, the first round of the auction took place without any bids being made.

By an order of 26 May 2017, the District Court, Prešov, rejected the defendant's application for an interim measure. Those defendants brought an appeal against that order before the Regional Court, Prešov. On 18 July 2017, before that court was able to give its decision, the immovable property concerned was acquired, in a second round of the auction, by the applicant, GR REAL, a company operating inter alia in the sector of loans and the management and maintenance of immovable property. That sale took place even though PO opposed the enforcement of the mortgage at issue on the ground that the judicial proceedings seeking to prevent that enforcement were still ongoing, and that both the auctioneer and the successful bidder had been informed that there was a pending legal challenge to the enforcement.

On 9 August 2017, the Regional Court, Prešov, set aside the order of 26 May 2017 and ordered that the defendants' application for an interim measure be reconsidered, on the ground, inter alia, that the District Court, Prešov, should have examined the defendant's objections concerning the absence of an agreement on the acceleration clause.

On 19 December 2017, the defendants withdrew the action brought on 21 April 2017, on account of the sale of the immovable property concerned. Accordingly, on 11 January 2018, the District Court, Prešov, closed the proceedings.

Following the refusal of the defendants to vacate the immovable property concerned, that being their sole residence and the property that they occupied with their children, two of whom were minors, the applicant brought eviction proceedings before the District Court, Prešov. The rejection of that action by that court was confirmed on appeal by the Regional Court, Prešov.

By an order of 8 April 2021, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) set aside the decisions of both those courts and referred the case back to the District Court, Prešov, in order that that latter court examine the right of ownership of the applicant. The District Court, Prešov, upheld the applicant's action and ordered the defendants to vacate the property concerned, rejecting their application seeking to challenge the lawfulness of the sale of that property.

Both the applicant and the defendants appealed that decision before the Regional Court, Prešov, which is the referring court. Before that court, the defendants claim a failure to observe their rights as consumers and their right to accommodation.

First, the referring court expresses doubts as to the compliance of the acceleration clause in the loan contract at issue with the requirement of transparency, given that that term was included in the bank's general conditions but allegedly was not brought to the defendants' knowledge. Secondly, that

court raises the issue of whether, under Directive 93/13, the successful bidder for immovable property in an extrajudicial sale at auction, informed of pending judicial proceedings concerning the validity of the term on which that sale was based, enjoys absolute protection or if that protection could be limited, having regard, in particular, to the proactive conduct of the consumers concerned in order to defend themselves against that enforcement by claiming that that term is unfair, and to the doubts in relation to the good faith of that company.

Findings of the Court

In the first place, the Court examines whether the judicial proceedings at issue in the main proceedings fall within the scope of Directive 93/13. [76]

The Court thus recalls that, in order to determine whether Directive 93/13 may usefully be relied on in such proceedings, it is necessary to examine the subject matter of those proceedings and the specific features of the dispute of which they form part, and the possible presence of a potentially unfair term in the mortgage loan contract which formed the subject matter of such proceedings.

As regards, in the first place, the subject matter of the proceedings, the Court reiterates its case-law under which Directive 93/13 cannot usefully be relied on, in principle, in a dispute which concerns the protection of real rights derived from title lawfully acquired by a seller or supplier following a sale by auction. [77] It also points out that a national court cannot carry out an examination of the unfairness of contractual terms which would lead to the annulment of the acts transferring ownership of immovable property in a situation in which the mortgage enforcement procedure which led to that transfer has ended and the ownership rights in that property have been transferred to a third party, without the lawfulness of the transfer being challenged. [78] In that context, the Court states that the subject matters of the actions at issue in the main proceedings can be distinguished from those at issue in its aforementioned case-law. A special feature of the dispute in the main proceedings is that the referring court is seised (i) of an action for the eviction of the defendants from their family home, brought by the applicant in the exercise of its right to ownership acquired in the extrajudicial sale at auction of that home, and (ii) of a counterclaim by which the defendants challenge the lawfulness of the transfer of ownership of that home to the applicant, on the ground that the conditions in which that transfer took place do not meet the requirement of effective judicial protection. [79]

Consequently, unlike the dispute which was at issue in the case which gave rise to the judgment in *Banco Santander*, [80] the dispute in the main proceedings concerns not only the protection of real property rights acquired following a sale of immovable property by auction, but also the conditions under which the proceedings for enforcement of the mortgage granted over that property may have led to the transfer of those rights to the company making the successful bid. In the present case, in their counter-claim, the defendants in the main proceedings do not rely, against the transferee of immovable property, which is a third party to the mortgage loan contract in relation to that property, on grounds for the annulment of that contract or some of its terms, but dispute the very lawfulness of the transfer of ownership of that property to that transferee.

Second, as regards the specific features of the dispute of which the enforcement proceedings form part, and, specifically, the consumers' attitude in relation to the extra-judicial enforcement proceedings at issue, the Court points out that that cannot be regarded as completely passive.

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76 And specifically, the scope of Article 6(1) and Article 7(1) of Directive 93/13.

77 Judgment of 7 December 2017, *Banco Santander* (Case C-598/15, EU:C:2017:945, paragraphs 44 and 47).

78 Judgment of 17 May 2022, *Ibercaja Banco* (C-600/19, EU:C:2022:394, paragraph 57).

79 As provided for by Article 47 of the Charter and Article 7(1) of Directive 93/13.

80 Judgment of 7 December 2017, *Banco Santander* (C-598/15, EU:C:2017:945).

The defendants brought an action seeking to prevent the continuation of those proceedings, attaching an application for an interim measure seeking the suspension of the proceedings. According to the referring court, that legal remedy would have been the only means of opposing the performance of an extrajudicial sale by auction. Subject to the assessment which it is for that court to carry out, the fact that, after the sale by auction, those defendants withdrew that action cannot call into question the finding that those defendants did not remain passive, because they could reasonably consider that the action concerned had become devoid of purpose.

