COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

MONTHLY CASE-LAW DIGEST
August-September 2025

I. FUNDAMENTAL RIGHTS

1. RIGHT TO AN IMPARTIAL TRIBUNAL AND A FAIR TRIAL

Judgment of the Court of Justice (Grand Chamber) of 1 August 2025, Royal Football Club Seraing, C-600/23

Link to the full text of the judgment

Reference for a preliminary ruling – Article 19(1) TEU – Obligation of Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy – Possibility of recourse to arbitration – Arbitration between individuals – Imposed arbitration – Decision of a body of an international sports federation imposing a sanction – Award by the Court of Arbitration for Sport (CAS) upheld by a decision of a court of a third State – Legal remedy against the arbitral award – National legislation conferring on that arbitral award the authority of *res judicata* between the parties and probative value vis-à-vis third parties – Powers and obligations of the national courts before which that arbitral award is relied on – Effective review of the consistency of such an arbitral award with the principles and provisions falling under EU public policy

Ruling on a reference for a preliminary ruling from the Belgian Cour de cassation (Court of Cassation), the Court of Justice, sitting as the Grand Chamber, delivers a judgment concerning the judicial review to which awards made on the basis of arbitration mechanisms established by international sports associations must be amenable, in the light of EU law, before the courts or tribunals of the Member States. More specifically, the Court of Justice clarifies the relationship between, on the one hand, the system for dispute resolution before the Court of Arbitration for Sport (CAS), as established by the Fédération internationale de football association (FIFA), and, on the other, the principle of effective judicial protection, in the context of national legislation conferring on an arbitral award, upheld by a decision of a court of a third State, the authority of *res judicata* between the parties to the dispute as well as probative value vis-à-vis third parties. RFC Seraing ('the club') is a football club that is established in Belgium and is affiliated to the Union royale belge des sociétés de football association ASBL (URBSFA). That club concluded two contracts with Doyen Sports Investment Ltd ('Doyen'), a company established in Malta, whose economic activity consists in the provision of financial assistance to football clubs in Europe. Under those contracts, Doyen became the owner of a part of the club's economic rights [1] over four specific players.

Disciplinary and arbitration proceedings in Switzerland

On 4 September 2015, the FIFA Disciplinary Committee adopted a decision in which it found, inter alia, that, by entering into the contracts concerned, the club had infringed the Regulations on the Status and Transfer of Players ('the RSTP') [2] and imposed disciplinary sanctions on that club. Since the internal appeal lodged by the club was dismissed, the club brought, on 9 March 2016, an appeal against that rejection decision before the CAS, claiming that the provisions on which that decision was based and the disciplinary sanctions imposed were unlawful. In that regard, the club maintained, inter alia, that the RSTP, in so far as they lay down a total prohibition of the practices known as 'third-party influence' and 'third-party ownership', attended by disciplinary sanctions, infringe EU law and, more

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1 Those economic rights are intended to reflect the financial value of players. They are linked to the federative rights that a club acquires by signing on a given player, such as the right to register that player or the right to field him or her. Exercising those rights enables the club holding them to receive the sums due, for example, when that player is loaned out or transferred, when his or her image rights are exploited or transferred, or when there has been a breach of his or her contract.

2 Those regulations, which were adopted by FIFA on 22 March 2014 and entered into force on 1 August 2014, lay down, in Article 18bis, entitled 'Third-party influence on clubs', and Article 18ter, entitled 'Third-party ownership of players' economic rights', a prohibition on the practices of third-party influence and third-party ownership.

specifically, the freedom of movement for workers, the freedom to provide services and the free movement of capital, guaranteed by Articles 45, 56 and 63 TFEU, respectively, as well as the competition rules laid down in Articles 101 and 102 TFEU.

On 9 March 2017, the CAS made an arbitral award ('the CAS award') in which, inter alia, it confirmed that those provisions of EU law were applicable to the dispute and found that they had not been infringed.

On 15 May 2017, the club brought an action against the CAS award before the Tribunal fédéral (Federal Supreme Court, Switzerland), which was dismissed by judgment of 20 February 2018.

The judicial proceedings conducted in Belgium

On 3 April 2015, Doyen and the association governed by Belgian law that runs the club brought proceedings against FIFA, the Union des associations européennes de football (UEFA) and the URBSFA before the tribunal de commerce francophone de Bruxelles (Brussels Commercial Court (French-speaking), Belgium). On 8 July 2015, the club intervened voluntarily in the proceedings, requesting, inter alia, that that court find that the total prohibition on the abovementioned practices was incompatible with Articles 45, 56, 63, 101 and 102 TFEU. On 17 November 2016, the tribunal de commerce francophone de Bruxelles (Brussels Commercial Court (French-speaking)) delivered a judgment in which it found that it had no jurisdiction to examine the various requests made by the club.

The club's appeal against that judgment before the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium) was dismissed on 12 December 2019. That court held, first, that the club's grounds of appeal alleging that the RSTP infringe EU law had already been raised by that club before the CAS in the context of the dispute between the club and FIFA and had been rejected in the CAS award. According to the cour d'appel de Bruxelles (Court of Appeal, Brussels), the CAS award must be regarded, pursuant to the applicable Belgian legislation, [3] as having the same effects as a decision of a court in the relations between the parties, as having, accordingly, the authority of *res judicata* as from the day it was made, and as having the force of *res judicata* as from the day on which the Tribunal fédéral (Federal Supreme Court) dismissed the action brought against that award. Second, the cour d'appel de Bruxelles (Court of Appeal, Brussels) observed, in essence, that, from the time a judicial decision or an arbitral award acquires the authority of *res judicata* in the relations between the parties to the dispute, it must be regarded as having, vis-à-vis third parties to that dispute, against whom it may be relied on, the probative value which attaches to such authority. In the present case, according to that court, the CAS award has probative value vis-à-vis the URBSFA, which was not a party to the dispute between the club and FIFA before the CAS.

The club brought an appeal on a point of law before the referring court against the judgment of the cour d'appel de Bruxelles (Court of Appeal, Brussels), raising, in particular, a ground of appeal alleging infringement of the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

In those circumstances, the referring court asks the Court of Justice whether those provisions of EU law preclude, within the territory of a Member State, first, the authority of *res judicata* from being conferred on a CAS award, in the relations between the parties to the dispute, where the conformity of that award with EU law has not first been reviewed by a national court or tribunal that is authorised to make a reference to the Court of Justice for a preliminary ruling, and second, such an award from being regarded as having probative value, as a consequence of that authority of *res judicata,* in the relations between the parties to that dispute and third parties.

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3 Articles 24 and 28 and Article 1713(9) of the code judiciaire (Belgian Judicial Code), as amended by the loi portant dispositions diverses en matière de justice (Law on various provisions relating to justice) of 21 December 2018 (*Moniteur belge* of 31 December 2018, p. 106560).

Findings of the Court

Effective judicial protection for individuals within the European Union, including in the event of recourse to arbitration

As a preliminary point, the Court recalls, first, that the obligation laid down in the second subparagraph of Article 19(1) TEU means that all bodies within the judicial system of the Member States which may be called upon, as 'courts or tribunals' within the meaning of EU law, to interpret or apply that law must meet the requirements essential to effective judicial protection. Second, the right to an effective remedy guaranteed by Article 47 of the Charter requires, in particular, that those courts or tribunals be able to carry out an effective judicial review of the acts, measures or behaviour alleged, in the context of a given dispute, to have infringed the rights or freedoms which EU law confers on individuals. However, neither of those two provisions implies that individuals must have a direct legal remedy the primary object of which is to call into question a given measure, provided that one or more legal remedies also exist, in the national judicial system concerned, enabling those individuals to obtain, indirectly, effective judicial review of that measure, thereby ensuring respect for the rights and freedoms guaranteed to those individuals by EU law.

Furthermore, the legal order established by the Treaties does not preclude, in principle, individuals who are subject to that legal order by virtue of pursuing an economic activity within the territory of the European Union from submitting disputes that may arise between them in the context of that pursuit to an arbitration mechanism. Thus, individuals may conclude an agreement that subjects, in clear and precise terms, all or part of any disputes relating to that agreement to an arbitration body in place of the court or tribunal that would have had jurisdiction to rule on those disputes under the provisions applicable in the absence of such an agreement. However, once the arbitration mechanism established or designated by such an agreement is to be implemented in the territory of the European Union, in the context of disputes relating to the pursuit of an economic activity within that territory, that mechanism must be designed and implemented in such a way as to ensure, first, its compatibility with the principles underlying the judicial architecture of the European Union and, second, effective compliance with EU public policy. To that end, awards made by the arbitration body must be amenable to judicial review such as to guarantee effective judicial protection, [4] although that review may legitimately be limited in nature.

In that context, it cannot be accepted that, by having recourse to arbitration, individuals may discard the principles and provisions of primary or secondary EU law which are essential to the legal order established by the Treaties or are of fundamental importance for the accomplishment of the tasks entrusted to the European Union. On the contrary, observance of those principles and provisions, which form part of EU public policy, is binding on individuals provided that the respective conditions governing their application are satisfied in a given case. To that extent, consistency with that public policy constitutes an essential complement to the structured network of principles, rules and mutually interdependent legal relations binding the European Union and the Member States and binding the Member States to each other. The freedoms guaranteed by Articles 45, 56 and 63 TFEU form part of EU public policy. Those three articles, which have direct effect, constitute the foundations of the internal market comprising an area without internal frontiers referred to in Article 26 TFEU.

Judicial review of awards made by the CAS in the context of disputes relating to the pursuit of a sport as an economic activity within the territory of the European Union

First of all, the Court states that the arbitration mechanisms to which international sports associations such as FIFA subject the settlement of disputes which may arise between, on the one hand, themselves or their member national associations, and, on the other, individuals subject to their respective jurisdiction, be they undertakings or athletes, are characterised, owing to the statutes and prerogatives of those sports associations, by a number of factors specific to them.

For that reason, where those disputes relate to the pursuit of a sport as an economic activity within the territory of the European Union, the possibility for the individuals concerned to obtain effective

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4 To which the individuals concerned are entitled, under Article 47 of the Charter, and which the Member States are required to ensure in the fields covered by EU law, in accordance with the second subparagraph of Article 19(1) TEU.

judicial review as to whether the awards made in those disputes are consistent with the principles and provisions forming part of EU public policy is particularly important. In the light of the statutes and prerogatives of sports associations such as FIFA, recourse to such arbitration mechanisms must be regarded as being unilaterally imposed by such associations on those individuals. Even though, from a formal point of view, the application of a mechanism of that kind to an individual may require the conclusion of an agreement with that individual, the conclusion of that agreement and the insertion in it of a clause providing for recourse to arbitration are, in reality, imposed beforehand by rules that are adopted by the association concerned and are applicable to its members and to persons affiliated to those members, or to other categories of persons. The mandatory nature of arbitration mechanisms of that type is closely linked to the fact that they are intended to apply to disputes between, on the one hand, a sports association with *sui generis* and particularly extensive regulatory and oversight powers as well as the power to impose sanctions, and, on the other hand, a general and indeterminate group of legal or natural persons who are subject to the exercise of those powers in the pursuit of their professional activity.

It is true that that imposed recourse to arbitration may be warranted in principle, in the light of the legal autonomy enjoyed by international sports associations and having regard to their responsibilities, by the pursuit of legitimate objectives such as ensuring the uniform handling of disputes relating to the sporting discipline that is within the purview of their jurisdiction or enabling the consistent interpretation and application of the rules applicable to that discipline. Nevertheless, that legal autonomy cannot justify the exercise of the powers held by such associations having the effect of limiting the possibility for individuals to rely on the rights and freedoms conferred on them by EU law which form part of EU public policy. That requirement itself implies that respect for those rights and freedoms may be subject to effective judicial review, a fortiori when recourse to arbitration is imposed on the individuals concerned.

Next, as regards the requirements that judicial review of awards made by an arbitration body must meet, [5] the Court states, in the first place, that, whenever an award has been made in the context of a dispute relating to the pursuit of a sport as an economic activity within the territory of the European Union and no provision has been made for a direct legal remedy against that award before a court or tribunal of a Member State, a possibility must exist for the individuals concerned to obtain, indirectly, at their request or of the court's or tribunal's own motion, from any court or tribunal of a Member State that is liable to examine such an award in any manner whatsoever, effective judicial review as to whether that award is consistent with the principles and provisions forming part of EU public policy.

In the second place, the courts or tribunals of the Member States that are called upon to carry out such a review must, where such an award involves, as in the present case, an interpretation or application of the principles or provisions forming part of EU public policy and conferring rights or freedoms on individuals, be able to review the interpretation of those principles or provisions, the legal consequences attached to that interpretation as regards their application to the case at hand, and the legal classification which was given, in the light of that interpretation, to the facts as established and assessed by the arbitration body.

In the third place, those courts or tribunals cannot confine themselves to finding, as the case may be, that such an award is inconsistent, in full or in part, with the principles or provisions forming part of EU public policy. On the contrary, they must also be able to draw, within the framework of their respective powers and in accordance with the applicable national provisions, all the appropriate legal conclusions where such an inconsistency is found to exist. Failing that, the judicial review carried out would not be effective, inasmuch as it could allow that inconsistency to persist.

In the last place, any national court or tribunal before which a dispute governed by EU law has been brought must have the power to grant interim measures which ensure the full effectiveness of the judgment to be given on the substance of the case, including where that court or tribunal makes a request for a preliminary ruling to the Court of Justice and stays the proceedings pending the reply of

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5 In order to enable the national courts or tribunals having jurisdiction to guarantee individuals the effective judicial protection to which those individuals are entitled under Article 47 of the Charter, and which the Member States are required to ensure in the fields covered by EU law, in accordance with the second subparagraph of Article 19(1) TEU.

the Court of Justice. Furthermore, such a court or tribunal must disapply the rules of national law which preclude that power. Consequently, first, the individuals concerned must have the possibility of applying to any national court or tribunal properly seised of the question whether an arbitral award is consistent with the principles and provisions forming part of EU public policy for interim relief pending the decision on the substance of the case. Second, any national court or tribunal with jurisdiction to rule on such a question must disapply any rule of a Member State or, a fortiori, of a sports association, that prohibits the individuals concerned from requesting that court or tribunal to grant such interim relief or that otherwise precludes it from granting them such relief. Consequently, lastly, where the national provisions applicable to a given dispute may hinder the full effectiveness of the second subparagraph of Article 19(1) TEU, the national court or tribunal having jurisdiction must, if it is unable to interpret those national provisions in conformity with EU law, disapply them of its own motion. That obligation applies, in particular, where the applicable national provisions prevent the national court or tribunal having jurisdiction from carrying out, indirectly, an effective review as to whether an arbitral award made by the CAS, in the context of a dispute relating to the pursuit of a sport as an economic activity within the territory of the European Union, is consistent with the principles and provisions forming part of EU public policy. Therefore, that obligation applies, in particular, where there are national provisions and rules conferring on such an arbitral award, first, the authority of *res judicata* in the relations between the parties, and second, probative value in the relations between the parties and third parties, without that arbitral award having first been subject to a review enabling a court or tribunal of the Member State concerned, authorised to make a reference to the Court of Justice for a preliminary ruling, effectively to ascertain whether the award is consistent with the principles and provisions forming part of EU public policy. In that regard, it is the very conferral of such an authority and, consequently, such a value on that arbitral award that, in such a context, is in breach of the requirement of effective judicial protection referred to in the second subparagraph of Article 19(1) TEU and in Article 47 of the Charter.

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, AW 'T', C-225/22

Link to the full text of the judgment

Reference for a preliminary ruling – Rule of law – Independence of judges – Second subparagraph of Article 19(1) TEU – Effective legal protection in the fields covered by Union law – National legislation and case-law prohibiting national courts from calling into question the legitimacy of constitutional courts and bodies or from establishing or assessing the lawfulness of the appointment of judges of those courts or bodies – Verification, by a lower court, of compliance by a higher court with requirements relating to the guarantee of an independent and impartial tribunal previously established by law – Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs) of the Sąd Najwyższy (Supreme Court, Poland) – Body that does not constitute an independent and impartial tribunal previously established by law – Primacy of EU law – Possibility of declaring a judicial decision to be null and void

Hearing a reference for a preliminary ruling from the Sąd Apelacyjny w Krakowie (Court of Appeal, Cracow, Poland), the Court rules on the effects of a decision given by a judicial body which is not an independent and impartial tribunal previously established by law for the purposes of the second subparagraph of Article 19(1) TEU.

In October 2021, the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs, Poland) of the Sąd Najwyższy (Supreme Court, Poland), called upon to rule on an extraordinary appeal, set aside a 2006 judgment, which had the force of *res judicata*, and referred the case concerned back to the referring court for re-examination.

In that context, the referring court considers, on account of irregularities vitiating the procedure for the appointment of judges of the Chamber of Extraordinary Control and Public Affairs, that that formation of the court does not constitute a tribunal established by law within the meaning of EU law. Consequently, there is no need to examine the effects of the decision of such a body.

However, the referring court observes that decisions of the Trybunał Konstytucyjny (Constitutional Court, Poland) and national legislation [6] prohibit it from assessing the regularity of the appointment of judges and therefore from verifying whether the Chamber of Extraordinary Control and Public Affairs may be classified as an independent and impartial tribunal previously established by law. Since it is uncertain whether that constitutional case-law and that national legislation are compatible with the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), the referring court asks the Court whether it may disapply them and consider the decision of October 2021 to be null and void.

Findings of the Court

In the first place, as regards the prohibition on examining the regularity of the appointment of judges of a formation of the Supreme Court, the Court considers that the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, and the principle of the primacy of EU law preclude legislation of a Member State and constitutional case-law which require a national court to comply with a decision delivered by a higher court where, on the basis of a decision of the Court, that national court finds that one or more judges forming part of that panel of judges do not meet the requirements of independence, impartiality and previous establishment by law, and which prevent it from verifying the regularity of the composition of that panel of judges.

In the present case, the Court notes that the 2021 decision ordering re-examination was issued by a body of last instance whose status as a court or tribunal was rejected by the Court in the judgment in *Krajowa Rada Sądownictwa (Continued holding of a judicial office*) [7] since that body does not satisfy the conditions of independence, impartiality and previous establishment by law, for the purposes of the second subparagraph of Article 19(1) TEU. In accordance with the principle of the primacy of EU law and the effects of such a decision of the Court, that fact cannot be disregarded by a court. Thus, it will be for the referring court to ascertain whether the judges who formed part of the panel of judges of the Chamber of Extraordinary Control and Public Affairs which delivered the judgment of 2021 were appointed under the same conditions as those which characterised the appointment of the three judges of the referring body in the case which gave rise to the judgment in *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*.

In that regard, it is, however, apparent from the file before the Court that the five judges who, together with two lay judges, composed the panel of judges of that chamber in the case in the main proceedings, were appointed on the same day and under the same conditions as those who constituted the referring body in the case which gave rise to that judgment. The presence, within the body concerned, of a single judge appointed in the same circumstances as those at issue in that case is sufficient to deprive that body of its status as an independent and impartial tribunal previously established by law.

Moreover, as regards the national provisions and the decisions of the constitutional court which prevent the referring court from verifying whether another court complies with the requirements stemming from EU law as regards the guarantee of an independent and impartial tribunal previously established by law, the Court has previously held that those provisions are incompatible with EU law. [8] The same conclusion must be drawn as regards decisions of the constitutional court, which have a scope similar to that of those provisions.

In the second place, concerning the effects of a decision issued by a body which does not satisfy the requirements of independence, impartiality and previous establishment by laws, the Court considers that, in a situation where it is found, on the basis of a decision of the Court, that a judicial body of last

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6 Article 42a(2) of the ustawa Prawo o ustroju sądów powszechnych (Law on the organisation of the ordinary courts) of 27 July 2001 (Dz. U. No 98, item 1070), as amended by the ustawa o zmianie ustawy – Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Law amending the Law on the organisation of the ordinary courts, the Law on the Supreme Court and certain other laws) of 20 December 2019 (Dz. U. of 2020, item 190), provides: 'An ordinary court or other authority cannot establish or assess the lawfulness of the appointment of a judge …'. In addition, Article 107(1) of that law makes it a disciplinary offence for a judge to call into question, inter alia, the validity of the appointment of another judge or the mandate of a constitutional body of the Republic of Poland.

7 Judgment of 21 December 2023, *Krajowa Rada Sądownictwa* (*Continued holding of a judicial office*) (C-718/21, EU:C:2023:1015).

8 Judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442).

instance does not satisfy those requirements, a decision taken by such a body, by which the case concerned is referred back to a lower court for re-examination, must be regarded as null and void, where such a consequence is essential in view of the procedural situation at issue in order to ensure the primacy of EU law.

In that regard, no consideration based on the principle of legal certainty or linked to the alleged finality of the judgment can successfully be relied on in order to prevent a court from declaring such a decision to be null and void. It is apparent from the case file that that is the case in the main proceedings, since, even if the judgment of 20 October 2021 is final, that case was referred back to the referring court. Thus, in those circumstances, the referring court must regard that judgment as null and void.

2. PRINCIPES OF LEGALITY AND PROPORTIONALITY OF CRIMINAL OFFENCES AND PENALTIES

Judgment of the Court of Justice (Grand Chamber) of 1 August 2025, BAJI Trans, C-544/23

Link to the full text of the judgment

Reference for a preliminary ruling – Regulations (EEC) No 3821/85 and (EU) No 165/2014 – Obligation periodically to inspect tachographs – Exemption – Last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union and Article 51(1) thereof – Principle *lex posterior mitius* – Administrative penalties of a criminal nature – Appeal in cassation – New law having entered into force after the ruling which is the subject of that appeal – Concept of 'final conviction'

Hearing a request for a preliminary ruling from the Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), the Court of Justice, sitting as the Grand Chamber, specifies the scope of the principle *lex posterior mitius* (*lex mitior*), enshrined in the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), in the context of the review by a court of an administrative penalty, at the stage of the appeal in cassation.

By an administrative decision adopted in December 2016, T.T. was found guilty of an offence consisting in having driven a vehicle, owned by BAJI Trans, intended for the carriage of concrete and with a tachograph [9] which had not undergone a valid periodic inspection. On that basis, T.T. was ordered to pay a fine of EUR 200.

The administrative appeal brought by T.T. against that decision having been dismissed by the National Labour Inspectorate, T.T. and BAJI Trans brought an action against those decisions before the Krajský súd v Bratislave (Regional Court, Bratislava, Slovakia).

That court dismissed their action, holding, inter alia, that the obligation to use tachographs in all road transport vehicles was laid down by Regulation No 3821/85 [10] and by national legislation, without prejudice to the exceptions listed by Regulation No 561/2006. [11] However, those exceptions did not include vehicles intended for the carriage of concrete.

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9 This device, which records speed, is used in, inter alia, motor vehicles.

10 See Article 3 of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8) ('the regulation on recording equipment').

11 The referring court alludes to Articles 3 and 13 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

The parties then brought an appeal in cassation against that decision, emphasising that Regulation No 561/2006 had been amended by Regulation 2020/1054. [12] They argued that that amendment, made after the lodging of their appeal in cassation, meant that the acts committed by T.T. were no longer unlawful, as the Slovak Republic had implemented the possibility, derived from that amendment, of exempting vehicles intended for the carriage of concrete from the obligation to be equipped with tachographs.

Hearing that appeal in cassation, the referring court has decided to ask the Court, primarily, whether the principle *lex mitior* is to be applied by the court hearing an appeal in cassation, ruling in connection with a dispute concerning an administrative penalty, where the more lenient law entered into force subsequent to the decision given by the lower administrative court ruling on the substance, which has become final under national law and against which the appeal in cassation has been lodged.

Findings of the Court

In the first place, the Court finds that a Member State is implementing Union law for the purposes of Article 51(1) of the Charter, and that the Charter is therefore applicable, when, in accordance with the regulation on recording equipment [13] and with Regulation No 165/2014, [14] it imposes an administrative penalty on the driver of a vehicle because of a failure, by that driver, to fulfil obligations laid down by those regulations. In addition, this is also the case when it subsequently avails itself of the possibility which it is recognised as having under the latter regulation [15] of exempting certain road transport vehicles from having to comply with such obligations.

First of all, on the date of the offence committed by T.T., both the regulation on recording equipment and the regulation on tachographs required, without the possibility of exemption, the presence of tachographs in vehicles such as the vehicle at issue in the main proceedings, as well as the periodic inspection of those devices. Furthermore, both regulations impose an obligation on Member States to penalise infringements of their provisions. [16] Thus, by adopting a piece of national legislation laying down an obligation to use tachographs in all road transport vehicles and by imposing an administrative fine on T.T. for failing to comply with the obligations periodically to inspect the tachograph with which his vehicle had to be equipped, the Slovak authorities were implementing Union law.

In addition, the Court notes that the dispute in the main proceedings concerns, more specifically, the possibility of imposing a penalty on T.T. for having committed the offence at issue, before the entry into force of Regulation 2020/1054, even though, as a result of the combined effect of that regulation and the national legislation referred to above, vehicles transporting ready-mixed concrete are now exempt, under Slovak law, from the obligation to be equipped with tachographs. Such an amendment to the relevant national legislation, which is a measure adopted in connection with a margin of discretion which is an integral part of the regime established by an act of EU law, also constitutes an implementation of Union law for the purposes of Article 51(1) of the Charter.

In the second place, the Court rules that the last sentence of Article 49(1) of the Charter is capable of being applied to an administrative penalty of a criminal nature imposed on the basis of a rule which,

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12 Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ 2020 L 249, p. 1).

13 More specifically, Article 19(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 1), as amended by Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 (OJ 2006 L 102, p. 1).

14 Under Article 41(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ 2014 L 60, p. 1) ('the regulation on tachographs').

15 This possibility is provided for by Article 3(2) of that regulation, concerning the categories of vehicles mentioned in Article 13(1) of Regulation No 561/2006, as supplemented by Regulation (EU) 2020/1054.

16 This obligation is apparent from Article 19(1) of the regulation on recording equipment and Article 41(1) of the regulation on tachographs.

after the imposition of the penalty, has been amended in a way which is more favourable to the person concerned by that penalty, provided that that amendment reflects a change of position regarding the criminal classification of the acts committed by that person or regarding the penalty to be applied.

In order to come to that conclusion, the Court begins by recalling that the application of that provision presupposes a succession of legal regimes over time; a succession which reflects a change of position favourable to the perpetrator of the offence. Furthermore, the European Court of Human Rights has already held that Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms [17] does not guarantee the retroactive application of an amendment which has been made to the legislation and which is favourable to the perpetrator of the offence where that amendment is due only to a change in factual circumstances which has taken place since the commission of that offence and where that amendment is, accordingly, unrelated to the assessment of the offence as such.

In this instance, T.T. was penalised for having driven a vehicle for the delivery of ready-mixed concrete with a tachograph that had not undergone a valid periodic inspection.

It appears that the rules of EU law relating to the obligation to equip certain vehicles with tachographs and to ensure that those tachographs are periodically inspected were amended, after the offence committed by T.T., in a way that could have been favourable to him if the Slovak authorities had decided, in accordance with Article 3(2) of the regulation on tachographs, to exempt that type of vehicle from the obligation to be equipped with a tachograph. The Slovak legislature decided to implement the possibility provided for by that provision. [18] Such a removal, under Slovak law, of the obligation, for vehicles intended for the carriage of ready-mixed concrete, to be equipped with tachographs, thus appears to reflect a change of position on the part of the Slovak legislature with regard to the wish to punish acts such as those of which T.T. is accused.

