COURT OF JUSTICE
OF THE EUROPEAN UNION

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Monthly Case-Law Digest July 2025

I. Values of the European Union: rule of law – judicial independence 3

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Lita and Jeszek, C-646/23 and C-661/23 3

II. Fundamental rights: protection of personal data 5

Judgment of the General Court (Tenth Chamber, Extended Composition), 16 July 2025, Ballmann v European Data Protection Board, T-183/23 5

III. Institutional Provisions: public procurement by the EU institutions 9

Judgment of the General Court (Fourth Chamber), 23 July 2025, BT GS Belgium v Commission, T-1081/23 9

Judgment of the General Court (Eighth Chamber), 23 July 2025, Lattanzio KIBS and Others v Commission, T-113/24 11

IV. Freedom of movement: freedom of establishment and freedom to provide services 14

Judgment of the Court of Justice (Grand Chamber), 10 July 2025, INTERZERO and Others, C-254/23 14

V. Border checks, asylum and immigration: asylum policy 19

Judgment of the Court of Justice (First Chamber), 3 July 2025, Al Nasiria, C-610/23 19

VI. Competition: agreements, decisions and concerted practices (Article 101 TFEU) 21

Judgment of the General Court (Seventh Chamber), 23 July 2025, UBS Group and Others v Commission, T-84/22 21

VII. Approximation of laws 25

1. European Union Trademark 25

Judgment of the General Court (Eighth Chamber, Extended Composition), 2 July 2025, Ferrari v EUIPO – Hesse (TESTAROSSA), T-1103/23 25

Judgment of the General Court (Eighth Chamber, Extended Composition), 2 July 2025, Ferrari v EUIPO – Hesse (TESTAROSSA), T-1104/23 27

Judgment of the General Court (Sixth Chamber), 9 July 2025, Spin Master Toys UK v EUIPO – Verdes Innovations (Shape of a cube with faces having a grid structure and differentiated by their colours), T-1171/23 29

Judgment of the General Court (Eighth Chamber, Extended Composition), 9 July 2025, Bouwbenodigdheden Hoogeveen v EUIPO – Pürschel (BIENENEIBSSER), T-144/24 31

Judgment of the General Court (Seventh Chamber), 16 July 2025, Iceland Foods v EUIPO – Íslandsstofa (Promote Iceland) and Others (ICELAND), T-105/23 33

Judgment of the General Court (Seventh Chamber), 16 July 2025, Iceland Foods v EUIPO – Icelandic Trademark (Iceland), T-106/23 33

2. Chemicals 36

Judgment of the General Court (Fifth Chamber), 9 July 2025, LAT Nitrogen Piesteritz et Cornerstone v ECHA (Mélamine), T-167/23 36

VIII. Economic and monetary policy: prudential supervision of credit institutions 38

Judgment of the Court of Justice (Grand Chamber), 15 July 2025, ECB and Commission v Corneli, C-777/22 P and C-789/22 P 38

IX. Consumer protection: unfair terms 42

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Wiszkier, C-582/23 42

X. Environment: Aarhus Convention 46

Judgment of the General Court (Seventh Chamber, Extended Composition), 23 July 2025, Bloom v Commission, T-1049/23 46

XI. Budget and subsidies of the European Union: grant agreement 47

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Glonatech v REA, C-114/24 P 47

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

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Lita and Jeszek, C-646/23 and C-661/23

Link to the full text of the judgment

Reference for a preliminary ruling – Rule of law – Independence of the judiciary – Second subparagraph of Article 19(1) TEU – Effective judicial protection in areas covered by Union law – Principle of irremovability of judges – Military judge found unfit for professional military service – National legislation requiring the early retirement of that judge

Hearing a reference for a preliminary ruling from the Wojskowy Sąd Okręgowy w Warszawie (Regional Military Court, Warsaw, Poland), the Court of Justice rules on the interpretation of the second subparagraph of Article 19(1) TEU [1] and on the principle of primacy of EU law, in relation to national legislation which provides, from its entry into force, for the compulsory early retirement of a military judge declared unfit for professional military service, without there being any judicial remedy to challenge that measure.

Two professional soldiers, P.B. and R.S., were found guilty of criminal offences by the Wojskowy Sąd Garnizonowy w Warszawie (Garrison Military Court, Warsaw, Poland). They appealed to the referring court. Both cases were assigned to a single-judge formation of that court, composed of Judge P.R. The hearings were held in October and November 2023 respectively.

Judge P.R. had been declared unfit for professional military service in July 2017, although he was declared fit to continue performing his or her duties as a judge. Following that decision, he applied [2] for a transfer to a position as a judge in an ordinary court. On 27 December 2021, despite a proposal to that effect by the Krajowa Rada Sądownictwa (National Judicial Council, Poland), the President of the Republic of Poland refused to grant that request.

On 24 April 2022, Article 233 of the Law on the defence of the homeland [3] came into force, allowing any military judge who had been released from the obligations of professional military service to continue in office. As a result, P.R. returned to the Wojskowy Sąd Okręgowy w Warszawie (Regional Military Court, Warsaw) in March 2023.

However, that retention rule was abolished for military judges by the amending law of 28 July 2023, [4] which now applies only to military prosecutors. [5] According to that law, [6] a judge who, on 15 November 2023, had been retained in his or her duties within a military court after having been released from his or her professional military service obligations, is automatically retired on the latter date.

The referring court observes that the provision of the amending law which abolished the possibility for a judge of a military court to remain in his or her post when he or she has been released from the obligations of his or her professional military service, while maintaining it for military prosecutors who

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1 That provision requires all Member States to establish the legal remedies necessary to ensure effective judicial protection in the areas covered by EU law.

2 In accordance with the national law in force at the time.

3 Ustawa o obronie Ojczyzny (Law on the defence of the homeland) of 11 March 2022 (Dz. U., item 655).

4 Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw (Law amending the Civil Code and certain other laws) of 28 July 2023 (Dz. U., item 1615; 'the amending law'). That law came into force on 15 November 2023.

5 Article 10 of the amending law.

6 Article 13 of the amending law.

are in a similar situation, was adopted without any justification. [7] As for the provision of the same law imposing early retirement, it would in fact affect only one judge, while forming part of a series of measures taken in respect of that judge, having the nature of a sanction. No judicial remedy would be available to challenge that measure of compulsory early retirement.

The referring court questions whether EU law precludes national legislation requiring compulsory early retirement in the circumstances referred to above. If so, it seeks to ascertain whether that legislation must be disapplied, which would entail an obligation to reinstate a judge who has been retired pursuant to that legislation, and whether it may temporarily suspend its application.

Findings of the Court

Concerning its jurisdiction, the Court points out that the second subparagraph of Article 19(1) TEU is intended to apply to any national court or tribunal capable of deciding questions concerning the interpretation or application of EU law. Since the referring court may be called upon, in its capacity as a military court, to rule on questions relating to the application or interpretation of EU law, the second subparagraph of Article 19(1) TEU applies. In interpreting that provision, due regard must be had to Article 47 of the Charter.

Concerning the substance, the Court points out, in the first place, that the requirement of independence of the courts and tribunals presupposes the existence of rules, in particular as regards the composition of the body, the appointment, the term of office and the grounds for abstention, recusal and dismissal of its members, which make it possible to remove any legitimate doubt in the minds of litigants as to the imperviousness of that body to external factors and as to its neutrality in relation to the conflicting interests.

In that regard, the Court notes that the principle of the irremovability requires, inter alia, that judges may remain in office until they reach the mandatory retirement age or until the expiry of their term of office where that term is fixed. Exceptions may only be made to that principle if there are legitimate and compelling reasons for doing so, in accordance with the principle of proportionality. Therefore, judges may be removed from office if they are unable to continue in office due to incapacity or serious misconduct, subject to compliance with appropriate procedures.

In addition, the guarantee of irremovability of members of a court requires that the cases in which its members may be dismissed be determined by special rules, by means of express legislative provisions offering guarantees that go beyond those provided by the general rules of administrative law and labour law that apply in cases of wrongful dismissal.

While stating that it will be for the referring court to determine whether the national legislation which, in the abovementioned circumstances, introduced a measure of early retirement for military judges released from their obligations of professional military service, infringes the requirements arising from the principle of the independence of judges, as set out in the second subparagraph of Article 19(1) TEU, since Article 267 TFEU does not empower the Court to apply the rules of EU law to a particular case, the Court states that it may, however, on the basis of the material in the case file available to it, provide the national court with any guidance as to the interpretation of EU law which it may require.

In the present case, no justification can be found for the amending law providing for the compulsory early retirement of military judges who, despite having been released from their professional military service obligations, had been retained in their duties as military judges. In addition, it appears that that law applies only to military judges and not to military prosecutors, whereas those two categories of magistrates were previously subject to the same rules on continued service after being released from their professional military service obligations. That difference in treatment was not justified on the basis of an objective difference in situation between those two categories of magistrates. In those circumstances, subject to the verifications incumbent on the referring court, national legislation such as that at issue fails to comply with the requirement that exceptions to the principle of the irremovability of judges must be justified on legitimate and overriding grounds.

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7 Also in breach of Article 180(3) of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), which provides for early retirement of a judge only in the event of illness or infirmity rendering him or her incapable of performing his or her duties.

Moreover, the Court notes that the early retirement of Judge P.R. was adopted, not because of his or her unfitness to continue in office, but because of his or her public criticism of the reform of the Polish judiciary. Accordingly, that measure appears to form part of a series of measures taken in respect of that judge which are in the nature of sanctions. The Court also points out that the amending law does not provide for any means of appeal for a judge who is the subject of an early retirement measure justified by his or her unfitness for professional military service.

Consequently, national legislation which, in such circumstances, provides, with effect from its entry into force, for the compulsory early retirement of a military judge declared unfit for professional military service infringes the second subparagraph of Article 19(1) TEU.

In the second place, the Court states that the principle of primacy of EU law requires a national court or tribunal and any other authority of the Member State concerned to disapply such legislation where it has been adopted in breach of the second subparagraph of Article 19(1) TEU, which means that a judge who has been retired pursuant to that legislation must be reinstated in his or her duties. [8]

In the last place, as regards the possibility of suspending the application of such national legislation, the Court emphasises that the full effectiveness of EU law requires that the court seised must be able to grant such interim measures as are necessary to ensure the full effectiveness of the judicial decision to be given. In addition, the national court must rule out the application of rules of domestic law which would impede that power to grant interim measures.

It follows, in particular, that the referring court must be able to suspend the application of the provisions of the amending law which have the effect of imposing a retirement measure on it of its own motion until it has ruled on the criminal proceedings in the main proceedings following the Court's reply.

II. FUNDAMENTAL RIGHTS: PROTECTION OF PERSONAL DATA

Judgment of the General Court (Tenth Chamber, Extended Composition), 16 July 2025, Ballmann v European Data Protection Board, T-183/23

Link to the full text of the judgment

Protection of personal data – Complaint against the controller of personal data of users of an online social network in the European Union – Article 65(1)(a) of Regulation (EU) 2016/679 – Binding decision of the European Data Protection Board – Complainant's request for access to the file prepared for the purposes of the binding decision – Refusal to grant access – Action for annulment – Actionable measure – Admissibility – Article 41(2)(b) of the Charter of Fundamental Rights

In upholding an action for annulment against a decision of the European Data Protection Board (EDPB) rejecting a request for access ('the contested decision'), made on the basis of Article 41(2)(b) of the European Charter of Fundamental Rights of the European Union ('the Charter'), to the file prepared for the purposes of its binding decision, [9] the General Court clarifies the scope and nature of the right of access to the file under that provision of the Charter.

In 2018, the applicant brought a complaint via the non-profit association NOYB – European Center for Digital Rights ('NOYB'), before the Österreichische Datenschutzbehörde (Austrian Data Protection

8 The judicial bodies responsible for determining and modifying the composition of panels are required to ensure that reinstatement.

9 Binding Decision 3/2022 of the EDPB.

Authority), in accordance with the General Data Protection Regulation, [10] against Facebook Ireland Ltd (which, in 2022, became Meta) for infringement of the GDPR when processing personal data related to the use of the social network Facebook. The Austrian Data Protection Authority sent that complaint to the Data Protection Commission (Ireland) ('the Irish supervisory authority'), the lead supervisory authority. [11]

Following its investigation, the Irish supervisory authority submitted a draft decision [12] to the other national supervisory authorities concerned, which was the subject of a number of relevant and reasoned objections. On account of a disagreement between the Irish supervisory authority and the other supervisory authorities, the Irish supervisory authority referred the matter to the EDPB under the consistency mechanism established by the GDPR [13] in order for it to adopt a position on those objections. [14]

After having received the draft decision, the applicant was no longer involved in the procedure and did not receive a copy of those objections or have the opportunity to submit comments. NOYB requested the EDPB to allow the applicant to be heard after having given the applicant access to the complete case file, but the EDPB replied, on 21 November 2022, that the applicant was not likely to be adversely affected by the binding decision and that she therefore did not have the right to be heard before it. On 5 December 2022, the EDPB adopted the binding decision, which reproduced the same response. On 31 December 2022, the Irish supervisory authority adopted a final decision implementing that binding decision.

By email dated 6 January 2023, relying on Article 41 of the Charter, the GDPR and 'the right to access to documents under EU law', NOYB requested the EDPB to send to it the binding decision, the Irish supervisory authority's final decision together with the relevant and reasoned objections raised by the other national supervisory authorities in relation to the draft decision. The EDPB replied that the internet links to the text of those decisions would be provided to it as soon as they were published and that the request for access to the objections would be treated as a request for access to documents in accordance with Regulation No 1049/2001. [15] The Irish authority subsequently sent the final decision to NOYB, while the EDPB provided it with the internet link to the text of the binding decision and granted it full access to some of the relevant and reasoned objections requested and partial access to some of the other requested objections, on the basis of Regulation No 1049/2001.

On 25 January 2023, NOYB submitted to the EDPB a new request for access to the EDPB's entire case file, relying primarily on the applicant's rights under Article 41 of the Charter 'as a party' as well as 'any other legal basis', such as Regulation No 1049/2001. By the contested decision contained in an email dated 7 February 2023, the EDPB, considering the request for access to the file under Regulation No 1049/2001, first, invited NOYB to clarify the scope of that request and to accept a fair solution. Second, it stated that, in parallel, it had made a thorough assessment of the request for access to the file under the Charter and that it had concluded that the applicant, as the complainant, did not have a right of access on that basis.

After the applicant brought the action before the Court on 7 April 2023, the EDPB granted NOYB, on 12 April 2023, on the basis of Regulation No 1049/2001, full access to some of the documents requested by NOYB and partial access to some of the other documents requested.

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10 Article 77 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1; 'the GDPR').

11 In accordance with Article 56(1) of the GDPR, which confers, inter alia, competence to act on the supervisory authority of the controller's main establishment in the case of cross-border processing carried out by the controller.

12 In accordance with Article 60(3) of the GDPR.

13 Article 60(4) of the GDPR.

14 Article 65(1)(a) of the GDPR.

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

Findings of the Court

In the first place, recalling [16] that it is, in principle, acts which definitively determine the position of the institutions of the European Union upon the conclusion of an administrative procedure, and which are intended to have binding legal effects capable of affecting the interests of the applicant, which are open to challenge, the Court rejects the plea of inadmissibility raised by the EDPB. In that regard, it notes that the EDPB stated in the contested decision that it had 'thoroughly' assessed the request for access to the file based on the Charter before concluding that it ought to be rejected. In addition, since that request for access and the contested decision took effect at a time when both the binding decision and the final decision of the Irish supervisory authority had already been adopted, the contested decision definitively fixed the EDPB's position in relation to that request for access, thereby immediately and irreversibly affecting the applicant's legal position as regards any right of access she might have to the EDPB file. The examination, in parallel, by the EDPB of the request for access on the basis of Regulation No 1049/2001 does not call into question that conclusion, since those two routes for access to documents fall within two different legal regimes.

First of all, those two rights do not have the same beneficiaries, since the right of access to documents is granted to any EU citizen and to any natural or legal person residing or having its registered office in a Member State, whereas the right of access to the file is enjoyed by the person concerned by that file. Next, they do not necessarily relate to the same documents: the Charter applies to the file of the person concerned, whereas Regulation No 1049/2001 applies to any document of an institution. Furthermore, while Regulation No 1049/2001 lays down a two-stage administrative procedure which occurs before any action before the EU Courts, no such requirement exists in relation to a request for access to the file based on the Charter. Finally, the right of access to documents is subject to certain limitations based on grounds of public or private interests, whereas the right of access to the file is limited only by 'respecting the legitimate interests of confidentiality and of professional and business secrecy'. Consequently, it is not guaranteed that a request for access based on Regulation No 1049/2001 will, in all circumstances, lead to the same result, as regards the documents disclosed, as a request made on the basis of the Charter.

In the second place, as regards the substance, in relation, first, to whether the right of access to the file is autonomous from the right to be heard, the Court observes at the outset that there is no legal text specifically regulating or, a fortiori, limiting the right of the person lodging a complaint under the GDPR to have access to the EDPB file prepared for the purposes of the adoption of a binding decision. In particular, there are no limitations in either the GDPR or the EDPB's Rules of Procedure.

As regards Article 41(2)(b) of the Charter, first of all, the Court observes that the wording of that provision does not limit a person's right of access to his or her file to the fact that that file relates to a measure liable to affect him or her adversely. While such a requirement is contained in point (a) of that paragraph as regards the right to be heard, neither the wording of those provisions nor the wording of Article 41 of the Charter considered as a whole, makes the exercise of the right to access to the file subject, as a matter of principle, to the right to be heard. It is true that the right of access to the file is a necessary prerequisite for the effective exercise of the rights of the defence, but its scope may be more extensive and cannot be reduced to being a corollary of the principle of respect for the rights of the defence. That is the situation for the applicant, who requested access to the EDPB file in order to assess, on the basis of its content, whether to bring a legal action.

In addition, Article 41(2)(b) of the Charter must be read in conjunction with Article 41(1) thereof, as meaning that the right of access to the file is associated with the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time by the administration of the European Union. However, the right of access to the file is not limited to taking measures which are, or are likely to be, unfavourable to natural or legal persons. The fact of being required to handle a person's affairs fairly may, in particular, be interpreted as implying an obligation to communicate to that person the administrative file concerning him or her.

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16 Judgment of 25 June 2020, *SatCen* v *KF* (C-14/19 P, EU:C:2020:492, paragraph 70).

Moreover, the Court notes that the right of access to the file laid down in the Charter is a component of the 'right to good administration', [17] which does not relate solely to the exercise of the right to be heard by the administration of the European Union, but has a broader scope. It also encompasses other rights or principles which that administration must observe in its relations with natural and legal persons, [18] which are not limited to situations in which the rights of the defence are to be applied. Consequently, the Court concludes that a person has a right of access to his or her file on the basis of the Charter, even if that person is not in a situation in which he or she could assert his or her right to be heard, subject, however, to there being no specific rules in the field at issue limiting the exercise of that right of access to the file. [19]

Second, as regards the question whether the applicant's request for access to the file under the Charter related to a file concerning her, the Court notes, first of all, that the binding decision arose from a complaint lodged by the applicant under the GDPR. That regulation [20] grants every data subject not only the right to lodge a complaint with a supervisory authority if the data subject considers that the processing of personal data relating to him or her infringes that regulation, but also the right to be informed, by that supervisory authority, on the progress and outcome of that complaint.