Moreover, the referring court states that the defendants informed the applicant, at the second round of the auction, of the existence of a pending application for an interim measure to suspend the enforcement of the mortgage concerned. That assessment of the facts is a matter for the national court and binds the Court of Justice, although the applicant disputes that it was informed of the existence of such an application.

Third, the referring court takes the view that corroborating evidence existed, on the date of the sale by auction, as to the possible presence of a potentially unfair term in the contract on which the enforcement of the mortgage concerned was based. It expresses doubts as to whether the acceleration clause which led to that enforcement complies with the requirement of transparency.

Having regard to the foregoing, the Court of Justice considers that, unlike the case which gave rise to the judgment in *Banco Santander*, [81] the defendants did not remain passive in the extrajudicial enforcement proceedings. On the contrary, they made use of the legal remedies provided for by the national legislation in order to oppose that enforcement, while informing the persons concerned by that enforcement of their actions. However, those enforcement proceedings continued and culminated in the sale by auction of their family home, in the absence of any judicial review of the basis of the debt of which the bank sought payment, even though there was corroborating evidence as to the potential unfairness of the acceleration clause on which that enforcement was based. In such circumstances, the protection of the legal certainty of a transfer of ownership already carried out in respect of a third party [82] cannot be regarded as absolute.

Consequently, the Court finds that the scope of Directive 93/13, [83] read in the light of the rights to accommodation and effective judicial protection, [84] covers judicial proceedings in which (i) the company which was the successful bidder for a property constituting the family home of a consumer, sold in the context of extrajudicial enforcement of a mortgage granted over that property by that consumer for the benefit of a creditor acting in the course of trade, applies for the eviction of that consumer and (ii) the consumer challenges, by means of a counterclaim, the lawfulness of the transfer of ownership of that property to that company making the successful bid, that transfer taking place despite court proceedings which were still pending at the time of that transfer and which sought suspension of the enforcement of that mortgage on the ground that there were unfair terms in the contract on which that enforcement was based, the company making the successful bid having been previously informed of those pending proceedings by that consumer. That applies in so far as, at the time of the sale concerned, there was corroborating evidence that the terms were potentially unfair and that the consumer had availed him or herself of the legal remedies that an average consumer could reasonably be expected to avail him or herself of with a view to obtaining judicial review of those terms.

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81 Judgment of 7 December 2017, *Banco Santander* (C-598/15, EU:C:2017:945).

82 To which the Court referred in the judgments of 7 December 2017, *Banco Santander* (C-598/15, EU:C:2017:945, paragraph 45), and of 17 May 2022, *Ibercaja Banco* (C-600/19, EU:C:2022:394, paragraph 57).

83 And specifically Article 6(1) and Article 7(1) of Directive 93/13.

84 Articles 7 and 47 of the Charter.

In the second place, the Court finds that Directive 93/13, read in the light of the rights to accommodation and to effective judicial protection, precludes national legislation [85] which allows extrajudicial enforcement of a mortgage, granted by a consumer for the benefit of a creditor acting in the course of trade, on immovable property constituting that consumer's family home to continue despite the existence of a pending application before a court for an interim measure seeking suspension of that enforcement, and corroborating evidence as to the possible presence of a potentially unfair term in the contract on which that enforcement was based. That applies where that legislation does not provide for any possibility of obtaining by judicial means the annulment of that enforcement on the ground that there are unfair terms in that contract.

In the present case, subject to the verifications which it is for the referring court to carry out, the legal remedies available to the defendants on the date of the sale by auction at issue did not meet the requirement of effective judicial protection.

First, those legal remedies did not offer an effective possibility to suspend performance of that sale by auction, in the context of enforcement proceedings, to enable the judicial review of a potentially unfair term in the contract giving rise to that enforcement, even though an application for suspension was pending before a court. Article 7(1) of Directive 93/13 requires that the consumer is not deprived of the effective possibility of obtaining the suspension of enforcement proceedings brought pursuant to an enforceable instrument based on a contractual term the validity of which is challenged before the courts on the ground that it is unfair. In the absence of that suspension, a decision finding that that term is unfair would afford that consumer only subsequent protection of a purely compensatory nature, which would be incomplete and insufficient. That requirement is all the more justified where, as in the present case, the enforcement proceedings concern the home of the consumer and his or her family, the protection of which falls within the scope of the fundamental right to respect for private and family life. [86]

Secondly, those legal remedies did not provide the defendants with the possibility to apply for the annulment of that sale by auction on account of the presence of an unfair term in the contract on which that sale was based, [87] despite the existence of consistent evidence as to the potential unfairness of that term.

The Court adds that, having regard to the recent case-law of the Supreme Court of the Slovak Republic on the Law on Voluntary Auctions, [88] the possibility of an interpretation of that law [89] which is consistent with the provisions of Directive 93/13 does not appear to be precluded. In that regard, if the referring court takes the view that it is open to it to so interpret that law, as regards the grounds for annulment provided for in it, that law also provides that an application for annulment must be filed within three months of the date of the acceptance of the winning bid. Subject to verification by the referring court, the defendants could not reasonably be expected to bring an application for annulment of the sale by auction concerned on the basis of the Law on Voluntary Auctions inasmuch as they could not have anticipated the interpretation made of that law by the Supreme Court of the Slovak Republic five years after that sale.

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85 Zákon č. 527/2002 Z. z. o dobrovoľných dražbách a o doplnení zákona Slovenskej národnej rady č. 323/1992 Zb. o notároch a notárskej činnosti (Notársky poriadok) v znení neskorších predpisov (Law No 527/2002 on voluntary auctions and amending the Law of the Slovak National Council No 323/1992 on notaries and notarial activity (the Notarial Code)) ('the Law on Voluntary Auctions').