Lastly, as Article 49 of the Charter contains the same guarantees as those provided for in Article 7 ECHR, which must be taken into account as a minimum threshold of protection, the Court notes that the requirements to which a possible application of the principle *lex posterior mitius* is subject under Article 49(1) of the Charter ensure, in view of the case-law of the European Court of Human Rights, a level of protection of that principle which does not disregard the level of protection guaranteed in Article 7 ECHR, as interpreted by that court.

In the last place, the Court specifies that, under the last sentence of Article 49(1) of the Charter, a court hearing an appeal in cassation against a judicial decision dismissing the action brought against an administrative fine of a criminal nature and falling within the scope of EU law is, in principle, required to apply a piece of national legislation which is more favourable to the convicted person and which entered into force after the delivery of that judicial decision, irrespective of whether such a decision is classified as final under national law.

In that regard, the Court recalls that the rule *lex posterior mitius*, contained in that provision, applies so long as no final conviction has been handed down. This rule means that, with effect from the date on which it was considered, in the legal system concerned, that it was no longer necessary either to punish a specific type of conduct at all or to punish that conduct as severely, such a change in assessment must be applied immediately to all criminal proceedings which have not yet been closed by means of a final conviction. That interpretation of the last sentence of Article 49(1) of the Charter does not disregard the threshold of protection provided by Article 7 ECHR.

In addition, although the rules of criminal procedure fall within the competence of the Member States in so far as the European Union has not legislated in that field, the Member States are nonetheless required, in exercising that competence, to comply with their obligations under EU law, including the fundamental rights enshrined in the Charter. Accordingly, while the assessment of the 'final' nature of the conviction must be carried out on the basis of the law of the Member State in which that

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

18 The Slovak legislature chose to exempt, by operation of law, all the categories of vehicles listed in Article 13(1) of Regulation No 561/2006 from the obligation to be equipped with tachographs for reasons identical to those relied on by the EU legislature.

conviction was handed down, for the purpose of applying the last sentence of Article 49(1) of the Charter, that concept must be given an autonomous and uniform interpretation throughout the European Union, in so far as it determines the extent of the right guaranteed by that provision and, consequently, the extent of the obligations derived therefrom for the Member States.

Thus, the fact that a conviction is regarded as final under national law is not decisive for the purposes of the application, by the court hearing an appeal against the decision handing down that conviction, of that provision.

The Court considers that a conviction cannot be regarded as final for the purposes of the last sentence of Article 49(1) of the Charter where it may be the subject of an ordinary appeal, that is to say, any appeal which forms part of the normal course of an action and which, as such, constitutes a procedural development which any party must reasonably expect. That is the case where the convicted person or the public prosecuting authority may bring, within a time limit determined by law and without having to rely on exceptional circumstances, proceedings before a court in order to obtain annulment or variation of the conviction or the penalty imposed.

Consequently, where the possibility of bringing an appeal in cassation against a judicial decision, within a time limit determined by law and without having to rely on exceptional circumstances, is available to the convicted person or the public prosecuting authority, that decision cannot become final for the purposes of the application of the last sentence of Article 49(1) of the Charter until the parties have exhausted that legal remedy or have allowed the time limit for bringing such an appeal to have elapsed without having lodged such an appeal.

Accordingly, the last sentence of Article 49(1) of the Charter means that a court hearing an appeal in cassation is, in principle, obliged to ensure that the perpetrator of an offence the penalising of which constitutes the implementation of Union law benefits from a piece of criminal legislation that is favourable to that perpetrator, even if that piece of legislation entered into force after the delivery of the judicial decision that is the subject of that appeal in cassation. The fact that, under national law, the decision which is the subject of the appeal may be set aside only in so far as it is vitiated by a defect of legality or in so far as the court hearing the appeal in cassation is required to give a ruling in the light of the situation existing on the date that decision was delivered is not capable of altering that conclusion. It is for every court to ensure that the perpetrator of an offence benefits from the criminal law which is more favourable to that perpetrator, so long as his or her conviction is not final.

In that last regard, where it is not possible to interpret a provision of national law in a way which is consistent with the requirements of EU law, the principle of the primacy of EU law requires that the national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is to disapply any provision of national law which is contrary to provisions of EU law having direct effect. The last sentence of Article 49(1) of the Charter is worded in a way that is clear and precise and is not subject to any conditions, meaning that it has direct effect. As a result, if the referring court were to find that its domestic law does not permit it to apply the guarantees derived from that provision to the dispute pending before it, that court would be required to ensure, within the framework of its competences, the protection derived, for litigants, from that provision and to guarantee the full effect of the provision by disapplying, if necessary, any provision of national legislation that is contrary thereto.

II. INSTITUTIONAL PROVISIONS

1. RIGHT OF PUBLIC ACCESS TO DOCUMENTS

Judgment of the General Court (Eighth Chamber) of 10 September 2025, Nouwen v Council, T-255/24

Link to the full text of the judgment

Access to documents – Regulation (EC) No 1049/2001 – Documents concerning the work of the Code of Conduct Group (Business Taxation) established by the Council – Partial refusal of access – Article 4(1)(a) of Regulation No 1049/2001 – Exceptions relating to the protection of the public interest as regards international relations and the financial, monetary or economic policy of the Union or of a Member State – General presumption of confidentiality – Obligation to state reasons

The General Court, hearing an action for annulment, which it partially upholds, specifies the conditions under which the exceptions to the right of access to documents laid down in Regulation No 1049/2001 may apply, [19] where the documents at issue originate from Member States opposing their disclosure. The Court also refuses to establish a general presumption of confidentiality applicable to documents relating to the revision of the 'Tax Code of Conduct' adopted by a working group set up by the Council of the European Union and composed of high-level representatives of the Member States and the European Commission ('the Code of Conduct Group'), reaffirming the principle of the widest possible access to the documents of the institutions.

The applicant, Mr Martijn Frederik Nouwen, is a professor who, inter alia, carries out research on the Tax Code of Conduct. On 14 July 2023, he submitted a request for access to documents under Regulation No 1049/2001, by which he sought disclosure of emails from the Member States, the Commission and the Council, exchanged from 2019 to 30 May 2023, concerning the reform or revision of the mandate or scope of the Tax Code of Conduct and its supervising body, namely the Code of Conduct Group, in the area of business taxation.

Following numerous exchanges between the applicant and the Council, the institution, by decision of 7 March 2024 ('the contested decision'), in response to a confirmatory request from the applicant, informed him that it had identified 75 emails meeting the criteria of his request. The Council fully disclosed 55 of them, refused access to 19 of them and granted access to one of them in part (together, 'the documents at issue').

The Council based the refusal of access on the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, on the ground that their disclosure would undermine the public interests relating to international relations and the financial, monetary or economic policy of the Union or of a Member State. That refusal was made after having consulted the Member States concerned under Article 4(5) of that regulation.

Findings of the Court

In the first place, the Court examines the Council's argument that the documents at issue are covered by a general presumption of confidentiality, since they form part of the work carried out by the Code of Conduct Group, which must remain confidential in order to protect the financial, monetary or economic policy of the Union or of a Member State and to preserve the effectiveness of that work.

In that regard, the Court recalls that Regulation No 1049/2001 reflects the intention to mark a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. To those ends, Article 1 of

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19 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).

Regulation No 1049/2001 provides that the purpose of that regulation is to confer on the public as wide a right of access as possible to documents of the EU institutions.

That being said, it follows from Article 4 of Regulation No 1049/2001, which introduces a system of exceptions to the right of access to documents, that that right is, nevertheless, subject to certain limits based on reasons of public or private interest. Such exceptions must be interpreted and applied strictly. In that regard, where an EU institution, body, office or agency that has received a request for access to a document decides to refuse to grant that request on the basis of one of the exceptions laid down in Article 4 of Regulation No 1049/2001, it must, in principle, explain how access to that document could specifically and actually undermine the interest protected by that exception, and the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical.

In certain cases, the Court's case-law has acknowledged that it was however open to that institution, body, office or agency to base its decisions on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature. The objective of such presumptions is thus the possibility, for the EU institution, body, office or agency concerned, to consider that the disclosure of certain categories of documents undermines, in principle, the interest protected by the exception which it is invoking, by relying on such general considerations, without being required to examine specifically and individually each of the documents requested.

The Court notes that, as the law stands, the Court of Justice has recognised five categories of documents which enjoy general presumptions of confidentiality and the General Court has recognised five further general presumptions of confidentiality regarding other categories of documents. In each of those cases, the refusal to grant access at issue related to a set of documents which were clearly defined by the fact that they all belonged to a file relating to ongoing administrative or judicial proceedings.

Moreover, the general presumptions of confidentiality are based on the fact that the exceptions to the right of access to documents set out in Article 4 of Regulation No 1049/2001 cannot, where the documents which are the subject of a request for access fall within a particular area of EU law, be interpreted without taking account of the specific rules governing access to those documents. Those general presumptions thus make it possible to ensure consistency in the application of legal rules which pursue different objectives and do not expressly provide for one to take precedence over the other.

Furthermore, the application of general presumptions is essentially dictated by the overriding need to ensure that the procedures at issue operate correctly, and to guarantee that their objectives are not jeopardised. Accordingly, a general presumption may be recognised on the basis that access to the documents involved in certain procedures is incompatible with the proper conduct of those procedures and the risk that those procedures could be undermined, it being understood that general presumptions ensure that the integrity of the conduct of the procedure can be preserved by limiting intervention by third parties.

In the present case, first of all, the Court finds that the documents requested are not defined by the fact that they all belonged to a file relating to ongoing administrative or judicial proceedings. Next, it is common ground that there are no specific rules governing access to documents relating to the revision of the Tax Code of Conduct. Lastly, the Council cannot rely on the Council's Conclusions, from which it would follow that the entire work of the Code of Conduct Group should be confidential. The scope of the obligations incumbent upon an EU institution under Regulation No 1049/2001, as interpreted by the Courts of the European Union, cannot depend on the content of acts, such as the Council's Conclusions, adopted by the institution concerned itself. In those circumstances, the Court finds that a presumption of confidentiality is not intended to apply to the documents at issue.

The Court takes the view that that finding is not called into question by the Council's argument that such a presumption must apply to the documents requested on the ground that the Code of Conduct Group has an intergovernmental character because taxation remains an exclusive competence of the Member States. The Council fails to explain how that fact alone would justify the establishment of a general presumption of confidentiality. Furthermore, it is common ground that the Council holds the documents at issue. Thus, those documents are subject to the principles arising from Regulation

No 1049/2001, including those enshrined in the case-law of the Courts of the European Union for the purpose of recognising a general presumption of confidentiality.

In those circumstances, the Court rejects the Council's argument that the documents at issue are covered by a presumption of confidentiality.

In the second place, as regards the question of the applicability of the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001 to the documents at issue, and compliance with the obligation to state reasons, the Court points out that, where a Member State relies on Article 4(5) of Regulation No 1049/2001 and puts forward grounds for refusal listed in Article 4(1) to (3) thereof, it is for the European Union judicature to review, on application by a person to whom the institution has refused to grant access, whether that refusal could have been validly based on those exceptions, regardless of whether the refusal results from an assessment of those exceptions by the institution itself or by the Member State concerned. Thus, ensuring effective judicial protection for the person who has made the request and to whom the institution has refused to grant access to one or more documents originating from a Member State following an objection by that State means that the European Union judicature must assess the lawfulness of the decision to refuse access in the specific case, in the light of all relevant factors, among the most important of which are the documents whose disclosure has been refused.

As regards the scope of the exceptions concerned, the Court notes that, under the third indent of Article 4(1)(a) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine the protection of the public interest as regards international relations. Likewise, under the fourth indent of Article 4(1)(a) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State. The particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001 confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. That is all the more so since the exceptions set out in Article 4(1) of Regulation No 1049/2001 are framed in mandatory terms inasmuch as the institutions are obliged to refuse access to documents falling under any one of those exceptions once the relevant circumstances covered by those exceptions are shown to exist, and there is no need to balance the protection of the public interest against an overriding general interest.

Furthermore, the criteria set out in Article 4(1)(a) of Regulation No 1049/2001 are very general, since access must be refused, as is clear from the wording of that provision, if disclosure of the document concerned would 'undermine' the protection of the 'public interest' at issue and not only, as had been proposed during the legislative procedure which preceded the adoption of that regulation, when that protection has actually been 'significantly undermined'. Thus, the principle of strict interpretation of the exceptions set out in Article 4 of Regulation No 1049/2001 does not, in respect of the public interest exceptions provided for in Article 4(1)(a) of that regulation, preclude the institution concerned from enjoying a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision. Consequently, the review by the General Court of the legality of a decision by that institution refusing access to a document on the basis of one of those exceptions must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers.

In the present case, the Court notes that the Council relied on the grounds of the protection of the public interest as regards international relations and the financial, monetary or economic policy of the Union to justify its refusal to grant access to the documents at issue under the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001. It is therefore for the Court to ascertain whether that refusal could validly be based, in light of the content of the documents at issue, on such grounds. Following its examination, the Court concludes that three of the documents at issue were not covered by those exceptions and that, therefore, the Council should have granted full access to the applicant. In contrast, it finds that the Council was justified in objecting, on the basis of the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, to the disclosure of the other documents at issue.

In the third place, the Court examines whether the Council should have granted partial access to those other documents at issue to which access was fully refused.

In that regard, the Court notes, first of all, that some passages of those documents contain, in particular, general observations on the reasons for revising the Tax Code of Conduct and the appropriate time to do so, and editorial observations on certain parts of the draft new Tax Code of Conduct or the resolution relating thereto, or, moreover, general questions on the practical implementation of the draft new Tax Code of Conduct. Some of those documents also contain courtesies between the various stakeholders involved in the revision of the Tax Code of Conduct and proposals to hold additional meetings. The disclosure of such passages is manifestly not likely to present a reasonably foreseeable, and not purely hypothetical, risk to the interests protected by the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001.

Next, those passages can be easily separated from the rest of the content of the documents concerned.

Lastly, in so far as the Council maintains that disclosure of those passages would not be of use to the applicant, the Court recalls that Article 4(6) of Regulation No 1049/2001, like that regulation as a whole, does not require the applicant to show that the document whose disclosure is requested is 'useful' to him or her. It is not for the institution receiving a request for access to documents to assess the usefulness of the document for the applicant. This is all the more so since Article 4(6) of Regulation No 1049/2001 cannot be interpreted in such a way as to amount to exempting the institution concerned from an obligation which is expressly envisaged in that provision, namely the obligation to disclose parts of the document requested, whereas such an exemption is not among the exceptions exhaustively listed by that regulation.

The Court concludes that the Council made a manifest error of assessment when it found that partial access could not be granted to the documents at issue, apart from three of them, to which full access should, in any event, have been granted.

In conclusion, the Court partially annuls the contested decision. However, it notes that it is not for the Court to substitute itself for the Council and to indicate all the parts of the documents at issue to which partial access should have been granted, because the Council is required, when implementing the judgment, and in accordance with Article 266 TFEU, to take into account the reasoning set out in it. In the present case, the Court emphasises that the passages of the documents at issue which it identified as requiring disclosure constitute only examples of passages which are manifestly not covered by the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, the Council being obliged, where appropriate after consulting the Member States under Article 4(5) of that regulation, to identify all passages which are not covered by them.

2. EUROPEAN PARLIAMENT – STATUTE AND FUNDING OF EUROPEAN POLITICAL PARTIES AND FOUNDATIONS

Judgment of the General Court (Sixth Chamber, Extended Composition) of 10 September 2025, Patriotes.eu v Authority for European Political Parties and European Political Foundations, T-1189/23

Link to the full text of the judgment

Law governing the institutions – Authority for European Political Parties and European Political Foundations – Decision imposing a financial sanction on a political party – Article 27(2)(a)(vi) of Regulation (EU, Euratom) No 1141/2014 – Non-contractual liability

Hearing an action for annulment and for damages, which it upholds in part, the General Court rules for the first time on a decision of the Authority for European Political Parties and European Political

Foundations ('the Authority'), by which the latter imposed a financial sanction under Article 27 of Regulation No 1141/2014. [20]

The applicant, Patriotes.eu, formerly Identité et Démocratie Parti (ID Parti), is registered as a European political party. On 9 March 2022, it sent the Authority a letter containing, in an annex, inter alia, an updated list of the its board members, which, since 16 February 2022, no longer included the name of one of its members ('the board member in question'). Since that amendment was not immediately taken into account on the applicant's website and social media networks, the Authority sent to it, on 23 March 2023, a request for information concerning the inconsistencies between, first, the communication of 9 March 2022, and second, the posts on its website and social media networks.

After several exchanges, the Authority opened, on 14 June 2023, an investigation in respect of the applicant for potentially inaccurate information on the composition of its board. By letter of 28 September 2023, the applicant, after setting up a new website no longer referring to the board member in question, informed the Authority that it had been decided to maintain the posts, on social media networks, where the board member in question was presented as a current member of its board.

By decision of 25 October 2023 ('the contested decision'), the Authority imposed a financial sanction on the applicant pursuant to Article 27(2)(a)(vi) of Regulation No 1141/2014, on the ground that it had maintained, on social media networks, inaccurate posts presenting the board member in question as a current member of its board, which was no longer the case.

Findings of the Court

First, the Court interprets Article 27(2)(a)(vi) of Regulation No 1141/2014. For the purposes of the present case, the Court limits the interpretation of that provision to situations where the European political party concerned has, at any time, intentionally provided incorrect information.

First of all, as regards the literal interpretation, the Court finds, in the first place, that that provision does not specify the addressee or the method of transmission of incorrect information. Nevertheless, it notes that the word 'provided' used in that provision refers, in the usual meaning in everyday language, to the idea of submitting, communicating or producing what is required. In addition, combined with the word 'information', the word 'provided' is used in other provisions of Regulation No 1141/2014 [21] to refer to the transmission of information, by European political parties and European political foundations to various competent authorities, required in a procedural context. By contrast, when Regulation No 1141/2014 refers to the transmission of information to the public, use is made of the expression 'be available', [22] and when information intended to be published on the internet is dealt with, the words used are 'available online' and '[made] public'. [23] Accordingly, the expression 'provided incorrect … information' used in Article 27(2)(a)(vi) of Regulation No 1141/2014 refers to the idea of submitting, communicating or producing incorrect required information.

In the second place, the Court notes that the adverb 'intentionally' refers, in the usual meaning in everyday language, to an act carried out with intention, deliberately, with the result that the expression 'intentionally provided … incorrect information' militates in favour of an interpretation, according to which the European political party, when submitting, communicating or producing the required information, is aware of the inaccuracy of that information, but deliberately decides to submit, communicate or produce it.

Lastly, it points out that the expression 'at any time' indicates, in the usual meaning in everyday language, that something may occur at any time during a given period. In that context, that expression leads to an interpretation according to which the European political party decides, at any time, deliberately to submit, communicate or produce incorrect required information.

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20 Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ 2014 L 317, p. 1).

21 See, inter alia, Article 23(4), the first subparagraph of Article 24(4), Article 25(6) or Article 29(1) of Regulation No 1141/2014.

22 Recital 41 of Regulation No 1141/2014.

23 Article 7(1) and Article 32 of Regulation No 1141/2014.

Those considerations therefore militate in favour of a literal interpretation of Article 27(2)(a)(vi) of Regulation No 1141/2014, according to which that provision applies to situations where the European political party deliberately decides, at any time, to submit, communicate or produce incorrect required information, in the knowledge that it was inaccurate.

Next, as regards the contextual interpretation, the Court recalls, in the first place, that it is apparent from Regulation No 1141/2014, which governs the legal and financial framework of European political parties, that the latter are required to provide information to the Authority, both for the purposes of registration and throughout their existence, on the conditions for registration and the governance provisions linked, in particular, to the statutes, but also on their financial situation, by submitting, inter alia, their annual financial statements, an external audit report and the list of their donors and contributors and their respective donations and contributions.

In the second place, the Court observes, first, that the Authority is to establish and manage a register of European political parties and European political foundations [24] that contains data, particulars and documents submitted with applications for registration and data, particulars and documents which are subsequently submitted. [25] That register provides a public service for the benefit of transparency, accountability and legal certainty, and is to be operated by the Authority in a way which provides appropriate access to, and certification of, information contained in it. [26] Second, the Court holds that the Parliament is to make public on a website the statutes of all European political parties, the documents submitted as part of their application for registration and any amendments notified in that regard, as well as their annual financial statements and external audit reports, the names of their donors and their corresponding reported donations or their reported contributions. [27] It therefore follows from the provisions of Regulation No 1141/2014 [28] that information concerning European political parties, in particular information considered to be of substantial public interest, is to be made available to the public by competent authorities, including the Authority, so that the public can have appropriate access to it. By contrast, that regulation does not lay down any obligation for European political parties to make information available to the public.

In the last place, the Court states that the other types of infringements provided for in Article 27(2)(a)(vi) of Regulation No 1141/2014, such as the intentional failure to provide information by European political parties or the existence of material omissions or misstatements in their annual financial statements, entail sanctions in the event of non-compliance by those parties with the requirements to communicate information to competent authorities.

All the foregoing militates in favour of a contextual interpretation of Article 27(2)(a)(vi) of Regulation No 1141/2014, according to which that provision applies to situations where the European political party intentionally provides incorrect information to the competent authorities, including the Authority.

Lastly, as regards the teleological interpretation, the Court holds, first, that the ultimate objective pursued by Regulation No 1141/2014 is to strengthen European political awareness and European representative democracy. [29] Moreover, the Court observes that the strengthening of transparency of European political parties [30] and the strengthening of their obligation of accountability [31] are also amongst the objectives pursued by that regulation.

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24 Article 7(1) of Regulation No 1141/2014.

25 Recital 2 and Article 1 of Commission Delegated Regulation (EU, Euratom) 2015/2401 of 2 October 2015 on the content and functioning of the Register of European political parties and foundations (OJ 2015 L 333, p. 50).

26 Recital 4 of Delegated Regulation 2015/2401.

27 Article 32(1)(a) and (d) to (f) of Regulation No 1141/2014.

28 See, inter alia, recital 33 of Regulation No 1141/2014.

29 Recitals 1 and 23 of Regulation No 1141/2014.

30 Recitals 24, 33, 34 and 38 of Regulation 1141/2014.

31 Recitals 26 and 33 of Regulation No 1141/2014.

In the second place, the Court finds that, by adopting Regulation No 1141/2014, the legislature wished to achieve the aforementioned objectives by establishing a regulatory framework intended to ensure that information concerning European political parties considered to be of substantial public interest is made available to the public by competent authorities in order to enable the public to have appropriate access to that information and to scrutinise effectively the activities of those parties.

Therefore, a teleological interpretation of Article 27(2)(a)(vi) of Regulation No 1141/2014 results in that provision applying to situations where the European political party intentionally provides incorrect information to the competent authorities within such a regulatory framework.

In the light of the foregoing, the Court holds that Article 27(2)(a)(vi) of Regulation No 1141/2014, in so far as it covers situations where the European political party concerned has, at any time, intentionally provided incorrect information, must be interpreted as applying to situations where such a party intentionally provides incorrect information to the competent authorities, including the Authority, in the context of its obligations under that regulation.

Second, the Court examines whether the Authority was right in imposing a financial sanction under Article 27(2)(a)(vi) of Regulation No 1141/2014 in the present case. In that regard, it observes that that authority imposed the financial sanction on the applicant under that provision, on the ground that it had maintained, on social media networks, posts mentioning the board member in question as being a current member of its board in the knowledge that they were inaccurate. The Court states, first, that that provision applies to situations where the European political party intentionally provides incorrect information to the Authority in the context of its obligations under that regulation. Second, it is apparent from its wording that that provision applies to situations where a European political party intentionally 'provides' incorrect information. However, the verb 'to maintain', which means, in the usual sense in everyday language, 'to keep', 'to preserve' or 'not to modify', does not have the same scope as the verb 'to provide', which refers, inter alia, to the idea of submitting, communicating or producing what is required.

In the light of those considerations, the Court holds that, by imposing a financial sanction on the applicant under Article 27(2)(a)(vi) of Regulation No 1141/2014, on the ground that it had maintained, on social media networks, posts mentioning the former board member in question as being a current member of its board in the knowledge that they were inaccurate, the Authority erred in law. Accordingly, it annuls the contested decision.

By contrast, the Court rejects the applicant's claims for compensation.

III. PROCEEDINGS OF THE EUROPEAN UNION: LEGAL REPRESENTATION BEFORE THE EU COURTS

Judgment of the Court of Justice (Grand Chamber) of 4 September 2025, Studio Legale Ughi e Nunziante v EUIPO, C-776/22 P

Link to the full text of the judgment

Appeal – Action for annulment – Article 19 of the Statute of the Court of Justice of the European Union – Representation of non-privileged parties in direct actions before the Courts of the European Union – Representation of a law firm by a partner of that firm – Lawyer having the status of third party in respect of the applicant – Presumption of independence – Rebuttal of the presumption – Conditions

Hearing an appeal, the Court of Justice, sitting as the Grand Chamber, sets aside the order of the General Court in *Studio Legale Ughi e Nunziante* v *EUIPO*. [32] In its judgment, the Court of Justice clarifies the extent to which a law firm may be represented before the Courts of the European Union by a partner of that law firm. In addition, it rules on the scope of the requirement of independence of the representatives of non-privileged parties and on the possibility for a party to put in order an application not satisfying that requirement.

On 26 September 2017, Studio Legale Ughi e Nunziante, a professional partnership of lawyers established under Italian law ('the law firm') filed with the European Union Intellectual Property Office (EUIPO) an application for revocation of the EU word mark UGHI E NUNZIANTE in respect of all the services for which that mark had been registered.

By decision of 23 February 2021, the Cancellation Division of EUIPO granted that application in respect of all the services, with the exception of 'legal services'. [33] On 1 March 2021, the law firm filed a notice of appeal against that decision with EUIPO, which was dismissed by a decision of 8 April 2022 of the Fifth Board of Appeal of EUIPO.

The law firm then brought an action before the General Court for annulment of that decision. By the order under appeal, the General Court dismissed that action as manifestly inadmissible. It found that the law firm was represented by three lawyers, who practised within that firm as partners, and that that status was not compatible with the requirements of independence necessary in order to represent that firm before the Courts of the European Union. More specifically, according to the General Court, those lawyers were not independent third parties in relation to the applicant. Furthermore, it held that that breach was not capable of being remedied. It is in that context that the law firm brought an appeal against that order before the Court of Justice.

Findings of the Court

In the first place, the Court recalls that the representation of non-privileged parties before the Courts of the European Union must satisfy two cumulative conditions. First, those parties must be represented by a lawyer and, second, only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement may represent or assist a party before the Courts of the European Union. [34]

As regards the condition relating to the authorisation of a lawyer to practise before the courts of a Member State, the Court notes that it has already held that the meaning and scope of that condition must be interpreted by reference to the national law concerned. [35] Given that, in the present case, the lawyers instructed by the law firm were authorised to practise before the Italian courts, the Court of Justice finds that the General Court erred in law in holding that the action at first instance had not been brought in accordance with that condition.