Next, the Court recalls that where, as in the present case, the data processing is cross-border in nature, [21] the lead supervisory authority, since it is required, in the context of the cooperation procedure, to endeavour to reach consensus among the supervisory authorities, is without delay to submit a draft decision to the other supervisory authorities for their opinion. [22] Where one of the other supervisory authorities concerned expresses a relevant and reasoned objection, the lead supervisory authority, if it does not follow the relevant and reasoned objection or is of the opinion that that objection is not relevant or reasoned, is to submit the matter to the consistency mechanism in order to obtain a binding decision from the EDPB. [23] That mechanism is intended to resolve conflicts of views between the lead authority and the other supervisory authorities concerned. The competence of the EDPB is limited to solely those matters which have been the subject of a relevant and reasoned objection. Accordingly, the binding decision is addressed to all the authorities concerned and relates solely to those questions. [24]

However, even if the complainant under the GDPR is not a formal party to the procedure for the adoption of a binding decision, that complaint plays an essential role in that procedure. First of all, that complaint constitutes the starting point for the entire decision-making process. Next, the objections on which the EDPB makes a decision in the context of a procedure initiated following that complaint often take into account the facts and arguments put forward by the data subject. That data subject may therefore legitimately wish to ascertain whether the elements of his or her complaint have been taken into consideration by the EDPB, or the extent to which they influenced the content of the binding decision. In that regard, the Court notes that, in the present case, the binding decision refers, on numerous occasions, not only to the complaint lodged by the applicant but also to the applicant as such. Lastly, the applicant, as the complainant, has a direct interest in the outcome of the procedure, which seeks to ensure the GDPR is applied specifically to a situation involving the processing of the complainant's personal data. Therefore, the Court concludes that the EDPB file

17 Enshrined in Article 41 of the Charter.

18 Such as handling affairs within a reasonable time, the obligation to give reasons for decisions, the European Union being responsible for making good any damage caused by its administration and the requirement to communicate in the EU language used by natural and legal persons, laid down by Article 41(1), (2)(c), (3) and (4) of the Charter respectively.

19 In accordance with the requirements of Article 52(1) of the Charter.

20 Article 77 of the GDPR.

21 As referred to in Article 4(23) of the GDPR.

22 In accordance with Article 60(3) of the GDPR.

23 Article 60(4), Article 63 and Article 65(1(a) of the GDPR.

24 Article 65(1)(a) and (2) of the GDPR.

prepared for the purposes of the adoption of the binding decision concerns the applicant as provided for in Article 41(2)(b) of the Charter.

III. INSTITUTIONAL PROVISIONS: PUBLIC PROCUREMENT BY THE EU INSTITUTIONS

Judgment of the General Court (Fourth Chamber), 23 July 2025, BT GS Belgium v Commission, T-1081/23

Link to the judgment as published in extract form

Public supply contracts – Tendering procedure – Trans-European Services for Telematics between Administrations – New Generation Extension (TESTA-ng II Ext) – Directive 2014/24/EU – Regulation (EU, Euratom) 2018/1046 – Decision to modify the existing contract without publishing a new call for tenders – Unforeseeable circumstances – Action for annulment – *Locus standi* – Individual concern – Admissibility

In its judgment, the General Court dismisses the action brought by BT Global Services Belgium, the applicant, against the European Commission's decision to modify an existing contract without publishing a new call for tenders. The Court thereby clarifies the admissibility requirements of an action for the annulment of a contract modification notice and the concept of 'circumstances which a diligent contracting authority could not foresee' within the meaning of Regulation 2018/1046. [25]

The Commission launched several calls for tenders relating to a network service in order to provide a communication platform for the exchange of data between the European public administrations ('the TESTA network'). In two calls for tenders, launched for that purpose in 2011 and 2017, the contract was awarded to T-Systems International GmbH.

In May 2019, the Commission launched a new call for tenders, in which the contract was awarded to the applicant. As the result of a number of orders handed down by the Courts of the European Union concerning that award decision and ordering suspension of the signature of that contract, the Commission, in April 2023, issued a decision cancelling that call for tenders.

In June 2019, the Commission launched a new call for tenders, by means of a negotiated procedure without prior publication of a contract notice, in which it awarded the contract to T-Systems. The maximum contract value was set at EUR 121.9 million and 17 June 2024 was set as the contract expiry date.

In August 2023, the Commission issued a decision modifying that contract without launching a new procurement procedure ('the contested decision'). The modifications to the contract included, inter alia, adding additional services and increasing the maximum value of the contract from EUR 121.9 million to EUR 160.9 million. The reasons for those modifications included unforeseeable circumstances, such as those resulting from the COVID-19 pandemic and from the orders handed down by the Courts of the European Union, which had led to cancellation of the call for tenders in which the contract had been awarded to the applicant.

Subsequently, the applicant brought an action before the Court seeking annulment of the contested decision.

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25 Article 172(3)(b)(i) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation').

Findings of the Court

As regards the admissibility of the present case, the Court rules on the argument put forward by the Commission, which submits that the action is inadmissible because the applicant lacks standing, specifically, because it is not individually concerned.

Since the Court finds that the applicant is not an addressee of the contested decision and that that decision is not a regulatory act of general application, it satisfies itself that the applicant is directly and individually concerned by that decision.

After finding that the contested decision directly affects the applicant, the Court examines whether the latter is individually concerned by that decision. In that context, it ascertains whether the contested decision affects the applicant by reason either of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons.

In that regard, the Court notes that, where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form part of a limited class of economic operators. It also adds that, in the field of public procurement, the Court of Justice has held that effective judicial protection required that unsuccessful tenderers have a real possibility of bringing an action.

In the specific circumstances of use by a contracting authority of the negotiated procedure without prior publication of a contract notice, an operator which had not been invited to participate in that procedure, even though it was able to fulfil the criteria applied by the contracting authority to select the undertakings to be invited to tender, must be regarded as belonging to a limited class of competitors able to submit a tender if they had been invited to participate in the procedure.

In the present case, the Court notes that the contested decision is a contract modification notice. Accordingly, it is not possible for the applicant to prove, as it could have done, as the case may be, in the event of a negotiated procedure without prior publication of a contract notice, that it was able to fulfil the criteria applied by the contracting authority to select the undertakings to be invited to tender and that it therefore formed part of a limited class of competitors able to submit a tender if they had been invited to participate in the procedure.

However, the Court notes, first, that the applicant was the only person to succeed in the last procurement procedure open to competition relating to TESTA network services.

Second, the Court highlights the fact that there is a close link between the call for tenders in which the applicant won the contract and the contract modified by the contested decision, and a direct link between the cancellation of that call for tenders and the adoption of that decision.

Accordingly, the Court finds that that factual situation, which differentiates the applicant from any other person, serves to distinguish the applicant individually. Consequently, it rejects the Commission's argument that the action is inadmissible and finds the action to be admissible.

On the substance of the case, in the first place, the Court rejects the plea in law alleging that the modification of the contract concerned was not brought about by circumstances which a diligent contracting authority could not foresee.

In that regard, it recalls, first of all, that unforeseeable circumstances are external circumstances that the contracting authority, despite reasonably diligent preparation of the initial award, could not foresee when awarding the contract concerned.

Next, the Court notes that, in the present case, at the time of preparation of the call for tenders in question, which was launched in June 2019, and when the corresponding contract was awarded, in May 2020, the Commission could not foresee any of the external circumstances identified in the contested decision, that is to say, neither the severity of the COVID-19 pandemic, which, at the time the contract was awarded, had just been declared, nor the succession of procedural events, which constitutes a particularly unusual state of affairs.

It therefore follows from Directive 2014/24 [26] and from the Financial Regulation [27] that the COVID-19 pandemic and the decisions handed down by the General Court and the Court of Justice between April 2022 and March 2023, ordering suspension of the signature of the preceding framework contract, can be regarded as circumstances that a diligent contracting authority could not foresee within the meaning of those provisions.

Last, the Court notes that the reasonable diligence with which the contracting authority must have acted when preparing the initial award so as to be able to rely on 'circumstances which a diligent contracting authority could not foresee' does not require the Commission to have taken into consideration, when preparing the public contract concerned, that it might be impossible, by reason of those unforeseeable circumstances, to migrate to a new network or to have a new network fully operational by expiry of the framework contract.

In the second place, the Court rejects the plea alleging that the consecutive modifications to the initial contract were aimed at circumventing Directive 2014/24. It emphasises that the *raison d'être* of the limitation concerning the modification of contracts during their term, laid down by that directive, [28] is to avoid a situation in which the contracting authority devises a number of successive modifications to a single contract with the aim of circumventing the obligations under Directive 2014/24. That limitation therefore applies to consecutive modifications to a specific contract. In the present case, the Commission modified the contract only once.

Consequently, the Court dismisses the applicant's action.

Judgment of the General Court (Eighth Chamber), 23 July 2025, Lattanzio KIBS and Others v Commission, T-113/24

Link to the judgment as published in extract form

Public procurement – Protection of the European Union's financial interests – Action for annulment – Lack of direct concern – Partial inadmissibility – Criteria for exclusion from participation in public procurement procedures – Concept of 'final judgment that the person or entity is guilty' – Article 136(1)(d)(ii) of Regulation (EU, Euratom) 2018/1046 – Persons who have powers of representation, decision or control with regard to a person or entity who is excluded – Article 136(4)(a) of Regulation 2018/1046 – Obligation to state reasons – Proportionality

Hearing an action for annulment, which it dismisses, the General Court clarifies the scope of the criterion of exclusion from award procedures for public procurements and grants funded by the general budget of the European Union laid down by Article 136(1)(d)(ii) of Regulation 2018/1046. [29] In particular, it clarifies for the first time the interpretation of the concept of final judgment establishing the guilt of the persons concerned and, in that regard, recognises that final judgments resulting from the 'patteggiamento' procedure, a special form of procedure provided for in the Italian Code of

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26 Article 72(1)(c)(i) and recital 109 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

27 Article 172(3)(b)(i).

28 Article 72(1)(c)(iii).

29 Pursuant to Article 136(1)(d)(ii) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation of 2018'). That regulation was replaced by Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) (OJ L, 2024/2509) of which Article 138(1)(d)(ii) is drafted in terms similar to those of Article 136(1)(d)(ii) of the Financial Regulation of 2018.

Criminal Procedure, may be classified as final judgments of guilt and thus form the basis of such an exclusion.

The applicants, Lattanzio KIBS SpA, a company established under Italian law ('LKIBS'), as well as CY, CV and CW, three natural persons, sought the annulment of the decision by which the European Commission, inter alia, had excluded LKIBS from participation in award procedures for public procurements and grants until 26 April 2024. [30]

In 2020, the company Lattanzio Advisory SpA had been excluded by the Commission from participating in public procurement procedures for awards of contracts financed by the general budget of the European Union, and from participating in procedures for the grant of EU funds for a period running into 2024, on the ground that there were a number of irregularities committed by that company in the context of certain public procurement procedures for awards of contracts financed by the European Union in North Macedonia. [31]

By judgment of 13 July 2021, which became final on 8 October 2021, the Tribunale di Milano (District Court, Milan, Italy), imposed, first, on Lattanzio Advisory Spa (which became LA International Cooperation Srl ('LAIC')) a fine of EUR 80 000, and, second, on CY and CV a suspended sentence of two years' imprisonment for, inter alia, acts of corruption ('the judgment of the District Court of Milan'), corresponding, in essence, to the irregularities that were the reason for the 2020 exclusion decision being adopted.

In 2022 and 2023, LKIBS submitted requests to participate in three public procurement procedures for the award of contracts financed by the European Union. When submitting those requests, LKIBS accredited its own experience in projects financed by the European Union by referring to earlier projects implemented by LAIC, of which it had acquired the branch responsible for carrying out those projects.

The Commission rejected those three requests by LKIBS on the ground that it had presented incomplete or misleading information because it had participated in those three procedures while being in an exclusion situation. The Commission considered, in essence, that the judgment of the District Court of Milan constituted a final judgment and that, by requesting the application of a reduced sentence and consenting to it, CY and CV had acknowledged their guilt for acts of corruption, such as referred to in Article 136(1)(d)(ii) of the Financial Regulation of 2018.

Findings of the Court

After dismissing, owing to a lack of direct concern, the action brought by CW, the Court examines, inter alia, several of the pleas raised alleging, in essence, that the Commission infringed Article 136(1)(d)(ii) of the Financial Regulation of 2018 by finding that the judgment of the District Court of Milan was a final judgment which established the guilt of CY and CV for acts of corruption.

According to that provision, the authorising officer responsible is to exclude a person or entity from participating in award procedures or from being selected for implementing EU funds where that person or entity is in one or more exclusion situations, including where it has been established by a final judgment that the person or entity is guilty of corruption.

At the outset, the Court observes that it is clear, in essence, from the judgment of the District Court of Milan that there was sufficient evidence to demonstrate incriminating facts, which qualified legally as acts of corruption within the meaning of the Italian Criminal Code. It noted that those acts could be attributed, in particular, to CY and CV, and that on conclusion of the special form of procedure of 'patteggiamento', requested by the accused persons and accepted by the public prosecutor's office, a suspended custodial sentence was imposed on them for those acts. In addition, a financial penalty was imposed on Lattanzio Advisory for the same acts.

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30 Commission Decision Ares(2023) 8545235 of 13 December 2023.

31 Commission Decision Ares(2020) 3816259 of 20 July 2020.

While it is common ground between the parties that the judgment of the District Court of Milan is final, the applicants dispute the second condition, according to which it must be established by such a final judgment that the person or entity in question is guilty of acts of corruption, has been satisfied.

In that respect, the Court observes that the wording of Article 136(1)(d)(ii) of the Financial Regulation of 2018 does not specify whether a final judgment delivered in the context of a special form of criminal procedure, such as the 'patteggiamento' procedure, must be regarded as satisfying that condition. Consequently, it carries out a contextual and teleological interpretation of that provision.

As regards, in the first place, the context of that provision, the Court states that the provisions of the Financial Regulation of 2018, including those in Title V, Chapter 2, Section 2 thereof, relating to the Early Detection and Exclusion System, which includes Article 136(1)(d)(ii) of that regulation, are administrative and not criminal provisions. In particular, pursuant to Article 91 of the Financial Regulation of 2018, which is within Title IV, under Section 1 of Chapter 5, entitled 'Liability of financial actors', is without prejudice to any liability under criminal law which could be incurred under conditions provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the European Union and the fight against corruption involving EU officials or officials of Member States. Thus, as an administrative provision, Article 136(1)(d) of the Financial Regulation of 2018 does not seek to establish the criminal liability, in national law, of a natural or legal person, but merely defines the cases in which that person must be excluded from award procedures governed by that regulation, which includes cases of corruption referred to in Article 136(1)(d)(ii) of that regulation.

As regards, in the second place, the teleological interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018, the Court notes that it is clear from both recital 64 of that regulation and Article 135(1) thereof that the objective of the exclusion system is to ensure the protection of the financial interests of the European Union. Thus, first, Article 136(1)(d)(ii) of the Financial Regulation of 2018 seeks to exclude persons and entities that, owing to their conduct, are likely to represent a risk for the financial interests of the European Union from participating in award procedures governed by that regulation. Secondly, that provision enables the Commission to comply with the obligation of sound financial management of the EU's resources which is imposed on it by Article 317 TFEU.

Next, it is specifically in order to avoid the risk of harming the financial interests of the European Union that the Financial Regulation of 2018 lays down the cases, such as those provided for in Article 136(2) and (5), permitting the provisional exclusion of tenderers from the award procedures that it governs, even in the absence of a final judgment establishing the guilt of the persons or entities concerned.

Lastly, the Court recalls that, where a provision of EU law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness. In those circumstances, it finds that a strict interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018 would be liable to harm the effectiveness of that provision. It would have the consequence of enabling persons and entities upon whom, by a final judgment, sentences and financial penalties have been imposed for acts of corruption nevertheless to participate in award procedures for public contracts financed by the budget of the European Union, thus posing a risk for the financial interests of the European Union and the sound financial management of its resources.

Having regard to the foregoing considerations, the Court concludes that a final judgment, such as that of the judgment of the District Court of Milan, which, without giving a formal ruling on the guilt of the persons or entities accused, nevertheless establishes, in essence, that the acts of corruption that may be attributed to them and imposes on them, for those acts, a sentence and financial penalty, falls within Article 136(1)(d)(ii) of the Financial Regulation of 2018.

The Court adds that that conclusion is not called into question by the applicants' arguments. In particular, first, the impossibility of delivering an acquittal under the relevant provisions of the Italian Code of Criminal Procedure, even if correct, has no effect since it is clear from the judgment of the District Court of Milan that there was sufficient proof of corruption. Secondly, the Court found that the differences that may exist, in Italian law, between the effects of such a judgment and those following a criminal conviction within the meaning of the relevant provisions of the Italian Code of Criminal Procedure are not capable of affecting the interpretation of Article 136(1)(d)(ii) of the Financial Regulation of 2018. Thirdly, it is true that the Commission made the incorrect statement that

the applicants had acknowledged their guilt by accepting a reduced sentence. However, it did not rely solely on that statement in order to apply Article 136(1)(d)(ii) of the Financial Regulation of 2018, but also took into account the fact that, in the words of that judgment, there was sufficient proof according to which the incriminating facts could be attributed to the accused persons. It also took into account the fact that the relevant provisions of the Italian Code of Criminal Procedure treats judgments delivered under the special form of procedure of 'patteggiamento', provided for by that code, as being equivalent to a conviction, and that Article 136(1)(d)(ii) of the Financial Regulation of 2018 does not distinguish between final judgments according to whether or not they were delivered following an agreement made between the persons concerned and the public prosecutor's office. Fourthly, the Court rejects the argument that, pursuant to the relevant provisions of the Italian Code of Criminal Procedure, a judgment delivered under the special form of procedure of 'patteggiamento' does not produce effects and cannot be used as evidence in, inter alia, administrative procedures, such as that which led to the contested decision. It recalls that the principle of primacy of EU law prevents a national provisions from precluding the application of a provision of EU law. Fifthly, the Court also rejects argument that, in the judgment in *TP* v *Commission*, [32] the Court held that the authorising officer responsible when adopting an exclusion measure based on Article 136(1)(b) to (d) and (f) to (h) of the Financial Regulation 2018, appeared to be bound by the legal classification of the conduct in question, adopted in a final judgment or in a final administrative decision, without having the slightest margin of discretion in that regard. In the present case, the Court observes that it is not a matter of adopting a different legal classification of the conduct in question from that adopted in the judgment of the District Court of Milan, but of interpreting a provision of EU law in order to establish whether such a judgment, taking account of the legal classifications such as they are set out therein, falls within its scope.