86 Article 7 of the Charter.

87 Paragraph 21(2) of the Law on Voluntary Auctions provides for the right to apply for annulment of a sale within three months of the date of the acceptance of the winning bid, in the event of a challenge to the validity of the contract creating the charge concerned or of infringement of the provisions of that Law.

88 In its written observations, the Slovak Government submits that in case-law dating from 2022, confirmed in 2023, the Supreme Court of the Slovak Republic interpreted Paragraph 21(2) of the Law on Voluntary Auctions to the effect that the existence of unfair terms in the contract on which an extrajudicial enforcement is based constitutes a ground for annulling the sale made in the context of that enforcement.

89 Specifically, Paragraph 21(2) of the Law on voluntary auctions.

The importance of the public interest underlying the protection which that directive confers on consumers and the need to ensure the effectiveness of the rights which individuals derive from that directive, warrant, in the absence of effective remedies enabling them to assert their rights under that directive before the date of the acceptance of the winning bid, the defendants in the main proceedings not being time-barred from challenging the enforcement having given rise to that acceptance.

The Court also states that since the referring court might find that the sale by auction is void and, consequently, restore the legal relationship between the defendants and the bank before that sale was carried out, that court should examine, in the light of the applicable national law, the possibility of allowing that bank to participate in the proceedings, in accordance with any appropriate procedural rules.

IX. ENVIRONMENT: HABITATS DIRECTIVE

Judgment of the Court of Justice (Fifth Chamber), 12 June 2025, Eesti Suurkiskjad, C-629/23

Link to the full text of the judgment

Reference for a preliminary ruling – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – First subparagraph of Article 1(i) – Conservation status of a species – Concept – Article 14 – Management measures – Taking in the wild and exploitation compatible with the maintenance or restoration of the species at a favourable conservation status – Second subparagraph of Article 1(i) – Assessment whether the conservation status of the species concerned is favourable – Cumulative conditions – *Canis lupus* (wolf) – Classification in the 'vulnerable' category of the International Union for Conservation of Nature's 'Red List' – Animal species forming part of a population whose natural range extends beyond the territory of a Member State – Taking account of exchanges with populations of the same species present in neighbouring Member States or in third countries – Article 2(3) – Taking account of economic, social and cultural requirements and regional and local characteristics

Ruling on a request for a preliminary ruling from the Riigikohus (Supreme Court, Estonia), the Court answers several questions relating to the protection of the wolf (*Canis lupus*) under the Habitats Directive [90] and, in particular, Article 14 thereof, [91] which permits the adoption of measures such as the restriction of hunting, in principle authorised in Estonia, [92] where such a restriction proves necessary for the maintenance of the species concerned at a favourable conservation status.

In 2020, the competent Estonian authority set, by way of an order, a quota for wolf hunting for the 2020 to 2021 hunting season in Estonia. The applicant and appellant in the appeal on a point of law in

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90 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive').

91 See Article 14(1) of the Habitats Directive: 'If, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.'

92 Since the Estonian wolf populations are listed in Annex V(a) to the Habitats Directive and may therefore be hunted. Those populations thus constitute an exception to the general rule that the hunting of the wolf is, in principle, prohibited under Article 12 of that directive, read in conjunction with Annex IV(a) thereto.

the main proceedings ('the applicant in the main proceedings'), an Estonian environmental protection association, challenged the legality of that order, arguing that the premiss on which that order is based, that is to say, that the conservation status of the wolf is favourable in Estonia, is incorrect.

In that regard, the 'favourable' conservation status of the Baltic population of the wolf – in turn part of the Eurasian population of that animal species, whose natural range extends to Estonia, Latvia, Lithuania, the north-east of Poland and certain neighbouring third countries – is not disputed. However, in the light of the classification of the Estonian regional population by the International Union for Nature Conservation (IUCN), that population cannot be regarded, according to the applicant in the main proceedings, as having such a conservation status.

Hearing an appeal on a point of law brought by that party against the dismissal of its challenge to that order, the referring court asks, in essence, whether Article 1(i) of the Habitats Directive, which defines the concept of the conservation status of a species and the conditions for determining whether the conservation status of a species is favourable, must be interpreted as meaning that classification in the 'vulnerable' category of the IUCN Red List of the population of an animal species present within the territory of a Member State precludes the conservation status of that species, within that Member State's territory, from being taken as 'favourable' within the meaning of that provision. Furthermore, that court seeks to ascertain, in essence, whether Article 1(i) of that directive must be interpreted as meaning that the adoption, by a Member State, of management measures under Article 14(1) thereof entails an obligation to ensure that the conservation status of the population of that species present within the territory of that Member State is favourable or whether that Member State may take into consideration the conservation status of the whole population, whose natural range extends beyond the territory of that Member State and, as the case may be, to what extent and under what conditions it may do so.

In that context, the referring court also asks whether economic, social and cultural requirements and regional and local characteristics may be taken into account when assessing the conservation status of a species.

Findings of the Court

In the first place, the Court states that the discretion of Member States in determining whether it is necessary to adopt measures under Article 14(1) of the Habitats Directive is limited by the obligation to ensure that the taking in the wild of specimens of a species and their exploitation are compatible with that species' being maintained at a favourable conservation status. In particular, where an animal species has an unfavourable conservation status, the competent authorities must take measures within the meaning of that provision in order to improve the conservation status of the species concerned in such a way that, in future and in a sustainable manner, its populations are maintained at a favourable status.

The favourable conservation status of the populations of the species concerned in their natural range must exist and be assessed, in the first place and necessarily, at local and national level. If the conservation status of a species is not favourable in a Member State to whose territory its natural range extends, at least potentially, that species cannot fulfil its ecological function there, or at least not to its full extent, even if the population of the species concerned present in that Member State is part of a population whose conservation status is favourable.