As regards the condition consisting of the obligation for non-privileged parties to be represented by a lawyer, the Court of Justice recalls that that condition requires compliance with two requirements. First, that condition imposes a prohibition on 'self-representation', that is to say, those parties may not under any circumstances represent themselves, with no derogation from, or exception to, that prohibition being provided for by the Statute of the Court or by the Rules of Procedure of the Court of Justice. Second, that condition requires the representatives of such non-privileged parties to comply with a requirement of independence, which is determined both negatively, namely by the absence of any employment relationship, characterised by the existence of a relationship of subordination, between a party and its representative, and positively, by reference to professional rules and codes of

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32 Order of 10 October 2022, *Studio Legale Ughi e Nunziante* v *EUIPO – Nunziante and Ughi (UGHI E NUNZIANTE)* (T-389/22, EU:T:2022:662) ('the order under appeal').

33 Those were services in Class 45 within the meaning 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.

34 Conditions referred to respectively in the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union ('the Statute of the Court').

35 See, to that effect, judgments of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA* (C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 56), and of 14 July 2022, *Universität Bremen* v *REA* (C-110/21 P, EU:C:2022:555, paragraph 40 and the case-law cited).

conduct. In that regard, any lawyer, irrespective of the form in which he or she practices his or her profession, authorised by the applicable laws, professional rules and codes of conduct, is presumed to satisfy the requirement of independence arising from the foregoing condition, unless there is a relationship of subordination between the party concerned and the lawyer who has been instructed to represent it.

Indeed, that requirement of independence necessarily presupposes the absence of any employment relationship, characterised by the existence of a relationship of subordination, between the party and the representative whom it has instructed. Consequently, the presumption of independence does not apply where there is such an employment relationship. That would be the case, in particular, if lawyers, who in accordance with the applicable national law practice their profession as employees of the law firm that employs them, were to represent that firm before the Courts of the European Union. The same would apply if in-house lawyers, who are members of the Bar of a Member State and entitled under the national law of that Member State to represent – before the national courts – the legal person to which they are bound by an employment relationship, had to represent that same person before the Courts of the European Union. Other than in cases where there is an employment relationship, that presumption of independence applies and may be rebutted only where it is apparent from specific evidence that there are connections between the party concerned and the representative that it has instructed, which have a manifestly detrimental effect on that representative's capacity to carry out his or her task by acting in his or her client's interests to the greatest possible extent, or that that representative does not comply with the national professional rules and codes of conduct applicable. [36]

According to the Court, where lawyers have the status of partners in the law firm that they represent before the Courts of the European Union, that circumstance cannot in itself be regarded as incompatible with the requirement of independence. First, such a circumstance cannot be equated with that in which there is an employment relationship. Second, in the absence of specific evidence establishing the existence of connections between the law firm and the partner whom it has appointed as its representative, which have a manifestly detrimental effect on that representative's capacity to carry out his or her task of representation by acting in the interests of the party concerned to the greatest possible extent, or that that partner does not comply with the national professional rules and codes of conduct applicable, the presumption of independence of the partner cannot be regarded as being rebutted.

Therefore, the Court of Justice holds that, in the present case, the General Court misconstrued the scope of the requirement of independence and erred in law.

In the second place, the Court of Justice recalls that any circumstance which relates to the admissibility of the action for annulment brought before the General Court, including that relating to the representation of a legal person by a lawyer for the purpose of bringing that action, is likely to constitute a matter of public policy which the Courts of the European Union are required to raise of their own motion. [37] The fact that such an action was not brought in accordance with the requirements laid down by the third paragraph of Article 19 of the Statute of the Court, as interpreted by the case-law of the Court of Justice, constitutes such a circumstance. However, the obligation on the Courts to raise of their own motion a matter of public policy is without prejudice to respect for the rights of the defence and, consequently, as a rule, the Courts must first invite the parties to submit their observations on that plea.

In the present case, the Court of Justice observes that the General Court confined itself to holding that the applicant was a law firm which had instructed three lawyers, who practised as partners within that firm, to represent it, and to drawing the conclusion therefrom – misconceived in law – that those lawyers could not represent that firm in conditions compatible with Article 19 of the Statute of the

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36 See, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA* (C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 64).

37 See, to that effect, judgment of 8 February 2024, *Pilatus Bank* v *ECB* (C-256/22 P, EU:C:2024:125, paragraphs 34 and 36 and the case-law cited).

Court, such incompatibility, moreover, not being capable, in the General Court's view, of being remedied after the expiry of the time limit for bringing proceedings.

According to the Court of Justice, the General Court ought to have ascertained, possibly by having recourse to the measures of organisation of procedure provided for in Article 64 of its Rules of Procedure, first of all, whether there was an employment relationship between those three lawyers and the law firm. In the absence of such an employment relationship, only specific evidence establishing either that the connections between the law firm and the partners representing it were such as to have a manifestly detrimental effect on the partners' capacity to carry out their task, or that those lawyers did not comply with the national professional rules and codes of conduct applicable, would have made it possible to conclude that there was a lack of independence for the purposes of the third paragraph of Article 19 of the Statute of the Court.

Next, the Court of Justice holds that the General Court ought, before ruling on that matter, to have invited the applicant to submit its observations, in order to ensure the effectiveness of its rights of defence. Lastly, if it considered that the requirement of independence was not satisfied, the General Court ought, before declaring the action inadmissible, to have invited the applicant to appoint a new lawyer. Indeed, in view of the seriousness of the consequences which follow from an infringement of Article 19 of the Statute of the Court for the applicant, namely the irremediable declaration of the inadmissibility of its action, it must, after being put in a position to know the evidence justifying, in the General Court's view, a decision of inadmissibility and to express its views on that evidence, be able to appoint a new lawyer.

In addition, the Court of Justice notes that it follows from the Rules of Procedure of the General Court [38] that a party must not be penalised by the inadmissibility of its action – without having first been invited to put the situation in order – on the ground that its application does not satisfy the required conditions. [39] It is also apparent from those rules of procedure [40] that the same is true in the case of conduct of a lawyer which is held to be incompatible with the dignity of the General Court or with the proper administration of justice during the proceedings. In such cases, the relevant provisions of those rules guarantee the continuity of the proceedings, by providing, as the case may be, that the party concerned may produce the required documents or appoint a new representative, within a reasonable period set by the Registry. Moreover, the Court of Justice notes that Article 21 of the Statute of the Court does not lay down an exhaustive list of the circumstances in which an application may be put in order and it further notes that it has already held, without this being precluded by that article, that it was appropriate to invite an appellant to put an appeal in order, where an appeal signed by that appellant himself had been submitted. [41]

Furthermore, the Court states that it is apparent from the current practice of the Member States that, where national law provides that the validity of a party's procedural acts is called into question by a failure to comply with the rules concerning the requirement that that party's representative be independent, that breach may, at the very least, be rectified in the course of the proceedings.

Accordingly, the Court of Justice sets aside the order under appeal and refers the case back to the General Court.

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38 Article 78(6) of the Rules of Procedure of the General Court, read in conjunction with Article 51(2) to (4) thereof.

39 The conditions are set out in Article 78(1) to (5) of the Rules of Procedure of the General Court.

40 Article 55(1) and (3) of the Rules of Procedure of the General Court.

41 See, to that effect, order of 5 December 1996, *Lopes* v *Court of Justice* (C-174/96 P, EU:C:1996:473, paragraph 3).

IV. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (First Chamber) of 4 September 2025, EDPS v SRB (Concept of personal data), C-413/23 P

Link to the full text of the judgment

Appeal – Protection of natural persons with regard to the processing of personal data – Procedure for granting compensation to shareholders and creditors of a banking institution following the resolution of that institution – Decision of the European Data Protection Supervisor finding that the Single Resolution Board failed to fulfil its obligations relating to the processing of personal data – Regulation (EU) 2018/1725 – Article 15(1)(d) – Obligation to inform the data subject – Transmission of pseudonymised data to a third party – Article 3(1) – Concept of 'personal data' – Article 3(6) – Concept of 'pseudonymisation'

Hearing an appeal brought by the European Data Protection Supervisor (EDPS), the Court of Justice set aside the judgment in *SRB* v *EDPS* [42] and referred the case back to the General Court. When doing so, it clarified the concept of 'personal data', in the context of pseudonymised data and, specifically, the information to be provided to the data subject where such data are transferred to a third party.

In the present case, by decision of 7 June 2017, the Single Resolution Board (SRB) placed Banco Popular Español SA ('Banco Popular') under resolution, which was approved on the same day by the European Commission. On 6 August 2018, the SRB published on its website its notice regarding its preliminary decision on whether compensation needs to be granted to the shareholders and creditors affected by the resolution of that institution. In order to be able to take a final decision on that point, it stated, in its preliminary decision, that it was necessary to organise a procedure enabling the persons concerned to exercise their right to be heard. Data from the shareholders and creditors participating in that procedure were collected, including data relating to their identity and proof that they owned capital instruments issued by Banco Popular. Once their status was verified by the SRB using the data collected, those individuals submitted comments on the preliminary decision. Some of those data, in the form of pseudonymised data, were transferred to Deloitte, an auditing and advisory company tasked by the SRB with carrying out a valuation of the effects of a resolution procedure on shareholders and creditors. [43]

In 2019, several affected shareholders and creditors submitted five complaints to the EDPS under Regulation 2018/1725, [44] on the ground that the SRB had not informed them that their data would be transmitted to third parties.

The EDPS acted on them by adopting an initial decision which, following a request for review by the SRB, was repealed and replaced by a revised decision. In that decision, he found that, in the present case, Deloitte was a recipient of the complainants' personal data. [45] In addition, he found that the SRB had failed to discharge its obligation to provide information as laid down in Regulation 2018/1725. [46] Specifically, he criticised the SRB for failing to mention in the privacy statement relating to the

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42 Judgment of the General Court of 26 April 2023, *SRB* v *EDPS* (T-557/20, EU:T:2023:219; 'the judgment under appeal').

43 A valuation provided for in Article 20(16), (17) to (18) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

44 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

45 Within the meaning of Article 3(13) of Regulation 2018/1725.

46 Article 15(1)(d) of Regulation 2018/1725.

processing of personal data that was to occur during the right to be heard procedure that Deloitte was a potential recipient of the personal data collected and processed by the SRB.

The SRB then brought an action before the General Court seeking, inter alia, annulment of the revised decision of the EDPS. The General Court upheld that action in part and annulled that decision.

Findings of the Court

In its judgment, the Court of Justice rules on the conditions in which the data may be classified as personal data, which had been examined in the judgment under appeal.

In the first place, it finds that the General Court erred in law in holding that the EDPS, in order to conclude that the information contained in the comments transmitted to Deloitte 'related', within the meaning of Article 3(1) of Regulation 2018/1725, to the persons who submitted those comments, should have examined the content, purpose or effects of those comments, since it was common ground that they expressed the personal opinion or view of their authors.

In that regard, the Court of Justice notes that information relates to an identified or identifiable natural person where, by reason of its content, purpose or effect, it is linked to an identifiable person. [47] Therefore, an examination of the content of information need not necessarily be supplemented by an analysis of the purpose and effects of that information, as indicated by the use of the conjunction 'or' linking the various criteria referred to in that case-law.

The Court of Justice makes clear that the interpretation favoured by the General Court – namely that the EDPS could not classify the information contained in the comments transmitted to Deloitte as personal data solely on the basis of the finding that they were personal opinions or views, but that he should also have examined the content, purpose and effect of the opinions expressed therein, in order to determine whether they were linked to a particular person – misconstrues the particular nature of personal opinions or views which, as an expression of a person's thinking, are necessarily closely linked to that person. [48]

In the second place, the Court rules on the condition laid down in Article 3(1) of Regulation 2018/1725, relating to the 'identifiable' nature of the natural person concerned and, specifically, on the EDPS's line of argument that pseudonymised data must be regarded as constituting, in all cases and for every person, personal data.

The Court of Justice finds that, contrary to what the EDPS maintains, the General Court was correct in so far as it held that pseudonymised data must not be regarded as constituting, in all cases and for every person, personal data for the purposes of the application of Regulation 2018/1725, in so far as pseudonymisation may, depending on the circumstances of the case, effectively prevent persons other than the controller from identifying the data subject in such a way that, for them, the data subject is not or is no longer identifiable.

First of all, the Court notes that, under Regulation 2018/1725, [49] pseudonymisation is not part of the definition of 'personal data', but refers to the establishment of technical and organisational measures to reduce the risk of a data set being correlated with the identity of data subjects.

It goes on to clarify that the concept of 'pseudonymisation' presupposes the existence of information enabling the data subject to be identified. The very existence of such information precludes data that have undergone pseudonymisation from being regarded, in all cases, as anonymous data, which is excluded from the scope of Regulation 2018/1725.

Lastly, it makes clear that the objective of pseudonymisation is, among other things, to prevent the data subject from being identified solely by means of pseudonymised data. [50] Accordingly, provided

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47 Judgments of 20 December 2017, *Nowak* (C-434/16, EU:C:2017:994, paragraph 35); of 7 March 2024, *OC* v *Commission* (C-479/22 P, EU:C:2024:215, paragraph 45); and of 7 March 2024, *IAB Europe* (C-604/22, EU:C:2024:214, paragraph 37 and the case-law cited).

48 Interpretation borne out by the case-law resulting from the judgment of 20 December 2017, *Nowak* (C-434/16, EU:C:2017:994).

49 Article 3(1) and (6) of Regulation 2018/1725.

50 Article 3(6) of Regulation 2018/1725 requires identifying information to be kept separately as well as technical and organisational measures 'to ensure that personal data are not attributed to an identified or identifiable natural person'.

that the technical and organisational measures required for pseudonymisation within the meaning of Regulation 2018/1725 are actually put in place and are such as to prevent the data in question from being attributed to the data subject, in such a way that the data subject is not or is no longer identifiable, pseudonymisation may have an impact on whether or not those data are personal. In that regard, it states that, as is usually the case for controllers who have pseudonymised data, the SRB does, in the present case, have additional information enabling the comments transmitted to Deloitte to be attributed to the data subject. For the SRB, those comments therefore retain their personal nature, despite pseudonymisation. On the other hand, as regards Deloitte, the Court held that those technical and organisational measures may have the effect that, for that company, those comments are not personal in nature. However, that presupposes, first, that Deloitte is not in a position to lift those measures during any processing of the comments which is carried out under its control and, second, that those measures are in fact such as to prevent Deloitte from attributing those comments to the data subject including by recourse to other means of identification such as cross-checking with other factors.

According to the Court, it follows both from recital 16 of Regulation 2018/1725 and from its case-law that the existence of additional information enabling the data subject to be identified does not, in itself, mean that pseudonymised data must be regarded as constituting, in all cases and for every person, personal data for the purposes of the application of Regulation 2018/1725. In that regard, the Court notes that, as regards a press release which contained a certain number of statements relating to a person without naming him or her, the Court did not confine itself to finding that the EU body which published that press release had all the information enabling that person to be identified, but examined whether the statements contained in that press release reasonably enabled the public concerned to identify that person, in particular by combining those statements with information available on the internet. [51] In addition, it has previously held that a means of identifying the data subject is not reasonably likely to be used where the risk of identification appears in reality to be insignificant, in that the identification of that data subject is prohibited by law or impossible in practice, for example because it would involve a disproportionate effort in terms of time, cost and labour. [52] In the same vein, it has held that data that are inherently impersonal and have been collected and retained by the controller were nevertheless connected to an identifiable person, since the controller had legal means of obtaining additional information from another person making it possible to identify the data subject. [53] According to the Court, in such circumstances, the fact that the information enabling the data subject to be identified was in the hands of other people did not actually prevent that subject from being identified in such a way that the subject was not identifiable for the controller.

In particular, the Court notes that data which are in themselves impersonal may become 'personal' in nature where the controller puts them at the disposal of other persons who have means reasonably likely to enable the data subject to be identified. [54] Where those data are put at their disposal, those data are personal data both for those persons and, indirectly, for the controller.

In the third place, the Court of Justice finds that the General Court erred in law in holding that, in order to assess whether the SRB had complied with its obligation to provide information, the EDPS should have examined whether the comments transmitted to Deloitte constituted, from Deloitte's point of view, personal data.

As a preliminary point, the Court points out that although Regulation 2018/1725 does not expressly specify the relevant perspective for assessing the identifiable nature of the data subject, it is clear

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51 Judgment of 7 March 2024, *OC* v *Commission* (C-479/22 P, EU:C:2024:215, paragraphs 52 to 64).

52 Judgment of 7 March 2024, *OC* v *Commission* (C-479/22 P, EU:C:2024:215, paragraph 51 and the case-law cited).

53 Judgments of 19 October 2016, *Breyer* (C-582/14, EU:C:2016:779, paragraphs 44, 47 and 48), and of 7 March 2024, *IAB Europe* (C-604/22, EU:C:2024:214, paragraphs 43 and 48).

54 Judgment of 9 November 2023, *Gesamtverband Autoteile-Handel (Access to vehicle information)* (C-319/22, EU:C:2023:837, paragraphs 46 and 49).

from case-law [55] that the relevant perspective for assessing whether the data subject is identifiable depends, in essence, on the circumstances of the processing of the data in each individual case.

As regards, in the present case, the obligation to provide information relating to the possible recipients of personal data, referred to in Article 15(1)(d) of Regulation 2018/1725, the Court states that that is information to be provided, among others, 'at the time when personal data are obtained', namely at the time when the data are collected from the data subject. While emphasising the importance of compliance with that obligation to provide information, the Court notes that, where the collection of such data is, as in the present case, based on the data subject's consent, the validity of that consent depends, inter alia, on whether that data subject has previously obtained the information in the light of all the circumstances surrounding the processing of the data in question to which he or she was entitled, under Article 15 of Regulation 2018/1725, and which allow him or her to give consent in full knowledge of the facts. One of the purposes of the obligation to provide the data subject, at the time of collection of the personal data linked to him or her, with information relating to the potential recipients of those data is to enable that data subject to decide, in full knowledge of the facts, whether to provide or, on the contrary, refuse to provide the personal data being collected from him or her.

The Court adds that, in addition to being essential for the data subject to be able to defend his or her rights against those recipients subsequently, the obligation to provide that information at the time of the collection of personal data ensures, inter alia, that those data are not collected by the controller against the will of the data subject, or even transferred to third parties against his or her will.

Accordingly, the obligation to provide information is part of the legal relationship between the data subject and the controller and, therefore, it concerns the information in relation to that data subject as it was transmitted to that controller, thus before any potential transfer to a third party.

Accordingly, the Court holds that, for the purposes of applying the obligation to provide information laid down by Regulation 2018/1725, the identifiable nature of the data subject must be assessed at the time of collection of the data and from the point of view of the controller. Thus, the SRB's obligation to provide information was applicable prior to the transfer of the data at issue and irrespective of whether or not those data were personal data, from Deloitte's point of view, after any potential pseudonymisation.

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, Quirin Privatbank, C-655/23

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Rights of the data subject – Article 17 – Right to erasure of data – Article 18 – Right to restriction of processing – Article 79 – Right to an effective judicial remedy – Unlawful processing of personal data – Action seeking an order requiring the controller to refrain from any further unlawful processing in the future – Basis – Conditions – Article 82(1) – Right to compensation – Concept of 'non-material damage' – Assessment of the compensation – Possible consideration of the degree of fault on the part of the controller – Possible impact of the grant of a 'prohibitory injunction'

Ruling on a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court of Justice clarifies the scope of the rights conferred by various provisions of the GDPR [56] on the data subject where his or her personal data have been unlawfully processed.

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55 See the case-law referred to in footnotes 10 to 12 to the present résumé.

56 Articles 17, 18, 79 and 82 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').

IP applied, through an online professional social networking platform, for a position with Quirin Privatbank, a company incorporated under German law. Subsequently, an employee of that company used that network's electronic messaging service to send to a third party, who was not involved in the recruitment process, a message intended solely for IP, in which she informed the latter that his salary expectations could not be met and offered him a different level of remuneration. Having previously worked with IP, that third party forwarded that message to him and asked him whether he was seeking employment.

IP brought an action before the Landgericht Darmstadt (Regional Court, Darmstadt, Germany) seeking an order that Quirin Privatbank, first, refrain from any processing of personal data in connection with his application that could reiterate the unauthorised disclosure of those data and, second, pay him damages as compensation for the non-material damage suffered. The court of first instance upheld those claims.

Following the appeal brought by Quirin Privatbank before the Oberlandesgericht Frankfurt (Higher Regional Court, Frankfurt, Germany), that judgment was varied in part in that the claim for damages was dismissed. In the opinion of that court, evidence of specific harm had not been provided by IP and, even if he had experienced humiliation, it could not be classified as non-material damage.

IP and Quirin Privatbank each brought an appeal against that judgment before the Bundesgerichtshof (Federal Court of Justice), which is the referring court.

Harbouring doubts as to the interpretation of a number of provisions of the GDPR, the Federal Court of Justice referred questions to the Court of Justice on the scope of the remedies, the scope of the right to compensation for damage suffered and the criteria for assessing the non-material damage for which compensation may be claimed.

Findings of the Court

First, the Court is called upon to rule on the question whether the provisions of the GDPR provide, for the data subject concerned by the unlawful processing of personal data who has not requested that his or her data be erased, a judicial remedy enabling him or her to obtain, as a preventive measure, a prohibitory injunction requiring the controller to refrain from any further unlawful processing in the future, and, if not, whether those provisions prevent Member States from providing for such a remedy in their respective legal systems.

The Court notes, in that regard, that the GDPR contains no provisions which provide, explicitly or implicitly, that data subjects enjoy a right to obtain, as a preventive measure and by means of judicial proceedings, an order that the controller of personal data refrain, in future, from committing an infringement of the provisions of that regulation, specifically in the form of a reiteration of unlawful processing.

Furthermore, the Court notes that none of the provisions of that regulation relating to remedies [57] oblige Member States to establish a preventive remedy. In particular, Article 79(1) of the GDPR, which lays down the right to an effective judicial remedy against a controller, does not require Member States to provide for a specific remedy whereby a prohibitory injunction may be obtained, as a preventive measure, by means of a legal action.

That said, having regard, inter alia, to the recognition, by the GDPR, of the right of each data subject to an effective judicial remedy where he or she considers that his or her rights under that regulation have been infringed as a result of the processing of his or her personal data in non-compliance with that regulation, 'without prejudice' to any other administrative or non-judicial remedy, the Court finds that Member States are not prevented from providing for such a preventive remedy with a view to the controller being ordered to refrain from any further infringement of the rights conferred on the data subject by that regulation.

The Court notes, on that point, that several provisions of the GDPR expressly make it possible for Member States to lay down additional, stricter or derogating national rules which leave them a margin of discretion as to the manner in which those provisions may be implemented ('opening clauses'). In

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57 Chapter VIII of the GDPR, headed 'Remedies, liability and penalties', comprises, inter alia, Articles 77 to 79 thereof.

that context, it states that, while the provisions of the GDPR relating to remedies do not specifically include such an opening clause, the EU legislature did not intend to bring about an exhaustive harmonisation of the remedies available in the event of an infringement of that regulation and, in particular, did not rule out the availability of such preventive remedies.

The Court adds that that interpretation is confirmed by the objectives pursued by the GDPR. Indeed, the possibility for the data subject to bring a legal action seeking an order requiring a controller to refrain, in future, from infringing the substantive provisions of the GDPR is such as to enhance the effectiveness of those provisions and thus the high level of protection of data subjects with regard to the processing of their personal data.

The Court concludes that the GDPR does not preclude a legal remedy in the form of an injunction aimed at preventing a possible infringement of the substantive provisions of that regulation, in particular through a potential reiteration of unlawful processing, from being available on the basis of provisions of the law of a Member State which are applicable before the national court seised.

Second, the Court clarifies the concept of 'non-material damage' which, under the GDPR, [58] entitles the data subject to obtain compensation from the controller for the damage suffered.

In that context, it recalls that Article 82(1) GDPR, relating to the right to compensation, precludes a national rule or practice which makes compensation for 'non-material damage' subject to the condition that the damage suffered by the data subject has reached a certain degree of seriousness. That provision does not require that the non-material damage alleged by the data subject must reach a '*de minimis* threshold' in order that such damage may be redressed. [59]

In addition, the Court observes that situations, such as those relied on in the dispute in the main proceedings, relating to 'damage to reputation' resulting from a personal data breach or a 'loss of control' over such data are expressly included among the examples of possible damage listed in the GDPR. [60]

It also recalls that the fear experienced by a data subject that his or her personal data will be misused in the future as a result of an infringement of the GDPR, is capable, in itself, of constituting 'non-material damage', provided that that fear, with its negative consequences, is duly proven, which is a matter for the national court hearing the case to determine. [61]

Therefore, the Court acknowledges that, while they may also form part of the general risk inherent in everyday life, the feelings mentioned by the referring court, in particular fear or annoyance, are capable of constituting 'non-material damage', within the meaning of the GDPR, provided that the data subject demonstrates that he or she is experiencing such feelings, with their negative consequences, precisely because of the infringement of that regulation at issue, such as the unauthorised transmission of his or her personal data to a third party giving rise to the risk of misuse of those data, which is a matter for the national courts seised to determine.

The Court points out that that interpretation is consistent with the wording of Article 82(1) of the GDPR, read in the light of recitals 85 and 146 of that regulation, which encourage the acceptance of a broad interpretation of the concept of 'non-material damage', and is supported by the objective of that regulation of ensuring a high level of protection of natural persons with regard to the processing of personal data.

Third, the Court finds that Article 82(1) of the GDPR, relating to the right to compensation, precludes the degree of seriousness of the fault on the part of the controller from being taken into account for the purpose of assessing the compensation for non-material damage payable under that article.

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58 Article 82(1) of the GDPR.

59 See, to that effect, judgments of 4 May 2023, *Österreichische Post (Non-material damage in connection with the processing of personal data)* (C-300/21, EU:C:2023:370, paragraph 51), and of 4 October 2024, *Agentsia po vpisvaniyata* (C-200/23, EU:C:2024:827, paragraphs 147 and 149).

60 See recitals 75 and 85 of the GDPR.

61 See, to that effect, judgments of 20 June 2024, *PS (Incorrect address)* (C-590/22, EU:C:2024:536, paragraph 32, 35 and 36), and of 4 October 2024, *Agentsia po vpisvaniyata* (C-200/23, EU:C:2024:827, paragraphs 143, 144 and 155 and the case-law cited).

In that regard, it recalls that, in view of the exclusively compensatory function of the right to compensation, national courts are required to ensure 'full and effective' compensation for the damage suffered, without there being any need, for the purposes of such compensation in full, to require the payment of punitive damages. [62]

It specifies that the exclusively compensatory function of the right to compensation under the GDPR precludes the severity and possible intentional nature of the infringement of that regulation by the controller being taken into account for the purpose of compensating damage under that provision. Therefore, the attitude and motivation of the controller cannot be taken into consideraiton in order, where relevant, to award compensation to the data subject that is lower than the damage he or she has actually suffered, whether as regards the amount or the form of that compensation.

Fourth and lastly, the Court finds that Article 82(1) of the GDPR precludes the fact that the data subject has obtained, under the applicable national law, an injunction to prohibit the reiteration of an infringement of that regulation, enforceable against the controller, from being taken into account in order to reduce the extent of the financial compensation for non-material damage payable under that article or, a fortiori, to replace that compensation.