IV. FREEDOM OF MOVEMENT: FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Judgment of the Court of Justice (Grand Chamber), 10 July 2025, INTERZERO and Others, C-254/23

Link to the full text of the judgment

Reference for a preliminary ruling – Freedom of establishment and freedom to provide services – Articles 49 and 56 TFEU – Protocol (No 26) on services of general interest, annexed to the EU and FEU Treaties – Services in the internal market – Directive 2006/123/EC – Scope – Monopolies and services of general economic interest – Requirements to be evaluated – Article 15 – Waste – Directive 2008/98/EC – Extended producer responsibility schemes – Articles 8 and 8a – Creation of a monopoly on the market for collective fulfilment of extended producer responsibility obligations – Non-profit-making single organisation – Article 106(2) TFEU – Concept of an 'undertaking' – Detailed rules for establishment and operation – Transitional arrangements – Obligation on producers subject to extended responsibility to comply with that scheme – Articles 16 and 17 of the Charter of Fundamental Rights of the European Union – Right to conduct a business and right to property – Principles of legal certainty and protection of legitimate expectations – Proportionality

32 Judgment of 18 December 2024, *TP* v *Commission* (T-776/22, EU:T:2024:908).

Hearing a request for a preliminary ruling from the Ustavno sodišče (Constitutional Court, Slovenia), the Court, sitting as the Grand Chamber, rules on certain aspects of the organisation of an extended producer responsibility scheme within the meaning of Directive 2008/98 [33] under EU law.

Directive 2008/98 establishes a legal framework for the treatment of waste in the European Union, while seeking to protect the environment and human health. This framework allows Member States to set up extended producer responsibility schemes, obliging producers to take financial and, where appropriate, organisational responsibility for the management of the waste phase of a product's life cycle. [34]

In 2022, the Slovenian legislature established a new extended producer responsibility scheme. [35] Unlike the previous scheme, under which a producer could fulfil its extended producer responsibility obligations, either individually or collectively, through a producer association or a commercial company, the new scheme requires that the collective implementation of those obligations be carried out on a non-profit-making basis by a single organisation in respect of each category of products covered by that scheme.

In that context, the new scheme provides for:

– the revocation by operation of law of the authorisations which have enabled economic operators to carry out the collective fulfilment of those obligations to date and the termination by operation of law of all the contracts concluded by those operators in the exercise of that activity;

– an obligation for producers placing on the market at least 51% of the total quantity of products of the same category, to which that extended responsibility obligation applies, to establish a single organisation responsible for the collective fulfilment of extended responsibility obligations and to hold shares in it;

– an obligation for shareholders in that organisation to be producers on the market concerned;

– the obligation for producers of products intended for household use to fulfil their obligations collectively, requiring them to contract with the single organisation covering their product category.

Several producers subject to the new scheme, operators providing services for the collective fulfilment of extended producer responsibility obligations under the previous scheme and operators carrying out waste management activities brought proceedings before the referring court, which initiated proceedings for review of the constitutionality of the new scheme before the Constitutional Court.

That court puts questions to the Court, first, about the interpretation of the concept of 'undertaking entrusted with the operation of services of general economic interest' within the meaning of Article 106(2) TFEU, as it has doubts as to whether that concept may include entities enjoying the exclusive right to carry out the collective fulfilment of extended producer responsibility obligations for a category of products under the new scheme.

Second, it raises the question whether such a monopoly situation and the measures imposed in that context are compatible with, inter alia, Articles 8 and 8a of Directive 2008/98, Directive 2006/123, the freedom of establishment and the freedom to provide services, enshrined in Articles 49 and 56 TFEU, respectively, the freedom to conduct a business and the right to property guaranteed by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the principles of legal certainty and the protection of legitimate expectations.

Findings of the Court

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33 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3), as amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 (OJ 2018 L 150, p. 109) ('Directive 2008/98').

34 These extended producer responsibility schemes are governed by Articles 8 and 8a of Directive 2008/98. Article 8a, introduced by Directive 2018/851, sets minimum operating requirements for such schemes.

35 Introduced by the Zakon o varstvu okolja (Law on environmental protection) of 16 March 2022 (Uradni list RS, No 44/22).

(1) Existence of a service of general economic interest

As regards the classification of the activity of the single organisations in question, the Court finds that a single organisation fulfilling extended producer responsibility obligations on a non-profit-making basis must be regarded as an undertaking entrusted with the operation of a service of general economic interest, provided that it has actually been entrusted with the discharge of public service obligations and that the nature, duration and scope of those obligations are clearly defined in national law.

In the first place, such a legal person may be regarded as carrying out an economic activity and, therefore, as constituting an undertaking within the meaning of EU competition law. Its activity of establishing a system for the collection and treatment of the waste from the products concerned, in return for the payment of fees by affiliated producers, cannot be regarded as connected with the exercise of public powers in relation to waste management, in view of the autonomy that organisation has in providing its services. Moreover, being non-profit-making is not sufficient to conclude that an activity is outside the sphere of economic activity. Similarly, the economic nature of an activity is not called into question by the mere fact that a Member State removes that activity from competition, for reasons of public interest, by creating a monopoly.

In the second place, the activity of fulfilling extended producer responsibility obligations may be classified as a service of general economic interest. Extended producer responsibility schemes contribute directly to achieving the objective of Directive 2008/98 which is, inter alia, to minimise the negative effects of waste management on the environment and human health. In so far as it contributes to ensuring the effective application of those schemes, the activity in question may be regarded as being of a general economic interest exhibiting special characteristics as compared with that of other economic activities.

(2) Respect for the fundamental freedoms and compliance with the Charter

Before examining the measures at issue, the Court clarifies the scope of Directive 2008/98 and the relationship between Directive 2006/123, the fundamental freedoms and the Charter.

(a) The impact of Directive 2008/98

Not only does Directive 2008/98 leave Member States free to choose whether certain categories of products should be covered by extended producer responsibility schemes, but it also allows them a margin of discretion in the organisation of those schemes and, in particular, the arrangements for the collective fulfilment of those extended producer responsibility obligations.

That said, when establishing extended producer responsibility schemes, the Member States must ensure that the necessary costs are efficiently passed on to the producers and that the performance of waste management systems is boosted, while also taking into account the general objective of Directive 2008/98 and of Article 191(2) TFEU. [36] In addition, subject to the derogations provided for in the field of services of general economic interest, any national legislation establishing an extended producer responsibility scheme must comply with the EU rules that seek to ensure the proper functioning of the internal market.

(b) The relationship between Directive 2006/123 and the freedom of establishment and between the freedom to provide services and the role of the Charter

In so far as Directive 2006/123 does not deal with the liberalisation of services of general economic interest or with the abolition of monopolies providing services, the Court finds that the extended producer responsibility scheme at issue is not covered by that exclusion from the scope of that directive. That exclusion concerns only services of general economic interest and monopolies in the field of provision of services which existed on the date of entry into force of the directive.

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36 That provision provides that EU policy on the environment is to aim at a high level of protection and is to be based, inter alia, on the precautionary principle and on the principles that preventive action should be taken and that the polluter should pay.

Thus, since services of general economic interest are not automatically excluded from the scope of Article 15 of Directive 2006/123, [37] only restrictions on freedom of establishment not covered by the requirements listed in paragraph 2 of that provision must be examined in the light of Article 49 TFEU. By contrast, as regards the freedom to provide services, the extended producer responsibility scheme can be examined only in the light of Article 56 TFEU, since Article 16 of Directive 2006/123, relating to that fundamental freedom, does not apply to services of general economic interest which are provided in another Member State.

It is also recalled that, where national legislation constitutes a restriction on the freedom of establishment and v or the freedom to provide services, the compatibility of that legislation with EU law and, therefore, its justification, must also be examined in the light of the Charter. That requirement entails ascertaining whether the national provisions concerned impose limitations on [the rights and freedoms of] the Charter and, if they do, whether those limitations are justified in the light of the requirements set out in Article 52(1) of the Charter.

(c) The measures at issue

In the first place, as regards the conditions for establishing the monopoly at issue, the Court finds that the establishment of such a monopoly constitutes a restriction on the freedom of establishment and the freedom to provide services. For the purpose of reviewing the proportionality of those restrictions, it notes, first, as regards the ability of that monopoly to pursue the objectives of the protection of the environment and human health relied on by the Slovenian Government, that national legislation establishing a monopoly constitutes a measure which is particularly restrictive of the fundamental freedoms. It must therefore be accompanied by a legislative framework suitable for ensuring that the holder of that monopoly will in fact be able to pursue, in a consistent and systematic manner, the objectives thus determined by means of a supply that is quantitatively measured and qualitatively planned by reference to those objectives and subject to strict control by the public authorities. In that regard, extended responsibility schemes established in accordance with Directive 2008/98 must be consistent with the systematic aim of transitioning to a circular economy and maintaining the long-term competitiveness of the European Union. That said, in the present case, the absence of a competitive market in the field of the collective fulfilment of extended producer responsibility obligations does not appear to ultimately compromise the effective management of waste.

Second, as regards the necessity of taking the decision to establish a monopoly, a Member State seeking to ensure a particularly high level of protection with regard to the environment and public health may be entitled to take the view that it is only by granting exclusive rights to a single entity which is subject to strict control by the public authorities that they will be able to pursue those objectives sufficiently effectively.

Third, as regards whether that decision is proportionate *stricto sensu*, the Court notes that it is for the referring court to verify that it is not disproportionate to the objectives of protection of the environment and public health pursued by the Slovenian legislature. In that context, that court may take into account, inter alia, the shortcomings which characterised the previous extended producer responsibility scheme and the characteristics of the new scheme that are likely to contribute to better quality control of waste management.

Furthermore, as regards compliance with the Charter, the consequences of the establishment of the monopoly in the present case, namely the revocation by operation of law of the authorisations issued to the economic operators that were active under the previous scheme and the termination by operation of law of all their contracts, may be regarded as a limitation on the exercise of the right to property relating to how the use of property is governed for the purposes of the third sentence of Article 17(1) of the Charter.

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37 According to that article, Member States are required to examine whether, under their legal system, one or more of the requirements listed in paragraph 2 of that article are imposed and, if so, to ensure that they are compatible with the conditions of non-discrimination, necessity and proportionality. It follows from Article 15(4) that, in so far as the conditions of non-discrimination, necessity and proportionality do not obstruct the particular task assigned by the competent authority to a service of general economic interest, those conditions must be complied with.

While such a limitation may be appropriate and necessary, respect for the fundamental rights of the economic operators concerned requires that the national legislator provides for adaptations to the application of the new rules to prevent any excessive burden being placed on those economic operators. Indeed, in the context of a legislative amendment, that legislature must take account of the particular situations of the economic operators concerned by that amendment. Accordingly, it is for the national legislature to provide for a transitional period of sufficient length to enable economic operators to adapt to the changes affecting them or a system of reasonable compensation for the damage suffered by them, or both.

In the second place, as regards the measures relating to the creation of a single organisation by the producers placing on the market at least 51% of the total quantity of the product concerned and to the holding of shares in that organisation, those measures are capable of strengthening the accountability of those producers and, consequently, of helping the extended producer responsibility schemes to function more efficiently. Furthermore, bearing in mind the discretion enjoyed by the Member States, the national legislature may, in principle, consider that there is a risk that, if economic operators who are not producers acting on the market concerned are in a position to exert influence on the operation of the single organisation, those operators may adopt management decisions liable to undermine the objectives pursued by that organisation.

In the third place, as regards the obligation to use the single organisation that is imposed on producers of products intended for household use wishing to access the Slovenian market, the Court finds that such an obligation restricts the freedom to provide services and the freedom of establishment by making the exercise of those freedoms less attractive. Indeed, first, obligation to have recourse to collective fulfilment may entail additional administrative and financial burdens. That is particularly the case in so far as the legislation concerned also applies to producers that provide services on the Slovenian market only occasionally and given that failure to comply carries a financial penalty. Second, the Court notes that, in view of the detailed rules for the implementation of the extended producer responsibility scheme at issue, a single organisation's activity is substantially determined by producers that are already present on the Slovenian market, thereby potentially giving those producers competitive advantages.

As regards the proportionality of such a measure, the latter appears to satisfy the requirements of appropriateness, necessity and proportionality *stricto sensu*. In particular, as regards whether it is appropriate for attaining the objectives of protecting the environment and public health, first, the collective fulfilment of extended producer responsibility obligations does not appear to entail disadvantages as compared to the individual fulfilment of those obligations, in particular as regards waste streams. Second, the collective fulfilment of extended producer responsibility obligations, conceived around a single organisation, is capable of facilitating the establishment of a well-functioning waste management system, in particular in small or medium-sized Member States.

Furthermore, that measure also appears to be compatible with the freedom to conduct a business guaranteed in Article 16 of the Charter and in particular with the freedom of contract which it entails. However, freedom of contract also requires that any legislative or regulatory intervention by a Member State in an economic operator's contractual relations with other economic operators be devised in such a way as to minimise its impact on the economic operator's interests. It follows that the obligation to use a single organisation must be accompanied by sufficient procedural safeguards, in particular as regards possible conflicts of interests or competitive disadvantages, in order to prevent any excessive burden being placed on the producers concerned in the course of carrying out their economic activity as a result of arbitrary or unforeseeable effects on their contractual relationships.

V. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (First Chamber), 3 July 2025, Al Nasiria, C-610/23

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – International protection – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 46 – Charter of Fundamental Rights of the European Union – Article 47 – Right to an effective remedy – Requirement of full and *ex nunc* examination of the appeal – Obligation to appear in person before the authority examining the appeal – Presumption that an appeal has been improperly brought – Dismissal of the appeal as manifestly unfounded without examination of the merits – Principle of proportionality

Ruling on a request for a preliminary ruling relating to the rejection of an application for international protection, the Court of Justice provides clarification on the right to an effective remedy against such a rejection decision, as provided for in Article 46 of Directive 2013/32. [38] More specifically, it rules on the compatibility with that provision of national legislation establishing a presumption that an appeal has been improperly brought when an applicant fails to appear in person before the court or tribunal hearing his or her appeal.

In February 2019, FO, an Iraqi national, lodged an application for international protection with a Greek authority, on the ground that his life was in danger in his country of origin. During an interview in February 2020 before a regional asylum office, he stated that he had been injured by firearm by a member of the family of a young woman with whom he had been in a romantic relationship, and had been the subject of a tribal order requiring him to be put to death. By a decision adopted in May 2020, that regional asylum office rejected FO's application for international protection, considering that his allegations were not reliable.

In August 2021, FO lodged an appeal against that decision with an Independent Appeals Committee. At that time, he was informed that the date set for the examination of his appeal was 11 October 2021. He was also informed that, even if he were not summoned to a hearing, he would be obliged to appear in person on the date of the examination of his appeal, unless he was lawfully staying at a reception and identification centre or was subject to a restriction on movement or residence in a place outside the region of Attica (Greece). FO did not appear in person before that committee. After verifying that he did not come within one of the exceptions allowing for a derogation from the obligation to appear in person, that committee dismissed the appeal as manifestly unfounded, without examining it as to its merits.

The referring court, before which FO brought an action against that decision, decided to refer questions to the Court, in particular on the point whether the procedural obligation to appear in person before those committees and, in particular, the legal consequences of non-compliance with that obligation, are compatible with Article 46 of Directive 2013/32.

Findings of the Court

As a preliminary point, the Court finds, subject to verification by the referring court, that the Independent Appeals Committees, established by the national legislation at issue in the main proceedings to hear appeals brought by applicants for international protection against decisions taken in respect of them, fulfil the conditions necessary for being considered to be 'courts or tribunals' for the purposes of Article 46 of Directive 2013/32. Referring, in that regard, to the same criteria as those developed for determining whether a referring body is a 'court or tribunal' for the purposes of Article 267 TFEU, the Court concludes that neither the information provided by the referring court nor

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

the arguments put forward by the Greek Government and the European Commission contain anything liable to call that assessment into question.

On the substance, the Court holds that Article 46 of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), [39] precludes legislation of a Member State which, in the event of failure by an applicant for international protection to comply with a procedural obligation to appear in person before the court or tribunal having jurisdiction to rule on his or her appeal against a decision rejecting his or her application, the sole objective of which is to verify the applicant's presence on the national territory and not to be heard, establishes a presumption that the appeal has been improperly brought and provides for it to be dismissed as manifestly unfounded.

In order to reach that conclusion, the Court observes that Article 46(1) of Directive 2013/32 provides that Member States are to ensure that applicants for international protection have the right to an effective remedy before a court or tribunal against decisions given on their applications, including in particular decisions rejecting an application for international protection as unfounded, without however setting out exhaustively the procedural rules governing that remedy. Although, in the absence of EU rules on the matter, it is for the national legal order, in accordance with the principle of procedural autonomy of Member States and subject to the observance of the principles of equivalence and effectiveness, to lay down the detailed procedural rules governing remedies for ensuring that individual rights derived from the EU legal order are safeguarded, Member States nevertheless have the responsibility to ensure observance in every case of the right to effective judicial protection of those rights as guaranteed by Article 47 of the Charter. Consequently, the characteristics of the remedy provided for in Article 46 of Directive 2013/32 must be determined in a manner that is consistent with Article 47 of the Charter.

In the present case, the national legislation at issue, which transposes Article 46 of Directive 2013/32, provides that applicants for international protection who have lodged an appeal against a decision rejecting their application are obliged, irrespective of where in Greece they are staying, to travel to the seat of the Independent Appeals Committees to appear in person, unless they come within one of the exceptions referred to in that legislation. All of those committees have their seat in Athens. Moreover, that legislation provides, as a legal consequence of non-compliance with that obligation to appear in person, that the applicant is to be deemed to have lodged the appeal solely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her expulsion or removal and that his or her appeal is to be rejected as manifestly unfounded.

In that regard, Article 46(11) of Directive 2013/32 does allow the Member States to lay down, in their national legislation, the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his or her remedy. In the present case, the objectives of dealing with such appeals expeditiously and of safeguarding the efficiency of the judicial system, pursued by the national legislation at issue, are legitimate objectives, inasmuch as they assist the courts or tribunals hearing those appeals in concentrating on those coming from applicants who have a genuine interest in the outcome of their appeal. Thus they are legitimate objectives and justify the introduction of a presumption, such as that at issue in the main proceedings, which addresses the interest of Member States and that of applicants.

Thus, the Court notes that national legislation providing for the obligation to appear in person before the court or tribunal having jurisdiction to rule on an appeal against a decision rejecting an application for international protection and, in the event of non-compliance with that obligation, for a presumption similar to a presumption of implicit withdrawal or abandonment of such an application may, in principle, be justified in the light of the objective of expedition pursued by Directive 2013/32, the principle of legal certainty, and the smooth progress of the procedure for the examination of applications for international protection.