That said, the classification of the national population of a species in the 'vulnerable' category of the IUCN Red List does not preclude, as such, the conservation status of that species, within the territory of the Member State concerned, from nevertheless being taken as favourable if the cumulative conditions laid down in the second subparagraph of Article 1(i) of the Habitats Directive are satisfied.

In that regard, the populations of an animal species, in particular the wolf, that are present also in the other Member States or third countries neighbouring the one that is planning to adopt management measures under Article 14(1) of the Habitats Directive will be relevant for the latter Member State so as to ascertain whether or not the conservation status of the population of that species present within its territory is favourable. Their relevance depends on whether there are exchanges between those populations, which are capable of being an influence acting on the species that may affect the long-term distribution and abundance of that population within that territory.

In cases where a situation is satisfactory at the present moment, it must still be ensured that that situation is sustainable in order to find that the conservation status of a species is favourable.

In that respect, account should be taken, in particular, first, of any foreseeable change which may affect the exchanges between the population present in the Member State concerned and the other populations that are part of the same population. Second, account should be taken of the level of legal protection enjoyed by the species concerned in the neighbouring Member States and third countries. Third, even greater weight must be attached to the relationships with the populations of other States where the Member States and third countries concerned not only apply comparable legal protection rules, but cooperate with a view to protecting the species concerned and coordinate, for example, their protective measures in such a way as to optimise the exchanges between the populations concerned.

Furthermore, in order to ensure that the taking in the wild of specimens of a species and their exploitation are compatible with that species' being maintained at a favourable conservation status, it may prove necessary for the Member State within whose territory a wolf population forming part of a population whose natural range extends beyond that territory is present, when it is planning to take into consideration exchanges between the wolf population present within that territory and those present in neighbouring Member States or third countries, to share with those Member States and third countries information on cross-border movements observed in specimens of that species and on the management measures that those Member States or third countries are taking or intend to take in respect of the populations present within their respective territories. First, such exchanges of information can render more precise the assessment, by the Member State concerned, of the size of its own population. Second, seeking information on the management measures applied or envisaged by the relevant Member States or third countries may be necessary in order for the Member State concerned to be able to ensure that the species in question can be regarded as in fact having a favourable conservation status within its territory. Lastly, information on the measures applied or envisaged by neighbouring Member States or third countries may be necessary for the Member State concerned to ensure that the measures that it is planning to take in respect of that species will be compatible with that species' being maintained at a favourable conservation status within its territory.

In the second place, the Court states that the economic, social and cultural requirements and regional and local characteristics referred to in Article 2(3) of the Habitats Directive, which, moreover, do not constitute an autonomous derogation from the general system of protection put in place by that directive, cannot be relied on in order to disregard the obligation to ensure that the taking in the wild of specimens of a species and their exploitation are compatible with that species' being maintained at a favourable conservation status, an obligation which limits the discretion enjoyed by the Member States under Article 14 of that directive. It is only within the limits of that discretion that the Member States are in principle authorised to take account of those requirements and characteristics.

X. ENERGY

Judgment of the General Court (Third Chamber, Extended Composition), 25 June 2025, RWE Supply & Trading v ACER, T-95/23

Energy – Internal market for electricity – Regulation (EU) 2017/2195 – ACER decision on the amendment to the methodology for pricing balancing energy – Imposition of a temporary price limit – Appeal brought before the Board of Appeal of ACER – Specific conditions and arrangements concerning actions – Article 28(1) and Article 29 of Regulation (EU) 2019/942 – Inadmissibility due to lack of standing to bring an appeal before the Board of Appeal – Plea of illegality – Equality before the law and effective judicial protection – Lack of individual concern – Attributes or factual circumstances not raised – Time limit for bringing proceedings – No excusable error

The General Court confirms the validity of the decisions of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) dismissing, as inadmissible, the actions brought by two companies against ACER's decision on the amendment to the methodology for pricing balancing energy. In doing so, the Court rules, first, on the standing of natural or legal persons to bring appeals before the Board of Appeal of ACER, pursuant to Article 28(1) of Regulation 2019/942. [93] Secondly, it provides clarification as to the assessment of whether natural or legal persons are individually concerned by decisions adopted by ACER.

By decision of 24 January 2020, ACER adopted, on a proposal from the transmission system operators, a methodology for pricing balancing energy which provided, inter alia, that prices for the supply of balancing energy must not be higher or lower than a technical price limit of plus or minus EUR 99 999 per megawatt hour (MWh).

By decision of 25 February 2022 ('the initial decision'), ACER temporarily amended that methodology, replacing the technical price limit in question with a price limit of plus or minus EUR 15 000/MWh, applying exclusively to exchanges of balancing energy on the European platforms PICASSO and MARI, for a period of 48 months from 1 July 2022.

The applicants, RWE Supply & Trading GmbH and Uniper Global Commodities SE, are two balancing energy suppliers active on the German market, on which the European platforms PICASSO and MARI are operational.

Considering themselves to have been adversely affected by the initial decision, they each brought an appeal before the Board of Appeal of ACER ('the Board of Appeal'). By two decisions of 9 December 2022 ('the contested decisions'), that board dismissed the appeals as inadmissible on the ground of lack of standing under Article 28(1) of Regulation 2019/942.

Under that provision, any natural or legal person may appeal against a decision of ACER which is addressed to that person or against a decision which is of direct and individual concern to that person. In circumstances where the applicants were not the addressees of the initial decision, the Board of Appeal took the view that that decision was of direct but not individual concern to them.

Against that background, the applicants brought actions before the Court seeking annulment of the contested decisions and, in the alternative, of the initial decision.

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93 Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ 2019 L 158, p. 22).