The Court recalls having previously accepted that, within the limits stemming from the principle of effectiveness, certain circumstances may influence the assessment of compensation payable under Article 82 of the GDPR, especially in order to restrict that compensation. A form of compensation provided for by the applicable national law may be regarded as compatible with the GDPR only in so far as that form of compensation is capable of ensuring that compensation for the damage suffered by the data subject is full and effective. In particular, compensation payable under Article 82 of the GDPR cannot be awarded, in part or in full, in the form of a prohibitory injunction, since the right to compensation for damage fulfils an exclusively compensatory function, whereas the purpose of a prohibitory injunction imposed on the person responsible for the damage is purely preventive.

Judgment of the General Court (Tenth Chamber, Extended Composition) of 3 September 2025, Latombe v Commission, T-553/23

Link to the full text of the judgment

Transfer of personal data to the United States – Commission Implementing Decision on the adequate level of protection of personal data ensured by the United States – Right to an effective remedy – Right to private and family life – Decisions based solely on automated processing of personal data – Security of the processing of personal data

In its judgment, the General Court, sitting in extended composition, dismisses the action for annulment brought by a French citizen and directed against the European Commission's adequacy decision which put in place the new transatlantic framework for personal data flows between the European Union and the United States. [63] In doing so, while following the case-law of the Court of Justice in this area, [64] the General Court provides clarification as regards the assessment of the impartiality and independence of the Data Protection Review Court (United States 'the DPRC'), [65] and

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62 See, to that effect, judgments of 4 May 2023, Österreichische Post (Non-material damage in connection with the processing of personal data) (C-300/21, EU:C:2023:370, paragraphs 57 and 58), and of 4 October 2024, Patērētāju tiesību aizsardzības centrs (C-507/23, EU:C:2024:854, paragraph 34).

63 Commission Implementing Decision EU 2023/1795 of 10 July 2023, pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework (OJ 2023 L 231, p. 118; 'the contested decision').

64 Judgments of 6 October 2015, *Schrems* (C-362/14, 'the judgment in *Schrems I*', EU:C:2015:650), and of 16 July 2020, *Facebook Ireland and Schrems* (C-311/18, 'the judgment in *Schrems II*', EU:C:2020:559).

65 That is the body responsible, in the United States, for review of the lawfulness of the transfer of personal data from the European Union.

the examination of the lawfulness of the bulk collection, by United States intelligence agencies, of personal data in transit from the European Union.

In the judgments in *Schrems I* and in *Schrems II,* the Court of Justice invalidated the previous two adequacy decisions, on the ground that the 'Safe Harbour' and 'Privacy Shield' systems governing the transfer of personal data from the European Union to the United States did not guarantee a level of protection of fundamental rights and freedoms essentially equivalent to that guaranteed by EU law. Subsequently, the Commission commenced negotiations with the United States Government with a view to a possible new adequacy decision that would meet the requirements of the General Data Protection Regulation, [66] as interpreted by the Court of Justice.

On 7 October 2022, the United States of America adopted Executive Order 14086 ('E.O. 14086'), which strengthens the privacy safeguards governing the signals intelligence activities carried out by intelligence agencies established in the United States. That order was supplemented by Attorney General Title 28 CFR Part 201 ('the AG Title') which amended the provisions governing the establishment and functioning of the DPRC.

On 10 July 2023, after an examination of those regulatory developments, the Commission adopted the contested decision. The present action for annulment was brought before the General Court, which is called upon to examine the lawfulness of that decision, in particular with regard to the GDPR and the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

The Court begins by ruling on whether or not the Commission infringed the second paragraph of Article 47 of the Charter and Article 45(2) of the GDPR in so far as, in the contested decision, it found that the DPRC offered an 'adequate level of protection' regarding the right of access of EU citizens to an independent and impartial tribunal previously established by law.

In that context, it rejects, in the first place, the plea alleging that the DPRC is not an independent and impartial tribunal, but a body dependent on the executive.

To do so, it rejects, first, the argument that the DPRC is not an independent and impartial tribunal since its mission is to review the decisions of the Civil Liberties Protection Officer of the Director of National Intelligence ('the CLPO'), attached to the United States Office of the Director of National Intelligence.

In that regard, it notes that the examination of safeguards relating to the independence of the CLPO is irrelevant to the assessment of whether the DPRC constitutes an independent and impartial tribunal. The DPRC was established as an independent review body of the CLPO and several safeguards were provided for in E.O. 14086 such that CLPO decisions can be reviewed and, where appropriate, altered in an independent and impartial manner by the DPRC.

The applicant is therefore not justified in maintaining that the inadequacy of the safeguards applicable to the CLPO affects the independence and impartiality of the DPRC.

Secondly, the Court rejects the argument that the DPRC is not an independent and impartial tribunal since it is composed of judges appointed by the Attorney General after consultation with the Privacy and Civil Liberties Oversight Board ('the PCLOB'), which is a body dependent on the executive.

First of all, it states that, even though the PCLOB had been established within the executive, it is, with regard to its composition, an independent agency whose mission is to oversee in an impartial manner the work carried out by the executive with a view to protecting, inter alia, private life and civil liberties.

Accordingly, the fact that the PCLOB was established within the executive does not in itself support the conclusion that, because it is consulted prior to the appointment of judges to the DPRC, the DPRC is not an independent and impartial tribunal.

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66 Article 45(2) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, corrigendum OJ 2018 L 127, p. 2; 'the GDPR').

The Court then clarifies that, to ensure that the DPRC judges are independent from the executive, E.O. 14086 provides that, during their appointment, the Attorney General must respect a number of criteria and conditions.

Moreover, DPRC judges may be dismissed only by the Attorney General and only on a valid ground, after taking due account of the standards applicable to federal judges laid down in the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The Court concludes from this that the rules for the appointment and dismissal of DPRC judges cannot call into question its independence and its impartiality.

Lastly, the Court notes that the Commission is obligated to monitor continuously the application of the legal framework on which the contested decision is based, in order to determine whether the United States of America continues to ensure an adequate level of protection. Thus, if the legal framework in force in the United States at the time of the adoption of the contested decision changes, the Commission may decide, if necessary, to suspend, amend, or repeal the contested decision or to limit its scope.

Thirdly, the Court rejects the argument that the DPRC is not an independent and impartial tribunal since the AG Title does not rule out the possibility that its judges may be subject to forms of oversight other than daily oversight by the executive.

The Court notes in that regard that, while it is clear from the file that the DPRC judges must not be subject to daily oversight from the Attorney General, the contested decision also indicates that, according to E.O. 14086, the intelligence agencies and the Attorney General must not impede or improperly influence the work of the DPRC. Moreover, it is apparent from the file that E.O. 14086 and the AG Title limit the possibility for the executive to influence the work of the DPRC by providing that its judges can be removed only by the Attorney General and only on a valid ground.

In the second place, the Court rejects the plea alleging that the DPRC was not previously established by law, since it was not created by a law adopted by the United States Congress, but rather by an act of the executive, namely a decision of the Attorney General.

The Court notes, first of all, that, in order to assess whether the requirements under the second paragraph of Article 47 of the Charter are satisfied, it is necessary not only to assess the formal nature of the legal text establishing a tribunal and defining its operating rules, but also to ascertain whether that legal text provides for sufficient safeguards to ensure its independence and its impartiality as regards other powers, including the executive.

The Court then notes that, as was held by the Court of Justice in the judgments in *Schrems I* and in *Schrems II*, in the context of an adequacy decision, the Commission is not obligated to ensure that the relevant provisions of the third country are identical to those in force in the European Union; rather it must ensure that they are essentially equivalent to those guaranteed by EU law pursuant to the GDPR, read in the light of the Charter. It follows that, in the present case, the Court is obligated to verify the validity of the finding of adequacy made by the Commission in the contested decision, according to which the provisions of United States law concerning the establishment and functioning of the DPRC offer safeguards essentially equivalent to those provided for by EU law in the second paragraph of Article 47 of the Charter. Such safeguards are offered, in particular, where the legal text establishing that tribunal and defining its operating rules is aimed at ensuring its independence and impartiality as regards other powers, including the executive, despite the fact that that text does not constitute, from a formal point of view, a law.

In the present case, it appears from the contested decision that the DPRC was not formed by a law adopted by the legislature, namely the United States Congress, but by an act emanating from the executive.

In that context, the Court verifies whether E.O. 14086 and the AG Title provide for safeguards aimed at ensuring the independence and impartiality of the DPRC, in a manner essentially equivalent to EU law.

After having examined, inter alia, the rules for the establishment of the DPRC as an independent body with decision-making authority, the rules for appointing and dismissing its judges, and the procedural

safeguards surrounding the accomplishment of its mission, the Court finds that the deficiencies identified by the Court of Justice in the judgment in *Schrems II* have been remedied.

In the light of all the foregoing considerations, the General Court rejects the plea alleging infringement of the second paragraph of Article 47 of the Charter and of Article 45(2) of the GDPR in its entirety.

Next, the Court rules on whether the Commission infringed Articles 7 and 8 of the Charter, on, respectively, the respect for private life and the protection of personal data, in so far as the Commission considered that the United States of America ensured an adequate level of protection as regards the bulk collection of personal data by the intelligence agencies of that country, despite the fact that E.O. 14086 did not establish an obligation for those intelligence agencies to obtain, ahead of the bulk collection of personal data, prior authorisation from a judicial or administrative authority.

In that context, the Court rejects, in the first place, the argument that the bulk collection of personal data carried out by United States intelligence agencies is not subject to judicial oversight and is not circumscribed by sufficiently clear and precise rules.

First of all, the Court emphasises that no element of the judgment in *Schrems II* suggests that the bulk collection of personal data must necessarily be subject to prior authorisation issued by an independent authority. On the contrary, it is apparent from that judgment that the decision authorising such a collection must, at a minimum, be subject to *ex post* judicial review.

In the present case, E.O. 14086 and the AG Title make the signals intelligence activities carried out by United States intelligence agencies subject to *ex post* judicial oversight by the DPRC. Consequently, it cannot be considered that the bulk collection of personal data carried out by intelligence agencies on the basis of the contested decision failed to satisfy the requirements stemming from the *Schrems II* judgment in that regard.

The Court then observes that E.O. 14086 establishes that bulk collection is to be authorised only in order to advance a specific validated intelligence priority that could not reasonably be achieved by a targeted collection, sets basic requirements for all signals intelligence activities and establishes specific safeguards for the bulk collection of personal data.

In those circumstances, the Court considers that it cannot validly be argued that the implementation of bulk collection is not circumscribed in a sufficiently clear and precise manner.

In the second place, the Court rejects the argument that the bulk collection by United States intelligence agencies of personal data in transit from the European Union must be subject to prior authorisation, in accordance with the judgment in *La Quadrature du Net and Others*. [67]

The Court states, in that regard, that the situation at issue in the case giving rise to the judgment in *La Quadrature du Net and Others* differs from that at issue in the present case and thus concludes that the reference to that judgment is irrelevant.

In the third place, the Court rejects the argument that the bulk collection by United States intelligence agencies of personal data in transit from the European Union must be subject to prior authorisation, in accordance with the judgment of the European Court of Human Rights in *Big Brother Watch*. [68]

The General Court – after finding that an operation consisting in the bulk collection of personal data, such as that forming the subject of the contested decision, enters the scope of the first of the interception stages identified by the European Court of Human Rights in the judgment in *Big Brother Watch*, inasmuch as it consists of collecting, for the purposes of the protection of national security, the personal data in transit from the European Union of a large number of persons – draws the necessary conclusions from that judgment in the context of the assessment of the lawfulness of the contested decision.

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67 Judgment of 6 October 2020, *La Quadrature du Net and Others* (C-511/18, C-512/18 and C-520/18, 'the judgment in *La Quadrature du Net and Others*', EU:C:2020:791).

68 ECtHR, 25 May 2021, *Big Brother Watch and Others v. the United Kingdom* (CE:ECHR:2021:0525JUD005817013; 'the judgment in *Big Brother Watch*').

Thus, the General Court notes that the European Court of Human Rights indicated, in the judgment in *Big Brother Watch*, that the mass interception of personal data had to be circumscribed by several safeguards, such as the obtaining of authorisation from an independent authority when the object and scope of the surveillance operation at issue are being defined, the implementation of a supervision system and independent *ex post* judicial review and the provision of legal rules that ensure, for each stage of the interception, the necessity and proportionality of the measures taken.

Moreover, the European Court of Human Rights held that the need to provide for safeguards increased as the process passed those different stages and, consequently, as the degree of interference with the right to private life grew more significant.

In that context, the General Court notes that the Commission is not required, in the context of an adequacy decision, to ensure that the relevant provisions of the third country are identical to those in force in the European Union; rather, it must ensure that they are essentially equivalent.

Thus, the Court considers, in the present case, that the need to provide, for that specific stage of the bulk collection, safeguards limiting the discretionary authority of intelligence agencies is more limited, considering the context in which the interception is carried out. The present case concerns only the initial bulk interception of personal data by intelligence agencies, and not subsequent activities.

Furthermore, the Court recalls that providing for prior authorisation is not the only safeguard that must circumscribe the mass interception of personal data; rather, it constitutes one of the elements that, taken together, constitute the cornerstone of every mass interception regime. In that regard, the United States law in force provides for legal rules circumscribing in a sufficiently clear and precise manner the implementation of the bulk collection of personal data by United States intelligence agencies and grants the persons affected by the transfer of their data the right to an effective judicial remedy before the DPRC. In addition, and which the applicant does not dispute, recitals 162 to 169 of the contested decision indicate that the intelligence activities carried out by intelligence agencies are reviewed by the PCLOB, which was designed by its founding statute as an independent agency. Likewise, those activities are subject to oversight (i) by the legal officials and delegates who, within every intelligence agency, are tasked with monitoring and ensuring compliance with that law; (ii) by the independent Inspector General tasked, for every intelligence agency, with reviewing foreign intelligence activities carried out by the agency at issue; (iii) by the Intelligence Oversight Board (United States), created within the President's Intelligence Advisory Board (United States) and required to oversee compliance with the law by the United States authorities and (iv) by special committees established within the United States Congress that exercise oversight functions in relation to all foreign intelligence activities of that country.

In the light of those considerations, the Court rules that the fact that United States law does not provide for prior authorisation for the initial bulk collection by United States intelligence agencies of personal data in transit from the European Union is not sufficient to find that it does not provide safeguards essentially equivalent to those provided for by EU law.

In the fourth and last place, the Court rejects the argument that the bulk collection by United States intelligence agencies of personal data in transit from the European Union must be subject to prior authorisation in accordance with Opinion 5/2023 of the European Data Protection Board (EDPB). [69]

The Court notes, in that regard, that Opinion 5/2023 was given on the basis of Article 70(1)(s) of the GDPR. When acting on that basis, the EDPB is limited to exercising an advisory function. That Opinion is therefore not binding on the Commission.

In any event, the Court finds that, in that Opinion, the EDPB did not indicate that the failure to put in place a prior review relating to the bulk collection of personal data necessarily undermines the Commission's positive evaluation of the adequate level of protection of personal data offered by the EU-US Data Privacy Framework.

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69 Opinion 5/2023 on the European Commission Draft Implementing Decision on the adequate protection of personal data under the EU-US Data Privacy Framework of 28 February 2023 ('Opinion 5/2023').

Accordingly, the Court rejects the plea alleging infringement of Articles 7 and 8 of the Charter and dismisses the present action in its entirety.

V. FREEDOM OF MOVEMENT

1. FREE MOVEMENTS OF GOODS

Judgment of the Court of Justice (Fifth Chamber) of 1 August 2025, Caves Andorranes, C-206/24

Link to the full text of the judgment

Reference for a preliminary ruling – Customs union – Repayment or remission of import or export duties – Regulation (EEC) No 1430/79 – Customs duties collected in infringement of EU law – Third subparagraph of Article 2(2) – Conditions for repayment on their own initiative – Finding that those duties were wrongly collected before the expiry of a period of three years from the date on which they were entered in the accounts – Finding that the national customs authorities are aware of the identity of the operators concerned and of the amount to be repaid to each of them – Obligation on those authorities to take the necessary and appropriate measures to obtain the information necessary to make such repayment

Ruling on a request for a preliminary ruling from the Cour de cassation (Court of Cassation, France), the Court of Justice clarifies the scope of the obligation imposed on a national customs authority to repay on its own initiative customs duties wrongly collected, and the conditions relating thereto, in the light of the third subparagraph of Article 2(2) of Regulation No 1430/79. [70]

Between the years 1988 and 1991, companies incorporated under Andorran law imported into Andorra, through the company Ysal, a customs agent established in France, goods originating, in particular, from third countries. Those imports resulted in the payment of customs duties in France. At that time, the French customs authorities required that goods originating from third countries and destined for Andorra be released for free circulation when they crossed French territory.

In January 1991, the European Commission found, by reasoned opinion, [71] that, by imposing such a requirement that goods be released for free circulation, the French Republic had failed to fulfil its obligations under certain provisions of EU law. It therefore called upon the French Republic to take the necessary measures to correct the situation.

By a ministerial opinion, [72] the French authorities then put an end to that practice as regards all goods from third countries destined for Andorra.

In 2015, those Andorran importers, from whose rights Caves Andorranes and YX are derived, brought legal proceedings against the French customs authorities seeking the payment of a sum corresponding to the customs duties which the French customs authorities had wrongly collected in respect of imports of goods from third countries into Andorra between 1988 and 1991. As that application was dismissed at first instance and on appeal, Caves Andorranes and YX brought an appeal before the Cour de cassation (Court of Cassation), which is the referring court.

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70 Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (OJ 1979 L 175, p. 1), as amended by Council Regulation (EEC) No 3069/86 of 7 October 1986 (OJ 1986 L 286, p. 1) ('Regulation No 1430/79').

71 Reasoned opinion COM(90) 2042 final.

72 Notice to importers and exporters from the ministère de l'Économie, des Finances et du Budget (Ministry of the Economy, Finance and Budget (France)), published in the *Journal officiel de la République française* (Official Journal of the French Republic) on 6 June 1991.

That court has referred two questions to the Court for a preliminary ruling seeking, in essence, to ascertain whether the third subparagraph of Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject, first, to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected and, second, to the knowledge, by that authority, of the identity of the operators concerned and of the amount to be repaid to each of them. In that context, the referring court raises the question of the measures which that authority must, where appropriate, take in order to obtain such information.

Findings of the Court

The Court finds, first of all, that the third subparagraph of Article 2(2) of Regulation No 1430/79, in so far as it provides in categorical terms that the national customs authorities are to 'repay … on their own initiative', establishes an obligation of repayment on the part of those authorities without the importer concerned having to request it. That obligation to repay customs duties on its own initiative is subject to the fact that the national customs authority concerned has itself established, before the expiry of a period of three years from the date of entry in the accounts of the customs duties concerned, [73] that those duties have been wrongly collected. In contrast, repayment as such does not necessarily have to be made within that period, with the result that it may be made after the expiry of that period.

Furthermore, in so far as customs duties are imposed in respect of specific amounts, established by the national customs authority on the basis of customs declarations submitted on behalf of a specific person, the finding, by that authority, that such duties have been wrongly collected necessarily implies a finding that a person known to that authority has unduly paid a specific amount, also known to that authority. Consequently, where the national customs authority finds that customs duties have been wrongly collected and must be repaid, it is, in principle, aware both of the identity of the person whom it must repay and of the exact amount to be repaid.

That authority cannot rely on the fact that it no longer has in its possession the customs declarations submitted by the persons concerned, or the individual decisions adopted in relation to them, in order to justify a possible failure to repay to those persons the customs duties which it has found, within the three-year period laid down in the third subparagraph of Article 2(2) of Regulation No 1430/79, to have been wrongly collected because, as long as that period has not expired, such a customs authority is required to retain any documents and information which may be relevant for the purpose of proceeding with any repayment.

That said, where that customs authority does not have, through no fault of its own, the information necessary to repay customs duties wrongly collected, it is for that authority, in order to comply with its repayment obligation arising from that provision, to take the necessary and appropriate measures to obtain that information. It is true that such measures do not include disproportionate research, namely research which would require the use of human and material resources unrelated to what may reasonably be expected of a diligent administration. However, a passive attitude on the part of the customs authority, on the pretext that it does not have that information, is not compatible either with its abovementioned repayment obligation or with the requirements arising from the right to good administration, which is a general principle of EU law intended to apply to the Member States when they implement that law.

The Court concludes that the third subparagraph of Article 2(2) of Regulation No 1430/79 must be interpreted as meaning that the existence of an obligation on a national customs authority to repay customs duties on its own initiative is subject to the fact that that authority has itself established, before the expiry of a period of three years from the entry in the accounts of those duties, that those duties have been wrongly collected. That finding implies that that authority is aware of the identity of the persons who paid those duties and of the amount to be repaid to each of them. Where that authority does not have, and could not have, at its disposal all of the information necessary to make

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73 In accordance with Article 1(2)(e) of Regulation No 1430/79, that date corresponds to the date of adoption of the official act by which the amount of those duties was initially established by the competent authorities.

such a repayment to the person who paid the customs duties wrongly collected or to the persons who succeeded him or her in his or her rights and obligations, it is for that authority, in order to comply with its repayment obligation, to take the measures which, without being disproportionate, are necessary and appropriate in order to obtain that information and to make the repayment.

2. FREEDOM OF ESTABLISHMENT AND FREE MOVEMENT OF CAPITAL

Judgment of the Court of Justice (Fourth Chamber) of 1 August 2025, Veracash, C-665/23

Link to the full text of the judgment

Reference for a preliminary ruling – Payment services in the internal market – Directive 2007/64/EC – Article 56(1)(b) – Obligation for the payment service user to notify the payment service provider 'without undue delay' of the loss, theft, misappropriation or unauthorised use of his or her payment instrument – Article 58 – Notification of unauthorised payment transactions – Rectification of such a transaction by the payment service provider subject to the obligation for the user of those services to notify that transaction 'without undue delay … and no later than 13 months after the debit date' – Articles 60 and 61 – Respective liabilities of the payment service provider and of the payer for unauthorised payment transactions – Successive unauthorised payment transactions resulting from the loss, theft, misappropriation or unauthorised use of a payment instrument – Delayed notification without intent or gross negligence – Scope of the right to a refund

In the context of a dispute concerning the refusal to refund an individual for allegedly unauthorised withdrawals of money, on account of a notification which was held to be delayed, the Court clarifies certain aspects of liability for unauthorised transactions carried out by means of a payment instrument, in accordance with Directive 2007/64, [74] taking into account the balance established by the legislature between the interests of the payer and those of the payment service provider.

IL is a natural person who holds a deposit account with Veracash. On 24 March 2017, Veracash sent to IL's address a new cash withdrawal and payment card.

On 23 May 2017, IL notified Veracash that daily withdrawals had been made from that account between 30 March 2017 and 17 May 2017, while he had neither received the new payment card nor authorised those withdrawals.

For that reason, he initiated legal proceedings in order to obtain, inter alia, a refund of the sums corresponding to those withdrawals.

Following the dismissal of his action by the cour d'appel de Paris (Court of Appeal, Paris, France), which held that the notification to Veracash of the withdrawals at issue was delayed, since it was made almost two months after the first contested withdrawal, IL brought an appeal on a point of law before the Cour de cassation (Court of Cassation, France), which is the referring court.

The referring court states that the outcome of that dispute depends, inter alia, on whether the payment service provider can refuse to refund the amount of an unauthorised transaction where the payer, despite having notified that transaction before the expiry of the 13-month time limit after the debit date, as provided for under Article 58 of Directive 2007/64 and under national law, [75] delayed in

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74 Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1, and corrigendum OJ 2009 L 187, p. 5).

75 Article L-133-24 of the Code monétaire et financier (Monetary and Financial Code), in the version resulting from Order No 2009-866 of 15 July 2009 on the conditions governing the supply of payment services and creating payment institutions (JORF of 16 July 2009, text No 13, and corrigendum JORF of 25 July 2009, text No 18).

doing so, without that delay having been intentional or the result of gross negligence on his or her part.

Noting that the relevant provisions of national law must be interpreted in the light of Directive 2007/64, the referring court has referred questions to the Court of Justice for a preliminary ruling on the interpretation of that directive.

Findings of the Court

In the first place, the Court considers that the payment service user is, in principle, deprived of the right to obtain rectification of a transaction if he or she did not notify his or her payment service provider without undue delay on becoming aware of an unauthorised payment transaction, even though he or she notified it to that payment service provider within 13 months after the debit date.

According to the wording of Article 58 of Directive 2007/64, the payment service user is subject to a twofold temporal condition: the user must both notify his or her payment service provider without undue delay on becoming aware of an unauthorised payment transaction – an obligation which is triggered when that payment service user becomes aware of that transaction and compliance with which must be assessed in the light of the circumstances in which he or she finds him or herself – and make that notification within 13 months of the debit date.

The obligation to notify 'without undue delay' therefore differs from the obligation to notify within the 13-month time limit after the debit date, as also suggested by the use of the terms 'should inform … as soon as possible' in recital 31 of Directive 2007/64.

Furthermore, in the event that the obligation to notify the loss, theft, misappropriation or any unauthorised use of a payment instrument, in accordance with the requirements of Article 56(1)(b) of Directive 2007/64, [76] arises simultaneously with the notification obligation laid down in Article 58 of that directive, it would be inconsistent to consider that the notification obligation under Article 58 may be duly fulfilled by mere compliance with the 13-month time limit after the debit date, whereas the obligation laid down in Article 56 must be carried out more expeditiously.

Lastly, the obligation to notify 'without undue delay' laid down in Article 58 of Directive 2007/64 has a preventive objective of reducing the risks and consequences associated with unauthorised transactions. That objective would be undermined if that obligation could be deemed to be fulfilled by mere compliance with the time limit of 13 months after the debit date. Moreover, the objective of the obligation to notify within the 13-month period, which is to ensure legal certainty for the parties, [77] would also be undermined if the payment service user were entitled to obtain rectification of an unauthorised payment transaction of which he or she was aware, but which he or she delayed in notifying to his or her payment service provider. The existence of two distinct objectives supports the fact that Article 58 imposes two separate temporal conditions.

In the second place, the Court specifies, however, that, in the event of an unauthorised payment transaction resulting from the use of a lost, stolen or misappropriated payment instrument, or from any unauthorised use of such an instrument, and where that transaction has been notified by the payer to his or her payment service provider within 13 months after the debit date, that payer is – in principle and except where that payer has acted fraudulently – to be deprived of his or her right to obtain actual rectification of that transaction only if he or she delayed in notifying it to his or her payment service provider with intent or gross negligence consisting in a serious breach of a duty of care.

In that regard, it is apparent from the first sentence of Article 61(2), Article 56(1)(b) and Article 60(1) of Directive 2007/64 that it is only where the payment service user acts fraudulently or has delayed, with intent or gross negligence, in notifying his or her payment service provider or the entity specified by that provider of the loss, theft, misappropriation or unauthorised use of that payment instrument

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76 In accordance with that article, the payment service user entitled to use a payment instrument has the obligation, on becoming aware of the loss, theft, misappropriation or unauthorised use of his or her payment instrument, to notify the payment service provider, or the entity specified by that provider, without undue delay.

77 See, to that effect, judgment of 2 September 2021, *CRCAM*, C-337/20, EU:C:2021:671, paragraphs 48 to 52.

that the payment service provider is relieved of its obligation to refund to the payer the amount of the unauthorised payment transactions resulting from such an event.