Nevertheless, the legislation of a Member State intended to implement the right to an effective remedy provided for in Article 46(1) of Directive 2013/32 must observe the principle of

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39 Article 47 of the Charter provides for the right to an effective remedy before a tribunal for everyone whose rights and freedoms guaranteed by EU law are infringed.

proportionality, which presupposes inter alia that it is apt to ensure attainment of the objective pursued, that it does not go beyond what is necessary to achieve that objective and that it is proportionate.

In that regard, in the first place, the Court finds that the procedural obligation requiring applicants who have lodged an appeal to appear in person before the Independent Appeals Committees, provided for by the national legislation at issue, is apt for helping to attain the abovementioned objectives. In enabling more efficient processing of applications submitted by applicants who retain an interest in the outcome of their appeals, whilst avoiding an examination of applications which have become moot, it helps with the smooth progress of the procedure for the examination of applications for international protection.

As regards, in the second place, the question whether that national legislation goes beyond what is necessary to achieve the objectives pursued, it seems that less restrictive measures, such as allowing applicants who have brought an appeal to be represented by a lawyer or other person authorised for that purpose and, in order to prove their presence in Greek territory, to appear at a police station or before another public or judicial authority close to where they are staying, could be envisaged.

In the third place, as regards the question whether the national legislation at issue is proportionate, the Court notes that the obligation for the applicant to appear in person before the court or tribunal having jurisdiction to rule on his or her appeal, the sole objective of which is to verify his or her presence on the national territory and not to be heard, imposes an unreasonable and excessive burden on applicants for international protection who are not staying in the region of Athens, such as the applicant in the main proceedings, who is staying several hundred kilometres away, since, unless they come within one of the exceptions provided for in that legislation, they must travel to Athens, solely in order to have their presence recorded, without however necessarily being heard. The disproportionate nature of that national legislation is evident, inter alia, from the legal consequence provided for by that legislation in the event of non-compliance with the obligation to appear in person, inasmuch as it establishes an irrefutable presumption that an appeal has been brought improperly, with the result that it must be dismissed as manifestly unfounded, without any examination being conducted as to its merits. Moreover, the failure to appear in person before the court or tribunal having jurisdiction to rule on the appeal may be due to reasons unrelated to any intention to frustrate or delay the enforcement of an earlier or imminent decision ordering the expulsion of the applicant or his or her removal by any other means.

VI. COMPETITION: AGREEMENTS, DECISIONS AND CONCERTED PRACTICES (ARTICLE 101 TFEU)

Judgment of the General Court (Seventh Chamber), 23 July 2025, UBS Group and Others v Commission, T-84/22

Link to the full text of the judgment

Competition – Agreements, decisions and concerted practices – Sector of Foreign Exchange (Forex) spot trading of G10 currencies – Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement – Exchanges of information – Agreements or concerted practices relating to G10 foreign exchange activities – Restriction of competition by object – Single and continuous infringement – Principle of sound administration – Rights of the defence – Fines – Basic amount – Proxy for value of sales – Article 23(2) and (3) of Regulation (EC) No 1/2003 – Unlimited jurisdiction

The General Court confirms the decision of the European Commission [40] in so far as it finds that the undertakings Credit Suisse Group, Credit Suisse and Credit Suisse Securities (Europe) (together, 'Credit Suisse'), participated in an agreement in the sector of foreign exchange spot trading of G10 currencies. [41] Nevertheless, it annuls the fine imposed on Credit Suisse in the Commission's decision, on account of the error made by that institution in so far as concerns the use of certain data in the calculation of the fine and, ruling on the application made by the applicants for a reduction of the amount of the fine, imposes a fine in a lesser amount than that imposed in the contested decision.

Further to a leniency application made in 2013 by UBS AG, the Commission opened an investigation with a view to determining whether there existed an agreement in the sector of foreign exchange spot trading of G10 currencies. Foreign exchange spot trading of G10 currencies is defined as an agreement between two parties to exchange two currencies, namely to buy a certain amount ('the notional amount') of one currency in exchange for its equivalent in another currency at the value at the time of the agreement ('exchange rate'). Exchange rates vary according to information about their fundamental value. In the short term, they are mainly determined by traders' order flows, while market fundamentals determine exchange rates in the longer term.

Following its investigation, the Commission found that the traders of several undertakings active in the banking and financial sector, including Credit Suisse, had exchanged information in order to obtain a competitive advantage on the spot trading market. Furthermore, in the Commission's view, that conduct formed part of an overall plan pursuing a single anticompetitive objective. The Commission therefore concluded that Credit Suisse had infringed Article 101(1) TFEU by participating in exchanges of information forming part of a single and continuous infringement the object of which was to restrict or distort competition in the sector of foreign exchange spot trading of G10 currencies which covered the whole of the European Economic Area (EEA). Consequently, it imposed a fine on Credit Suisse in the amount of EUR 83 294 000.

UBS Group AG – the successor in law to Credit Suisse Group AG – UBS AG – the successor in law to Credit Suisse AG – and Credit Suisse Securities (Europe) Ltd brought an action before the General Court seeking, principally, annulment of the contested decision and, in the alternative, the reduction of the amount of the fine imposed on Credit Suisse.

Findings of the Court

In the first place, the Court confirms the anticompetitive nature of almost all of the discussions between the traders, which took place between May 2011 and July 2012 and in which Credit Suisse participated from 7 February until 12 July 2012 ('the relevant period'); those discussions took the form of exchanges of commercially sensitive information.

More specifically, with one exception, the discussions between the traders of the banks concerned, which involved Credit Suisse, revealed an exchange of precise, current and confidential information. By virtue of its subject matter and its level of detail and the fact that it was not accessible to competitors not present in the chatroom concerned, that information conferred a commercial advantage on the recipients thereof by enabling them to adapt their trading strategies as a result and to reduce the uncertainties inherent in the foreign exchange spot trading market.

It follows that, in spite of its error of assessment as regards the anticompetitive nature of one of those discussions, the Commission rightly found that the exchanges of information concerned supported the finding as to the existence of agreements and v or concerted practices of an anticompetitive nature within the meaning of Article 101 TFEU.

In the second place, as regards the question whether the exchanges of information at issue constitute a restriction 'by object', the Court recalls that such a characterisation is subject to the finding that the

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40 Commission Decision C(2021) 8612 final of 2 December 2021 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40135 – FOREX (Sterling Lads)) ('the contested decision').

41 The currencies concerned by the decision are the following: the euro (EUR); the Australian dollar (AUD); the Canadian dollar (CAD); the Swiss franc (CHF); the Danish krone (DKK); the British pound (GBP); the Japanese yen (JPY); the Norwegian krone (NOK); the New Zealand dollar (NZD); the krona (SEK); and the United States dollar (USD).

agreements at issue present a sufficient degree of harm to competition, having regard to their content, their objectives and their economic and legal context.

In the present case, for the purposes of assessing the economic context of which the exchanges of information formed part, the Commission erred in finding that the foreign exchange spot trading market was transparent at the material time. In a transparent market, information is immediately available free of charge to all market participants, which is not the case in the foreign exchange spot trading market having regard to the existence of a number of types of information.

However, that error of assessment has no bearing on the characterisation of the exchanges of information at issue as a 'restriction by object'. Those exchanges, which related bid-ask spreads, customer orders, open risk positions and current or prospective trading activities, served to reduce the normal uncertainties inherent in the relevant market and therefore presented a sufficient degree of harm to competition.

In so far as concerns the applicants' arguments that the conduct at issue is justified in the light of its pro-competitive effects, the Court points out, first, that it is not necessary to take into consideration the pro-competitive effects as such, for the purposes of assessing whether the exchanges of information at issue should be characterised as a restriction 'by object' Secondly, consideration of the alleged legitimate objectives is not decisive in that assessment.

In the third place, the Court examines the plea disputing the existence of a single and continuous infringement. According to the applicants, the Commission failed to establish that there was an overall plan pursuing a single anticompetitive objective to which Credit Suisse intended to contribute, or of which the latter was aware.

In the present case, the Court considers that the Commission rightly found that the single anticompetitive objective pursued by the traders of the banks concerned was to reduce the normal uncertainties inherent in the spot trading market, thus comforting the traders in their pricing and risk management decisions. The exchanges of commercially sensitive information, in which Credit Suisse participated, also pursued that objective.

Furthermore, several objective factors confirm that the anticompetitive conduct adopted by the participants was linked and that that conduct was intended to achieve the aim pursued by the overall plan found by the Commission.

First of all, the conduct at issue followed the same modus operandi, namely daily and frequent discussions on commercially sensitive information within a 'private' chatroom, access to which was by personal invitation only.

Next, the conduct in question involved a stable group of undertakings and took place between the same natural persons involved on behalf of those undertakings during parallel or adjacent periods. That group was enlarged once the trader from one of those banks changed employer and took up a position with Credit Suisse, leading to Credit Suisse's participation in the exchanges of commercially sensitive information in the chatroom at issue throughout the relevant period.

Finally, all the conduct in question related to the same products, namely G10 currencies.

In so far as concerns Credit Suisse's intention to contribute to the common objective and its knowledge of the offending conduct of the other participants, the Court confirms, first, that the previous employment of the Credit Suisse trader formed part of the context and could be taken into account in order to establish that Credit Suisse was aware of the infringement.

Second, the Court recalls that the finding of the existence of a single and continuous infringement is distinct from the question whether liability for that infringement as a whole is attributable to an undertaking. Moreover, whether liability for the single and continuous infringement as a whole may be attributed to an undertaking must be assessed in the light of two factors, namely, first, the intentional contribution of that undertaking to the common objectives pursued by all the participants and, secondly, its knowledge of the infringing conduct planned or implemented by other undertakings in pursuit of the same objectives or the fact that it could reasonably have foreseen it and had been prepared to take the risk.

However, Credit Suisse was found liable for the infringement at issue not as a whole, but in so far as it participated in extensive and recurring exchanges of current or forward-looking and commercially sensitive information. Thus, it is entirely unnecessary to assess whether it was aware of the collusive conduct of the other members of that infringement and intended, through its own conduct, to contribute to the common objectives pursued by all the participants, since those factors have no bearing on whether the infringement at issue may be attributed to that bank.

Furthermore, the Court finds that the Commission was entitled to consider that that bank had been aware of the exchanges that had taken place in the chatroom at issue, to which its trader was connected, even though he did not actively participate in some of the exchanges analysed in the contested decision, and that, in the absence of any public distancing from the practices concerned or any reporting thereof to the administrative authorities, Credit Suisse could be held liable. The position would have been different only if the applicants had been able to demonstrate, by means of evidence that was certain and precisely time-stamped, that Credit Suisse had not in fact been aware of the offending exchange or exchanges, or had become aware of them only after a period of time such that the information contained in those exchanges was no longer sensitive.

In the fourth and last place, the Court examines the plea alleging errors made by the Commission in the various stages of calculating the amount of the fine imposed on Credit Suisse.

In determining the amount of the fine imposed, the Commission applied the method set out in the 2006 Guidelines. [42] However, as regards the calculation of the basic amount as part of that method, the Commission decided to use a proxy value instead of the value of sales provided for in point 13 of those guidelines. As the starting point for the calculation of that proxy value, the Commission relied on the annualised notional amounts corresponding to the most traded currency pairs of the transactions which took place with counterparties located in the EEA during the months of the undertakings' participation in the infringement. Those annualised notional amounts were then multiplied by an adjustment factor consisting, first, of an adjustment factor related to market-making and, second, an adjustment factor related to trading on own account.

For the purposes of calculating the adjustment factor related to market-making, the sample used by the Commission concerned 16 exchanges of information that took place in 2011 and in 2012.

Having recalled that it was for the Commission to ensure that it takes the best available figures into consideration, the Court observes that the small number of elements in the sample used by the Commission to calculate the adjustment factor in question, more than half of which do not relate to the relevant period, do not have a level of detail specific to each currency pair selected as relevant by the Commission in that calculation. Consequently, that sample cannot be regarded as providing data that were sufficient to ensure that all the relevant currency pairs were proportionately represented in the light of the logic of the adjustment factor related to market-making, that is to say the taking into account of the fact that trading revenues are embedded in the bid-ask spread applied to a trade in a currency pair involving an EEA currency.

By contrast, the data proposed to the Commission by the applicants for the purpose of determining the adjustment factor related to market making, namely the Bloomberg BFIX data, were the best available figures for implementation of the methodology defined by the Commission for the purposes of calculating the proxy.

Those figures make it possible to take into account all the currency pairs included among the currencies concerned by the calculation of the adjustment factor in question, provide a larger sample so as to reflect proportionately the annualised notional amounts to which that factor was applied, and relate to the period of Credit Suisse's participation in the infringement. They must therefore be regarded as more consistent, complete and reliable than those on which the Commission relied in order to reflect the economic importance of the infringement and Credit Suisse's relative weight in it.

The use by the Commission of Bloomberg BFIX data would also not have infringed the principle of equal treatment in view of the other participants in the infringement, which principle cannot preclude

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

the taking into account, in the present case, of the individualised data of the undertakings participating in the infringement, while applying the same methodology for the calculation of the proxy. The use of individualised bid-ask spread data relating to the period of Credit Suisse's participation in the infringement is merely one means of implementing the methodology developed by the Commission and applicable to all the parties to that infringement, which does not alter it in substance but is capable only of increasing the accuracy of the proxy for that bank's value of sales as regards the scale and extent of the bank's activities during the period of its participation in the infringement.

In the light of the foregoing, the Court annuls the fine imposed on Credit Suisse in the contested decision.

Next, ruling on the applicants' application for a reduction of the amount of the fine, pursuant to the unlimited jurisdiction conferred on the Court by Article 261 TFEU and Article 31 of Regulation No 1/2003 and taking, inter alia, the Bloomberg BFXI data into account in the calculation of the proxy value, the Court imposes a fine in the amount of EUR 28 920 000, for which the applicants are jointly and severally liable.

VII. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (Eighth Chamber, Extended Composition), 2 July 2025, Ferrari v EUIPO – Hesse (TESTAROSSA), T-1103/23

Link to the full text of the judgment

EU trade mark – Revocation proceedings – International registration designating the European Union – Word mark TESTAROSSA – Genuine use of the mark – Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) – Use by third parties – Nature of the use – Implied consent of the proprietor of the mark – Proof of genuine use – Second-hand cars – Parts and accessories

The General Court, sitting in extended composition, annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) [43] and rules on the meaning of genuine use in the context of a resale by third parties of second-hand goods bearing the contested mark with the implied consent of the proprietor of the mark. It thus clarifies the case-law arising from the judgment in *Ferrari*. [44]

Ferrari SpA, the applicant, is the proprietor of the international registration, designating the European Union, of the word mark TESTAROSSA inter alia in respect of vehicles. [45] On 7 September 2015, Mr Kurt Hesse, the intervener, filed an application for invalidation of the effects of that international

43 Decision of the Fifth Board of Appeal of EUIPO of 29 August 2023 (Joined Cases R 334/2017-5 and R 343/2017-5), as corrected on 28 September 2023 ('the contested decision').

44 Judgment of 22 October 2020, *Ferrari* (C-720/18 and C-721/18, EU:C:2020:854).

45 Goods in Class 12 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.

registration. [46] The Cancellation Division partially granted the application for revocation and rejected it for 'automobiles'.

Both the intervener and the applicant brought an appeal seeking partial annulment of that decision. The Board of Appeal of EUIPO upheld the intervener's appeal and dismissed the applicant's appeal, whose rights in the contested mark were thus revoked for all the goods. The applicant brought an action before the Court for the annulment of that decision.

Findings of the Court

In the first place, the Court rules on the genuine use of the contested mark in respect of automobiles. First of all, it states that no new cars were produced or placed on the market under the contested mark during the relevant period and that the second-hand cars bearing the contested mark were marketed by authorised dealers or distributors. In that regard, it points out that, although the resale, as such, of a second-hand product bearing a trade mark does not necessarily constitute genuine use, [47] the fact remains that, if the proprietor of the trade mark concerned uses it when reselling in accordance with its essential function, such use may be regarded as 'genuine use' of that mark. Such an interpretation is confirmed by Article 13(1) of Regulation No 207/2009, from which it follows that a mark is capable of being put to use in respect of goods already put on the market under that mark, with the result that its proprietor cannot prohibit third parties from using that mark. On the other hand, that does not mean that the proprietor cannot itself use its trade mark in respect of such goods. That also applies to use of the mark by third parties with the consent of the proprietor, so that it remains open to the proprietor of the trade mark to show that it has been put to genuine use in respect of second-hand goods sold under that mark by third parties with its consent.

Next, while noting that the applicant did not produce any evidence showing its express consent to use of the contested mark by third parties during the relevant period, the Court states that such consent may also be inferred from facts and circumstances prior to, simultaneous with or subsequent to the use of the mark by a third party. That being said, in the specific context of the use of a trade mark in respect of second-hand goods, implied consent cannot be inferred from the mere fact that the proprietor was aware of the use of the mark by a third party, but requires that the proprietor be involved in that use. Furthermore, the relevant facts and circumstances potentially reflecting implied consent must be examined in the light of the practices regarded as warranted in the relevant economic sector and of the characteristics of the market.

Thus, first, the Court considers that the fact that a second-hand car bearing the contested mark is sold by a dealer or distributor authorised by the proprietor of that mark, and not by some unrelated third party, constitutes an indication that the sale is conducted with the implied consent of the proprietor. In that regard, it points out that the use of a production company's mark by a distribution company authorised by the proprietor of that mark may be regarded as having been made with the latter's consent, in so far as such authorisation establishes a link between those two companies which presupposes that the proprietor of the mark has authorised the approved dealer or distributor to use its trade mark. That assessment is supported by the practices regarded as warranted in the motor vehicle market, in which a distributor or dealer approved by the manufacturer is deemed to be authorised to market all of that manufacturer's car models. The same applies to the second-hand vehicle market, in which sales of second-hand cars by an independent third party are generally distinguished from sales by an authorised dealer or distributor.

Second, as regards the certification service provided by the applicant, the purpose of which is to certify, in return for remuneration, the authenticity of second-hand cars bearing the contested mark, the Court points out that the actual use, by its proprietor, of a mark registered in respect of certain goods, for services which are directly connected with the goods previously sold and intended to meet the needs of customers of those goods, is capable of constituting 'genuine use' of that mark. In the present case, the certification service relates directly to sales of second-hand cars bearing the

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46 On the basis of Article 158(2) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), read in conjunction with Article 51(1)(a) of that regulation.

47 Within the meaning of Article 51(1)(a) of Regulation No 207/2009.

contested mark by authorised dealers and is intended to meet the needs of purchasers of such cars, with the consequence that such use is capable of constituting 'genuine use' of that mark. The simultaneous use of the Ferrari mark and the contested mark on the invoices for that service is consistent with normal practice on the market, since cars are commonly marketed under a mark designating the manufacturer and at the same time under a second mark designating the model.

Lastly, the Court concludes that the applicant has demonstrated that it had impliedly consented to the use of the contested mark by third parties in respect of 'automobiles'.