Findings of the Court

In support of their action, the applicants object, inter alia, that the Board of Appeal infringed the fourth paragraph of Article 263 TFEU [94] by finding that they did not have the requisite standing to bring an appeal against the initial decision before it. However, that decision is a regulatory act which concerns the applicants directly and does not entail implementing measures. Accordingly, it is challengeable before the EU judicature under the fourth paragraph of Article 263 TFEU.

According to the applicants, in order to comply with the principle of effective judicial protection laid down in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), as implemented by the fourth paragraph of Article 263 TFEU, and with the principle of equality before the law, enshrined in Article 20 of the Charter, Article 28(1) of Regulation 2019/942 should have been interpreted as allowing them to bring an appeal against the initial decision before the Board of Appeal.

The Court notes, as a preliminary point, that that first plea is in essence a two-fold complaint based, first, on the interpretation of Article 28(1) of Regulation 2019/942 having been inconsistent with the principles of effective judicial protection and equality before the law set out in Articles 20 and 47 of the Charter and, secondly, on an implicit plea of illegality relating to Article 28(1) of Regulation 2019/942, advanced on the ground of non-compliance with those same principles and articles of the Charter.

As regards the first complaint, it is apparent from settled case-law that an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness. Thus, where the meaning of such a provision is absolutely plain from its very wording, the EU judicature cannot depart from that interpretation.

In the present case, it is apparent from the clear and precise wording of Article 28(1) of Regulation 2019/942 that the applicants, as legal persons who are not addressees of the initial decision, may bring an action against that decision only if that decision concerns them not only directly but also individually. While it is true that the condition of individual concern laid down by that provision must be interpreted in the light of the general principles of EU law, as guaranteed by the Charter, a broad interpretation is possible only in so far as it is compatible with the wording of the provision in question and does not result in an interpretation that is *contra legem*.

It follows that, in the contested decisions, the Board of Appeal was justified in interpreting Article 28(1) of Regulation 2019/942 as permitting the applicants, as legal persons, to bring an appeal against the initial decision before that board only if they were concerned both directly and individually by that decision.

As regards the second complaint, the Court notes that, in accordance with the fifth paragraph of Article 263 TFEU, acts setting up bodies, offices and agencies of the European Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of those bodies, offices or agencies intended to produce legal effects in relation to them.

Thus, the EU legislature has provided, in Articles 28 and 29 of Regulation 2019/942, that natural or legal persons must, for reasons of procedural economy, have a right to appeal to the Board of Appeal against ACER acts which are addressed to them or which are of direct and individual concern to them. In that context, it decided not to include, among the natural or legal persons who may bring an appeal directly before the Board of Appeal, those falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU. Where, as in the present case, ACER adopts a regulatory act, such persons may bring an action for annulment directly before the Court.

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94 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act addressed to that person (first situation) or which is of direct and individual concern to them (second situation), and against a regulatory act which is of direct concern to them and which does not entail implementing measures (third situation).

In that regard, the Court rules that Article 29 of Regulation 2019/942, which provides that the internal appeal procedure must be exhausted before an action can be brought before the EU judicature, does not prevent the applicants from bringing an action for annulment directly before the Court. That provision must be interpreted as applying only to the categories of natural or legal persons who have standing to bring an appeal before the Board of Appeal for the purposes of Article 28 of that regulation.

It follows that natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU do not fall within the scope of the mandatory prior appeal procedure established by Articles 28 and 29 of Regulation 2019/942, and must accordingly bring an action directly before the Court.

In the light of those considerations, the Court analyses, in the first place, whether the difference of treatment established by Article 28 of Regulation 2019/942 between natural or legal persons in the third situation envisaged by the fourth paragraph of Article 263 TFEU and natural or legal persons who are authorised to bring an appeal directly before the Board of Appeal, and who are in the first or second of the situations envisaged by the fourth paragraph of Article 263 TFEU, is compatible with the principle of equality before the law enshrined in Article 20 of the Charter.

As a preliminary remark, the Court observes that the creation of a board of appeal forms part of an overall approach to provide the EU agencies with review bodies where they have been given decision-making powers on complex technical or scientific issues. Those review bodies are an appropriate means of protecting the rights of the parties concerned in a context in which, where the EU authorities have a broad discretion, in particular in relation to highly complex scientific and technical facts, review by the EU judicature must be limited to verifying whether there has been a manifest error of assessment or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion.

Thus, by not allowing natural or legal persons in the third situation envisaged by the fourth paragraph of Article 263 TFEU to bring an action before the Board of Appeal, Article 28 of Regulation 2019/942 establishes a difference of treatment between, on the one hand, natural or legal persons who, like the applicant, can benefit only from the limited review of ACER decisions that is carried out by the Court – limited, in particular, as regards complex scientific, technical or economic assessments related to energy – and, on the other hand, those who are able to bring an appeal directly before the Board of Appeal and thus benefit from a full review of ACER decisions with regard to those assessments.

However, such a difference of treatment is justified by the closer or more distant link between the different categories of natural or legal persons concerned and the ACER decision. Those authorised to bring an appeal directly before the Board of Appeal are distinguished individually by those decisions, in that they are the addressees of those decisions or are in a position analogous to that of an addressee in terms of the effect of the decision on them. By contrast, that is not true of natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU.

Furthermore, it is apparent from the case-law that, for the EU legislature to be accused of infringing the principle of equal treatment, it must have treated comparable situations differently, thereby subjecting some persons to disadvantages as opposed to others. The direct review of an ACER act that is carried out by the Court cannot be regarded as disadvantageous to natural or legal persons who are unable to bring an appeal directly before the Board of Appeal of ACER. That review mechanism must be regarded as an appropriate means of protecting the rights of natural or legal persons who have a more distant link with the act.