In the third and last place, the Court specifies that, in the event of successive unauthorised payment transactions resulting from the use of a lost, stolen or misappropriated payment instrument or any unauthorised use of such an instrument, the payer may be deprived of the right to a refund only in respect of the losses resulting from the transactions which he or she delayed in notifying to his or her payment service provider with intent or gross negligence.

First of all, the wording of Article 61(2) establishes a causal link between, first, the payer's conduct and, second, the losses incurred in respect of which he or she cannot obtain rectification. Next, since Article 58 of Directive 2007/64 expressly refers to the notification of individual payment transactions, the delayed nature of the notification must be assessed separately for each transaction.

That literal interpretation is supported by the context in which the relevant provisions of Directive 2007/64 occur and by the objectives pursued by that directive. First, both Article 61(4) [78] and Article 61(5) [79] of that directive confirm that the payer cannot be held liable for losses which he or she could not have avoided. Second, since that directive requires a causal link between the payer's conduct and the losses incurred, it balances the interests of payment service users and payment service providers. Thus, the user has an incentive promptly to notify any unauthorised transaction of which he or she becomes aware, whereas the provider must fulfil his obligations to allow the user to be able to become aware of such transactions.

VI. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Third Chamber) of 1 August 2025, Minister for Children, Equality, Disability, Integration and Youth and Others, C-97/24

Link to the full text of the judgment

Reference for a preliminary ruling – Liability of a Member State in the event of infringement of EU law – Sufficiently serious infringement – Asylum policy – Directive 2013/33/EU – Standards for the reception of applicants for international protection – Significant influx of applicants for temporary or international protection – No access to material reception conditions – Basic needs – Temporary exhaustion of housing capacity

Hearing a request for a preliminary ruling from the High Court (Ireland), the Court of Justice rules on the liability of a Member State under EU law in the context of the obligation, laid down by Directive 2013/33, [80] to guarantee applicants for international protection access to material reception conditions.

S.A. and R.J., who are third-country nationals, made applications for international protection in Ireland on 15 February and 20 March 2023 respectively. The Irish authorities issued each of them with a

78 In accordance with that article, except where the payer has acted fraudulently, the payer is not to bear any financial consequences resulting from the use of a lost, stolen or misappropriated payment instrument which occurred after the notification provided for in Article 56(1)(b) of Directive 2007/64.

79 In accordance with that article, if the payment service provider does not provide appropriate means for the notification at all times of a lost, stolen or misappropriated payment instrument, as required under Article 57(1)(c) of Directive 2007/64, the payer shall not be liable for the financial consequences resulting from use of that payment instrument, except where he or she has acted fraudulently.

80 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

single voucher for EUR 25. By contrast, those authorities considered that they were not in a position to allocate housing to S.A. and R.J., because the reception centres for asylum seekers were full, notwithstanding the availability of individual temporary housing in Ireland. Without having accommodation in such a reception centre, S.A. and R.J. were not eligible for the daily expenses allowance for applicants for international protection provided for by Irish law.

S.A. and R.J. thus lived on the streets in very precarious conditions before being paid certain allowances in April 2023, and obtaining accommodation a few weeks later.

Subsequently, S.A. and R.J. brought actions before the referring court against the Minister for Children, Equality, Disability, Integration and Youth (Ireland) ('the Minister') and the Attorney General (Ireland), seeking compensation for the damage which they claimed had ensued for each of them as a result of a failure to provide material reception conditions meeting their basic needs. Before that court, the Minister and the Attorney General remark, inter alia, that housing capacity, in Ireland, for applicants for international protection had been exhausted following the sudden arrival in that Member State of an unprecedented number of third-country nationals seeking temporary or international protection. As a result, for a period of four and a half months, non-vulnerable single adult men seeking international protection in that Member State had not received offers of accommodation.

In that context, the referring court seeks to ascertain whether a Member State which has not guaranteed, for a number of weeks, access by an applicant for international protection to the material reception conditions provided for by Directive 2013/33 may avoid liability under EU law by pleading temporary exhaustion of the housing capacity normally available in its territory for applicants for international protection, owing to an influx of third-country nationals seeking temporary or international protection; an influx which, because of its significant and sudden nature, was unforeseeable and unavoidable.

The Court answers that question in the negative.

Findings of the Court

As a preliminary point, the Court recalls that individuals who have been harmed by an infringement of EU law attributable to a Member State have a right to compensation where three conditions are met: the rule of EU law infringed must be intended to confer rights on them; the infringement of that rule must be sufficiently serious; and there must be a direct causal link between that infringement and the loss or damage sustained by those individuals. In this instance, as the first and third of those conditions are not disputed, the Court examines only the condition concerning the sufficiently serious nature of the infringement of EU law.

In that regard, the Court finds that it follows from the combination of rules set out in Articles 17 and 18 of Directive 2013/33 [81] that, in the event of temporary exhaustion of the housing capacity normally available in its territory for applicants for international protection, a Member State has a choice between two possible options.

First, provided that the conditions set out in paragraph 9 of Article 18 of that directive are satisfied, the Member State concerned may decide to provide housing in kind, without being required to comply with all the requirements set out in that article, but in any event covering the basic needs of the persons concerned. [82] Second, if that Member State no longer wishes to provide material reception conditions in kind or is no longer in a position to do so, it must provide those conditions in

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81 Under Article 17(1) of Directive 2013/33, Member States are to ensure that material reception conditions are available to applicants for international protection when they make their application. According to Article 2(g) of that directive, material reception conditions include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance. Article 17(5) of Directive 2013/33 provides that, where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof is to be determined on the basis of the level or levels established by the Member State concerned to ensure adequate standards of living for nationals, on the understanding that the treatment granted to applicants for international protection may be less favourable than that granted to those nationals.

82 Article 18(9)(b) of Directive 2013/33 permits the Member States, exceptionally and in duly justified cases, to set modalities for material reception conditions different from those provided in that article, for a reasonable period which is to be as short as possible, when housing capacities normally available are temporarily exhausted. The last part of Article 18(9) of that directive requires however that those conditions in any event cover the basic needs of the persons concerned.

the form of financial allowances or vouchers in an amount sufficient to ensure that the basic needs of applicants for international protection, including a standard of living which is dignified and adequate for their health, are met and to ensure their subsistence.

It follows that, while the Member States have a certain discretion to determine the form and precise level of material reception conditions which they provide, they cannot, without manifestly and gravely exceeding that discretion and without acting in manifest breach of the case-law of the Court, fail to provide, even temporarily, material reception conditions covering the basic needs of an applicant for international protection who does not have sufficient means to have a standard of living suitable for his or her health and to be able to ensure his or her subsistence, including as regards his or her access to housing.

Consequently, such a failure appears to be such as to constitute a sufficiently serious infringement of EU law even when it occurs in a situation where the housing capacity normally available, in the territory of the Member State concerned, for applicants for international protection is temporarily exhausted.

Next, the Court specifies that the derogation system introduced by Article 18(9)(b) of Directive 2013/33 is applicable where the temporary exhaustion of the housing capacity normally available for applicants for international protection could not be objectively avoided by a reasonably diligent Member State. Accordingly, that derogation system applies, in particular, in cases where such exhaustion is the result of a significant and sudden influx of third-country nationals seeking temporary or international protection, where that situation is unforeseeable and unavoidable.

Accordingly, a Member State cannot, without disregarding the very purpose of the derogation system established in that provision and depriving it of its practical effect, justify a failure to apply the obligations deriving from that derogation system, and in particular the obligation to cover 'in any event' the basic needs of the persons concerned, by relying on the occurrence of the event to which the application of that derogation system is subject, namely the temporary exhaustion of the housing capacity normally available for applicants for international protection, including where this is the result of a significant and sudden influx of third-country nationals seeking temporary or international protection, where that situation is unforeseeable and unavoidable.

Similarly, it cannot be accepted that pleading the occurrence of such an event enables it to be established that a failure to fulfil the obligations laid down by Directive 2013/33 is not sufficiently serious to be capable of giving rise to a right to compensation. Indeed, such a solution, by depriving applicants for international protection of a key element of their effective judicial protection, would impair the effectiveness of Article 18(9)(b) of that directive, and in particular the obligation as to the result to be obtained regarding the covering of those applicants' basic needs, which is laid down in that provision and which is intended to ensure respect for human dignity as guaranteed by Article 1 of the Charter of Fundamental Rights of the European Union.

Judgment of the Court of Justice (Grand Chamber) of 1 August 2025, Alace and Canpelli, C-758/24 and C-759/24

Link to the full text of the judgment

Reference for a preliminary ruling – Asylum policy – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Articles 36 and 37 – Concept of 'safe country of origin' – Designation by means of a legislative act – Annex I – Criteria – Article 46 – Right to an effective remedy – Article 47 of the Charter of Fundamental Rights of the European Union – Examination, by a court, of a Member State's designation of a third country as a safe country of origin – Publicisation of the sources of information on which that decision is based

Hearing two references for a preliminary ruling from the Tribunale ordinario di Roma (District Court, Rome, Italy), the Court of Justice, sitting as the Grand Chamber, rules, first, on the limits of the option, afforded to Member States under Directive 2013/32, [83] to designate third countries as safe countries of origin and, second, on the scope of the review of such a designation by the court or tribunal hearing an action against a decision rejecting an application for international protection, which had been submitted by a national who is from a third country designated as such.

After being rescued at sea by the Italian authorities, LC and CP, two nationals of the People's Republic of Bangladesh, were taken to a detention centre in Albania. [84] On 16 October 2024, they each lodged an application for international protection with the Italian authorities from that detention centre. By decisions of 17 October 2024, the Territorial Commission for the Recognition of International Protection, Rome – Border Procedures Section II, rejected those applications under an accelerated border procedure as manifestly unfounded, on the ground that LC and CP were from a safe country of origin. [85] The detention orders were not validated by the court having jurisdiction and the applicants were, therefore, released.

Having arrived in Italy, LC and CP challenged those decisions before the referring court, which has doubts as to the designation of the People's Republic of Bangladesh as a safe country of origin.

Findings of the Court

In the first place, the Court finds that a Member State may designate third countries as safe countries of origin by means of a legislative act, provided that that designation can be subject to judicial review as regards compliance with the material conditions for such a designation, set out in Annex I to Directive 2013/32, by any national court or tribunal hearing an action brought against a decision taken on an application for international protection, which had been examined under the special scheme applicable to applications lodged by applicants who are from third countries designated as safe countries of origin.

In that regard, the Court makes clear that, when transposing a directive, Member States enjoy discretion as to the choice of ways and means of ensuring that a directive is implemented. [86] However, the choice, by a Member State, of the competent authority and the legal instrument effecting the designation, at national level, of safe countries of origin cannot affect its obligations under Directive 2013/32. It is thus for each Member State, inter alia, to ensure respect for the right to an effective judicial remedy conferred on applicants for international protection against decisions taken on their applications. [87] In those circumstances, where an action is brought before a national court or tribunal, against a decision taken on an application for international protection from applicants who are from third countries designated as safe countries of origin, that court or tribunal must raise, on the basis of the information in the file and the information brought to its attention during the proceedings before it, a failure to have regard to the material conditions for such designation. [88]

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83 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). Under Article 37(1) of that directive, Member States may retain or introduce legislation that allows, in accordance with Annex I thereto, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

84 Those measures were taken pursuant to the protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria (Protocol concluded between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on strengthening cooperation in the field of migration), under which the Albanian Government made available to the Italian Republic two areas of Albanian territory, which fall entirely within the competence of the Italian authorities and which are treated in the same way as border or transit zones in which asylum seekers may be detained.

85 In accordance with Article 31(8)(b) and Article 32(2) of Directive 2013/32, where the applicant is from a safe country of origin, Member States may decide to accelerate an examination procedure and/or conduct that procedure at the border or in transit zones, and consider his or her application to be manifestly unfounded.

86 The third paragraph of Article 288 TFEU.

87 Article 46(1) of Directive 2013/32.

88 Judgment of 4 October 2024, Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky (C-406/22, EU:C:2024:841, paragraph 98).

In the second place, the Court holds that a Member State, which designates a third country as a safe country of origin, must ensure that there is, in respect of the sources of information on which that designation is based, sufficient and adequate access. That access must, on the one hand, enable the applicant for international protection concerned, who is from that third country, to defend his or rights under the best possible conditions and to decide with full knowledge of the facts whether it is useful to bring a case before the court or tribunal having jurisdiction and, on the other hand, enable that court or tribunal to review a decision taken on the application for international protection.

On that point, the Court notes that no provision of Directive 2013/32 expressly states that the national authority which designates safe countries of origin at national level must make accessible the sources of information on the basis of which it made such a designation.

However, the fact remains that the designation, by a Member State, of a third country as a safe country of origin makes the special scheme for examining applications for international protection applicable to applicants from that country. That scheme enables Member States to accelerate the procedure for examining those applications and is based on a form of rebuttable presumption of adequate protection in the country of origin, which may be rebutted by the applicant if he or she submits serious grounds relating to his or her particular circumstances. However, the possibility for an applicant to rebut that presumption requires, in order to be effective, that he or she be put in a position to know the reasons why his or her country of origin is presumed to be safe. Accordingly, that applicant must, on that basis, have access to the sources of information on the basis of which his or her country of origin was designated as a safe country of origin.

Moreover, where an application for international protection is rejected as manifestly unfounded on the ground that the applicant is from a safe country of origin, in order for the judicial protection to be effective, both the applicant concerned and the court or tribunal seised must be able to have not only knowledge of the grounds for such a rejection, but also access to the sources of information on the basis of which the third country in question was designated as a safe country of origin. Indeed, that ground for rejection overlaps, in essence, with the grounds on which the presumption of adequate protection, entailed by the designation of the country concerned as a safe country of origin, is based.

As regards the scope of the right to an effective remedy, the Court states that the national court or tribunal hearing an action brought against a decision taken on an application for international protection, which had been examined under the special examination scheme applicable to applications lodged by applicants who are from third countries designated as safe countries of origin, may, when it verifies, even indirectly, whether that designation complies with the material conditions for such a designation, take account of the information which it has itself gathered, provided that it satisfies itself that that information is reliable and that it guarantees the parties to the dispute that the adversarial principle is observed. The Court recalls, in that regard, that Member States are required to order their national law in such a way that the processing of the actions referred to includes an examination, by the court or tribunal, of all the facts and points of law necessary in order to make an up-to-date assessment of the case at hand. [89]

Lastly, in the third place, the Court finds that Article 37 of Directive 2013/32, read in conjunction with Annex I to that directive, precludes a Member State from designating as a safe country of origin a third country which does not satisfy, for certain categories of persons, the material conditions for such a designation, set out in Annex I to that directive. In that context, the Court notes that Article 61(2) of Regulation 2024/1348, [90] which makes it possible to provide for exceptions for clearly identifiable categories of persons, will enter into force on 12 June 2026, but that it is open to the EU legislature to bring that date forward.

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89 In accordance with Article 46(3) of Directive 2013/32; judgment of *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, cited above, paragraph 87.

90 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348).

VII. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN ARREST WARRANT

Judgment of the Court of Justice (Grand Chamber) of 4 September 2025, C.J. (Enforcement of a sentence further to an EAW), C-305/22

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant issued for the purposes of executing a custodial sentence – Article 4(6) – Grounds for optional non-execution of the European arrest warrant – Conditions for an executing Member State's assumption of responsibility for the execution of that sentence – Article 3(2) – Concept of 'finally judged … in respect of the same acts' – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Article 25 – Compliance with the conditions and procedure laid down by the framework decision in the event that a Member State undertakes to enforce a sentence handed down by a judgment delivered by an issuing State – Requirement of consent on the part of the issuing State as regards another Member State's assumption of responsibility for the enforcement of such a sentence – Article 4 – Possibility for the issuing State to forward the judgment and certificate referred to in that article to the executing State – Consequences where forwarding does not take place – Principle of sincere cooperation – Article 22 – Right of the issuing State to enforce that sentence – Maintenance of the European arrest warrant – Obligation on the part of the executing judicial authority to enforce a European arrest warrant

Ruling on a request for a preliminary ruling from the Curtea de Apel București (Court of Appeal, Bucharest, Romania), the Court, sitting as the Grand Chamber, rules on the relationship between Framework Decisions 2002/584 [91] and 2008/909, [92] where the enforcement of a custodial sentence following a European arrest warrant ('EAW') in the executing State has been decided unilaterally by that State, despite the express disagreement of the issuing State.

On 25 November 2020, an EAW was issued by the Court of Appeal, Bucharest, against C.J. for the purpose of enforcing a prison sentence. In December 2020, C.J. was arrested in Italy. At the request of the Italian authorities, the issuing judicial authority forwarded the sentencing judgment to those authorities, but opposed the recognition of that judgment and the assumption of responsibility, in Italy, for enforcement of the sentence.

By judgment of 6 May 2021, the Corte d'appello di Roma (Court of Appeal, Rome, Italy) refused, on the basis of the ground of optional non-execution laid down in Article 4(6) of Framework Decision 2002/584, to surrender C.J., recognised the sentencing judgment and ordered that the sentence be enforced in Italy. That court held that the enforcement of the sentence in Italy would promote the social rehabilitation of C.J., who was lawfully and permanently resident in that State.

After receiving the arrest warrant specifying the form of enforcement of the sentence in Italy, the Romanian judicial authorities stated, in a letter addressed to the Italian judicial authorities, that, as long as they were not informed of the commencement of the enforcement of the sentence in Italy,

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91 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) ('Framework Decision 2002/584').

92 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27) ('Framework Decision 2008/909').

they would retain their right to execute the sentence in Romania. They also stated that the EAW issued against C.J. had not been annulled and remained in force.

On 15 October 2021, the Office for Enforcement of the Second Criminal Division of the Court of Appeal, Bucharest, raised an objection to enforcement in respect of the sentencing judgment before the referring court.

In that context, the referring court, called upon to rule inter alia on the validity of the EAW, decided to refer questions to the Court of Justice for a preliminary ruling concerning, in essence, first, the legal consequences of a refusal, based on Article 4(6) of Framework Decision 2002/584, to surrender a requested person in the event of non-compliance with the conditions and procedure laid down by Framework Decision 2008/909 by the executing State and, second, the legal classification of such a refusal decision.

Findings of the Court

First, the Court examines the relationship between Framework Decision 2002/584 and Framework Decision 2008/909. In that regard, those two framework decisions give concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition. However, there is nothing to indicate that the EU legislature intended to provide for two separate legal systems as regards the recognition and enforcement of judgments in criminal matters, according to whether or not an EAW exists. As regards, more particularly, the effect of Framework Decision 2008/909 on the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, in view of the identical nature of the objective pursued, first, by that ground and, second, by the rules laid down by Framework Decision 2008/909, namely that of facilitating the social rehabilitation of persons sentenced in another Member State, where a judicial authority of the executing State wishes to apply that ground, it must take account of those rules.

Thus, the Court finds that, in order to observe the effectiveness of the system of surrender between the Member States established by Framework Decision 2002/584, the recognition of the sentencing judgment and the assumption of responsibility for enforcing the sentence must take place in accordance with the conditions and the procedure laid down in Framework Decision 2008/909. In that regard, the issuing State must inter alia consent to the executing State's assumption of responsibility for the enforcement of the sentence. That consent takes the form of the forwarding to the executing State, in accordance with the procedures laid down in Article 4 of that framework decision, of the sentencing judgment, together with the certificate, the specimen of which is set out in Annex I to that framework decision. Therefore, where the issuing State considers, on the basis of objective circumstances, that the sentence will not actually be enforced in the executing State or that enforcement of that sentence in that State will not contribute to the objective of social rehabilitation of the requested person upon expiry of the custodial sentence imposed on him or her, it may refuse to forward the sentencing judgment and the accompanying certificate. The same applies where the issuing State considers, on the basis of criminal policy considerations, that the enforcement of the sentence imposed on its territory is justified. However, the issuing State must ensure that the prerogative conferred on it by Framework Decision 2008/909 to refuse such forwarding is exercised in such a way as to enable effective cooperation between the competent authorities of the Member States in criminal matters and which ensures that the operation of the EAW and the mutual recognition of judgments for the purposes of their enforcement in another Member State are not brought to a standstill. Furthermore, the issuing and executing judicial authorities must make full use of the instruments provided for in Framework Decisions 2002/584 and 2008/909, in order to foster the mutual trust on which that cooperation is based.

In those circumstances, where it is not possible for the executing State actually to assume responsibility for enforcing the sentence, including on account of non-compliance with the conditions and procedure laid down in Framework Decision 2008/909, an EAW must be executed, in order to prevent the impunity of the requested person. The execution of an EAW constitutes the rule, while refusal to execute that warrant is an exception which must be interpreted strictly.

Consequently, where the executing judicial authority has refused, on the basis of Article 4(6) of Framework Decision 2002/584, to execute an EAW, in breach of the conditions and procedure laid down by Framework Decision 2008/909 as regards recognition of a sentencing judgment and the assumption of responsibility for the enforcement of that sentence, the issuing State retains the right

to enforce that sentence and therefore to maintain the EAW. [93] A contrary interpretation would open the door to circumvention of the rules laid down in Framework Decision 2008/909 and would undermine the operation of the simplified and effective system for the surrender of requested persons established by Framework Decision 2002/584. It is, however, for the issuing judicial authority to examine whether, in the light of the specific features of the case, that retention, which is liable to affect the personal freedom of the requested person, is proportionate. Such an examination would then have to take into account the consequences for that person of the maintenance of the EAW and the prospects for its execution.

Secondly, the Court finds that a decision by which the executing judicial authority has refused, on the basis of Article 4(6) of Framework Decision 2002/584, to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence, recognised the sentencing judgment imposing that sentence and ordered the enforcement of that sentence in the executing State cannot be regarded as being covered by the concept of 'finally judged … in respect of the same acts' within the meaning of Article 3(2) of that framework decision. The examination carried out in the context of such a decision does not entail the initiation of criminal proceedings against the sentenced person and does not involve an assessment of the merits of the case, since such a decision is intended solely to enable the sentence handed down in the issuing State to be enforced in the executing State.

Judgment of the Court of Justice (Fourth Chamber) of 11 September 2025, Fira, C-215/24

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant issued for the purpose of executing a custodial sentence – Article 4(6) – Ground for optional non-execution of the European arrest warrant – Objective of social rehabilitation – Residence of the convicted person – Enforcement of that sentence by the executing State in accordance with its domestic law – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Suspension of the enforcement of a custodial sentence ordered by a court of the executing Member State – Article 8 – Obligation, for the executing State, to recognise the judgment and enforce the sentence – Article 17 – Option, for the executing State, to determine the procedures for enforcement

In proceedings relating to the execution of a European arrest warrant issued for the purposes of enforcing a custodial sentence, the Court states that the competent judicial authority of a Member State, after refusing to give effect to that arrest warrant and undertaking to enforce that sentence, cannot suspend enforcement of that sentence.

YX received a custodial sentence of six months from the Tribunal Judicial da Comarca do Porto – Juízo Local Criminal de Vila Nova de Gaia (District Court, Oporto – Local Criminal Court, Vila Nova de Gaia, Portugal), which is the referring court. Since the person concerned transferred his residence to Spain, that court issued a European arrest warrant for his surrender for the purposes of enforcing that custodial sentence.

The competent Spanish judicial authority, while refusing, pursuant to Article 4(6) of Framework Decision 2002/58, [94] to surrender YX to the referring court, declared that it recognised the judgment issued by that court for the purposes of its enforcement in Spain.

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93 Article 22(1) of Framework Decision 2008/909, which provides that the issuing State may no longer enforce the sentence imposed where the enforcement of that sentence has begun on the territory of the executing State, does not apply where, as in the present case, the refusal of surrender on the basis of Article 4(6) of Framework Decision 2002/584 by the executing State has not taken place in accordance with the rules set out in Framework Decision 2008/909.

94 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1, 'Framework Decision 2002/584). Under Article 4(6) of that framework decision, the executing judicial authority

Pursuant to the Spanish Criminal Code, the Juzgado Central de lo Penal nº 1 de Madrid (Central Criminal Court No 1, Madrid, Spain) subsequently suspended execution of the custodial sentence at issue in the main proceedings for a period of two years.

Taking the view that such a suspension decision might call into question the objectives pursued by Framework Decision 2008/909 [95] and the principle of mutual recognition, the referring court made a reference to the Court of Justice for a preliminary ruling. The referring court notes that the competent authority of the executing State is required, in principle, to recognise the sentencing judgment of the competent authority of the issuing State and to enforce the sentence imposed, which is to correspond in its length and nature to the sentence imposed in that judgment. Therefore, the court of the executing State cannot, without infringing Article 8 of Framework Decision 2008/909, alter the substance of the sentence imposed by the court of the issuing State and cannot suspend the enforcement of the sentence imposed on the person in question in the issuing State.

Moreover, according to the referring court, Article 17 of Framework Decision 2008/909, under which enforcement of a sentence is governed by the law of the executing State, refers only to measures intended to ensure the physical enforcement of the custodial sentence and therefore does not include, contrary to the view taken by the Central Criminal Court No 1, Madrid, a decision suspending the enforcement of such a sentence.

The Court thus finds that it is necessary to determine whether a decision to suspend the enforcement of a custodial sentence must be regarded as altering the sentencing judgment, in which case Article 8(1) of Framework Decision 2008/909 precludes the competent authority of the executing State from ordering such a suspension, or as falling within the scope of the enforcement of that judgment, in which case Article 17(1) of that framework decision allows that authority to order such a suspension.

Findings of the Court

At the outset, the Court points out that neither Article 8(1) nor Article 17(1) of Framework Decision 2008/909 expressly refer to the situation in which the competent authority of the executing State suspends the enforcement of a custodial sentence imposed by the competent authority of the issuing State. In particular, there is no textual element that makes it possible to determine whether such a suspension measure falls within the concept of 'procedures for enforcement' of the sentence, within the meaning of Article 17(1) of Framework Decision 2008/909.

However, while Article 17(1) of that framework decision provides that the competent authorities of the executing State are to exercise exclusive competence in respect of all the procedures for enforcing a sentence and all the measures relating thereto, which include early or conditional release, paragraphs 3 and 4 of that article provide, for the benefit of the competent authority of the issuing State, first of all, for the right to be informed, upon request, of the applicable provisions of the executing State on early or conditional release, then, for the right to withdraw the certificate [96] which expresses the consent of the issuing State to the enforcement of the sentence in the executing State and, lastly, for the possibility of communicating the conditions for early or conditional release in the issuing State, with a view to their being taken into account by the competent authority of the executing State.

Thus, even if the prerogatives conferred by Article 17(3) and (4) of that framework decision on the competent authority of the issuing Member State should, a fortiori, apply to the suspension of the enforcement of a custodial sentence, given that such a measure takes place before any actual

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may refuse to execute the European arrest warrant if it has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.

95 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2008/909').

96 This concerns the certificate referred to in Article 4 of Framework Decision 2008/909, the forwarding of which is one of the formalities which must be complied with when the executing State takes charge of the enforcement of a custodial sentence imposed in the issuing State.

enforcement of that sentence and therefore entails, unlike early or conditional release, a suspension of that sentence in its entirety, the Court finds that they were provided for by the EU legislature only as regards the conditions for early or conditional release.

Therefore, the Court considers that such a measure suspending enforcement of a custodial sentence does not fall within the concept of 'procedures for enforcement' in Article 17(1) of Framework Decision 2008/909.