In the second place, the Court examines genuine use of the contested mark in connection with parts and accessories, which are mainly second-hand. It observes, first, that that use was made during the relevant period by authorised dealers and distributors and, second, that the applicant offers a certification service which includes verification of the commercial origin of the parts of the second-hand cars covered by the contested mark. Therefore, the applicant has shown that it impliedly consented to the use, by third parties, of the contested mark in respect of parts and accessories. Furthermore, the Court finds that the Board of Appeal did not take sufficient account of the fact that the sales of parts and accessories effected by authorised dealers also related to genuine parts designated specifically by the contested mark. For those reasons, the Court considers that the Board of Appeal's assessments are flawed.

Lastly, the Court observes that the use of the contested mark for parts and accessories may also constitute use of that mark for 'automobiles'. A trade mark registered in respect of a category of goods and replacement parts thereof is to be regarded as having been put to genuine use in connection with all the goods in that category and the replacement parts thereof if it has been so used only in respect of some goods or only in respect of replacement parts or accessories of some of those goods, unless it is apparent that a consumer will perceive them as an independent subcategory of the category of goods in respect of which the mark concerned was registered. In the present case, however, the Board of Appeal did not examine that evidence and did not find that those parts and accessories constituted an autonomous subcategory in relation to automobiles, such that proof of use in respect of the former was irrelevant as regards the latter. First, the Board of Appeal merely noted that there was a disproportion in economic value between the spare parts and accessories and the automobiles, without taking account of the case-law according to which the criterion of the purpose or intended use is of fundamental importance when defining a subcategory of goods or services. Second, it found that the relevant public would not consider that manufacturers of parts and accessories would have the technical capacity to build cars. The Court states that such a general rule, according to which the public necessarily considers that the cars and the parts and accessories come from two different manufacturers, is not established, since a number of spare parts and accessories are produced by the car manufacturers themselves. Consequently, the contested decision is also vitiated by errors in that regard.

Judgment of the General Court (Eighth Chamber, Extended Composition), 2 July 2025, Ferrari v EUIPO – Hesse (TESTAROSSA), T-1104/23

Link to the full text of the judgment

EU trade mark – Revocation proceedings – International registration designating the European Union – Word mark TESTAROSSA – Genuine use of the mark – Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) – Use by third parties – Nature of the use – Implied consent of the proprietor of the mark – Proof of genuine use – Scale toy land motor vehicles

The General Court, sitting in extended composition, partially annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) [48] and rules on the meaning of genuine use in the context of the use of a mark by third parties with the implied consent of the

48 Decision of the Fifth Board of Appeal of EUIPO of 29 August 2023 (Case R 887/2016-5).

proprietor of that mark. It clarifies, in particular, the case-law arising from the judgment in *Opel* [49] and specifies the conditions under which genuine use of a mark may be demonstrated where the practices of the sector and the market in question allow, under certain conditions, use of the registered mark by certain operators in order to describe the goods in question.

Ferrari SpA, the applicant, is the proprietor of the international registration, designating the European Union, of the word mark TESTAROSSA inter alia in respect of scale models of vehicles and toys. [50] On 14 November 2014, Mr Kurt Hesse, the intervener, filed an application for invalidation of the effects of that international registration. [51] The Cancellation Division partially granted the application for revocation and rejected it in respect of 'scale toy land motor vehicles'.

Both the intervener and the applicant brought an appeal seeking partial annulment of that decision. The Board of Appeal of EUIPO upheld the intervener's appeal and dismissed the applicant's appeal, whose rights in the contested mark were therefore revoked in respect of all the goods. The applicant brought an action before the Court for the annulment of that decision.

Findings of the Court

As a preliminary point, the Court notes that the affixing by a third party of a sign identical to a trade mark registered for toys to scale model vehicles cannot be prohibited unless it affects or is liable to affect the functions of that trade mark, which must be assessed according to the characteristics of the market for scale model vehicles. That market is characterised by the coexistence, on the one hand, of independent toy manufacturers, which use trade marks registered for automobiles simply to indicate that a scale model is a faithful reproduction of a real car, and, on the other hand, of scale model vehicles manufactured and sold by the proprietors of trade marks registered in respect of automobiles or by undertakings economically linked to them by virtue of a licence. The relevant public is therefore used to being exposed to scale model vehicles, both with and without a licence from the car manufacturer, and to distinguishing them depending on the information on the packaging. Thus, the Court states that a third party may use such a mark without the consent of its proprietor, provided that the use made of that mark on a scale model vehicle is limited to indicating to the relevant public that the scale model is a faithful reproduction of a real car. By contrast, where the use of the mark by a third party refers, for example, to a licencing agreement entered into with the proprietor of that mark, it will be perceived as an indication that those goods originate from the car manufacturer or from an undertaking economically linked to that manufacturer. In such a case, the trade mark proprietor is entitled to oppose such use if it has been made without its consent.

As regards the present case, in the first place, the Court examines whether the use of the mark by third parties is consistent with its essential function. It notes that the evidence produced by the applicant consists, inter alia, of several catalogues and photographs of scale models, on which the contested mark appears, third-party trade marks, but also the wording 'Ferrari Official Licensed Product'. In that regard, it states that those indications enable the relevant public to understand that those scale models are manufactured by a third party under license from the applicant, even though the contested mark is affixed alongside third-party trade marks. Therefore, such use of the contested mark is consistent with its essential function, which is to guarantee to consumers the commercial origin of the goods. The fact that the scale model vehicles bearing the contested mark are marketed by different undertakings and vary in quality and price does not call that conclusion into question. Similarly, it is irrelevant that the wording 'Ferrari Official Licensed Product' does not refer to the contested mark, since the link between the use of the Ferrari mark and the contested mark on the packaging and catalogues is consistent with the practices of the market in question. The Court notes that, in the car market, cars are marketed under a first mark designating their manufacturer and, at the same time, under a second mark designating their model, and that those observations are also relevant to the market for scale model vehicles. Furthermore, the fact that the symbols '®' or 'TM' do

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49 Judgment of 25 January 2007, *Adam Opel* (C-48/05, EU:C:2007:55).

50 Goods in Class 28 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.

51 On the basis of Article 158(2) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), read in conjunction with Article 51(1)(a) of that regulation.

not appear alongside the contested mark does not alter the capacity of that mark to fulfil its essential function. In the light of the foregoing, the Court considers that the contested mark was used, during the relevant period, for scale model vehicles, in accordance with its essential function.

In the second place, the Court examines whether the proprietor consented to the use of the contested mark by third parties. It observes that the extracts from the licence agreements produced by the applicant do not contain a list of the marks they cover with the result that they do not establish that the applicant expressly consented to the use of its mark by the third parties. Nevertheless, it points out that the consent of the proprietor to the use of the mark by third parties may also be inferred from facts and circumstances prior to, simultaneous with or subsequent to that use, which must be examined in the light of the practices regarded as warranted in the relevant economic sector.

Thus, first, the Court states that, in the specific context of the market at issue, the implied consent of the proprietor of the contested mark stems from the fact that it was aware of the use of its mark by third parties and did not object to it, and the Court considers that that is the case here. Second, it states that the use of a production company's mark by another company marketing the goods in question as 'official' goods licensed by the first company may be regarded as having been made with the consent of the proprietor of that mark, in so far as such use establishes a link between those two companies which presupposes that the latter has authorised the use of its trade marks by the company in question. Third, it considers that, by producing invoices and order forms issued by third parties in relation to the sale of scale model vehicles bearing the contested mark for the purposes of establishing genuine use, the applicant claims by implication that it consented to that use. Consequently, the Court considers that the applicant impliedly consented to the use of the contested mark by third parties in respect of the goods at issue.

Accordingly, in the light of the foregoing considerations, the Court annuls the decision of the Board of Appeal in so far as the contested mark was revoked in respect of scale models of vehicles.

Judgment of the General Court (Sixth Chamber), 9 July 2025, Spin Master Toys UK v EUIPO – Verdes Innovations (Shape of a cube with faces having a grid structure and differentiated by their colours), T-1171/23

Link to the full text of the judgment

EU trade mark – Invalidity proceedings – Three-dimensional EU trade mark – Shape of a cube with faces having a grid structure and differentiated by their colours – Absolute ground for invalidity – Sign consisting exclusively of the shape of goods which is necessary to obtain a technical result – Article 7(1)(e)(ii) of Regulation (EC) No 40/94

By its judgment, the General Court dismisses the action brought by Spin Master Toys UK Ltd, the applicant, seeking the annulment of the decision of the European Union Intellectual Property Office (EUIPO) of 20 October 2023. This case allows the Court to clarify the concepts of 'shape' and 'essential characteristic' in the context of a three-dimensional trade mark registered in colour.

The applicant was the proprietor of a three-dimensional trade mark with a 3×3 version of the puzzle known as a Rubik's Cube. An application for a declaration of invalidity of that mark was filed with EUIPO by Verdes Innovations SA.

EUIPO upheld the application for a declaration of invalidity of the contested mark. That decision was confirmed by the Board of Appeal of EUIPO, which considered that the colours of the squares on each side of the cube were an essential characteristic of the mark and formed an integral part of its shape. It thus found that the combination of the six different colours was necessary to obtain a technical result, within the meaning of Article 7(1)(e)(ii) of Regulation No 40/94. [52]

52 Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), read in conjunction with Article 51(1)(a) of that regulation.

Subsequently, the applicant brought an action before the Court, claiming that the contested mark has essential characteristics which do not consist exclusively of the shape and which, in any event, are not necessary to obtain a technical result.

Findings of the Court

As a preliminary point, the Court recalls that the ground for refusal set out in Article 7(1)(e)(ii) of Regulation No 40/94 applies if all the essential characteristics of the shape in question are functional, unless there is at least one non-functional essential characteristic, and it does not matter whether a non-essential characteristic is non-functional.

In the present case, it is necessary to take account of the fact that the contested mark was filed as a three-dimensional mark or shape mark, and not as a pattern, position or colour mark. It must also be observed that the technical result of the contested mark is that of a game which consists in completing a cube-shaped three-dimensional colour puzzle by generating six differently coloured faces.

In the first place, the Court states that the expression 'essential characteristics' must be understood as referring to the most important elements of the sign, as opposed to minor arbitrary elements. In the present case, it holds, as did the Board of Appeal, that the essential characteristics of the contested mark are as follows:

– a cube shape;

– a grid structure separating 3x3 small squares on each of the six faces of the cube;

– the differentiation of those small squares on each face of the cube by means of six basic colours (red, green, blue, orange, yellow and white), making it possible to distinguish them and producing a contrasting effect between them.

By contrast, it finds that the six specific colours placed on the faces of the cube and their alleged 'specific arrangement' do not constitute an essential characteristic of the contested mark. Those elements are of minor and secondary importance in relation to the cube shape, the grid structure and the differentiation of the faces of the cube. This follows both from the examination of the individual elements of that mark and from the examination of the overall impression produced by it, that examination having to be carried out in the light of the technical result obtained by the shape at issue and with the specific aim of examining the functionality of that shape. First, the six basic colours merely perform the function of distinguishing the different faces of the cube by means of a contrasting effect. Second, the alleged 'specific arrangement' of the colours on the faces of the cube does not appear clearly in the graphic representation of the contested mark. Third, neither the type of the contested mark (three-dimensional) nor its description suggests that protection was sought primarily for the surface design, that is to say, the specific colours and their arrangement on the cube, contrary to what the applicant claims.

In the second place, the Court examines whether the third essential characteristic, namely the differentiation by means of six colours, may be regarded as forming an integral part of the shape of the contested mark. It considers that, in the light of the public interest underlying Article 7(1)(e)(ii) of Regulation No 40/94, as well as the need to preserve the effectiveness of that provision, the concept of 'shape' must not be interpreted in an excessively narrow manner, which, in particular, would exclude any coloured shape of goods. Given the type of the contested mark as well as its graphic representation and its description, the differentiation of the small squares on each face of the cube by means of six basic colours is inherent in and inseparable from the shape represented and forms an integral part of that shape. In that regard, the addition of six basic colours, in an unclear arrangement, to the functional three-dimensional shape, which is clearly defined and represented by the functional lines of the grid, does not preclude the contested mark from being a sign which consists exclusively of a shape, within the meaning of Article 7(1)(e)(ii) of Regulation No 40/94. The possibility that other surfaces might make the Rubik's Cube more than a shape is irrelevant to the question whether, in the present case, the contrasting effect resulting from the differentiation of the faces of the cube by means of basic colours constitutes an essential characteristic of that mark.

As regards the application of Regulation No 40/94 to three-dimensional colour marks, the Court notes that the insertion of the wording 'another characteristic' into Article 7(1)(e)(ii) of Regulation

No 207/2009 [53] was not intended to establish that such marks henceforth fall outside the scope of application of that provision in its previous version on account of the fact that they contain colours. That legislative amendment was closely linked to the removal of the requirement of graphic representation and to the subsequent introduction of new types of 'non-traditional' trade marks into the EU trade mark system. Three-dimensional trade marks in colour were not introduced by that legislative amendment, but already existed beforehand, with the result that the addition of the wording 'another characteristic' did not alter the examination of the functionality of such marks.

In the third place, the Court considers that the essential characteristic relating to the fact that each face (and each small square) of the cube can be distinguished by means of six different colours producing a contrasting effect is functional, that is to say, necessary to obtain the technical result of the contested mark. The presence of non-essential characteristics consisting of a range of six basic colours, in so far as those colours per se are not functional, does not alter the conclusion that the contested mark consists exclusively of the shape of goods which is necessary to obtain a technical result.

In the fourth and last place, the Court states that the ground for refusal set out in Article 7(1)(e)(ii) of Regulation No 40/94 also applied to 'jigsaw puzzles' and, accordingly, that the contested mark was caught by the corresponding ground for invalidity in respect of all the goods covered by the registration. Although the indication 'jigsaw puzzles', in respect of goods in Class 28, is ambiguous and unclear, it cannot be interpreted in such a way that it includes only, for the benefit of the applicant, two-dimensional 'jigsaw puzzles', which would allow that indication to avoid the ground for refusal set out in Article 7(1)(e)(ii) of Regulation No 40/94 and the corresponding ground for invalidity. Therefore, that indication must be interpreted in such a way that it also includes three-dimensional 'jigsaw puzzles'. They are necessary to obtain the technical result of the contested mark, since there is nothing in the representation of that mark that excludes the possibility of dismantling the cube and reassembling it in order to make the perfect combination, the grid structure being necessary to separate the individual cubes and the colours being necessary to indicate the order in which the cubes must be reassembled.

Judgment of the General Court (Eighth Chamber, Extended Composition), 9 July 2025, Bouwbenodigdheden Hoogeveen v EUIPO – Pürschel (BIENENEIBSSER), T-144/24

Link to the full text of the judgment

EU trade mark – Revocation proceedings – EU word mark BIENENEIBSSER – Genuine use of the mark – Article 58(1)(a) of Regulation (EU) 2017/1001 – Proof of genuine use – Use in connection with the goods in respect of which the mark is registered – Role of the Nice classification – Homogeneous category of goods – Air vents – Obligation to state reasons

By its judgment, the General Court rules on the obligation, on the Boards of Appeal of the European Union Intellectual Property Office (EUIPO), to state reasons where, in revocation proceedings, the proprietor of the mark at issue puts forward specific and substantiated arguments that the goods covered by that mark come within the same homogeneous category or subcategory of goods even though they belong to different classes of the Nice Classification, [54] with the result that it is sufficient to demonstrate use of that mark solely for goods in one of those classes in order for the mark to be maintained.

Since 2010, Bouwbenodigdheden Hoogeveen BV, the applicant, has been the proprietor of the EU word mark BIENENEIBSSER, registered for metal building materials and building materials (non-metallic) in Classes 6 and 19 of the Nice Agreement, respectively.

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53 Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) replaced Regulation No 40/94.

54 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.

In 2021, Sören Pürschel filed an application for revocation [55] of that mark in respect of all the goods for which it had been registered. The Cancellation Division of EUIPO upheld that application in part and revoked that mark for certain goods in Class 6 and for all the goods in Class 19.

The applicant therefore filed a notice of appeal before the Board of Appeal of EUIPO seeking to have that decision set aside in so far as its rights in the contested mark had been revoked in respect of 'building materials (non-metallic) including air vents' in Class 19. However, the Board of Appeal of EUIPO dismissed that appeal.

It is in that context that an application for the annulment in part of the decision of the Board of Appeal was brought before the Court in respect of non-metallic air vents.

Findings of the Court

As a preliminary point, the Court notes that, in order to assess whether a trade mark has been put to genuine use 'in connection with the goods or services in respect of which it is registered', it is necessary to determine, in the first place, the scope of protection of the mark at issue and, in the second place, the type of goods or services for which that mark has actually been used on the market during the relevant period, in order to ascertain whether that type of goods or services is included in the scope of protection of that mark.

In the first place, as regards the determination of the scope of protection of a mark, the Court states that, although the Nice Classification is purely administrative, the Board of Appeal may use it to determine the range or meaning of the goods in respect of which a mark has been registered. In particular, where the description of the goods or services for which a mark is registered is so general that it may cover very different goods or services, it is possible to take into account, for the purposes of interpretation or as a precise indication of the designation of those goods or services, the classes in the Nice Classification that the trade mark applicant had chosen. To that end, the headings of the goods covered by that mark must be interpreted from a systematic point of view, having regard to the logic and the system inherent in the Nice Classification, while taking into account the descriptions and explanatory notes to the classes, which are relevant in determining the nature and purpose of the goods in respect of which that mark was registered.

Accordingly, in the present case, the Court finds that the Board of Appeal could, without erring, have recourse to the Nice Classification and its explanatory notes in order to determine the scope of protection of the contested mark and observe that Class 6 includes metal building materials whereas Class 19 includes building materials (non-metallic).

In the second place, as regards the determination of the type of goods or services in respect of which the mark at issue was actually used, the Court notes that the applicant used its mark only in relation to some of the goods for which it was registered. In that regard, the Court recalls that, where the grounds for revocation of rights exist in respect of only some of the goods or services covered by the mark, the rights of the proprietor of that mark are to be declared to be revoked in respect of those goods or services only. [56]

First, as regards the concept of 'some of the goods or services', the Court notes that a consumer who wishes to purchase a product or service in a category that has been defined particularly precisely and narrowly, within which it is not possible to make any significant subdivisions, will associate all the goods or services belonging to that category with the mark at issue. Accordingly, it is sufficient to require the proprietor of the mark to adduce proof of genuine use in relation to some of the goods or services in that homogeneous category. However, in the case of goods or services which form part of a broad category, which may be subdivided into several independent subcategories, it is necessary to require the proprietor of the mark to adduce proof of genuine use of that mark for each of those independent subcategories. That being said, the Court notes that the concept of 'partial use' cannot result in the proprietor of the trade mark being stripped of all protection for goods which, although

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

56 Article 58(2) of Regulation 2017/1001.

not identical to those in respect of which he or she has succeeded in proving genuine use, are not in essence different from them. Consequently, the concept of 'some of the goods or services' cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or subcategories.