It follows that the EU legislature established, in Article 28(1) of Regulation 2019/942, a justified difference of treatment between natural or legal persons who are not in an identical or comparable

situation with regard to ACER decisions. There is thus no requirement for those persons to be subject to the same specific conditions or arrangements concerning the legal recourse available to them against such decisions, and consequently the difference of treatment does not infringe the principle of equality before the law enshrined in Article 20 of the Charter.

In the second place, as regards the infringement of the principle of effective judicial protection and of Article 47 of the Charter [95] that is alleged to arise from the fact that natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU cannot bring an appeal before the Board of Appeal, the Court observes that, since it remains open to them to bring an action for annulment before the Court, the EU legislature cannot be regarded as having infringed that principle when it adopted Articles 28 and 29 of Regulation 2019/942.

The Court adds that the procedural complications that might arise from that system of remedies, in particular the possibility of parallel proceedings being brought against the same decisions of ACER before the Board of Appeal and the Court, and the complexity of the concept of 'individual concern', on which the respective competence of the Board of Appeal and the Court depends, do not constitute a sufficient reason to hold that that system is, in itself, contrary to the principle of effective judicial protection.

Continuing its analysis of the action, the Court also rejects the plea alleging infringement of Article 28(1) of Regulation 2019/942 in so far as the Board of Appeal did not find, in the contested decisions, that the applicants were individually concerned by the initial decision by reason of attributes which were peculiar to them and which differentiated them from all other persons.

First, the Court states that, in order to assess whether the applicants are individually concerned within the meaning of Article 28(1) of Regulation 2019/942, reference must be made to the case-law of the EU judicature concerning the second situation envisaged by the fourth paragraph of Article 263 TFEU.

The specific conditions and arrangements for actions laid down by Regulation 2019/942 pursuant to the fifth paragraph of Article 263 TFEU must remain fully consistent with the general scheme provided for by Article 263 TFEU as regards the jurisdiction of the EU judicature to hear and determine the actions that are assigned to it. It follows that, where the same admissibility conditions are found in both the general scheme provided for by Article 263 TFEU and the specific conditions and arrangements adopted pursuant to the fifth paragraph of that provision, those conditions must, in principle, be interpreted in the same way.

Secondly, as regards the attributes and factual circumstances which the applicants relied on before the Court with a view to demonstrating individual concern, the Court limits its examination to those which had also been raised before the Board of Appeal and analysed by that board in the contested decisions. Admittedly, the Court is called upon to assess the legality of those decisions by reviewing the application of EU law made by the Board of Appeal, particularly in the light of the facts which were submitted to the latter. However, the Court cannot carry out such a review by taking into account matters of fact newly raised or produced before it.

In the light of those clarifications, the Court notes that, as regards the attributes and factual circumstances that were raised by the applicants before the Board of Appeal, namely the fact that they are active on the German market for balancing energy and are among the largest suppliers on that market, and later developed, in the context of the present action, through the submission that their position on that market was substantially affected by the initial decision, the applicants refer to the case-law of the EU judicature on State aid and mergers.

However, first, the applicants cannot usefully rely on that case-law in support of the claim that their position on that market was substantially affected by the initial decision. That case-law is based, at

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95 As implemented by the fourth paragraph of Article 263 TFEU.

least in part, on the existence of an actual or potential competitive relationship between the beneficiaries of the decision in question, on the market concerned by that decision, and the applicant, whose position on the market concerned or on neighbouring markets, upstream or downstream, is, in a specifically identified way, negatively and, as the case may be, substantially affected by that decision.

In the present case, the applicants do not claim, let alone demonstrate, that they are in an actual or potential competitive relationship with the addressees and, in their view, the true beneficiaries of the initial decision on the German market for balancing energy on which they operate and which is the market concerned by that decision.

Secondly, and in any event, the attributes and factual circumstances relied on by the applicants were not such as to distinguish them individually from all other persons.

Having rejected the pleas in law put forward by the applicants, the Court dismisses the action for annulment of the contested decisions.

As regards the alternative claims for annulment of the initial decision, since those were brought after the time limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, they must be rejected as inadmissible. In that regard, the Court notes that there is no excusable error, such as to justify a derogation from the obligation to comply with the prescribed time limit for bringing proceedings, that can legitimately be relied on by the applicants in the circumstances of the present case.

Consequently, the Court dismisses the action in its entirety.

Judgment of the General Court (Third Chamber, Extended Composition), 25 June 2025, Uniper Global Commodities v ACER, T-96/23

Energy – Internal market for electricity – Regulation (EU) 2017/2195 – ACER decision on the amendment to the methodology for pricing balancing energy – Imposition of a temporary price limit – Appeal brought before the Board of Appeal of ACER – Specific conditions and arrangements concerning actions – Article 28(1) and Article 29 of Regulation (EU) 2019/942 – Inadmissibility due to lack of standing to bring an appeal before the Board of Appeal – Plea of illegality – Equality before the law and effective judicial protection – Lack of individual concern – Attributes or factual circumstances not raised – Time limit for bringing proceedings – No excusable error

The General Court confirms the validity of the decisions of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) dismissing, as inadmissible, the actions brought by two companies against ACER's decision on the amendment to the methodology for pricing balancing energy. In doing so, the Court rules, first, on the standing of natural or legal persons to bring appeals before the Board of Appeal of ACER, pursuant to Article 28(1) of Regulation 2019/942. [96] Secondly, it provides clarification as to the assessment of whether natural or legal persons are individually concerned by decisions adopted by ACER.

By decision of 24 January 2020, ACER adopted, on a proposal from the transmission system operators, a methodology for pricing balancing energy which provided, inter alia, that prices for the supply of balancing energy must not be higher or lower than a technical price limit of plus or minus EUR 99 999 per megawatt hour (MWh).

96 Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ 2019 L 158, p. 22).