That assessment is supported by the fact that Framework Decision 2008/947, [97] the scope of which excludes that of Framework Decision 2008/909, [98] applies specifically to judgments which themselves entail suspension of a custodial sentence or are accompanied by separate probation decisions, which are delivered in both cases by a competent authority of the issuing State. [99] Framework Decision 2008/947 thus confirms that the suspension of the enforcement of a custodial sentence falls within the jurisdiction of the competent authority of the issuing State and, accordingly, the judgment to be recognised, and not the enforcement of that judgment and the jurisdiction of the competent authority of the executing State.

Furthermore, the possibility for the executing State to adapt, beyond the cases expressly provided for in Articles 8 and 17 of Framework Decision 2008/909, the sentence imposed in the issuing State or the arrangements for its enforcement could undermine the special mutual confidence of the Member States in their respective legal systems and would therefore run counter to the objective of further developing cooperation between Member States concerning the enforcement of judgments in criminal matters. Articles 8 and 17 thus play a central role in the pursuit of that objective when they specify, for the recognition and enforcement of judgments in criminal matters, the extent and the limits of the jurisdiction conferred on the competent authorities of the executing State.

For those reasons, the Court concludes that the suspension of the enforcement of a custodial sentence falls within the scope of Article 8 of Framework Decision 2008/909 and consequently cannot be granted by the competent authority of the executing State pursuant to Article 17 of that framework decision.

Lastly, the Court states that the fact that the revocation of the suspension of a custodial sentence, on account of the breach by the person concerned of an objective condition attached to that suspension, does not constitute a decision within the meaning of Article 4a of Framework Decision 2002/584, [100] and may therefore fall within the scope of the enforcement of the sentence imposed, does not necessarily mean that the decision whether or not to grant the suspension of a custodial sentence is of the same nature.

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97 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ 2008 L 337, p. 102).

98 Article 1(3)(a) of Framework Decision 2008/947.

99 Article 2(1), (2) and (5) of Framework Decision 2008/947.

100 See, to that effect, judgments of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026, paragraphs 77 and 78), and of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)* (C-514/21 and C-515/21, EU:C:2023:235, paragraphs 53 and 54).

VIII. COMPETITION

1. STATE AID

Judgment of the Court of Justice (Grand Chamber) of 11 September 2025, Austria v Commission (Paks II nuclear power station), C-59/23 P

Link to the full text of the judgment

Appeal – State aid – Article 107(3)(c) and Article 108 TFEU – Aid planned for the development of two new nuclear reactors at the site at Paks (Hungary) – Direct award of the construction contract – Directive 2014/25/EU – Decision declaring the aid compatible with the internal market subject to compliance with certain commitments – Compliance of the aid with EU law other than State aid law – Object of the aid – Aspects that are inextricably linked to the aid – Parallel conduct of infringement proceedings – Obligation to state reasons

The Court of Justice, sitting as the Grand Chamber, sets aside the judgment of the General Court [101] confirming the decision of the European Commission on the State aid that Hungary is planning to implement for supporting the development of two new reactors at the nuclear power station site at Paks. [102] Now itself giving final judgment on the dispute, the Court of Justice annuls that decision and finds, in that context, that the Commission erred in law in examining the compatibility of the notified aid measure with the internal market without taking into consideration certain indissociable aspects of that measure.

By the decision at issue, the Commission approved, for the benefit of the State-owned undertaking MVM Paks II Nuclear Power Plant Development Private Company Limited by Shares ('the Paks II company'), investment aid notified by Hungary on 22 May 2015 concerning the operation of two new nuclear reactors at the Paks nuclear power station site, in addition to the four nuclear reactors already in operation at that site.

That aid, which consists, in essence, of the provision free of charge of the new nuclear reactors to the Paks II company for the purpose of their operation, is in large part financed by a loan in the form of a revolving credit facility of EUR 10 billion granted by the Russian Federation to Hungary in the framework of an intergovernmental agreement on cooperation on the peaceful use of nuclear energy, and by an additional amount of EUR 2.5 billion paid by Hungary. In accordance with that agreement, the task of constructing the new reactors was entrusted, by means of a direct award (and therefore without a public tender procedure) to the company Nizhny Novgorod Engineering Company Atomenergoproekt ('JSC NIAEP'), designated by the Russian Federation.

By the decision at issue and subject to the conditions set out therein, the Commission declared the aid at issue compatible with the internal market, in accordance with Article 107(3)(c) TFEU. Under that provision, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market, in so far as it does not adversely affect trading conditions to an extent contrary to the common interest.

Since the Republic of Austria's action against the decision at issue was dismissed by the General Court, that Member State lodged an appeal against the judgment of that Court.

Findings of the Court

In support of its appeal, the Republic of Austria submits, in essence, that the General Court erred in law inasmuch as, first, it excluded the construction of the two new nuclear reactors from the

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101 Judgment of 30 November 2022, *Austria* v *Commission* (T-101/18, EU:T:2022:728; 'the judgment under appeal').

102 Commission Decision (EU) 2017/2112 of 6 March 2017 on the measure/aid scheme/State aid SA.38454 – 2015/C (ex 2015/N) which Hungary is planning to implement for supporting the development of two new nuclear reactors at Paks II nuclear power station (OJ 2017 L 317, p. 45) ('the decision at issue').

definition of the object of the aid measure at issue. Second, the Republic of Austria claims that the General Court erred in endorsing the Commission's conclusion that the direct award of the contract for that construction to the company JSC NIAEP does not constitute an aspect that is inextricably linked to the object of the aid at issue, with the result that a potential infringement of the EU public procurement rules would have had no effect on the assessment of the compatibility of that aid with the internal market.

First of all, the Court of Justice examines whether the General Court was entitled to hold that the object of the aid at issue consists solely of 'the provision free of charge of two new nuclear reactors to the Paks II company for the purpose of their operation', thus excluding their construction from it.

The Court of Justice finds that the objective of the aid at issue is to support the activity of nuclear energy production, by means of a project aimed at the development of two new nuclear reactors. According to the intergovernmental agreement, the development of those reactors includes their design and construction, a process whose essential aspects, namely, in particular, the identity of the constructor and the technical specifications of those reactors, were apparent from the notification of the aid measure at issue. A process the essential aspects of which are apparent from the notification of the aid measure at issue and which forms an integral part of that measure cannot be excluded from the object of that measure, since it amounts to a factor that is necessary for the implementation of that measure and, therefore, for the attainment of its objective.

As regards the amount of the aid at issue, first, that aid includes a revolving credit facility of EUR 10 billion provided by means of the loan granted to Hungary by the Russian Federation, whose sole use is limited to the design, construction and commissioning of the two new nuclear reactors. Second, it includes an additional amount of EUR 2.5 billion paid by Hungary. The total amount of EUR 12.5 billion invested by Hungary in the framework of the project at issue corresponds, as confirmed by the Commission, in particular, to the cost of the construction of those two new nuclear reactors.

In so far as the construction of those reactors is, first, a factor that is necessary for the attainment of the objective pursued by the notified measure at issue and, second, a process financed, at least indirectly, with Hungary's resources, that construction forms an integral part of the aid measure notified by that Member State and could not, therefore, validly be excluded by the General Court from the object of that measure.

Consequently, by stating, in the judgment under appeal, that the sole object of that aid is 'the provision free of charge of two new nuclear reactors to the Paks II company for the purpose of their operation', the General Court made an incorrect legal characterisation of the relevant facts.

Next, the Court of Justice examines whether, despite that incorrect legal characterisation of the facts, the General Court was entitled to endorse the Commission's conclusion in the decision at issue that the direct award of the contract for the construction of the two new nuclear reactors to the company JSC NIAEP, without a public tender procedure, does not constitute an aspect that is inextricably linked to the object of that aid.

As a preliminary point, the Court recalls that the Commission must assess, in the context of the procedure laid down in Article 108 TFEU, the indissociable aspects of the object of an aid measure, that is to say, the modalities which are so indissolubly linked to that object that it is impossible to evaluate them separately, with the result that their effect on the compatibility or incompatibility with the internal market of that aid viewed as a whole must therefore of necessity be determined in the framework of that procedure.

By contrast, aspects which, although forming part of the aid measure at issue, are not specifically necessary for the attainment of its objective or for its functioning are not aspects that are inextricably linked to the object of the aid.

In the present case, the direct award of the contract for the construction of the two new nuclear reactors is an aspect that is inextricably linked to the object of the aid measure notified by Hungary to the Commission, which is aimed at developing those reactors with a view to their provision, free of charge, to the Paks II company. That aspect is indispensable for the attainment of the objective of the aid defined in that manner.

That conclusion is borne out by the financing arrangement set out in the intergovernmental agreement, which is specifically aimed at developing those reactors with a view to their provision free of charge and which provides for the gradual release of the funds to the company JSC NIAEP, upon request by the Paks II company, as the construction work on those nuclear reactors progresses.

It follows that a potential infringement, by that indissociable aspect of the aid measure at issue, of provisions or general principles of EU law, such as the EU public procurement rules, could preclude that measure from being declared compatible with the internal market, in a procedure under Article 108 TFEU.

An analysis of the conformity of the direct award of the contract for the construction of the two new nuclear reactors with those rules was all the more necessary since the organisation of an open, impartial and unconditional tender procedure for the award of a contract for the construction of infrastructure is likely to have an impact, inter alia, on the cost of the investment required for that construction and on the properties of that infrastructure and, accordingly, on the extent of any advantage granted to an undertaking or group of undertakings by that means.

Thus, the General Court erred in holding that the Commission was entitled to consider that the lawfulness of the decision at issue did not depend on Hungary's compliance with EU public procurement rules.

The finding that 'an infringement of the rules on public procurement would produce effects solely on the market for the construction of nuclear power stations and would have no consequences for the market covered by the object of the aid measure at issue' is also vitiated by an error. It is clear from the case-law of the Court of Justice that, when the Commission assesses whether proposed aid satisfies the condition [103] of not adversely affecting trading conditions to an extent contrary to the common interest, it must take into account the negative effects that that aid may have on competition and trade between Member States in general.

Accordingly, it cannot be ruled out that an infringement of a provision of EU law which is liable to produce a distortion of competition on a market that is different from but linked to the market covered by the notified aid measure must be taken into consideration by the Commission in its examination of the compatibility of that measure with the internal market. That is true, in the present case, of any distortion of competition which could have resulted, on the market for the construction of nuclear power stations, from the award of the contract for the construction of the two new nuclear reactors at the Paks site in breach of EU public procurement rules, since that award is an aspect that is inextricably linked to the object of the aid measure at issue.

Lastly, the Republic of Austria contests the General Court's examination of the conclusion made for the sake of completeness in the decision at issue, according to which the direct award of the contract for the construction of the two new nuclear reactors did not, in any event, give rise to an infringement of the public procurement procedures laid down by Directive 2014/25. [104] In that regard, the Court of Justice finds that the General Court erred in law by ruling that that conclusion was reasoned to the requisite legal standard by the mere reference made by the Commission to the assessment it had carried out in infringement proceedings initiated against Hungary in 2015.

In that context, the Court of Justice notes that infringement proceedings and a procedure under Article 108 TFEU may be combined where a State measure falls at the same time within the scope of the State aid provisions and of other provisions of the Treaty. Nevertheless, the Commission does not have the power to determine conclusively, in the context of infringement proceedings, the rights and obligations of a Member State or to afford that State guarantees concerning the compatibility of a given line of conduct with EU law, given that the Court alone has jurisdiction to find that a Member State has failed to fulfil an obligation under the Treaties.

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103 Article 107(3)(c) TFEU.

104 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

Accordingly, the closure by the Commission of infringement proceedings against a Member State, which amounts to the exercise of a discretion it enjoys, which, moreover, the Court cannot review, cannot be decisive for the purpose of determining whether the national legislation or the national measure that was the subject of those proceedings is consistent with EU law.

In the present case, there was nothing to prevent the Commission from referring, in the decision at issue, to the 2015 infringement proceeding and, in particular, to the conclusions which it had drawn from the assessments it had carried out on that occasion. By contrast, a mere reference to such infringement proceedings and to the provision of EU public procurement law which is alleged to be applicable in the case at hand, without any indication of the other specific factors taken into consideration by that institution or of the methodology pursuant to which it reached its conclusion, cannot satisfy the obligation to state reasons laid down in Article 296 TFEU.

The reasons set out by the Commission in the decision at issue do not contain any information capable of showing in a clear and unequivocal fashion the reasoning of that institution that enabled it to reach the conclusion that the direct award of the contract for the construction of the two new reactors at the Paks site complied with Directive 2014/25.

Nor can it be inferred from those reasons why the Commission relied, in the decision at issue, on that directive, even though the time limit for its transposition had been set at 18 April 2016 and Directive 2004/17 [105] was repealed only with effect from that date.

In the light of the foregoing, the Court of Justice sets aside the judgment under appeal, considers that the state of the proceedings permits final judgment to be given, and, ruling on that dispute, annuls the decision at issue.

2. ACTIONS FOR COMPENSATION FOR THE HARM CAUSED BY INFRINGEMENTS OF COMPETITION RULES

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, Nissan Iberia, C-21/24

Link to the full text of the judgment

Reference for a preliminary ruling – Article 101 TFEU – Principle of effectiveness – Actions for damages for infringements of the competition law provisions of the Member States and of the European Union – Limitation period – Determination of the *dies a quo* – Knowledge of the information necessary for bringing an action for damages – Publication on the website of a national competition authority of its decision finding an infringement of the competition rules – Binding effect of a decision of a national competition authority which is not yet final – Suspension or interruption of the limitation period – Stay of the main proceedings before the court hearing an action for damages – Directive 2014/104/EU – Article 10 – Temporal application

Hearing a request for a preliminary ruling from the Juzgado de lo Mercantil nº 1 Zaragoza (Commercial Court No 1, Zaragoza, Spain), the Court of Justice determines the starting point of the limitation period applicable to actions for damages brought before national courts for infringements of competition law found by a national competition authority.

In 2015, the Comisión Nacional de los Mercados y la Competencia (National Commission for Markets and Competition, Spain; 'the CNMC') adopted a decision finding that a number of undertakings, including Nissan Iberia SA, had infringed Article 101 TFEU and the Spanish rules on competition law.

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105 Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

That decision was the subject of a press release, published on the CNMC's website on 28 July 2015. On 15 September 2015, that decision was published in its entirety on that website.

A number of actions for annulment were brought against the decision of the CNMC by the perpetrators of the alleged infringement, including Nissan, but it was upheld, as regards Nissan, by the Tribunal Supremo (Supreme Court, Spain) in 2021.

In March 2023, CP brought an action for damages before the referring court seeking an order that Nissan pay compensation for the losses which CP allegedly suffered as a result of the purchase of a vehicle the price of which had been affected by the infringement found in that decision.

In its defence, Nissan argued that the action for damages was time-barred.

In that respect, the referring court explains that, under national law, the limitation periods applicable to actions for damages for infringements of the competition rules cannot begin to run before the infringement concerned ceased and before the injured party knew, or could reasonably have known, of the information necessary for bringing his or her action for damages.

In cases where that infringement was established by a decision of the CNMC, that court considers that the view may be taken that the injured parties became aware of that information at the time the decision of the CNMC was published on its website, irrespective of whether that decision was final. According to that interpretation, the action for damages brought by CP is time-barred in the present case.

The referring court observes, however, that there is also a line of national case-law according to which the limitation period applicable to actions for damages in respect of anticompetitive conduct found by a decision of the CNMC and which is the subject of an action for annulment does not begin to run until the point when that decision has become final following judicial review.

In those circumstances, the referring court submits three questions for a preliminary ruling asking, in essence, whether Article 101 TFEU, read in the light of the principle of effectiveness, and, as the case may be, Article 10(2) of Directive 2014/104 [106] preclude national legislation, as interpreted by the national courts having jurisdiction, according to which, for the purposes of determining the starting point of the limitation period applicable to actions for damages for infringements of the competition rules following a decision of the national competition authority finding an infringement of those rules, it may be concluded that a person who considers himself or herself to have been harmed was aware of the information necessary to enable him or her to bring an action for damages before that decision became final.

Findings of the Court

First, the Court reviews the temporal applicability of Article 10 of Directive 2014/104 to the main proceedings. Article 10(2) provides that the national limitation periods applicable to actions for damages for infringements of competition law do not begin to run before that infringement has ceased and before the applicant knew, or could reasonably be expected to have known, the information necessary for bringing his or her action for damages.

In order to determine whether that provision is applicable to the case in the main proceedings, the Court examines whether, on the date of expiry of the period for transposing Directive 2014/104, namely 27 December 2016, the national limitation period applicable to the action for damages brought by CP had expired.

On that point, the Court emphasises that, even before the expiry of the period for transposing Directive 2014/104, national legislation laying down the date on which the limitation period applicable to actions for damages for infringements of competition law starts to run, the duration of that period and the rules for its suspension or interruption must be adapted to the specificities of competition law and the objectives of the implementation of the rules of that law by the persons concerned, so as not to undermine completely the full effectiveness of Articles 101 and 102 TFEU.

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106 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1).

The Court also points out that the practical effect of the prohibition laid down in Article 101(1) TFEU would be put at risk if it were not open to any individual to claim damages for loss caused to him or her by an infringement of competition law. It follows that any person can claim compensation for the harm suffered where there is a causal relationship between that harm and an agreement or practice prohibited under Article 101 TFEU.

In accordance with the case-law, the exercise of that right to claim compensation would be made practically impossible or excessively difficult if the limitation periods began to run before the infringement ceased and the injured party knew, or could reasonably be expected to have known, the information necessary to bring his or her action for damages, which includes the existence of an infringement of competition law, the existence of harm, a causal link between that harm and that infringement, and the identity of the infringer.

In that context, it is apparent from the explanations provided by the referring court that a decision of the CNMC finding an infringement of the competition rules, the validity of which has been called into question through judicial proceedings, is not binding on the court hearing an action for damages following that decision. Thus, the person harmed by the infringement concerned could not effectively rely on that decision in support of his or her action for damages. It follows that, since the court hearing the action for damages is bound by the finding of the existence of the infringement concerned only when that decision has become final, the injured party can reasonably be expected to have become aware of the information necessary for bringing the action only when the CNMC's decision has become final following judicial review. Accordingly, the limitation period for the injured party's action for damages cannot begin to run before the date on which that decision has become final.

That being said, the Court also states that the condition relating to knowledge of the information necessary to bring an action for damages following a decision of a national competition authority requires not only that that decision becomes final but also that that information arising from the final decision has been made public in an appropriate manner. For those purposes, the judgment definitively upholding the decision of the national competition authority must be officially published and be freely accessible to the general public, and the date of its publication must be clearly set out in that judgment.

In the light of the foregoing, the Court recalls that, in the main proceedings, CP brought his action for damages in March 2023 following a decision of the CNMC which became final as regards Nissan following a judgment of the Tribunal Supremo (Supreme Court). Since that judgment was not pronounced until 2021, it may reasonably be supposed that, on the date on which the period for transposing Directive 2014/104 expired, namely 27 December 2016, not only had the limitation period applicable to the action for damages brought by CP not expired, but it had not even started to run.

Secondly, the Court considers that the content of the Article 10(2) of Directive 2014/104 reflects, as regards determining the moment from which the limitation period begins to run, in essence, its case-law relating to Articles 101 and 102 TFEU and the principle of effectiveness.

Thus, the Court finds that its considerations concerning the starting point of the limitation period for actions for damages for infringements of the competition rules before the entry into force of Directive 2014/104 are also applicable to the interpretation of Article 10(2) of that directive.

In those circumstances, the Court's answer to the questions posed is that Article 101 TFEU, read in the light of the principle of effectiveness, and Article 10(2) of Directive 2014/104 must be interpreted as meaning that they preclude national legislation, as interpreted by the national courts having jurisdiction, according to which, for the purposes of determining the starting point of the limitation period applicable to actions for damages for infringements of the competition rules following a decision of the national competition authority finding an infringement of those rules, it may be concluded that a person who considers himself or herself to have been harmed was aware of the information necessary to enable him or her to bring an action for damages before that decision became final.

IX. FISCAL PROVISIONS

1. COMMON SYSTEM OF TAXATION APPLICABLE IN THE CASE OF COMPANIES OF DIFFERENT MEMBER STATES

Judgment of the Court of Justice (Fourth Chamber) of 1 August 2025, Banca Mediolanum, C-92/24 to C-94/24

Link to the full text of the judgment

Reference for a preliminary ruling – Taxation – Common system of taxation applicable in the case of parent companies and subsidiaries of different Member States – Directive 2011/96/EU – Article 4(1)(a) – Prohibition on taxing profits received by the parent company – Prevention of double taxation of dividends – Scope – Regional tax on production activities – Inclusion of 50% of dividends received by the parent companies in the basis of assessment for that tax

In response to a request for a preliminary ruling from the Corte di giustizia tributaria di secondo grado della Lombardia (Tax Court of Second Instance, Lombardy, Italy), the Court clarifies the scope of the elimination of cross-border double taxation as regards the profits of two companies connected by a parent-subsidiary arrangement, in the light of Directive 2011/96. [107]

In the tax years 2014 and 2015, Banca Mediolanum, a bank resident for tax purposes in Italy, held shares in several companies which had their tax residences in other Member States of the European Union. Banca Mediolanum received dividends from those subsidiaries on that basis. 5% of the amount of those dividends was included in the basis of assessment for the Italian tax on corporate income ('IRES'), in accordance with the national legislation governing that tax.

In its capacity as a financial intermediary, Banca Mediolanum also included those dividends in the basis of assessment for the regional tax on production activities ('IRAP'), corresponding to 50% of their amount, pursuant to the provision of the Italian legislation relating to IRAP specifically concerning financial intermediaries.

Subsequently, claiming that that provision was contrary to Article 4 of Directive 2011/96, Banca Mediolanum brought applications before the tax authority seeking reimbursement of the proportion of IRAP resulting from the inclusion in the basis of assessment for that tax of amounts corresponding to 50% of the dividends received from subsidiaries resident in other Member States.

The tax authority rejected those applications on the ground that that provision is not contrary to Article 4 of Directive 2011/96, in so far as that article is intended to apply only to income tax, such as IRES, and not also to IRAP.

After those rejection decisions were confirmed by the Commissione tributaria provinciale di Milano (Provincial Tax Court, Milan, Italy), Banca Mediolanum brought an appeal before the Corte di Giustizia Tributaria di secondo grado della Lombardia (Tax Court of Second Instance, Lombardy), which is the referring court.

The referring court decided to stay the proceedings and to ask the Court of Justice whether, in essence, Article 4 of Directive 2011/96 must be interpreted as precluding national legislation pursuant to which a Member State that has opted for the exemption system provided for by that directive may levy tax on more than 5% of the amount of the dividends which the financial intermediaries resident in that Member State receive, as parent companies within the meaning of that directive, from their

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[107] Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).

subsidiaries resident in other Member States, including where that is done by way of a tax which is not a tax on corporate income, but which includes in its basis of assessment those dividends or a fraction thereof.

By its judgment, the Court answers that question in the affirmative.

Findings of the Court

In reaching that conclusion, the Court recalls, as a preliminary point, that, as regards the tax treatment of the profits distributed by a subsidiary to its parent company, Article 4(1) of Directive 2011/96 expressly leaves it open to the Member States to choose between the system provided for in Article 4(1)(a) ('the exemption system') and the system provided for in Article 4(1)(b) ('the imputation system'). In that regard, the Court notes that the Italian Republic applies the exemption system.

Furthermore, the Court states that, under Article 4(3) of that directive, Member States retain the option of providing, in particular, that the charges relating to the holding of the parent company in the capital of the subsidiary may not be deducted from the taxable profits of the parent company. The management costs relating to the holding may be fixed as a flat rate which may not exceed 5% of the profits distributed by the subsidiary.

As regards the interpretation of Article 4 of Directive 2011/96, in the first place, the Court finds that, from a literal point of view, it is clear from the wording of Article 4(1)(a) that a Member State which has chosen the exemption system must refrain from taxing the profits which a parent company resident in that Member State receives from its subsidiaries resident in other Member States.

In line with its case-law, the Court points out that the application of that provision is not limited to a tax in particular. [108] Consequently, from a literal point of view, Article 4(1)(a) of that directive must be interpreted as meaning that the exemption system it provides for concerns any tax which includes in its basis of assessment the dividends a parent company receives from its subsidiaries which are resident in other Member States.

In the second place, from a contextual point of view, the Court states that Article 2 of Directive 2011/96 only defines the scope *ratione personae* of that directive, and not the scope *ratione materiae* thereof. Therefore, the fact that IRAP is not included in the taxes set out in Part B of Annex I to that directive, to which Article 2(a)(iii) of that directive refers, does not mean that that tax is excluded from the material scope of that directive.

In the third and last place, from a teleological point of view, the Court notes that, in order to ensure the neutrality, from the tax point of view, of the distribution of profits by a subsidiary established in one Member State to its parent company established in another Member State, Directive 2011/96 aims to avoid, in particular, by the rule laid down in Article 4(1)(a) thereof, in economic terms, double taxation of those profits. Accordingly, distributed profits cannot be taxed, first, at the level of the subsidiary and, then, at the level of the parent company. [109]

The Court concludes that Article 4 of Directive 2011/96 must be interpreted as precluding national legislation pursuant to which a Member State that has opted for the exemption system may levy tax on more than 5% of the amount of the dividends which the financial intermediaries resident in that Member State receive from their subsidiaries resident in other Member States, including where that is done by way of a tax which is not a tax on corporate income, such as IRES, but which includes in its basis of assessment those dividends or a fraction thereof, as is the case with IRAP.

Furthermore, the Court states that the principle of equal treatment enshrined in EU law cannot be relied on in a purely domestic situation, such as that liable to arise from the fact that the answer to the present question referred for a preliminary ruling does not concern dividends which a parent company resident in Italy receives from its Italian subsidiaries. Therefore, it is for the referring court

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108 See, to that effect, judgment of 17 May 2017, *AFEP and Others* (C-365/16, EU:C:2017:378, paragraphs 5, 33 and 35), and judgment of 12 May 2022, *Schneider Electric and Others* (C-556/20, EU:C:2022:378, paragraph 47).

109 See, to that effect, judgment of 13 March 2025, *John Cockerill* (C-135/24, EU:C:2025:176, paragraph 33); see also, to that effect and by analogy, judgment of 12 May 2022, *Schneider Electric and Others* (C-556/20, EU:C:2022:378, paragraph 45).

to determine whether there is reverse discrimination prohibited by national law and, where relevant, establish how that discrimination should be removed.

2. TRANSACTIONS SUBJECT TO VAT

Judgment of the Court of Justice (Fourth Chamber) of 1 August 2025, Határ Diszkont, C-427/23

Link to the full text of the judgment

Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 1(2), Article 2(1)(c) and Article 78 – Exemptions on exportation – Article 146(1)(b) – Exempt supply of goods – Service for the administration of VAT refunds to customers not resident in the European Union – Single supply – Distinct and independent supplies – Principal or ancillary supply – Exemptions under Article 135(1)(d) and Article 146(1)(e) – Protection of legitimate expectations – Taxable amount

Having received a request for a preliminary ruling from the Szegedi Törvényszék (Szeged High Court, Hungary), the Court of Justice clarifies, in the light of Directive 2006/112, [110] the value added tax (VAT) regime applicable to administration fees for refunds of VAT to customers not resident in the European Union.