Second, as regards the question whether goods form part of a homogeneous category that cannot be subdivided, the Court notes that, in so far as consumers are searching primarily for goods or services which can meet their specific needs, the purpose or intended use of the goods or services at issue is vital in directing their choices. Consequently, that criterion is of fundamental importance in the definition of a homogeneous category of goods or services. It follows that, to that end, EUIPO is not required to limit itself to the indications of goods or services expressly included in the Nice Classification. Accordingly, to assess whether the goods or services in respect of which the proprietor of a trade mark has used that mark come within an independent category, the only relevant question is whether a consumer who wishes to purchase a product or service coming within the category of goods or services covered by the trade mark in question will associate all the goods or services belonging to that category with that mark.

In the present case, the Court notes that, admittedly, as the Board of Appeal correctly stated, the arguments put forward by the applicant before EUIPO that metallic and non-metallic air vents belonged to the same homogeneous category of goods, having regard to the fact that they have the same purpose and intended use, did not relate to the determination of the scope of protection of the mark. However, the Court notes that those arguments concerned the question whether the goods in respect of which the contested mark had actually been used on the market during the relevant period formed part of one and the same homogeneous category of goods. Accordingly, the grounds set out by the Board of Appeal, relating to the lack of impact of those arguments on the determination of the scope of protection of the mark at issue, do not enable the applicant to understand the reasons why those arguments were rejected or enable the Court to exercise its power of review. Similarly, by merely stating that the fact that metallic air vents can have some similarities with air vents made of other materials was not relevant to the present case, in that the Board of Appeal's assessment related to whether use had been proven for the registered goods, and not to the analysis of the market situation, the Board of Appeal did not set out to the requisite standard the reasons for rejecting the applicant's arguments. Accordingly, the Court finds that the Board of Appeal's decision is vitiated by a failure to state reasons.

In the light of those considerations, the Court annuls the Board of Appeal's decision in so far as it dismissed the applicant's appeal in respect of non-metallic air vents in Class 19.

Judgment of the General Court (Seventh Chamber), 16 July 2025, Iceland Foods v EUIPO – Íslandsstofa (Promote Iceland) and Others (ICELAND), T-105/23

Link to the full text of the judgment

EU trade mark – Invalidity proceedings – EU word mark ICELAND – Absolute grounds for invalidity – Descriptive character – Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EU) 2017/1001)

Judgment of the General Court (Seventh Chamber), 16 July 2025, Iceland Foods v EUIPO – Icelandic Trademark (Iceland), T-106/23

Link to the full text of the judgment

EU trade mark – Invalidity proceedings – EU figurative mark Iceland – Absolute grounds for invalidity – Descriptive character – Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001)

By its judgments, the General Court rules on the descriptive character of two signs that reproduce the name of a European country (ICELAND) and dismisses the actions brought against the decisions of the Grand Board of Appeal of the European Union Intellectual Property Office (EUIPO) on the ground that those signs are descriptive of the geographical origin of the goods and services which they cover or their characteristics.

Iceland Foods Ltd, the applicant, submitted to EUIPO applications for registration of the word sign ICELAND and the figurative sign ICELAND in respect of various goods and services, on 19 April 2002 and 12 February 2013 respectively. Subsequently, two applications for a declaration of invalidity of the marks at issue were filed with the Cancellation Division of EUIPO in respect of a number of the goods and services covered by those marks. [57] The Cancellation Division upheld those applications for a declaration of invalidity in respect of all the goods and services concerned.

The applicant accordingly filed a notice of appeal against each of the Cancellation Division's decisions. By decisions of 15 December 2022, the Grand Board of Appeal dismissed those actions ('the contested decisions'). The Grand Board of Appeal found that the marks at issue were perceived by the relevant public, namely the English-speaking general public of the European Union, as an indication that the goods and services covered by them came from Iceland and that they had to be regarded as descriptive. [58] After noting that it was sufficient that one of the absolute grounds for refusal applied in order for the signs at issue not to be registrable as EU trade marks, the Grand Board of Appeal found that, in any event, if the marks at issue were also to be examined in the light of their distinctive character, [59] it would inevitably be found that they had none. [60]

The applicant accordingly brought an action before the Court against each of the contested decisions.

Findings of the Court

The Court recalls, at the outset, that there are two situations in which it is not permissible to register geographical names. The first concerns the registration of geographical names as trade marks where they designate specific geographical locations which are already famous or known for the category of goods or services concerned and which are therefore associated with that category of goods or services by the relevant class of persons. The second concerns the registration of geographical names which are liable to be used by undertakings and must remain available to such undertakings as indications of geographical origin of the category of goods or services concerned.

In addition, the Court finds that the assessment of the descriptive character of the marks at issue requires taking into account a set of relevant factors such as the knowledge of Iceland and of its characteristics and the link between the categories of goods and services and the marks at issue.

In that regard, it observes that the marks at issue refer to the name of a country which is located in Europe, is composed of a territory which is, admittedly, relatively sparsely populated, but which has a surface area larger than that of some Member States of the European Union and of the European Economic Area (EEA).

The Court accordingly notes that the word 'Iceland' was recognised by a significant part of the relevant public, which consists of the English-speaking general public of the European Union.

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57 The goods and services in Classes 7, 11, 16, 29 to 32 and 35 and in Classes 29, 30 and 35 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

58 In accordance with Article 7(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), subsequently Article 7(1)(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1), which was itself replaced by Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

59 In accordance with Article 7(1)(b) of Regulation (EC) No 40/94, cited above, subsequently Article 7(1)(b) of Regulation (EC) No 207/2009, cited above, which was itself replaced by Article 7(1)(b) of Regulation (EU) 2017/1001, cited above.

60 The claim of the applicants for a declaration of invalidity that the marks at issue were contrary to public policy (within the meaning of Article 51(1)(a) of Regulation No 40/94 (subsequently Article 52(1)(a) of Regulation (EC) No 207/2009, now Article 59(1)(a) of Regulation 2017/1001) in conjunction with Article 7(1)(f) Regulation No 40/94 (subsequently, Article 7(1)(f) of Regulation No 207/2009, now Article 7(1)(f) of Regulation 2017/1001)), was rejected by the Grand Board of Appeal as inadmissible on account of its late submission. Accordingly, that issue was not examined by either the Board of Appeal or, subsequently, the Court.

Furthermore, the Court confirms that the evidence on which the Grand Board of Appeal relied establishes, first, that Iceland was an environmentally friendly country, on account of, in particular, multiple geothermal and hydroelectric power stations, and eco-friendliness, secondly, that Iceland was a popular tourist destination and, thirdly, that Iceland offered a wide range of goods and services, while maintaining, in respect of those goods and services, significant commercial relationships with the EEA countries.

The Court also notes that it is appropriate to take into account a set of circumstances, existing on the date of the application for registration of each mark at issue, and to do so with a prospective outlook and without being limited to only the question of the 'reputation' which Iceland enjoyed among the relevant public, or which it was liable to enjoy in the future, in relation to the goods and services covered by the marks at issue. In addition, the various characteristics of Iceland are significant for the purpose of ascertaining the extent to which the geographical origin of the goods or services in question is likely to be relevant, in the mind of the relevant class of persons, for the assessment of the quality or other characteristics of the goods or services concerned. For those reasons, the Court found that the Grand Board of Appeal was correct to take into account the economic prosperity, including the assessment of gross domestic product (GDP), skilled workforce and even the presence of various industries, since those factors could make it possible to ascertain whether Iceland was likely to become famous or known as a place of geographical origin in relation to the goods and services in question.

Next, as regards the goods including foodstuffs of plant and animal origin and liquids intended for human consumption, the Court finds that the marks at issue have a descriptive character in respect of those goods. Accordingly, on the date of registration of each of the marks at issue, Iceland produced and exported such goods and was capable of producing others, with the result that where one of those products is marketed under one of the marks at issue, it may be perceived as originating from that country. Furthermore, assuming that the present export of foodstuffs by Iceland is not a relatively significant part of its exports in general, the Court finds that that claim does not make it possible to call into question the descriptive link between the marks and the goods concerned in so far as that claim does not take into account, from a prospective viewpoint, the link which may reasonably be established between the mark at issue and the goods concerned.

Lastly, the Court notes that the Grand Board of Appeal carried out a detailed analysis of the descriptive character of the marks at issue in respect of all of the goods and services in question. In addition, as regards the figurative mark ICELAND, it adds that neither the typography nor the colour of the mark at issue give it an unusual or striking effect. The word element of that mark is represented in a font of standard white letters, without any typographical specificity. While, admittedly, it is positioned on a red, orange and yellow rectangular background, of which the yellow and orange effect gives it the impression of having a slightly faded look, the coloured background, in particular in orange and yellow colours, is, in essence, common in the advertising and on packaging, with the result that the consumer may regard it as a decorative element. In those circumstances, the figurative elements of the mark at issue served only to highlight the word element of that mark and did not alter in any way the descriptive content conveyed by the latter element.

As regards Article 12(b) of Regulation No 40/94, [61] concerning the limitation of the effects of the mark, which would allow Icelandic entities to use the name 'Iceland', the Court recalls that that provision is intended, inter alia, to resolve the problems posed by registration of a mark which consists wholly or partly of a geographical name and does not confer on third parties the right to use the name as a trade mark but merely guarantees their right to use it descriptively, that is to say, as an indication of geographical origin, provided that it is used in accordance with honest practices in industrial and commercial matters. In addition, the fact that Article 12(b) of Regulation No 40/94 ensures that every trader may freely use indications concerning the characteristics of goods and services does not guarantee the protection of the public interest underlying Article 7(1)(c) of that regulation. On the contrary, that fact clearly discloses the need for the ground of refusal set out in Article 51(1)(a), read in conjunction with Article 7(1)(c), of Regulation No 40/94 – which, moreover, is an absolute ground for

61 Subsequently Article 12(b) of Regulation No 207/2009, now Article 14 of Regulation 2017/1001.

refusal – to be actually applied to any sign which may designate a characteristic of the goods or the services in respect of which the mark is registered.

2. CHEMICALS

Judgment of the General Court (Fifth Chamber), 9 July 2025, LAT Nitrogen Piesteritz et Cornerstone v ECHA (Mélamine), T-167/23

Link to the judgment as published in extract form

REACH – Substances of very high concern – Establishment of a candidate list for eventual inclusion in Annex XIV to Regulation (EC) No 1907/2006 – Decision identifying melamine as a substance meeting the criteria laid down for inclusion in the list – Obligation to state reasons – Right to be heard – Ultra vires – Article 57 of Regulation No 1907/2006 – Manifest error of assessment – Proportionality – Precautionary principle – Misuse of powers

The General Court, hearing and dismissing an action for annulment of the decision of the European Chemicals Agency (ECHA) identifying melamine as a substance 'of very high concern' under the REACH Regulation, [62] rules on the novel question of the voting rules laid down in the rules of procedure of the Member State Committee ('MSC') and summarises the case-law, first, as regards the right of interested parties to submit comments in the context of the procedure for the identification of substances of very high concern and, second, as regards the concept of 'intrinsic properties'.

That decision of ECHA, which was disputed by two applicants, LAT Nitrogen Piesteritz GmbH and Cornerstone Chemical Co., undertakings which produce melamine and are established in Germany and the United States, was adopted following the Federal Republic of Germany's submission of a dossier, drawn up in accordance with Annex XV to the REACH Regulation, in favour of the identification of melamine as a substance of very high concern, in so far as it meets the criteria set out in Article 57(f) of the REACH Regulation. Following the submission of that dossier, ECHA invited the interested parties to submit their comments on it. [63] After the comments were submitted, the dossier was forwarded to the MSC, which reached a unanimous agreement on that identification.

Findings of the Court

First of all, the Court rejects the plea of illegality raised against Article 19(5) of the MSC Rules of Procedure, under which abstentions by members present in person or represented by a proxy do not prevent the MSC's adoption of tasks which require unanimity.

As regards, first, the MSC's power to lay down the voting rules in its rules of procedure, the Court points out that the list, in respect of issues that may be dealt with by the provisions of the rules of procedure, which is laid down in Article 85(9) of the REACH Regulation, is not exhaustive. Since the REACH Regulation governs only the issue of the type of majority to be achieved for the adoption of a decision identifying substances of very high concern, the other voting rules had to be laid down in the MSC Rules of Procedure, in order to avoid the risk that the MSC might be faced with a legal vacuum. The establishment of such rules contributes, moreover, to ensuring that they are predictable and enables the addressees of the acts adopted to be aware of them and, as in the present case, to challenge them before the Courts of the European Union. Those rules therefore help to preserve legal

62 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1; 'the REACH Regulation').

63 In accordance with Article 59(4) of that regulation.

certainty. The Court concludes from that that the MSC did have the power to lay down, in its rules of procedure, its voting rules.

As regards, second, the content of Article 19(5) of the MSC Rules of Procedure, the Court notes that the MSC rules on abstentions are based directly on Article 238(4) TFEU relating to votes taking place within the Council of the European Union. Since Article 19(5) of the MSC Rules of Procedure is based on that provision, according to which the act of refraining from taking a position should not prevent the adoption of decisions requiring unanimous agreement, it cannot be argued that it runs counter to fundamental democratic principles and prejudices the powers of the European Parliament, the Council or the European Commission. Moreover, abstention must be understood, in its usual sense, as a refusal to adopt a position on a given proposal and not a refusal of the proposal under discussion.

Next, as regards the substance, the Court rejects, in particular, the plea of illegality based on an alleged infringement of the applicants' right to be heard during the procedure for the adoption of the contested decision.

At the outset, the Court finds that, even though the French-language version of Article 59(4) of the REACH Regulation refers to the right of interested parties to submit '*informations*' (information), the right of those parties consists of a broader right to submit 'comments'. That interpretation is confirmed by the Spanish-, German-, English- and Italian-language versions of that provision.

However, the Court recalls that Article 59(4) of the REACH Regulation merely provides for a public consultation which does not confer on interested parties any specific procedural right other than the right to submit comments.

Similarly, Article 85(4) of the REACH Regulation and observer status as defined by ECHA do not confer, on the interested parties participating in the MSC meeting, a right to be heard. They merely give those parties the opportunity to submit comments on specific points which may be determined in advance.

Lastly, the Court considers that the applicants cannot validly claim that ECHA made a manifest error of assessment in finding that the environmental fate properties of melamine had effects that could contribute to a finding that that substance had to be identified as a substance of very high concern under Article 57(f) of the REACH Regulation.

In that regard, the fact that that provision refers, for the purpose of determining the equivalent level of concern, to the substances referred to in Article 57(a) to (e) of the REACH Regulation does not mean that a substance must meet the identification criteria for those substances in order to be identified as a substance of very high concern. Consequently, ECHA is not limited solely to the hazard classes established by Regulation No 1272/2008 [64] or by the criteria specifically laid down in Annex XIII to the REACH Regulation.

However, it is necessary for ECHA to analyse the hazards arising from the intrinsic properties of the substance the identification of which as a substance of very high concern is envisaged, and the concept of 'hazard' describes any product or procedure 'capable' of having an adverse effect on human health. In that regard, Article 57(f) of the REACH Regulation does not require that, in order to contribute to the identification of a substance as being of very high concern, an intrinsic property must, as such and taken in isolation, be capable of having a serious effect. However, it is necessary that it has an effect which, in combination with other effects linked to other intrinsic properties, is capable of having a serious effect on human health or the environment.

The very fact that, because of its environmental fate properties, a substance can easily be distributed and present in the environment is indeed an effect, since those are the consequences associated with its intrinsic properties. Persistent and bioaccumulative substances can be regarded as substances having serious effects on human health or the environment. Persistence and bioaccumulation are indeed properties linked to the environmental fate of a substance. In those circumstances, the effects associated with the environmental fate properties of a substance, such as its persistence, mobility

64 Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1).

and potential for long-range transport, may be taken into consideration in order to determine whether a substance may have serious effects on human health or the environment which give rise to an equivalent level of concern.

VIII. ECONOMIC AND MONETARY POLICY: PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS

Judgment of the Court of Justice (Grand Chamber), 15 July 2025, ECB and Commission v Corneli, C-777/22 P and C-789/22 P

Link to the full text of the judgment

Appeal – Economic and monetary policy – Directive 2014/59/EU – Recovery and resolution of credit institutions – Articles 27 to 29 – Early intervention measures – Regulation (EU) No 1024/2013 – Single supervisory mechanism – Article 4(3) – Decision of the European Central Bank (ECB) to place a bank under temporary administration – Action for annulment brought by a shareholder – Article 263, fourth paragraph, TFEU – Act of an EU institution that is of direct and individual concern to a natural person – Ending of placement under temporary administration – Continued interest in bringing proceedings – Application of EU and national law by the ECB – Obligation to interpret national law in conformity with EU law

The Court of Justice, hearing appeals brought by the European Central Bank (ECB) and the European Commission respectively and sitting in its Grand Chamber formation, set aside the judgment in *Corneli* v *ECB* [65] and referred the case back to the General Court for it to rule on the pleas and arguments that it has not yet examined. The Court of Justice confirms that the action for annulment brought by a shareholder against the ECB's decisions to place a credit institution under temporary administration in the event of a significant deterioration in a bank's situation is admissible and finds that the General Court made an error in law by holding that there was no possibility of interpreting national law in conformity with Directive 2014/59. [66]

Banca Carige ('the bank') was a credit institution established in Italy, which had been subject to direct prudential supervision by the ECB since 2014. The applicant at first instance, Ms Francesca *Corneli* ('the applicant'), was a minority shareholder in the bank.

Since the bank did not comply with the minimum capital ratio requirements on 1 January 2018, it made several attempts to remedy that situation. Those attempts were unsuccessful. Following opposition by majority shareholders to an increase in capital by an exchange of subordinated bonds for newly issued shares, seven members of Banca Carige's board of directors resigned, which led to the removal of the board of directors, in accordance with the bank's statutes and the relevant provision of Italian law. In accordance with those statutes, the other members remained in office to ensure the day-to-day management of the bank.

On 1 January 2019, the ECB adopted the decision to place the bank under temporary administration, the consequences of which were, first, the dissolution of the bank's board of directors and the

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65 Judgment of 12 October 2022, *Corneli* v *ECB* (T-502/19, EU:T:2022:627; 'the judgment under appeal').

66 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).

replacement of the former members by three temporary directors, second, the dissolution of the bank's supervisory committee and the replacement of the former members of that committee by three other persons and, third, the giving to the new bodies of the mandate to take the necessary steps to ensure that the bank once again complied with the asset requirements on a sustainable basis.

Those measures were extended by the ECB's decision of 29 March 2019 (together with the decision of 1 January 2019; 'the decisions at issue'). Then, on 30 September and 20 December 2019, the ECB adopted two further extension decisions, in order to enable the completion of the operation to strengthen the bank's capital base.

On 12 July 2019, the applicant brought an action before the General Court seeking annulment of the decision to place the bank under temporary administration and of 'any consequent or subsequent act', including, inter alia, the various decisions extending that placement.