By decision of 25 February 2022 ('the initial decision'), ACER temporarily amended that methodology, replacing the technical price limit in question with a price limit of plus or minus EUR 15 000/MWh, applying exclusively to exchanges of balancing energy on the European platforms PICASSO and MARI, for a period of 48 months from 1 July 2022.

The applicants, RWE Supply & Trading GmbH and Uniper Global Commodities SE, are two balancing energy suppliers active on the German market, on which the European platforms PICASSO and MARI are operational.

Considering themselves to have been adversely affected by the initial decision, they each brought an appeal before the Board of Appeal of ACER ('the Board of Appeal'). By two decisions of 9 December 2022 ('the contested decisions'), that board dismissed the appeals as inadmissible on the ground of lack of standing under Article 28(1) of Regulation 2019/942.

Under that provision, any natural or legal person may appeal against a decision of ACER which is addressed to that person or against a decision which is of direct and individual concern to that person. In circumstances where the applicants were not the addressees of the initial decision, the Board of Appeal took the view that that decision was of direct but not individual concern to them.

Against that background, the applicants brought actions before the Court seeking annulment of the contested decisions and, in the alternative, of the initial decision.

Findings of the Court

In support of their action, the applicants object, inter alia, that the Board of Appeal infringed the fourth paragraph of Article 263 TFEU [97] by finding that they did not have the requisite standing to bring an appeal against the initial decision before it. However, that decision is a regulatory act which concerns the applicants directly and does not entail implementing measures. Accordingly, it is challengeable before the EU judicature under the fourth paragraph of Article 263 TFEU.

According to the applicants, in order to comply with the principle of effective judicial protection laid down in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), as implemented by the fourth paragraph of Article 263 TFEU, and with the principle of equality before the law, enshrined in Article 20 of the Charter, Article 28(1) of Regulation 2019/942 should have been interpreted as allowing them to bring an appeal against the initial decision before the Board of Appeal.

The Court notes, as a preliminary point, that that first plea is in essence a two-fold complaint based, first, on the interpretation of Article 28(1) of Regulation 2019/942 having been inconsistent with the principles of effective judicial protection and equality before the law set out in Articles 20 and 47 of the Charter and, secondly, on an implicit plea of illegality relating to Article 28(1) of Regulation 2019/942, advanced on the ground of non-compliance with those same principles and articles of the Charter.

As regards the first complaint, it is apparent from settled case-law that an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness. Thus, where the meaning of such a provision is absolutely plain from its very wording, the EU judicature cannot depart from that interpretation.

In the present case, it is apparent from the clear and precise wording of Article 28(1) of Regulation 2019/942 that the applicants, as legal persons who are not addressees of the initial decision, may bring an action against that decision only if that decision concerns them not only directly but also individually. While it is true that the condition of individual concern laid down by that provision must

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97 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act addressed to that person (first situation) or which is of direct and individual concern to them (second situation), and against a regulatory act which is of direct concern to them and which does not entail implementing measures (third situation).

be interpreted in the light of the general principles of EU law, as guaranteed by the Charter, a broad interpretation is possible only in so far as it is compatible with the wording of the provision in question and does not result in an interpretation that is *contra legem*.

It follows that, in the contested decisions, the Board of Appeal was justified in interpreting Article 28(1) of Regulation 2019/942 as permitting the applicants, as legal persons, to bring an appeal against the initial decision before that board only if they were concerned both directly and individually by that decision.

As regards the second complaint, the Court notes that, in accordance with the fifth paragraph of Article 263 TFEU, acts setting up bodies, offices and agencies of the European Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of those bodies, offices or agencies intended to produce legal effects in relation to them.

Thus, the EU legislature has provided, in Articles 28 and 29 of Regulation 2019/942, that natural or legal persons must, for reasons of procedural economy, have a right to appeal to the Board of Appeal against ACER acts which are addressed to them or which are of direct and individual concern to them. In that context, it decided not to include, among the natural or legal persons who may bring an appeal directly before the Board of Appeal, those falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU. Where, as in the present case, ACER adopts a regulatory act, such persons may bring an action for annulment directly before the Court.

In that regard, the Court rules that Article 29 of Regulation 2019/942, which provides that the internal appeal procedure must be exhausted before an action can be brought before the EU judicature, does not prevent the applicants from bringing an action for annulment directly before the Court. That provision must be interpreted as applying only to the categories of natural or legal persons who have standing to bring an appeal before the Board of Appeal for the purposes of Article 28 of that regulation.

It follows that natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU do not fall within the scope of the mandatory prior appeal procedure established by Articles 28 and 29 of Regulation 2019/942, and must accordingly bring an action directly before the Court.

In the light of those considerations, the Court analyses, in the first place, whether the difference of treatment established by Article 28 of Regulation 2019/942 between natural or legal persons in the third situation envisaged by the fourth paragraph of Article 263 TFEU and natural or legal persons who are authorised to bring an appeal directly before the Board of Appeal, and who are in the first or second of the situations envisaged by the fourth paragraph of Article 263 TFEU, is compatible with the principle of equality before the law enshrined in Article 20 of the Charter.

As a preliminary remark, the Court observes that the creation of a board of appeal forms part of an overall approach to provide the EU agencies with review bodies where they have been given decision-making powers on complex technical or scientific issues. Those review bodies are an appropriate means of protecting the rights of the parties concerned in a context in which, where the EU authorities have a broad discretion, in particular in relation to highly complex scientific and technical facts, review by the EU judicature must be limited to verifying whether there has been a manifest error of assessment or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion.

Thus, by not allowing natural or legal persons in the third situation envisaged by the fourth paragraph of Article 263 TFEU to bring an action before the Board of Appeal, Article 28 of Regulation 2019/942 establishes a difference of treatment between, on the one hand, natural or legal persons who, like the applicant, can benefit only from the limited review of ACER decisions that is carried out by the Court – limited, in particular, as regards complex scientific, technical or economic assessments related to energy – and, on the other hand, those who are able to bring an appeal directly before the Board of Appeal and thus benefit from a full review of ACER decisions with regard to those assessments.