In 2020, Határ Diszkont Kft., a company incorporated under Hungarian law, sold various goods to customers not resident in the European Union. The customers exported the goods on the same day that they purchased them in Hungary and, subsequently, after the exportation, Határ Diszkont refunded those customers for the full amount of VAT paid on those goods.

As part of the administration of the VAT refunds, Határ Diszkont charged those customers not resident in the European Union fees corresponding to 15% of the VAT refunded, recorded in its VAT returns as remuneration for exempt services.

During a tax audit for 2020, Határ Diszkont maintained that the VAT refund administration services were exempt from tax.

After the tax authorities rejected all of the grounds for exemption relied on by Határ Diszkont, the latter brought an action before the referring court, which decided to stay the proceedings and to refer four questions to the Court of Justice concerning the tax treatment of those fees in the light of the VAT Directive.

In essence, the referring court seeks to ascertain:

- whether the administration of VAT refunds to foreign travellers constitutes a supply of services that is distinct from, and independent of, the corresponding exempt supply of goods, and must, as such, be subject to VAT;

- whether such a supply of services comes under the VAT exemption for transactions concerning 'deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments'; [111]

- whether the change in the practice of the tax authority which previously considered such a supply of services to be exempt from VAT before making that supply chargeable to that tax infringes the principle of the protection of legitimate expectations;

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[110] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

[111] Article 135(1)(d) of the VAT Directive.

- whether the fees invoiced as consideration for a VAT refund administration service are net amounts not including VAT, on the basis of which the tax to be paid by the issuer of those invoices must be calculated.

Findings of the Court

As regards the first question, the Court recalls, first of all, that, for the purposes of VAT, the VAT Directive implies that each transaction must normally be regarded as distinct and independent. However, in certain circumstances, several formally distinct supplies must be considered to be a single transaction where they are not independent. That is the case where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split. That is also the case where a supply is ancillary to a principal supply and shares the same tax treatment, that is, where it does not constitute, for customers, an end in itself but is a means of better enjoying the principal service of the supplier.

As regards, first, the classification of an single indivisible supply, the Court notes that, although there is a certain connection between the provision of the VAT refund administration service and the corresponding exempt supply of goods, given that the supply of that service presupposes the existence of that supply of goods, the inseparable link between several elements or acts supplied by the taxable person must necessarily be reciprocal, so that one element or act depends on the other and vice versa. In the present case, the supply of goods, which takes place before the VAT refund administration service is completed, in no way depends on that service, and the two transactions can also be separated in so far as the provision of the VAT refund administration service is not the necessary outcome of the supply of goods. Even if the VAT is not refunded on the ground, inter alia, that the formal conditions for refunding the tax are not satisfied, the supply of the goods will still have taken place and the purchased goods will be freely available to the customer.

As regards, second, the possibility that the VAT refund administration service is ancillary to the supply of the goods, the Court finds that the activity of that service pursues an objective that is independent of the supply of goods in question. Thus, that supply of goods enables customers who are not resident in the European Union to dispose fully of the goods purchased from Határ Diszkont and to transport them out of the European Union as soon as they have been paid for, without any ancillary service being necessary in that regard. As for the VAT refund administration service, it allows customers to benefit from the exemption for exportations. Therefore, it cannot be ruled out that the customer may decide not to use that service and thus waive the refund of the VAT which he or she paid on the purchase of those goods. In those circumstances, the VAT refund administration service cannot be regarded as constituting a supply of services that is ancillary to the supply of goods, since it is not merely a means of better enjoying that supply of goods, but is an end in itself.

Next, the Court examines the applicability of the VAT exemption for supplies of services, including transport and ancillary transactions, which are directly connected with the exportation or importation of goods covered by the exemption scheme provided for in the VAT Directive. [112]

The Court notes, in that regard, that the requirement for a direct connection between the supplies of services and the exportations of the goods concerned, laid down by Article 146(1)(e) of the VAT directive, entails, inter alia, that, by their subject matter, those supplies of services contribute to the actual performance of an exportation transaction. However, the characteristics of the VAT refund administration service carried out by Határ Diszkont do not support the conclusion that that activity contributes to the actual performance of an exportation transaction. The exportation in the present case is carried out independently of the VAT refund administration service, which, moreover, takes place at a later stage, when the exportation has already been completed.

As regards the second question, the Court states that a supply of services may be classified as a 'transaction concerning transfers' or as a 'transaction concerning payments' only if it effects the legal and financial changes which are characteristic of the transfer of a sum of money. By contrast, the supply of a mere physical, technical or administrative service not effecting such changes does not

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[112] Article 61, Article 146(1)(e) and Article 157(1)(a) of the VAT Directive.

come within that classification. The distinction will thus relate to whether the transaction under consideration causes the actual or potential transfer of ownership of the funds in question, or fulfils in effect the specific, essential functions of such a transfer.

The Court finds, in the present case, that Határ Diszkont did not cause the actual or potential transfer of ownership of funds to customers not resident in the European Union. Thus, although the VAT refund administration service provided by Határ Diszkont involved, in principle, the refunding of sums in cash, that supply must be regarded not as a supply of a financial service, but as a supply of an administrative service.

As regards the third question, the Court recalls, as per its settled case-law, that it is necessary to determine whether the acts of the tax authority gave rise to a reasonable expectation in the mind of the taxable person and, if so, the legitimate nature of that expectation must then be established. It states, in that respect, that the right to rely on the principle of the protection of legitimate expectations extends to any person whom an administrative authority has caused to entertain expectations which are justified by precise assurances [113] provided to him or her. Nevertheless, the tax authority's mere acceptance, even for several years, of the VAT returns, which did not include the amounts relating to certain transactions carried out by the taxable person, does not amount to a precise assurance provided by that authority that VAT is not to be applied to those transactions and cannot, therefore, give rise to a legitimate expectation in that regard.

Lastly, as regards the fourth question, the Court points out that VAT is always automatically included in the agreed price, even if the taxable person errs in determining the applicable rate. Given that, in accordance with the principle of VAT neutrality, the VAT system is aimed at taxing only the end consumer, the price agreed between the end consumer and the supplier of goods or services must be deemed to include the VAT charged on those transactions. Where a contract of sale has been concluded without reference to VAT, and in a situation where the supplier has no means of recovering from the purchaser the VAT claimed subsequently by the tax authorities, taking the total price, without deducting the VAT, as the taxable amount on which the VAT is to be levied, would lead to a situation where it is the supplier which bears the VAT burden, thereby conflicting with the principle that VAT is a tax on consumption to be borne by the end consumer. Taking that total price, without deducting the VAT, as the taxable amount on which the VAT is to be levied would also conflict with the rule that the tax authorities may not charge a VAT amount exceeding the amount paid by the taxable person.

Consequently, where the supplier has considered their supply of services to be exempt and it is manifestly impossible for the supplier subsequently to recover, from its customers, the amount of VAT claimed by the tax authorities, the amount of the administration fees must be regarded as a gross price which already includes the tax.

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113 In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes precise assurances. However, a person may not plead breach of the principle of the protection of legitimate expectations unless he or she has been given precise assurances by the authorities (see, to that effect, judgments of 14 March 2013, *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 25, and of 16 January 2025, *BALTIC CONTAINER TERMINAL*, C-376/23, EU:C:2025:20, paragraph 65 and the case-law cited).

3. SPECIAL ARRANGEMENTS

Judgment of the Court of Justice (Fourth Chamber) of 1 August 2025, Galerie Karsten Greve, C-433/24

Link to the full text of the judgment

Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Special arrangements for second-hand goods, works of art, collectors' items and antiques – Taxable dealers – Margin scheme – Article 316(1)(b) – Option to apply the margin scheme – Concept of 'supply of a work of art by the creator' – Supply by the creator through a legal person

Hearing a request for a preliminary ruling from the Conseil d'État (Council of State, France), the Court of Justice confirms in that judgment that the special arrangements for value added tax (VAT) for the resale of works of art acquired from their creators also applies where the work of art at issue has been supplied by its creator acting through a legal person and specifies the conditions for the application of those arrangements.

Galerie Karsten Greve ('GKG') operates as an art gallery and supplied to its customers, inter alia, paintings by the painter Gideon Rubin, which it had itself acquired from Studio Rubin Gideon ('SRG'), a company incorporated under United Kingdom law of which Mr Rubin is one of the two partners. In the context of the supply of those paintings to its customers, GKG applied the margin scheme.

Following tax procedures, the French tax authorities issued GKG with additional assessments for VAT, on the ground that the margin scheme could not apply to that supply.

Following the dismissal of its application for cancellation of the additional tax assessments by the French courts of first instance and appeal, GKG brought an appeal on a point of law before the Conseil d'État (Council of State), which is the referring court. That court states, inter alia, that national law makes it possible to opt for the special margin scheme for the supply of works of art resulting from a supply carried out by their creator or his or her successors in title and for supply resulting from an intra-Community acquisition of such works from their creator or his or her successors in title. [114] In the present case, the paintings at issue had not been supplied to GKG by their creator, namely the artist Gideon Rubin, who had painted them by hand, but by SRG which, in its capacity as a legal person, could not, according to the Conseil d'État (Council of State), be regarded as the creator of those paintings.

In those circumstances, the Court considers that the referring court is asking, in essence, whether Article 316(1)(b) of the VAT Directive [115] must be interpreted as meaning that the supply by taxable dealers of works of art supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person falls within the scope of that provision and, if so, under what conditions.

Findings of the Court

The Court finds, first of all, that the wording of Article 316(1)(b) of the VAT Directive does not specify the detailed rules for the supply of works of art by their creator or his or her successors in title to taxable dealers. However, the supply of works of art is part of the commercial activity of the creator or his or her successors in title, which consists of the transfer, generally for remuneration, of the right to dispose of tangible property as owner.

Accordingly, the wording of Article 316(1)(b) of the VAT Directive does not expressly preclude a creator or his or her successors in title from carrying out such a supply through a legal person or such a supply from being carried out by a legal person.

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114 Paragraph 2 of Article 278*septies* of the code général des impôts (General Tax Code), in the version applicable to the tax period in question, read in conjunction with Article 297 B of that code.

115 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

An interpretation of Article 316(1)(b) of the VAT Directive which excludes from its scope all of the supply by taxable dealers of works of art supplied to the taxable dealer by creators or their successors in title acting through legal persons could undermine the objectives pursued by the VAT Directive and by Article 316(1)(b) thereof, of ensuring fiscal neutrality, avoiding distortions of competition and promoting the introduction of new works of art onto the market of the European Union. The specific objective of Article 316(1)(b) of the VAT Directive is, first, to promote the introduction onto the EU market of new works of art by providing for favourable tax treatment for the importation of such works, for their first supply after creation and for the first supply of those works by taxable dealers, and, second, to limit the administrative burdens of proof for taxable dealers, in particular, as regards whether or not the purchase price of a work of art includes input VAT, and of verification for the tax authorities of the Member States.

In that regard, when they supply works of art to taxable dealers, the creators of those works of art or their successors in title carry out identical transactions from the point of view of levying VAT, whether they carry out such supply as natural persons or through legal persons. The principle of fiscal neutrality precludes economic operators carrying out the same transactions from being treated differently in relation to the collection of VAT.

Furthermore, different treatment depending on the legal form in which the creators or their successors in title act would be likely to result in the collection of VAT at different rates for identical transactions [116] and to distort competition between taxable dealers carrying out the same transactions for the acquisition and resale of works of art, in that they would be treated differently as regards the possibility of opting for the application of the margin scheme, depending on whether those works were supplied to the taxable dealer by the creator or his or her successors in title acting through a legal person or not.

For those reasons, the Court considers that Article 316(1)(b) of the VAT Directive also covers the supply by a taxable dealer of works of art supplied to the taxable dealer by a legal person, provided, however, that the supply of those works of art by that legal person to that taxable dealer can be attributed to the creator or his or her successors in title, which may be presumed where, as in the present case, the legal person was established by the creator or his or her successors in title for the purpose of marketing the works of art created by the creator.

Furthermore, in accordance with the specific objective of Article 316(1)(b) of the VAT Directive, the supply of works of art to a taxable dealer by their creator acting through a legal person must constitute their first introduction onto the EU market, which requires that that legal person have the right to dispose of those works as an owner from their creation or at the time of that first introduction onto the EU market, where they have not been previously supplied subject to VAT.

Since those two criteria have been fulfilled, the supply at issue falls within the scope of Article 316(1)(b) of the VAT Directive and allows a taxable dealer to opt for the margin scheme.

Lastly, the Court makes clear that the application of criteria such as the legal person being subject to a special legal regime, the natural person who has created a work of art holding all or part of the share capital of that legal person and that natural person exercising management functions within that legal person and/or transferring a substantial part of the proceeds of sale to that natural person, could create excessive burdens in terms of proof and verification, thereby undermining the objective of Article 316(1)(b) of the VAT Directive.

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116 See, in that regard, Article 103(2)(a) and (b) of the VAT Directive.

X. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the Court of Justice (Third Chamber) of 1 August 2025, Tradeinn Retail Services, C-76/24

Link to the full text of the judgment

Reference for a preliminary ruling – Intellectual property – Trade marks – Directive (EU) 2015/2436 – Approximation of the laws of the Member States relating to trade marks – Article 10(3)(b) – Rights conferred by a trade mark – Right to prevent a third party from offering the goods, putting them on the market or stocking them for those purposes under the sign – Online trade – Goods offered for sale from a Member State other than that in which the mark is registered – Concept of 'stocking'

By the present judgment, the Court clarifies the situations in which the proprietor of a trade mark may prevent a third party from using a sign [117] and interprets Directive 2015/2436. [118]

PH is the proprietor of two German trade marks, registered for, inter alia, diving accessories.

Tradeinn Retail Services S.L. ('TRS'), established in Spain, offered diving accessories for sale online under signs identical to those marks.

PH brought an action against TRS before the Landgericht Nürnberg-Fürth (Regional Court, Nuremberg-Fürth, Germany) seeking, inter alia, an order prohibiting that use. That court decided to order TRS to cease offering for sale or promoting diving accessories bearing signs identical to those marks.

On appeal by PH, the Oberlandesgericht Nürnberg (Higher Regional Court, Nuremberg, Germany) extended that prohibition to the distribution and stocking of those goods.

TRS brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany), which, having doubts as to the interpretation of Article 10(3)(b) of Directive 2015/2436, asked the Court about the scope of the rights of a proprietor of a trade mark protected in one Member State and the concept of 'stocking' laid down in that article.

Findings of the Court

First of all, the Court notes that the wording of Article 10(3)(b) of Directive 2015/2436 does not contain any express indication as to the possibility, for the proprietor of a trade mark registered in one Member State, of preventing a third party from holding, in the territory of another Member State, goods under that sign.

Next, the Court recalls that the protection afforded by the registration of a national mark is, in principle, limited to the territory of the Member State in which it is registered, so that, in general, its proprietor cannot rely on that protection outside the territory. In addition, the purpose of the exclusive right conferred by the registration of a trade mark [119] allows the proprietor of the trade mark concerned to protect his or her specific interests as proprietor of that mark, that is, to ensure that the trade mark can fulfil its functions. The exercise of that right must therefore be restricted to cases in which a third party's use of the sign adversely affects one of the functions of the trade mark or is liable to do so. Those functions include not only the essential function of the trade mark, which is to guarantee to consumers the origin of the goods or services concerned, but also its other functions,

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117 Those situations are provided for in Article 10(2) of Directive 2015/2436.

118 Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1).

119 That exclusive right is provided for in Article 10(1) of Directive 2015/2436.

such as that of guaranteeing the quality of those goods or services or those of communication, investment or advertising.

Thus, that purpose and the geographical scope of the protection conferred by the trade mark have a number of consequences for the interpretation of Article 10(3)(b) of Directive 2015/2436. In the first place, the proprietor of a national trade mark is entitled to prevent a third party from putting on the market, in the Member State in which the mark is registered, goods under the sign of which the use infringes that mark, it being understood, however, that such goods are not considered to have been put on the market if they are covered by a customs suspensive procedure such as that of external transit and have not been released for free circulation.

In the second place, the proprietor of a national trade mark may prohibit a third party from offering goods under that sign in the territory of the Member State in which the mark is registered. Accordingly, the trade mark proprietor may oppose such an offer, including where it relates to goods placed under the external transit customs procedure, provided that it necessarily entails the release of those goods for free circulation. In addition, the Court notes that the proprietor of a trade mark may prohibit a third party from offering, inter alia by means of online advertising, goods under that sign, including where that third party, the server of the website which it uses or those goods are located outside the Member State of registration, if that offer or advertisement is targeted at consumers in the territory of that Member State. If it were otherwise, operators who use electronic commerce and offer to consumers in that territory goods situated outside that territory would escape any obligation to respect the rights conferred by that trade mark, which would undermine the effectiveness (*effet utile*) of the protection guaranteed by Directive 2015/2436. However, the mere fact that a website is accessible in the territory of the Member State in which the trade mark concerned is protected is not a sufficient basis for concluding that the offers for sale displayed on that website are targeted at consumers in that territory. It falls to the national courts to assess on a case-by-case basis whether there are any relevant factors, on the basis of which it may be concluded that an offer for sale displayed on a website or an online marketplace accessible from that territory is targeted at consumers in that territory.

In the third place, Article 10(3)(b) of Directive 2015/2436 allows the proprietor of a trade mark to prevent a third party not only from offering and putting goods on the market under a sign, the use of which infringes that mark, but also from 'stocking them for those purposes'. That provision therefore applies to the stocking by a third party of such goods only if that is the preliminary step to offering or putting them on the market which the proprietor of a trade mark is entitled to prohibit.

The proprietor of a trade mark may prohibit a third party from offering, inter alia by means of online advertising, goods under that sign, notwithstanding the fact that that third party, the server of the website which it uses or those goods are located outside the Member State of registration, if that offer is targeted at consumers in the territory of that Member State. In such a situation, that proprietor is also entitled to prohibit that third party from stocking those goods outside that territory if that stocking constitutes a preliminary step to the making of such an offer or its implementation, with the result that it may be regarded as having been carried out for that purpose.

Lastly, the Court finds that the term 'stocking' in Article 10(3)(b) of Directive 2015/2436 covers not only cases in which the third party has direct and actual control over the goods concerned, but also those in which he or she has indirect but nonetheless actual control over those goods in that he or she has control or direction over the person who has direct and actual control over those goods. If that provision were applicable only to a third party with direct and actual control over the goods concerned, it would be impossible for the trade mark proprietor to have an injunction issued against an economic operator which, without the proprietor's consent, in order to offer or put those goods on the market, sends them to a service provider so that that operator can provide services such as storage or transport of those goods for those purposes. Such an interpretation would be incompatible with the purpose of Directive 2015/2436 and would deprive the protection which it guarantees of part of its effectiveness.

Judgment of the General Court (Second Chamber) of 10 September 2025, BVG v EUIPO (Sound of a melody), T-288/24

Link to the full text of the judgment

EU trade mark – Application for an EU trade mark consisting of a sound of a melody – Absolute ground for refusal – Distinctive character – Article 7(1)(b) of Regulation (EU) 2017/1001

In its judgment, the General Court annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) [120] on the ground that the Board of Appeal did not correctly assess, in the light of Article 7(1)(b) of Regulation 2017/1001, [121] the distinctive character of an EU trade mark for which registration was sought in respect of a sound sign consisting of a sound of a melody.

The applicant, Berliner Verkehrsbetriebe (BVB), applied for registration of a trade mark consisting of a sound of a melody covering certain transport services. [122] Following the examiner's rejection of that request, the applicant filed a notice of appeal with EUIPO.

The Board of Appeal found that the mark applied for lacked distinctive character. Given that it was a two-second sound sign consisting of a simple sequence of four different perceptible sounds, that mark was so short and banal that it had no resonance or recognisability and was incapable of being recognised by consumers as an indication of the commercial origin of the services concerned. It would simply be perceived as a functional sound element intended to attract the listener's attention.

The applicant brought an action against that decision before the General Court.

Findings of the Court

The Court finds that several factors permit the inference that the characteristics of the mark applied for in terms of duration and resonance make it possible to establish the existence rather than the lack of distinctive character within the meaning of Article 7(1)(b) of Regulation 2017/1001 and the related case-law.

First, as regards the customs of the economic sector at issue, it is well known that operators in the transport sector increasingly use 'jingles', that is to say, short sound patterns, in order to create a sound identity recognisable by the public – an audio equivalent of the visual identity of a mark – for the goods and services associated with it. Those jingles allow the listeners' attention to be captured in environments which can sometimes be noisy, such as in airport terminals or on the platforms of train stations, and to introduce or accompany messages addressed to the target public for advertising purposes or in connection with associated services.

Second, the sound of the melody of which the mark applied for consists does not have a direct link with the services covered and does not appear to be dictated by technical or functional considerations. In addition, it has not been established that that sound is already known to the public, which gives rise to the presumption that it is an original work. In that context, it may be considered that its purpose is rather to serve as a jingle, that is to say, as a short, striking sound sequence likely to be remembered. Moreover, that assessment is confirmed by EUIPO's decision-making practice and the EUIPO examination guidelines in relation to sound marks, which may constitute a reference source.

In view of the characteristics of the mark applied for in terms of duration, melody used and perceptible sounds, and the various indications provided by EUIPO in the past regarding the role

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120 Decision of the Fifth Board of Appeal of the European Union Intellectual Property Office of 2 April 2024 (Case R 2220/2023 5).

121 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).

122 Those services fall within Class 39 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, corresponding to the following description: 'Transport; passenger transport; wrapping and packaging services; storage; arranging of transportation for travel tours'.

played by those characteristics in the assessment of the distinctive character of a sound mark for which registration is sought, the Board of Appeal's assessment is incorrect in the light of both the customs of the sector concerned and the elements which characterise the mark applied for. Neither the duration of the mark applied for nor its alleged simplicity or banality, which does not in itself prevent the corresponding melody from being recognised, are obstacles which are sufficient, in themselves, to justify the lack of any distinctive character.

Third, the Board of Appeal erred in finding that the mark applied for had merely a functional role and that it was customary to play a short sequence of sounds before loudspeaker announcements providing information on means of transport in order to attract passengers' attention. Even if it were necessary to envisage one of the potential uses of the mark applied for, that is to say, to refer to its use in a station to announce the associated transport service, such use, even if it has a functional role, would not in any way prevent the mark applied for from performing its function of indicating the commercial origin of that service.

Fourth, as regards the other services covered by the mark applied for, which did not directly concern transport, but aspects associated with it, the Court considers that it is difficult to understand from the Board of Appeal's findings, first, to which aspects of those services the sound of the melody constituting that mark may be linked and, second, how the fact that the sound sign applied for may be used in advertising those services militates against its registration as a trade mark.

In the light of those considerations, the Court concludes that the Board of Appeal did not correctly assess the distinctive character of the mark applied for.

Judgment of the General Court (Second Chamber) of 10 September 2025, Ffauf Italia v EUIPO – Industria de Diseño Textil (pastaZARA Sublime), T-425/24

Link to the order as published in extract form

EU trade mark – Opposition proceedings – Application for EU figurative mark pastaZARA Sublime – Earlier EU word mark ZARA – Relative ground for refusal – No injury to reputation – Article 8(5) of Regulation (EC) No 40/94 – No link between the signs – No risk of unfair advantage being taken of the mark with a reputation – Existence of due cause for the use of the mark applied for

The General Court annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) [123] and finds, for the first time, that there is due cause for the use of signs equivalent to a mark applied for containing the word element which constitutes a mark with a reputation.

Ffauf Italia SpA, which is the applicant, filed an application with EUIPO for registration of the figurative mark 'pastaZARA Sublime' in respect of pasta. [124] On the basis of the earlier EU word mark 'ZARA', Industria de Diseño Textil, SA, filed a notice of opposition to registration of the mark applied for, [125] which the Opposition Division of EUIPO upheld. [126]

The applicant therefore filed a notice of appeal before the Board of Appeal of EUIPO, which dismissed the appeal on the ground that the earlier mark had a reputation as at the filing date of the mark applied for, that the two marks had a high degree of similarity and that, when the relevant public encountered the mark applied for, it would associate that mark with the earlier mark. Furthermore, the Board of Appeal considered that there was a risk that the use of the mark applied for, in respect

123 Decision of the Fifth Board of Appeal of EUIPO of 3 June 2024 (Case R 1576/2023-5).

124 These were goods in Class 30 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.

125 Based on Article 8(1)(b) and (5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

126 On the basis of Article 8(5) of Regulation No 40/94.

of which due cause had not been established by its proprietor, would take unfair advantage of the repute of the earlier mark.

It is in those circumstances that the applicant has brought an action before the Court seeking the annulment of that decision.

Findings of the Court

The Court rules on whether there is due cause for the use of the mark applied for by the applicant.

In that regard, it recalls that, although the concept of 'due cause' includes only objectively overriding reasons, it may also relate to subjective interests of a third party using a sign which is identical or similar to the mark with a reputation. 'Due cause' is therefore an expression of the general objective of Regulation No 40/94, which is to strike a balance between, on the one hand, the interests of the proprietor of the trade mark in safeguarding the essential function of that mark and, on the other, the interests of a third party in using, in the course of trade, such a sign for the purpose of denoting the goods and services that it markets. Thus, the use by a third party of a sign similar to a mark with a reputation may be classified as due cause if it is demonstrated that that sign was being used before the abovementioned mark with a reputation was filed and that such use is in good faith. Those factors are determined by taking into account, in particular, how that sign has been accepted by, and what its reputation is with, the relevant public, the degree of closeness between the goods and services at issue and the economic and commercial significance of the use of the sign for the goods in question.

In the present case, the Court notes, first of all, that the applicant used signs displaying the word element 'pastazara' to market its goods before the earlier mark was filed, namely, on 3 July 2001.

Next, it observes that the evidence submitted by the applicant demonstrates the good faith of that use. First, it is apparent from that evidence that the use of the name 'Zara' by the applicant relates to the origin of its business in the city of Zara (now Zadar, Croatia), in the 1930s, and that the applicant had already used signs containing that name to denote pasta or similar goods even before the first use of the earlier mark in 1975. Second, the applicant is the proprietor of international registrations of trade marks that contain the word element 'pastazara' and markets pasta under signs containing that word element in the territory of several Member States of the European Union. That evidence thus attests to the economic and commercial significance of the use of signs containing the word element 'pastazara' for the applicant.

Furthermore, the Court points out that the fashion goods covered by the mark with a reputation and the pasta covered by the mark applied for have nothing in common, given that they are neither complementary nor in competition and are usually offered by different companies active in different sectors.

Lastly, the Court states that the concept of 'due cause' is not conditional on the use of the sign being necessary for the marketing of the goods in question, on a finding as to a specific level of recognition of the sign, on a given level of investment and promotional effort or on the enjoyment of a market share. That being so, the evidence put forward demonstrates the marketing of pasta by the applicant under various marks containing the word element 'pastazara' in a significant part of the European Union, as well as the applicant's efforts to defend the use of those signs by means of the actions brought before various national courts.

In the light of the foregoing, the Court concludes that the applicant has established the existence of due cause for the use of the word element 'pastazara' within the mark applied for and annuls the decision of the Board of Appeal.