In the judgment under appeal, the General Court held, first of all, that the action was admissible only as regards the decisions at issue. It then held that the applicant had standing to bring proceedings. Lastly, as regards the substance, the General Court held, in essence, that the ECB had infringed Article 70 of the Consolidated Law on Banking [67] by relying, even though that condition was not provided for therein, on the significant deterioration in the situation of the bank in order to dissolve the bank's management and supervisory bodies, set up a temporary administration and maintain that administration during the period covered by the extension decision. Accordingly, on that basis, it annulled the decisions at issue.

Findings of the Court

In the first place, the Court of Justice rules on the grounds of appeal relating to the General Court's assessment that the applicant had standing to bring proceedings, on the ground that the decisions at issue were of direct and individual concern to her and that she also had the requisite interest in the action, with the result that her action, brought under Article 263 TFEU, was admissible.

Thus, first, as regards the question whether those decisions were of direct concern to the applicant, the Court finds that, from the time the bank was placed under temporary administration and for as long as that situation continued, the applicant was deprived, at the very least, of the possibility of exercising her right, as a shareholder of that bank, to join other shareholders of that bank in order to exercise collectively the rights of the shareholders, namely the right to submit a list of candidates for the election of the members of the board of directors and of the supervisory committee, the right to convene the general meeting or the right to bring an action for damages against the members of the management and supervisory bodies. That is an effect on the applicant's legal situation which follows directly from the adoption of the decisions at issue, which left no discretion to their addressee in that regard. Consequently, the Court of Justice holds that, on that point, the General Court's assessment was not vitiated by an error of law.

Second, as regards the matter of whether the decisions at issue were of individual concern to the applicant, the Court of Justice refers, in particular, to its case-law according to which, where a measure affects a group of persons who were identified or identifiable when that measure was adopted and by reason of criteria specific to the members of that group, those persons must be regarded as being individually concerned by that measure. [68] In that context, the fact relied upon in the present instance that the bank had some 35 000 shareholders who were all individually concerned by the decisions at issue is irrelevant. The Court emphasises that the application of that case-law depends solely on the possibility of identifying the persons whom an act affects on the basis of criteria specific to those persons, and not on the greater or lesser number of the persons identified.

In addition, the Court holds that the case-law relied upon by the ECB and the Commission, according to which the possibility of determining more or less precisely the number, or even the identity, of the

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67 Testo unico delle leggi in materia bancaria e creditizia (Legislative Decree No 385 consolidating the laws on banking and credit) of 1 September 1993 (GURI No 230 of 30 September 1993, Ordinary supplement No 92), in the version applicable to the present proceedings ('Consolidated Law on Banking').

68 Judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council* (C-348/20 P, EU:C:2022:548) paragraph 158 and the case-law cited.

persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as that measure is applied by virtue of an objective legal or factual situation defined by it, [69] does not concern a situation such as the one at issue in the present cases. That case-law concerns situations in which a measure is applied by virtue of a legal or factual situation defined by the act in question, with the result that it covers, by definition, acts of general application and not individual acts, such as the decisions at issue.

Third, as regards the applicant's interest in bringing proceedings, the Court of Justice confirms, in essence, the General Court's reasoning concluding that the applicant did have such an interest, which forms the basis for her bringing of an action for annulment of the decisions at issue, for as long as those decisions were in force. As regards the General Court's failure to examine of its own motion whether the applicant retains her legal interest in bringing an action after the end of the period of temporary administration of the bank, the Court of Justice concludes that that fact does not necessarily mean that the applicant's legal interest in bringing an action and, therefore, the purpose of the dispute before the General Court had ceased to exist in the course of the proceedings. However, it was for the General Court, before ruling on the substance of the case brought before it, to ascertain, of its own motion as the case may be, that that had not been the case. By failing to do so, the General Court did err in law; however, such an error in law cannot in itself lead to the judgment under appeal being set aside. The applicant would retain her legal interest in pursuing the annulment of the decisions at issue if such annulment could form the basis of a possible action for damages. In the present instance, although the effects of the decisions at issue and the bank's temporary administration came to an end in the course of the proceedings before the General Court, the applicant's legal interest in obtaining the annulment of those decisions has not, nevertheless, disappeared.

In the second place, the Court of Justice rejects as unfounded the ground of appeal alleging infringement by the General Court of its Rules of Procedure, [70] in so far as it failed to reject of its own motion as inadmissible the argument put forward for the first time in the applicant's reply, according to which Article 70(1) of the Consolidated Law on Banking did not allow a bank to be placed under temporary administration in the event of a significant deterioration in its situation. In that regard, the Court finds that the applicant cannot be criticised for having put forward, at the stage of that reply, a new plea, in so far as that argument constituted an amplification of the plea alleging infringement of Article 70(1) of the Consolidated Law on Banking, which was relied on in her application initiating proceedings. The applicant merely supplemented her line of argument seeking to demonstrate that the ECB had adopted the decision to place the bank under temporary administration in breach of that provision.

In the last place, as regards the grounds of appeal relating to the interpretation *contra legem* of Article 70(1) of the Consolidated Law on Banking which allegedly caused the limit laid down by EU law on the obligation to interpret that provision in conformity with Directive 2014/59 [71] to be disregarded, the Court considers them to be admissible. The question which they raise is tantamount to requesting the Court of Justice to determine whether there was an infringement of EU law by the General Court, which is a point of law which is, as such, subject to review on appeal.

As regards the substance, the Court states, first of all, that the ECB is required, where, in accordance with Regulation No 1024/2013, [72] it applies national law transposing a directive to a bank which comes under its direct prudential supervision, to interpret the national provision at issue in a manner consistent with that directive. Moreover, where it is led, as in the present instance, to apply national law, the General Court has the same duty to interpret national law in conformity with EU law, taking into account the directive which it is supposed to transpose. It adds that the prohibition on an interpretation of national law *contra legem* covers only the situation in which national law cannot be

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69 Judgment of 12 July 2022, *Nord Stream 2* v *Parliament and Council* (C-348/20 P, EU:C:2022:548) paragraph 157 and the case-law cited.

70 Article 84(1) of the Rules of Procedure of the General Court.

71 Article 29(1) of Directive 2014/59.

72 Article 4(3) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

applied in such a way that it leads to a result compatible with that envisaged by the provision of EU law concerned. [73]

Next, the Court notes that it is apparent from Directive 2014/59 [74] that Member States must ensure that, where there is a significant deterioration in the situation of a banking institution, the competent authority may, inter alia, depending on that situation, either merely require the removal of the senior management or management body of the institution, in its entirety or with regard to individuals, or also appoint one or more temporary administrators. In that regard, as regards the argument relating to the need to provide, in line with the principle of proportionality, for a scale of intervention measures available to the competent authority in the management of a banking institution, the Court finds that the system of intervention measures provided for by Directive 2014/59 [75] is in line with that principle. Specifically, the measure of temporary administration [76] may be adopted only after the less restrictive measure, [77] namely the replacement of the senior management or management body of the banking institution concerned, has been deemed insufficient in the light of the situation of that institution. Thus, in transposing Directive 2014/59, the national legislature must make provision for the competent authority to have the option to put in place temporary administration for the banking institution, in particular in the event of a significant deterioration in the situation of that institution.

In the present case, although particularly significant deterioration in the situation of a bank is one of the alternative conditions justifying the removal of the administrative or supervisory bodies of a bank, laid down in Article 69octiesdecies(1)(b) of the Consolidated Law on Banking, it is not, in those terms, among the conditions for the application of Article 70(1) of that law, which relates to the temporary administration of a bank . [78]

However, it cannot be inferred from that fact alone that an interpretation of Article 70(1) of the Consolidated Law on Banking in conformity with Article 29 of Directive 2014/59, with the effect that that provision applies in the event of a significant deterioration in the situation of a bank, is, for that reason, an interpretation *contra legem* within the meaning of the case-law of the Court of Justice. That interpretation does not infringe that provision, since, one of the alternative circumstances justifying the application of that same provision is a circumstance in which serious financial losses of a bank are expected.

The concepts of 'significant deterioration' in the situation of a bank, relevant in the context of Directive 2014/59, and of expecting 'serious financial losses' in the Consolidated Law on Banking, constitute legal concepts formulated in terms that are both general and similar. A deterioration in the situation of a bank necessarily implies the possibility, in the near future, that financial losses will be made by that bank, which, if the deterioration is significant, are capable of being classified as serious. Conversely, if it can be expected that a bank is going to suffer serious financial losses, that can only mean that the situation of that bank is deteriorating in a manner that may be described as 'significant'.

It follows that, by holding that Article 70(1) of the Consolidated Law on Banking cannot, under Italian law, serve as the basis for the adoption of a measure placing a bank facing a significant deterioration in its situation under temporary administration, without infringing the prohibition on an interpretation of national law *contra legem*, the General Court erred in law.

Consequently, the Court upholds the appeals and sets aside the judgment under appeal.

Lastly, the Court holds that the state of the proceedings permits final judgment to be given, in so far as regards, first, the plea of inadmissibility in respect of the action at first instance, raised by the ECB

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73 See, to that effect, judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 76 and the case-law cited).

74 By a combined reading of Article 28 and Article 29(1) of Directive 2014/59.

75 Articles 27 to 29 of Directive 2014/59.

76 Provided for in Article 29(1) of Directive 2014/59.

77 Provided for in Article 28 of Directive 2014/59.

78 Article 70(1) of the Consolidated Law on Banking.

supported by the Commission, and, second, the fourth plea in that action, in so far as it alleges an error of law in the determination of the legal basis relied upon when the decisions at issue were adopted.

First, the Court concludes that the plea of inadmissibility vis-à-vis the action at first instance raised by the ECB, alleging that the decisions at issue are not of direct and individual concern to the applicant and that she does not have the requisite legal interest in seeking the annulment of those decisions, must be rejected.

Second, the Court holds that Article 70(1) of the Consolidated Law on Banking must be interpreted as meaning that the condition that there is an expectation that the bank concerned may suffer serious financial losses is satisfied in the event of a significant deterioration in its situation and, therefore, that circumstance justifies placing that bank under temporary administration. Therefore, it holds that the ECB did not err in law in relying, for the purposes of adopting the decisions at issue, on that article of the Consolidated Law on Banking. The fourth plea in the action at first instance, in so far as it alleges an error of law in the determination of the legal basis relied upon to adopt the decisions at issue, must be rejected as unfounded.

As to the remainder, the Court of Justice holds that the state of the proceedings does not permit final judgment to be given, since the other pleas and arguments put forward by the applicant have not been examined by the General Court.

IX. CONSUMER PROTECTION: UNFAIR TERMS

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Wiszkier, C-582/23

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Powers and obligations of the national court – Insolvency proceedings relating to a natural person – Bankruptcy court has no power to examine *ex officio* whether the terms of a contract that gave rise to a claim on the list of claims are unfair – No power for that court to order interim measures – Principle of effectiveness

Hearing a reference for a preliminary ruling from the Sąd Rejonowy dla Łodzi-Śródmieścia w Łodzi (District Court for the central district of Łódź, Poland) concerning the interpretation of Article 6(1) and of Article 7(1) of Directive 93/13, [79] on unfair terms, the Court rules, in the light of the principle of effectiveness, on the provisions of Polish national law governing insolvency proceedings in respect of a natural person not engaged in business.

The request was made in bankruptcy proceedings relating to R.S., a bankrupt consumer, concerning the drawing up of a plan to repay his creditors, which included a bank, namely G. S.A. ('Bank G.'). R.S., his wife and two other natural persons had entered into a mortgage loan agreement with that bank, indexed to the Swiss franc. R.S. having been declared bankrupt, a list of claims, the majority of which were claims by Bank G., was drawn up by a trustee in bankruptcy, and was then approved by the supervisory judge. No objections were made and R.S. acknowledged all the claims.

In the event, the referring court has taken the view that the mortgage loan agreement at issue in the main proceedings contains unfair terms capable of rendering the agreement null and void, and notes

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

that that aspect has not been examined previously. The amounts owed to Bank G. are lower than the claims notified and may even not exist at all.

Nevertheless, the referring court has stated that, in bankruptcy proceedings governed by Polish law, it is for the bankruptcy court, on the basis of the list of claims already drawn up by the trustee in bankruptcy and approved by the supervisory judge, to establish a plan for the repayment of the claims against the bankrupt or to make a finding that the assets already accumulated in the bankruptcy estate are sufficient to satisfy all that person's debts and that no repayment plan is necessary. The decision of that court in that regard brings the bankruptcy proceedings to an end.

On the other hand, the referring court made clear that, first of all, under the applicable provisions of national law, the bankruptcy court, when it is drawing up a repayment plan, is not itself able to review whether the contractual terms are unfair. Next, the provisions applicable to the bankruptcy proceedings at issue in the main proceedings allow neither the bankruptcy court nor the supervisory judge to alter in any way the amount of the sums that are withheld in order to be paid into the bankruptcy estate. Last, in view of the amount of the funds collected during the bankruptcy proceedings and paid into the bankruptcy estate and the amount of the other debts, it may transpire that those funds are sufficient to satisfy the claims, with the exception of the claim of Bank G. Under the employment legislation in force, half the bankrupt's salary continues to be paid into the bankruptcy estate and it is only at the end of the bankruptcy proceedings that any surplus is reimbursed to that person.

In those circumstances, the bankrupt may be deterred from invoking the protection arising from Directive 93/13 because, if he did not claim that protection, the bankruptcy court could more quickly draw up a repayment plan for him, taking into account his needs and those of his close family, which would be likely to involve the repayment of lower amounts than the sums withheld from salary. That course of action would however require him to accept the fact that the list of claims would include the claim of Bank G.

In those circumstances, the referring court stayed the proceedings and referred two questions to the Court of Justice for a preliminary ruling.

Findings of the Court

In answer to the first question referred, the Court holds that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which provides that, in insolvency proceedings relating to natural persons, once the list of claims has been approved by a judicial authority, which has not examined the possible unfairness of the terms of the contract concerned, and proceedings have been commenced before the bankruptcy court, the latter is bound by that list, with the effect that it can neither assess the unfairness of terms contained in a loan agreement on which a claim included on that list is based nor amend that list, but must stay the proceedings and refer the matter of the possible unfairness of those terms to the judicial authority in question.

As a preliminary point, the Court notes that Article 6(1) of Directive 93/13 is a mandatory provision and that the national court is therefore required to assess *ex officio* whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in that way for the imbalance which exists between the consumer and the seller or supplier.

Article 7(1) of that directive, for its part, requires Member States, in the interests of consumers and of competitors, to establish adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. The rules implementing the consumer protection established by Directive 93/13 fall within the domestic legal system of the Member States by virtue of the principle of the procedural autonomy of the Member States, subject to compliance with the principles of equivalence and effectiveness.

As regards the principle of effectiveness, the question of whether national legislation makes the application of EU law impossible or excessively difficult must be analysed by reference to the proceedings as a whole, the way in which they are conducted and their particular features, along with, where relevant, the principles underlying the national legal system. Nevertheless, the specific characteristics of court proceedings cannot constitute a factor which is liable to affect the legal protection from which consumers must benefit under the provisions of Directive 93/13. However, the

need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for complete inaction on the part of the consumer concerned. In addition, the obligation on the Member States to ensure the effectiveness of the rights which individuals derive from EU law implies a requirement for effective judicial protection.

In the present case, the Court notes that it is apparent from the order for reference that a list of claims approved by the supervisory judge is binding on the bankruptcy court, with the effect that the latter cannot itself make findings of fact as regards whether the debts in question exist for the purposes of drawing up the creditor repayment plan. According to the referring court, the only means available to it of obtaining a review of the possible unfairness of terms in a contract that has given rise to a claim on the list of claims drawn up by the trustee in bankruptcy and approved by the supervisory judge is to put the matter before that supervisory judge seeking an examination both of those contractual terms and of the need to amend that list *ex officio*. It is also apparent that the obligation, for the bankruptcy court, to put the matter before the supervisory judge delays the conclusion of the bankruptcy proceedings and, because the bankruptcy estate receives withholdings from the bankrupt's salary continuously throughout the proceedings, prolongs that person's precarious financial situation. Prolonging the proceedings may therefore discourage that bankrupt from asserting his or her right to invoke the protection arising from Directive 93/13.

The Court of Justice notes that as a general rule a bankrupt is therefore dependent on the bankruptcy proceedings being concluded as soon as possible. When drawing up the repayment plan, which brings those proceedings to an end, the bankruptcy court can take account of the bankrupt's personal situation and expenditure and the requirement to meet the needs of the persons closest to him or her. The monthly amount that the bankrupt must allocate to repayment of his or her debts on conclusion of the proceedings is, in most cases, set below the amount withheld from salary during the proceedings. That bankrupt may therefore be forced, in order to avoid prolonging the bankruptcy proceedings, not to invoke the protection arising from Directive 93/13 and to accept a repayment plan that includes a claim arising from a contract containing potentially unfair terms.

The protection which Directive 93/13 confers on consumers extends to cases in which a consumer who has concluded with a seller or supplier a contract containing an unfair term fails to raise, first, the fact that that contract falls within the scope of that directive and, second, the unfair nature of the term in question, whether because the consumer is unaware of his or her rights or because he or she is deterred from enforcing them on account of the costs which judicial proceedings would involve or the financial burden that he or she would have to bear.

Accordingly, in the light of those factors, the Court finds that national legislation such as that at issue in the main proceedings, which may discourage a bankrupt from asserting his or her right to invoke the protection arising from Directive 93/13, makes the application of that directive in those proceedings excessively difficult.

For the avoidance of doubt, the Court states that the right to effective consumer protection includes the option to waive the exercise of one's rights, with the consequence that, where appropriate, the national court must take account of the intention expressed by the consumer where, although aware of the non-binding nature of an unfair term, that consumer states nevertheless that he or she is opposed to that term being disregarded, thus giving his or her free and informed consent to the term in question. In the present case, the bankrupt does not appear to have waived the exercise of his rights in that way. The fact that, at a stage in the proceedings when he was not represented by a lawyer, he acknowledged the notices of claims to the trustee in bankruptcy and did not lodge an objection with the supervisory judge cannot be regarded as indicating a free and informed waiver of the right to that protection. Moreover, since the bankrupt claimed before the bankruptcy court that the mortgage loan agreement at issue in the main proceedings contained unfair terms, his attitude cannot be described as completely inactive.

As regards whether there is an obligation to carry out an *ex officio* examination, the fact that the list of claims approved by the supervisory judge has become *res judicata* does not necessarily preclude the bankruptcy court from examining *ex officio* the possible unfairness of terms contained in a contract from which a claim on that list has arisen. The obligation to carry out such an *ex officio* examination is justified by the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, with the result that an effective review of the possible unfairness of

contractual terms, as required by that directive, could not be guaranteed if the force of *res judicata* were to be extended to judicial decisions which do not indicate that such a review has been conducted.