However, such a difference of treatment is justified by the closer or more distant link between the different categories of natural or legal persons concerned and the ACER decision. Those authorised to bring an appeal directly before the Board of Appeal are distinguished individually by those decisions, in that they are the addressees of those decisions or are in a position analogous to that of an

addressee in terms of the effect of the decision on them. By contrast, that is not true of natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU.

Furthermore, it is apparent from the case-law that, for the EU legislature to be accused of infringing the principle of equal treatment, it must have treated comparable situations differently, thereby subjecting some persons to disadvantages as opposed to others. The direct review of an ACER act that is carried out by the Court cannot be regarded as disadvantageous to natural or legal persons who are unable to bring an appeal directly before the Board of Appeal of ACER. That review mechanism must be regarded as an appropriate means of protecting the rights of natural or legal persons who have a more distant link with the act.

It follows that the EU legislature established, in Article 28(1) of Regulation 2019/942, a justified difference of treatment between natural or legal persons who are not in an identical or comparable situation with regard to ACER decisions. There is thus no requirement for those persons to be subject to the same specific conditions or arrangements concerning the legal recourse available to them against such decisions, and consequently the difference of treatment does not infringe the principle of equality before the law enshrined in Article 20 of the Charter.

In the second place, as regards the infringement of the principle of effective judicial protection and of Article 47 of the Charter [98] that is alleged to arise from the fact that natural or legal persons falling within the category corresponding to the third situation envisaged by the fourth paragraph of Article 263 TFEU cannot bring an appeal before the Board of Appeal, the Court observes that, since it remains open to them to bring an action for annulment before the Court, the EU legislature cannot be regarded as having infringed that principle when it adopted Articles 28 and 29 of Regulation 2019/942.

The Court adds that the procedural complications that might arise from that system of remedies, in particular the possibility of parallel proceedings being brought against the same decisions of ACER before the Board of Appeal and the Court, and the complexity of the concept of 'individual concern', on which the respective competence of the Board of Appeal and the Court depends, do not constitute a sufficient reason to hold that that system is, in itself, contrary to the principle of effective judicial protection.

Continuing its analysis of the action, the Court also rejects the plea alleging infringement of Article 28(1) of Regulation 2019/942 in so far as the Board of Appeal did not find, in the contested decisions, that the applicants were individually concerned by the initial decision by reason of attributes which were peculiar to them and which differentiated them from all other persons.

First, the Court states that, in order to assess whether the applicants are individually concerned within the meaning of Article 28(1) of Regulation 2019/942, reference must be made to the case-law of the EU judicature concerning the second situation envisaged by the fourth paragraph of Article 263 TFEU.

The specific conditions and arrangements for actions laid down by Regulation 2019/942 pursuant to the fifth paragraph of Article 263 TFEU must remain fully consistent with the general scheme provided for by Article 263 TFEU as regards the jurisdiction of the EU judicature to hear and determine the actions that are assigned to it. It follows that, where the same admissibility conditions are found in both the general scheme provided for by Article 263 TFEU and the specific conditions and arrangements adopted pursuant to the fifth paragraph of that provision, those conditions must, in principle, be interpreted in the same way.

Secondly, as regards the attributes and factual circumstances which the applicants relied on before the Court with a view to demonstrating individual concern, the Court limits its examination to those which had also been raised before the Board of Appeal and analysed by that board in the contested

98 As implemented by the fourth paragraph of Article 263 TFEU.

decisions. Admittedly, the Court is called upon to assess the legality of those decisions by reviewing the application of EU law made by the Board of Appeal, particularly in the light of the facts which were submitted to the latter. However, the Court cannot carry out that review by taking into account matters of fact newly raised or produced before it.

In the light of those clarifications, the Court notes that, as regards the attributes and factual circumstances that were raised by the applicants before the Board of Appeal, namely the fact that they are active on the German market for balancing energy and are among the largest suppliers on that market, and later developed, in the context of the present action, through the submission that their position on that market was substantially affected by the initial decision, the applicants refer to the case-law of the EU judicature on State aid and mergers.

However, first, the applicants cannot usefully rely on that case-law in support of the claim that their position on that market was substantially affected by the initial decision. That case-law is based, at least in part, on the existence of an actual or potential competitive relationship between the beneficiaries of the decision in question, on the market concerned by that decision, and the applicant, whose position on the market concerned or on neighbouring markets, upstream or downstream, is, in a specifically identified way, negatively and, as the case may be, substantially affected by that decision.

In the present case, the applicants do not claim, let alone demonstrate, that they are in an actual or potential competitive relationship with the addressees and, in their view, the true beneficiaries of the initial decision on the German market for balancing energy on which they operate and which is the market concerned by that decision.

Secondly, and in any event, the attributes and factual circumstances relied on by the applicants were not such as to distinguish them individually from all other persons.

Having rejected the pleas in law put forward by the applicants, the Court dismisses the action for annulment of the contested decisions.

As regards the alternative claims for annulment of the initial decision, since those were brought after the time limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, they must be rejected as inadmissible. In that regard, the Court notes that there is no excusable error, such as to justify a derogation from the obligation to comply with the prescribed time limit for bringing proceedings, that can legitimately be relied on by the applicants in the circumstances of the present case.

Consequently, the Court dismisses the action in its entirety.

Nota bene:

The résumé of the following case is currently being finalised and will be published in a future issue of the Monthly Case-Law Digest:

- Judgment of the General Court (Sixth Chamber), 25 June 2025, K-Way v EUIPO – Gubbini (Representation of five coloured parallel strips), T-372/24