Accordingly, since, in the present case – given that the supervisory judge has not expressly stated that she carried out an examination as to whether the contractual terms at issue in the main proceedings were unfair and, giving at least summary reasons, that that examination had not revealed the existence of any unfair terms – that examination appears not to have occurred, which is for the referring court to verify, Directive 93/13 requires the bankruptcy court to determine the possible unfairness of those terms and to draw the necessary conclusions from any unfairness.

In answer to the second question, the Court holds that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding national legislation which, in the context of insolvency proceedings relating to natural persons, does not provide that the bankruptcy court can order interim measures to regulate the situation of the bankrupt pending a decision concluding examination of the unfairness of the terms in a loan agreement, where that agreement has given rise to a claim included on the list of claims approved by a different judicial authority, which has not examined the possible unfairness of the terms of the contract concerned.

As a preliminary point, the Court recalls that Article 6(1) of Directive 93/13 requires Member States to ensure that unfair contract terms are not binding on the consumer, without the consumer having to bring an action and obtain a judgment confirming the unfairness of those terms. It follows that the national courts are required to exclude the application of those terms so that they do not produce binding effects with regard to a consumer, unless the consumer objects.

In the present case, as regards specifically the circumstances in which it may be necessary for the national court to grant interim measures in order to ensure the effectiveness of application of Directive 93/13, the Court emphasises that the need for such measures must be assessed in the light of the purpose of Directive 93/13, which is to provide consumers with a high level of protection.

Accordingly, the national court must be able to apply interim measures so that the rights that consumers derive from Directive 93/13 can be fully effective. The Court recalls that the protection guaranteed to consumers by that directive requires that the national court, which has jurisdiction to assess the unfairness of a contractual term, must be able to grant an appropriate interim measure if that is necessary to ensure the full effectiveness of the forthcoming decision on the unfairness of contractual terms. The same is so where there is a risk that that consumer will pay, in the course of legal proceedings the duration of which may be considerable, monthly instalments of a higher amount than that actually due if the term concerned were to be disregarded, if it is necessary to do so in order to ensure the full effectiveness of the forthcoming decision on the unfairness of contractual terms.

In that regard, the Court states that, first, under the national legislation at issue in the main proceedings, the bankruptcy court cannot grant interim measures to alleviate the bankrupt's financial situation pending the outcome of examination of the possible unfairness of a contractual term. Although, admittedly, the bankrupt does not, before conclusion of the bankruptcy proceedings, repay the debts on the list of claims approved by the supervisory judge, the fact remains that he is obliged, during that examination, to continue paying into the bankruptcy estate on the basis of a list of claims that potentially contains a claim arising from such a term. Because raising the unfairness of a contractual term involves prolonging the bankruptcy proceedings, the bankrupt is likely to be discouraged from asserting his or her right to invoke the protection arising from Directive 93/13. Second, in view of the amount of the funds paid up to the present time into the bankruptcy estate and the amount of the bankrupt's debts, those funds could be sufficient to satisfy the claims on that list, with the exception of the claim of Bank G.

In those circumstances, an interim measure, aimed at reducing the withholdings made from the bankrupt's salary pending a decision concluding examination of whether a contractual term is unfair, may be necessary in order to guarantee the protection afforded by Directive 93/13 and the effective judicial protection that flows therefrom. In order to verify whether such a measure is necessary, the referring court will have to take into account all the relevant circumstances of the case, including, in particular, whether there is sufficient evidence that the contractual terms concerned are unfair,

whether there is a real possibility that the bankruptcy estate is already sufficiently funded to satisfy the creditors, with the exception, as the case may be, of the claim concerned, as well as the bankrupt's financial situation and the risk of that person having to endure a prolongation of the bankruptcy proceedings which could result in an unwarranted deterioration in his or her financial situation pending the conclusion of those proceedings.

X. ENVIRONMENT: AARHUS CONVENTION

Judgment of the General Court (Seventh Chamber, Extended Composition), 23 July 2025, Bloom v Commission, T-1049/23

Link to the full text of the judgment

Common fisheries policy – IOTC Resolution on the management of fish aggregating devices – Objection submitted by the Commission – Refusal of the request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Act which may be the subject of a request for internal review – Concept of 'provisions that may contravene environmental law' – Article 2(1)(f) of Regulation No 1367/2006

By its judgment, the General Court annuls the decision of the European Commission of 30 August 2023 rejecting as inadmissible a request for internal review concerning the Commission decision objecting to Resolution No 23/02 of the Indian Ocean Tuna Commission (IOTC) on the management of fish aggregating devices ('FADs') in the IOTC area of competence. In doing so, it rules on the concept of an 'act which may be the subject of a request for internal review' for the purposes of the Aarhus Regulation, [80] thus contributing to the development of the case-law concerning the Aarhus Convention. [81]

The IOTC is an international organisation whose mission is to preserve the tuna resources in the Indian Ocean. [82] The European Union is a contracting party to the IOTC. On 11 April 2023, the Commission submitted, on behalf of the European Union, an objection against Resolution No 23/02 of the IOTC on the management of FADs ('the objection at issue'). FADs are artificial floating systems designed to attract fish and facilitate fishing. That resolution provided for, inter alia, a progressive reduction of the number of drifting FADs authorised per vessel, the creation of a drifting FAD registry in order to increase the transparency and monitoring of those devices and a 72-day closure period for drifting FADs in the Indian Ocean every year. The Commission indicated, in essence, that the implementation of Resolution No 23/02 would have resulted in a disproportionate burden on the purse seine fleets, or that it was practically not implementable.

Bloom, the applicant, is a non-governmental organisation contributing to the preservation of marine biodiversity and marine habitats. The applicant submitted a request to the Commission for internal review of the objection at issue under Article 10 of the Aarhus Regulation. The Commission rejected the applicant's request for internal review as inadmissible, on the ground that the objection at issue

80 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13) as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1) ('the Aarhus Regulation').

81 Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention').

82 Under Council Decision 95/399/EC of 18 September 1995 on the accession of the Community to the Agreement for the establishment of the [IOTC] (OJ 1995 L 236, p. 24).

was not an 'administrative act' within the meaning of Article 2(1)(g) of the Aarhus Regulation, since that objection does not contain any provision that may contravene environmental law as defined in Article 2(1)(f) thereof. The applicant then brought an action before the General Court for annulment of that decision.

Findings of the Court

With regard to the plea by which the applicant maintains, in essence, that the Commission erred in rejecting its request for review of the objection at issue as inadmissible, the General Court notes that the request for review was not rejected by the Commission as unfounded, on the ground that the objection at issue did not contravene environmental law, but as 'inadmissible', on the ground that that objection did not contain any 'provisions that may contravene environmental law' within the meaning of Article 2(1)(f) of the Aarhus Regulation and that, as a result, it did not constitute an 'administrative act' within the meaning of Article 2(1)(g) thereof.

The administrative acts which may be the subject of a request for internal review under Article 10 of the Aarhus Regulation are non-legislative acts adopted by an EU institution or body which have legal and external effects and contain provisions that may contravene environmental law. [83]

The General Court finds that the grounds submitted by the applicant in its request for review relate to potential infringements of concrete provisions of environmental law, enshrining inter alia the precautionary principle in the field of the common fisheries policy. Thus, in submitting the objection at issue, the European Union actively opposed the adoption of measures aimed at increasing the protection of certain fish stocks, and, as a result of that objection, it was no longer required to establish and implement the measures provided for in Resolution No 23/02 in its legal order. Consequently, that objection was capable of producing adverse effects on the attainment of the objectives of EU policy on the environment set out in Article 191 TFEU.

In those circumstances, the General Court concludes that the Commission erred in rejecting as inadmissible the applicant's request for review without examining in substance if the grounds for review put forward by the applicant were such as to give rise to plausible, that is to say, substantial, doubts as to the assessment of environmental law by the EU institution or body upon submission of the objection at issue.

XI. BUDGET AND SUBSIDIES OF THE EUROPEAN UNION: GRANT AGREEMENT

Judgment of the Court of Justice (Fourth Chamber), 3 July 2025, Glonatech v REA, C-114/24 P

Link to the full text of the judgment

Appeal – Arbitration clause – Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) – The SANAD project – Staff costs – Eligible costs – Request for recovery – Debit note – Article 41 of the Charter of Fundamental Rights of the European Union – Principle of good administration – Substitution of grounds – Article 47 of the Charter of Fundamental Rights – Right to effective judicial protection – Burden of proof – Proportionality

Dismissing this appeal relating to a grant agreement which contained an arbitration clause, the Court of Justice confirms its settled case-law according to which the European Commission remains subject,

83 In accordance with Article 2(1)(g) of the Aarhus Regulation.

in the context of performing a contract, to the obligations imposed on it by the Charter of fundamental rights of the European Union ('the Charter') and by the general principles of EU law, with the result that the EU judicature may be called upon to ascertain whether there is an infringement of Article 41 of the Charter in proceedings which, as in the present case, concern the implementation of Article 272 TFEU.

The appellant is a company governed by Greek law and operating in the sector of nanotechnologies. On 20 December 2012, it concluded with the European Research Executive Agency (REA), a grant agreement for the execution of the SANAD project ('the grant agreement'). That agreement provided for a maximum financial contribution by the European Union to that project which was required to be completed within a period of 48 months, starting from 2013, divided into two reporting periods of 24 months. In January 2013, four other participants in the SANAD project acceded to the grant agreement as beneficiaries. The project was completed on 31 December 2016.

In the context of the final payment of the EU contribution to the project the REA raised, in an email of 8 October 2018 sent to the appellant, a number of discrepancies and gaps in supporting documents that it had provided. On 21 August 2019, the REA also informed the appellant that it was launching a financial audit covering the entire period of the grant agreement and set out a detailed list of data and documents to be made available for the purpose of that audit, which it carried out between 22 and 24 October 2019.

On 22 July 2020, the appellant received a draft audit report setting out the result of the financial audit which concluded that certain categories of the costs of the project should be regarded as ineligible under the provisions of the grant agreement. The appellant disputed those conclusions on 23 September 2020. On 30 March 2021, the REA informed the appellant that the conclusions of the draft audit report were maintained and referred to an amount that had been over-claimed by the appellant having regard to the requirements of the grant agreement. It also stated that the adjustments set out in the report would be put into effect, including the order for the recovery of the amounts overpaid and the calculation of liquidated damages pursuant to the general conditions of the grant agreement. On 22 April 2021, the REA adopted the assessment report on the performance of the second reporting period of the SANAD project. On 5 May 2021, the REA communicated to the appellant a pre-information letter stating that it approved the final audit report and that it would proceed with the recovery of the outcome of the financial audit, whilst also inviting the appellant to raise, within two months, any objections it may have. The appellant submitted objections on two occasions, to which the REA responded.

To its last response, of 22 December 2021, in which it explained that the appellant's arguments were not capable of changing the conclusions of the final audit report, the REA attached debit note No 3242113938, demanding payment of a sum for the SANAD project from all the participants. On 22 June 2022, the appellant informed the REA of an updated allocation of the total amount of the claim to be recovered from the various participants in the SANAD project. Lastly, on 29 September 2022, the REA communicated to the appellant, first, credit note No 3234220185 cancelling debit note No 3242113938 and taking account of the allocation of its claim between the various participants in the SANAD project and, secondly, the new debit note specific to its claim against the appellant.

Findings of the Court

In the first place, the Court notes that the principle of good administration entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case. Thus, when the institutions, bodies, offices or agencies of the European Union perform a contract, the terms of which they have stipulated, that situation falls within the scope of EU law and therefore the scope of the Charter, within the meaning of Article 51 thereof. In addition, the Court recalls its case-law according to which, when the institutions, bodies, offices or agencies of the European Union perform a contract, they remain subject to their obligations under the Charter and the general principles of EU law. Consequently, the fact that the law applicable to the contract concerned does not guarantee the same rights as those guaranteed by the Charter and the general principles of EU law does not exempt the institutions, bodies, offices or agencies of the European

Union from ensuring that those rights are respected in relation to their contracting parties. [84] Furthermore, the Court recalls its settled case-law according to which, if the parties decide, in their contract, to confer on the EU judicature, by means of an arbitration clause, jurisdiction over disputes relating to that contract, that judicature will have jurisdiction, independently of the applicable law stipulated in that contract, to examine any infringement of the Charter or of the general principles of EU law.

In those circumstances, it holds that the General Court erred in law by excluding the possibility for the EU judicature to determine whether there had been an infringement of the principle of good administration enshrined in Article 41 of the Charter in a dispute which, as in the present case, is covered by Article 272 TFEU.

However, the Court observes that, in accordance with its settled case-law, if the grounds of a judgment of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement cannot lead to the setting aside of that judgment, and a substitution of grounds must be made and the appeal dismissed. [85] It is therefore necessary to ascertain whether the rejection of the complaint alleging infringement of the right to good administration enshrined in Article 41 of the Charter is shown to be well founded on legal grounds other than those vitiated by the error identified in the judgment of the General Court.

In that regard, first, the authorising officer responsible is to check, inter alia, at the latest before the payment of the balance, the fulfilment of the conditions triggering the payment of lump sums, unit costs or flat-rates, including, where required, the achievement of outputs and/or results, in accordance with Article 183(1) of the Financial Regulation 2018. [86] That provision states that the fulfilment of those conditions may be subject to *ex post* checks and thus expressly recognises the right of the authorising officer responsible to check that the conditions triggering payment have been fulfilled and to reduce the grant where those conditions are not fulfilled or in the event of irregularity, fraud or a breach of other obligations. In that regard, the Court points out that, in accordance with the provisions of the grant agreement concluded between the parties, at any time during the implementation of the project and up to five years after the end of the project, the REA or the Commission may carry out financial audits relating to the proper implementation of the grant agreement.

Second, that agreement lays down the obligation for the beneficiary of the funding to retain, up until five years after the end of the project, the originals or, in exceptional cases, certified copies of the originals, including electronic copies, of all documents relating to the grant agreement.

The Court observes that it is apparent from the General Court's findings that the SANAD project was completed on 31 December 2016 and that the REA informed the appellant on 21 August 2019 that an audit procedure had been initiated, after sending an email on 8 October 2018, by which it had already raised, in the context of the final payment of the EU contribution to the SANAD project and therefore before payment of the balance, the existence of a number of discrepancies and gaps in the supporting documents produced by the appellant. In addition, the General Court noted that the grant agreement stipulated that the financial audits could be carried out by staff of the REA or of the Commission, and found that, although the appellant relied on a lack of impartiality on the part of those staff, it did not produce the slightest evidence in that regard.

In those circumstances, the Court holds that the audit in question was not carried out belatedly nor in a manner contrary to the principle of impartiality. Thus, it was apparent that, notwithstanding the error of law identified in the General Court's judgment, the appellant's argument alleging a breach of

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84 Judgments of 16 July 2020, *Inclusion Alliance for Europe* v *Commission* (C-378/16 P, EU:C:2020:575, paragraph 82), and *ADR Center* v *Commission* (C-584/17 P, EU:C:2020:576, paragraph 86).

85 Judgment of 19 September 2024, *Coppo Gavazzi and Others* v *Parliament* (C-725/20 P, EU:C:2024:766, paragraph 114 and the case-law cited).

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

the right to good administration, provided for in Article 41 of the Charter, was unfounded and could therefore be rejected by the General Court

In the second place, the appellant submits that the General Court erred in law in its interpretation of several provisions of the grant agreement and of Articles 1161 to 1163 of the Belgian Civil Code. On that point, the Court recalls its settled case-law that the General Court's examination of a contractual provision, such as the provisions of the grant agreement, cannot be considered to be an interpretation of law and cannot therefore be reviewed in the context of an appeal without encroaching upon the jurisdiction of the General Court to establish the facts. That conclusion is also relevant to the appellant's argument that the General Court failed to interpret the grant agreement's lack of clarity in its favour, in accordance with Article 1162 of the Belgian Civil Code. That approach is, in fact, a challenge to the General Court's assessment that the wording of the contractual provisions was clear and unequivocal.

In addition, the Court of Justice also held that, as regards an interpretation by the General Court of the national law applicable to contracts concluded by the institutions, bodies, offices and agencies of the European Union, the Court of Justice has jurisdiction, on appeal, only to determine whether that law was distorted, and the distortion must be obvious from the documents in the file, without there being any need to carry out a new assessment of the facts and the evidence.

In the present case, the appellant does not claim that the General Court erred as a result of a distortion of the provisions of the Belgian Civil Code. The appellant also cannot validly submit, by referring to the general conditions of the grant agreement, that the General Court infringed the provisions of the Financial Regulation 2018, which take precedence over those of that agreement. It is apparent that the provisions of the grant agreement which lay down an obligation to retain the documents relating to that agreement and to make them available to the REA or the Commission in the event of an audit are consistent with the provisions of the Financial Regulation 2018, which authorises *ex post* checks in the context of a financial audit, including in the case of flat-rate financing.

Lastly, as regards the argument that the General Court failed to state reasons to the requisite legal standard for its interpretation of the grant agreement, the Court of Justice observes that the General Court's interpretation follows from the detailed analysis of the terms of that agreement carried out in the judgment under appeal. Consequently, the General Court provided reasons for its assessment in that regard.

In the last place, the Court of Justice emphasises that the General Court was fully entitled to find that the fact that it had been possible to successfully complete the SANAD project does not call into question a financial audit being carried out or the conditions under which that audit was conducted by the REA. It does not suffice that the project concerned has been technically and in compliance with the requirements of the grant agreement properly carried out for the appellant to be entitled to the financial aid provided for. It is also necessary for the appellant to have properly carried out its obligations under that agreement so as to enable the REA to verify, notably during a financial audit, that the costs declared are eligible costs and substantiated by evidence. [87] To that end, it is important in particular that the beneficiary is able to prove that the costs declared were actually incurred in order to carry out the project in question.

Consequently, according to the Court of Justice, in the event of a breach of the financial obligations laid down in the grant agreement, the beneficiary of the financial aid loses the right to payment of the grants and, hence, the co-contractor of the appellant is required to take all appropriate measures in that regard, [88] including the complete or partial recovery of the grant, irrespective of whether the SANAD project has technically been properly carried out.

It follows that the beneficiary of the grant therefore acquires a definitive right to payment of the EU financial contribution only if all the conditions to which the award of the grant is subject are satisfied. It is not sufficient for the beneficiary of the grant to show that a project has been carried out to justify the award of a particular grant. It is incumbent on the beneficiary to prove that the costs declared

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87 In accordance with Article II.21 of the general conditions of that agreement.

88 Pursuant to Article II.21(6) of the general conditions of that agreement.

have been incurred in accordance with the conditions laid down in particular in the grant agreement for the award of the grants concerned.

Nota bene:

The résumés of the following cases are currently being finalised and will be published in a future issue of the Monthly Case-Law Digest:

- Judgment of the General Court (Sixth Chamber, Extended Composition), 2 July 2025, Brasserie Nationale et Munhowen v Commission, T-289/24
- Judgment of the General Court (Second Chamber), 9 July 2025, Compagnie générale des établissements Michelin v Commission, T-188/24
- Judgment of the General Court (First Chamber, Extended Composition), 23 July 2025, OT v Council, T-1095/23