Judgment of the General Court (Second Chamber) of 24 September 2025, Barry's Bootcamp v EUIPO – Hummel (Device of eight inverted chevrons), T-32/24

Link to the order as published in extract form

EU trade mark – Revocation proceedings – International registration designating the European Union – Figurative mark representing eight inverted black chevrons – Genuine use of the mark – Article 18(1)(a) and Article 58(1)(a) of Regulation (EU) 2017/1001 – Nature of use of the mark – Form differing in elements that do not alter the distinctive character of the mark – Cross-claim – Subject matter of the action – Interest in bringing proceedings – Admissibility

Hearing an action for annulment, which it dismisses, the General Court rules, for the first time, on the admissibility of a cross-claim lodged against a decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) following the joinder, by the latter, of two actions brought against the same decision of the Cancellation Division and involving the same parties.

Hummel Holding A/S, the intervener, is the proprietor of the international registration designating the European Union of a figurative mark representing eight inverted black chevrons in respect of goods and services in several categories. [127] Barry's Bootcamp Holdings LLC, the applicant, submitted an application for revocation [128] with EUIPO for that international registration in respect of all the goods and services concerned. The Cancellation Division of EUIPO upheld that application in part, taking the view that the extent of use of the international registration had not been proved in respect of all the goods and services covered, with the exception of sports clothing, leisure clothing and fashion clothing in Class 25.

The intervener brought an appeal against the decision of the Cancellation Division on the ground that the latter had revoked its rights in the international registration in respect of bags for sport and footwear, sports footwear and leisure footwear [129] (Case R 1415/2022-2). For its part, the applicant brought another appeal against that decision, in so far as the application for revocation of the intervener's rights in the contested international registration had been rejected in respect of sports clothing, leisure clothing and fashion clothing [130] (Case R 1421/2022-2). The Board of Appeal of EUIPO joined those two appeals, on the ground that they were directed against the same decision, and dismissed them in the contested decision.

The applicant therefore brought an action before the Court for annulment of that decision ('the main action'). The intervener brought a cross-claim against that decision. By separate document, the applicant raised a plea of inadmissibility against that cross-claim.

Findings of the Court

In the first place, the Court points out that, under Article 184(1) of its Rules of Procedure, the cross-claim is to seek an order annulling or altering the decision of the Board of Appeal on a point not raised in the application.

First, the Court states that, in the present case, the applicant and the intervener had first brought two separate appeals against the decision of the Cancellation Division, with the result that they were automatically parties to the two parallel proceedings before the Board of Appeal. [131] The Board of

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127 The goods and services in question were in Classes 3, 18, 25, 28 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, as revised and amended.

128 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).

129 'Bags for sport' are included in Class 18 and 'footwear; sports footwear; leisure footwear' are included in Class 25.

130 Those goods are in Class 25.

131 In accordance with Article 67 of Regulation 2017/1001.

Appeal examined those two appeals in the course of the same proceedings, [132] at the end of which it adopted the contested decision. Therefore, in that decision, the Board of Appeal ruled on two appeals brought against the same decision of the Cancellation Division and involving the same parties.

Secondly, the Court notes that, by the main action, the applicant asks it to annul the contested decision in so far as the Board of Appeal dismissed the appeal in Case R 1421/2022-2, whereas the cross-claim seeks the annulment of the contested decision on the ground that the Board of Appeal decided to dismiss the appeal in Case R 1415/2022-2. It follows that the cross-claim seeks the annulment of the contested decision on a point not raised in the application within the meaning of Article 184(1) of the Rules of Procedure of the General Court.

In the light of those considerations, the Court considers that the applicant is not justified in claiming that the cross-claim relates to a decision separate from that contested in the main action.

In the second place, as regards the intervener's interest in bringing proceedings, the Court points out that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in having the contested act annulled. Such an interest therefore requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it.

In the present case, the cross-claim seeks the annulment of the contested decision in so far as it dismissed the intervener's appeal in Case R 1415/2022-2 and, therefore, upheld the decision of the Cancellation Division that had revoked the rights of the proprietor of the contested international registration, in particular for bags for sports and for footwear. Thus, the Court notes that, if it were to uphold the intervener's claims and annul the contested decision, the Board of Appeal would therefore be required to rule again on the intervener's action brought in Case R 1415/2022-2 and could, in that context, adopt a decision different from that annulled by the Court. Consequently, the cross-claim is liable, if successful, to procure an advantage for the intervener.

In the light of the foregoing, the Court concludes that the fact that the contested decision found in favour of the intervener as regards Case R 1421/2022-2 cannot deprive it of an interest in bringing proceedings against the contested decision in so far as that decision dismissed the action in Case R 1415/2022-2.

2. COMMUNITY DESIGNS

Judgment of the Court of Justice (Third Chamber) of 4 September 2025, LEGO (Concept of informed user of a design), C-211/24

Link to the full text of the judgment

Reference for a preliminary ruling – Community design – Regulation (EC) No 6/2002 – Article 8(3) – Design allowing the multiple assembly or connection of mutually interchangeable products within a modular system – Scope of the protection conferred by such a design – Article 10 – Concept of 'informed user' – Article 89(1) – Sanctions in actions for infringement – Special reasons allowing the national court not to make the orders provided for in that provision – Infringement in respect of the pieces of a toy building set, the number of which is small in relation to total number of components of that set

Ruling on a request for a preliminary ruling, the Court of Justice clarifies the concept of 'informed user' in the context of the protection of designs allowing the multiple assembly or connection of mutually

[132] Pursuant to Article 35(5) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation 2017/1001, and repealing Delegated Regulation (EU) 2017/1430 (OJ 2018 L 104, p. 1).

interchangeable products within a modular system. [133] In addition, it clarifies the scope of the concept of 'special reasons' allowing a Community design court not to make an order in an action for infringement or for threatened infringement. [134]

Lego A/S is the holder of two Community designs relating respectively to a modular component and to a coupling component of a toy building set. Pozitív Energiaforrás Kft. sought to import into Hungary, under another trade mark, toy building sets also composed of modular plastic pieces. Following a complaint by Lego, the Nemzeti Adó- és Vámhivatal Veszprém Megyei Adó- és Vámigazgatósága (Veszprém County Tax and Customs Directorate, under the National Tax and Customs Office, Hungary) ordered the seizure of those toy sets and initiated infringement proceedings against Pozitív Energiaforrás on the ground of its suspicion that there had been an infringement of Lego's intellectual property rights.

In 2022, Lego submitted an application to the Fővárosi Törvényszék (Budapest High Court, Hungary) for an interim measure seeking to maintain that seizure. That application was dismissed on the ground, inter alia, that the designs at issue produced a different overall impression on the informed user, in that that user looked at those designs with a particularly keen eye attentive to the smallest detail. By contrast, the Fővárosi Ítélőtábla (Budapest Regional Court of Appeal, Hungary), ruling on appeal, ordered the seizure of the toy sets at issue, taking the view that the Lego designs did not produce on the informed user a different overall impression from that produced by the pieces concerned. That decision was upheld by the Kúria (Supreme Court, Hungary).

Lego subsequently brought an action for infringement against Pozitív Energiaforrás before the Budapest High Court. Entertaining doubts as to the interpretation of the concept of 'informed user' within the meaning of Article 10 of Regulation No 6/2002 in the context of Article 8(3) of that regulation, and as to the concept of 'special reasons' within the meaning of Article 89(1) of that regulation, that court decided to stay the proceedings and to make a request to the Court of Justice for a preliminary ruling.

Findings of the Court

In the first place, the Court recalls that it is apparent from Article 10 of Regulation No 6/2002 that the protection conferred by a Community design extends to any design which does not produce on the 'informed user' a 'different overall impression', and that, in assessing that scope of protection, the 'degree of freedom of the designer in developing his design' must be taken into consideration. That provision also applies where the holder of Community designs covered by Article 8(3) of that regulation, which is a provision specifically devoted to modular systems, of which toy building sets form part, brings an action for infringement against a third party in order to prohibit that third party from using designs which do not produce a different overall impression on the informed user.

In that regard, the Court notes, first, that the concept of 'overall impression', referred to in Article 10 of Regulation No 6/2002, as well as that referred to in Article 6 of that regulation, to which Article 8(3) thereof expressly refers, consists of the informed user's visual perception of the appearance of the product at issue resulting, in particular, from the features listed in Article 3(a) of that regulation.

Second, the Court observes that the concept of 'informed user' refers to a user who, without being a designer or a technical expert, knows the various designs which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include, and, as a result of his or her interest in the products concerned, shows a relatively high degree of attention when he or she uses them. In addition, it emphasises that there is nothing to indicate that that concept should be interpreted differently where the protection conferred by a Community design falls within the scope of Article 8(3) of Regulation No 6/2002. Although a user's level of attention is likely to vary according to the sector concerned, including in the case of designs covered by that provision, it is not necessary to take into consideration the perception of a user who

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133 Within the meaning of Article 8(3) and Article 10 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

134 Within the meaning of Article 89(1) of Regulation No 6/2002.

is a specialist in the field concerned or to consider that the overall impression produced on that user should be formed primarily of a technical opinion.

Third, as regards the 'degree of freedom of the designer in developing his design', which must be taken into account in assessing the scope of the protection conferred by a design, the Court notes that, where that freedom is restricted by a high number of features of appearance of the product or of the part of the product at issue which are solely dictated by its technical function, the presence of minor differences between the designs at issue may be sufficient to produce a different overall impression on the informed user. Although that interpretation of the concept of 'degree of freedom of the designer' applies in the case of infringement proceedings brought by the holder of Community designs falling within the scope of Article 8(3) of Regulation No 6/2002, the practical effect of the latter provision must be ensured by taking into consideration the features of appearance that allow interconnection when assessing the 'overall impression' referred to in Article 10 of that regulation. Therefore, the presence, in the Community design concerned, of interconnecting components protected by Article 8(3) of that regulation may operate against the finding of a different overall impression, so that, where there are no sufficiently significant differences in the overall appearance of the designs at issue, the existence of connection points that have the same form and dimensions is capable of precluding such a finding.

In the light of the foregoing, the Court concludes that the scope of protection of a design under Article 8(3) of Regulation No 6/2002 must be assessed by reference to the overall impression produced by that design on an informed user who, without being a designer or a technical expert, knows the various designs which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include and, as a result of his or her interest in the products concerned, shows a relatively high level of attention when he or she uses them as components of the modular system of which they form part, and not on a user who, possessing technical knowledge similar to that which may be expected of a sectoral expert, examines the design concerned down to the smallest detail and whose overall impression is based primarily on technical considerations.

In the second place, the Court finds that the concept of 'special reasons' within the meaning of Article 89(1) of Regulation No 6/2002, allowing a Community design court not to make one or more of the orders referred to in that provision, must be interpreted uniformly and strictly in the EU legal order. That concept relates only to exceptional situations in which, in the light of the specific features of the conduct alleged against the third party, the Community design court is not required to issue an order prohibiting that third party from proceeding with such acts. That concept does not cover the fact that an infringement relates only to some of the pieces of a modular system, the number of which is small in relation to the total number of components of that system.

Judgment of the General Court (Third Chamber) of 3 September 2025, Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging), T-83/24

Link to the full text of the judgment

Judgment of the General Court (Third Chamber) of 3 September 2025, Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging), T-91/24

Link to the full text of the judgment

EU design – Invalidity proceedings – Registered EU design representing a decoration for bags of packaging – Earlier national word and figurative marks – Ground for invalidity – Use in the subsequent design of a distinctive sign the holder of which has the right to prohibit such use – Article 25(1)(e) of Regulation (EC) No 6/2002 – Applicable substantive law – Rights of the defence – Scope of the examination carried out by the Board of Appeal

Judgment of the General Court (Third Chamber) of 3 September 2025, Eti v EUIPO – Star Foods E.M. (Packaging), T-92/24

Link to the full text of the judgment

EU design – Invalidity proceedings – Registered EU design representing packaging – Earlier national figurative mark – Ground for invalidity – Use in the subsequent design of a distinctive sign the holder of which has the right to prohibit such use – Article 25(1)(e) of Regulation (EC) No 6/2002 – Rights of the defence – Scope of the examination carried out by the Board of Appeal

Dismissing the actions for annulment brought by Eti Gıda Sanayi ve Ticaret AŞ, the General Court rules for the first time on the applicable substantive law *ratione temporis* relating to EU designs, in particular in the context of the proceedings provided for in Article 25(1)(e) of Regulation No 6/2002, [135] and clarifies the case-law deriving from that provision and the rules for its implementation.

Eti Gıda Sanayi ve Ticaret AŞ, the applicant, filed three applications for registration of designs with the European Union Intellectual Property Office (EUIPO): one on 13 July 2007 and two others on 28 October 2016. Those designs represent, for the latter two registered designs, a decoration for bags of packaging and, for the former, packaging. The goods to which those designs are intended to be applied correspond to 'bags [packaging] (ornamentation for)' and 'packaging', respectively. [136]

On 21 January 2019, Star Foods E.M. SRL filed two applications for declarations of invalidity for those designs with EUIPO on the ground that the use of the earlier national signs enabled it to prohibit the use of the distinctive signs in the contested designs. [137] Those applications were based on the earlier Romanian word mark KRAX and three Romanian figurative marks depicting the word element 'krax', all registered for 'preparations made from cereals'. On 21 February 2020, Star Foods E.M. SRL filed a third application for a declaration of invalidity based on the Romanian figurative mark KRAX registered for goods such as 'snack products, especially those made from cereals by expanding and extruding processes, with different flavours'.

The Cancellation Division upheld the three applications for declarations of invalidity. Subsequently, the applicant brought three appeals against those decisions before the Board of Appeal of EUIPO, which dismissed them, finding that the Cancellation Division was justified in declaring the contested designs invalid under Article 25(1)(e) of Regulation No 6/2002, read in conjunction with Article 36(2)(b) of the Romanian Law on trade marks, since there was a likelihood of confusion.

In that context, the applicant brought three actions before the General Court seeking the annulment of those decisions.

Findings of the Court

First of all, the Court finds that, in view of the date on which the applications for registration of the two designs representing a decoration for bags of packaging were filed, [138] namely 28 October 2016, which is determinative for the purpose of identifying the applicable substantive law, the facts of the case are governed by the substantive provisions of Regulation No 6/2002 in its earlier version and the Romanian Law on trade marks in the version in force on that date.

Next, as regards the three designs concerned, it refers to the case-law on invalidity referred to in Article 25(1)(e) of Regulation No 6/2002 in its earlier version. Under that provision, a design may be

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

136 Those goods fall within Classes 32.00 and 9.03 respectively of the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968, as amended.

137 Ground referred to in Article 25(1)(e) of Regulation No 6/2002, in its earlier version, read in conjunction with Article 36(2)(b) and (c) of lege nr. 84 privind mărcile și indicațiile geografice (Law No 84 on trade marks and geographical indications) of 15 April 1998 (*Monitorul Oficial al României*, No 337 of 8 May 2014; 'the Romanian Law on trade marks').

138 Judgments Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging) (Case T-83/24) and Eti v EUIPO – Star Foods E.M. (Decoration for bags of packaging) (Case T-91/24).

declared invalid if a distinctive sign is used in a subsequent design and EU law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use. According to case-law, an application for a declaration that a Community design is invalid that has been based on the ground for invalidity specified in that provision can succeed only if it is found that the relevant public will form the impression that use is made, in that Community design, of the distinctive sign relied on in support of the application for a declaration of invalidity. The examination of that ground for invalidity must be based on the perception by the relevant public of the distinctive sign relied on in support of that ground, as well as on the overall impression that the sign leaves in the mind of the public.

That ground for invalidity does not necessarily presuppose a full and detailed reproduction of an earlier distinctive sign in a subsequent Community design. Even though the contested Community design may lack certain features of the sign in question or may have different, additional features, this may constitute 'use' of that sign, particularly where the omitted or added features are of secondary importance. This is particularly the case where the public retains only an imperfect picture of marks registered in the Member States or EU trade marks. That applies to every type of distinctive sign. As a consequence, if a distinctive sign as used in a subsequent Community design lacks certain secondary features or has additional features, the relevant public will not necessarily notice those changes vis-à-vis the earlier distinctive sign. On the contrary, it may believe that the sign it remembers is being used in the subsequent Community design. It follows that Article 25(1)(e) of Regulation No 6/2002 in its earlier version is applicable where use is made not only of a sign that is identical to that relied on in support of an application for a declaration of invalidity but also of a sign that is similar.

Furthermore, as regards the Romanian Law on trade marks, the Court finds that, in accordance with Article 36(2)(b) of that law, the proprietor of a trade mark may, in essence, request the competent judicial body to prevent third parties not having his or her consent from using in the course of trade any sign in respect of which, because of its identity with, or similarity to, the trade mark or the identity or similarity of the goods or services to which the sign is affixed, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the trade mark. That provision constitutes the transposition into Romanian law of Article 10(2)(b) of Directive 2015/2436, [139] the wording of which is itself identical to Article 5(1)(b) of Directive 2008/95. [140] Therefore, the concept of 'likelihood of confusion' within the meaning of Article 36(2)(b) of that law must be interpreted in the light of the case-law relating to Article 5(1)(b) of Directive 2008/95 and to Article 10(2)(b) of Directive 2015/2436. More specifically, within the meaning of that provision, the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically linked undertakings, constitutes a 'likelihood of confusion'. The existence of a likelihood of confusion on the part of the public must be assessed globally, taking into account all the factors relevant to the circumstances of the case.

Lastly, in the light of those considerations, the Court notes that the present proceedings concern the scope of protection of a mark and, more specifically, the question whether the proprietor of that earlier mark may prohibit the use of its distinctive sign in the contested design. Accordingly, it does not take into account the impression conveyed to the informed user or the individual and novel character of the contested design, within the meaning of Articles 4 to 6 of Regulation No 6/2002.

Therefore, following its examination relating to the existence of a likelihood of confusion as to the commercial origin of the goods within the meaning of Article 25(1)(e) of Regulation No 6/2002 in its earlier version, read in conjunction with Article 36(2)(b) of the Romanian Law on trade marks, the Court holds that the Board of Appeal did not err in finding that there was such a likelihood.

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139 Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1).

140 Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Judgment of the General Court (Eighth Chamber) of 3 September 2025, Costa Pujadas v EUIPO – Yasunimotor (Speed variator), T-331/24

Link to the order as published in extract form

European Union design – Invalidity proceedings – Registered EU design representing a speed variator – Ground for invalidity – No individual character – Visible features of a component part of a complex product – Concepts of 'normal use' and 'visibility' – Article 4(2) and (3) and Article 25(1)(b) of Regulation (EC) No 6/2002 – Burden of proof

Hearing an action for annulment, which it dismisses, the General Court clarifies the interpretation of the visibility requirement arising from Article 4(2) of Regulation No 6/2002 [141] and specifies, in particular, whether partial visibility of the component part of a complex product may make it possible to fulfil that requirement.

Juan Costa Pujadas, the applicant, is the holder of an EU design representing a speed variator, intended to be incorporated into motorcycles, [142] which can be mounted in two different positions, namely an 'external mounting' position or an 'internal mounting' position. In January 2022, on the basis of lack of novelty and individual character, [143] Yasunimotor, SL, the intervener, filed with the European Union Intellectual Property Office (EUIPO) an application for a declaration of invalidity of that design, which the Invalidity Division upheld.

The applicant filed a notice of appeal against that decision before the Board of Appeal of EUIPO, which, however, dismissed it on the ground that the part of the speed variator, which is the subject of the contested design, once incorporated into the complex product, is not clearly visible during the product's normal use.

It is in that context that an application for annulment of the Board of Appeal's decision was brought before the General Court.

Findings of the Court

In the first place, the Court observes that, in accordance with Article 4(2) of Regulation No 6/2002, a design applied to a product which constitutes a component part of a complex product is to be considered to be new and to have individual character only to the extent that, first, the component part, once it has been incorporated into the complex product, remains visible during normal use of that product and, second, those visible features of the component part fulfil in themselves the requirements as to novelty and individual character. Therefore, it is apparent from a combined reading of those two cumulative requirements that, in order for such a design to be protected, the component part to which it is applied must be visible during normal use of the complex product at issue, without, however, it being necessary for that component part to be visible in its entirety.

Accordingly, the Court notes that partial visibility of the component part at issue, once applied to the complex product, during normal use of that product, does not exclude protection of the visible features of the design, provided that they fulfil, in themselves, the requirements as to novelty and individual character. The interpretation that the component part must be visible 'in its entirety' at some point in time in the normal use of the complex product risks rendering Article 4(2)(b) of Regulation No 6/2002 meaningless, which refers only to the visible features of the component part, which implies that its other features may remain invisible. That conclusion is supported by recital 12 of Regulation No 6/2002, which envisages a situation in which only certain features of a component

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141 Council Regulation (EC) No 6/2002 of 12 December 2001 on European Union designs (OJ 2002 L 3, p. 1), in the version prior to the entry into force of Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 (OJ L, 2024/2822).

142 In Classes 12-11 and 12-16 within the meaning of the Locarno Agreement of 8 October 1968 establishing an International Classification for Industrial Designs, as amended.

143 Within the meaning of Article 25(1)(a) and (b) of Regulation No 6/2002, read in conjunction with Article 4(2) and Article 8(1) of that regulation.

part are visible during normal use of a product and where those features may be protected provided that they fulfil the two abovementioned requirements.

Consequently, the Board of Appeal erred in law in finding, in particular, that the speed variator to which the contested design was applied had to be visible 'as a whole' at some point in time during normal use of the complex product to which that variator is applied.

In the second place, the Court examines whether it is possible to distinguish with sufficient clarity and detail the contours and other aesthetic features of the design at issue for the purposes of examining their novelty and individual character.

In that regard, the Court states that it is necessary for the part of the product or the component part of the complex product protected to be visible and defined by features which constitute its particular appearance. That presupposes therefore that the appearance of that part of the product or that component part of a complex product is capable, in itself, of producing an overall impression and cannot be completely lost in the product as a whole.

In addition, the Court recalls that the visibility of a component part applied to a complex product must be assessed from the perspective of the end user of that product as well as from that of an external observer, with the result that different angles of view may be relevant in determining the degree of visibility of such a component part during normal use of the complex product to which it is applied. However, it notes, first, that the Board of Appeal took into account additional angles of view. Second, the Court considers that the evidence provided by the applicant does not demonstrate, either from a side view or from an oblique view, that the contours and other visible features of the speed variator in an internal mounting position are distinguishable, during the normal use of a racing motorcycle, with sufficient clarity and detail to enable the assessment of their novelty and individual character. Indeed, the visible parts of the speed variator in an internal mounting position are completely lost in the product as a whole and are not capable, in themselves, of producing an overall impression.

In the light of the foregoing, the Court concludes that the visible parts of the speed variator in an internal mounting position do not enable the contours and other features of the contested design to be distinguished with sufficient clarity and detail, with the result that the visibility requirement referred to in Article 4(2) of Regulation No 6/2002 is not fulfilled.

Consequently, the error of law made by the Board of Appeal in the interpretation of that article has no bearing on the conclusion reached by it.

3. MEDICINAL PRODUCTS FOR HUMAN USE

Judgment of the General Court (Fifth Chamber, Extended Composition) of 24 September 2025, Sanofi v Commission, T-483/22

Link to the full text of the judgment

Public health – Medicinal products for human use – Marketing authorisation for the medicinal product Nexviadyme (avalglucosidase alfa) – Non-recognition of avalglucosidase alfa as a new active substance – Directive 2001/83/EC – Regulation (EC) No 726/2004 – Commission document 'Notice to Applicants, Volume 2A, Procedures for marketing authorisation, Chapter 1, Marketing Authorisation' – Standard of proof – Obligation to state reasons – Principle of good administration – Right to be heard – Decision to remove the medicinal product from the European Union Register of Orphan Medicinal Products – Regulation (EC) No 141/2000 – Regulation (EC) No 847/2000 – Significant benefit – Standard of proof – Obligation to state reasons

Hearing an action for the annulment in part of the decision of the European Commission authorising the placing on the market of the biological medicinal product for human use Nexviadyme – avalglucosidase alfa, [144] which it dismisses, the General Court, sitting in an extended composition of five judges, clarifies, inter alia, several aspects of the assessment of whether an active substance may be regarded as being a 'new active substance' ('NAS') in the light of the definition of that concept in Annex I to the Commission document entitled 'Notice to Applicants, Volume 2A, Procedures for marketing authorisation, Chapter 1, Marketing Authorisation ('the Notice to Applicants'), raised in the context of an application for marketing authorisation for medicinal products for human use.

The applicant, Sanofi BV, has since 2006 held a marketing authorisation (MA) for the medicinal product Myozyme, which is an enzyme replacement therapy, the active substance of which is alglucosidase alfa, and which is indicated for patients with Pompe disease, a rare hereditary disorder. The applicant subsequently redesigned the molecular structure of alglucosidase alfa with a view to improving the treatment of patients. In March 2014, the Commission adopted a decision by which the active substance thus redesigned, avalglucosidase alfa, was designated as an orphan medicinal product for the treatment of Pompe disease and entered in the EU Register of Orphan Medicinal Products, in accordance with Regulation No 141/2000; the maintenance of that designation was to be reassessed subsequently at the stage of the MA application. [145]

On 11 September 2020, the applicant submitted an MA application to the European Medicines Agency (EMA) for a medicinal product called Nexviadyme, the active substance of which is avalglucosidase alfa, the redesigned active substance of alglucosidase alfa, present in the already authorised medicinal product Myozyme. It also requested that Nexviadyme continue to be designated as an orphan medicinal product at the time of the granting of the MA. Those applications led to a referral to several EMA committees, namely, first, the Committee for Medicinal Products for Human Use ('the CHMP'), which is responsible for drawing up the EMA's opinion on the granting of an MA for a medicinal product for human use and on any question relating to the evaluation of medicinal products for human use, [146] itself being assisted by the Biologics Working Party of the CHMP, which is responsible for providing it with recommendations on all matters relating directly or indirectly to the quality aspects of biological medicinal products, and, second, the Committee for Orphan Medicinal Products ('the COMP'), which is responsible for examining any application for the designation of a medicinal product as an orphan medicinal product. [147] Following the examination and review procedures conducted at the applicant's request, the Commission adopted the contested decision on 24 June 2022.

By that decision, first, avalglucosidase alfa was implicitly refused the status of NAS, thus precluding Nexviadyme from benefiting from a regulatory data protection period of 8 years and a regulatory marketing protection period of 10 years. [148] Second, owing to insufficient evidence of significant benefit when compared with Myozyme, Nexviadyme was not qualified as an 'orphan medicinal product', thus precluding it from benefiting from a 10-year period of market exclusivity. [149] Consequently, the medicinal product Nexviadyme was removed from the EU Register of Orphan Medicinal Products. The applicant therefore brought an action before the Court for annulment of the contested decision relating to those two classifications on the basis that the Commission allegedly infringed the legislation at issue, infringed the principle of good administration and committed manifest errors of assessment, while relying on an inadequate statement of reasons.

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144 Commission Implementing Decision C(2022) 4531 final of 24 June 2022 granting marketing authorisation under Regulation No 726/2004 of the European Parliament and of the Council for 'Nexviadyme – avalglucosidase alfa', a biological medicinal product for human use ('the contested decision').

145 Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1).

146 Under Article 5(2), Article 6(3) and Article 56(1)(a) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

147 Under Article 56(1)(c) of Regulation No 726/2004 and Article 4(2)(a), Article 5(5) and (12)(b) of Regulation No 141/2000.

148 Under Article 14(11) of Regulation No 726/2004.

149 Under Article 8(1) of Regulation No 141/2000.

Findings of the Court

In the first place, the Court rejects any error of law as regards the relevant legal point of reference for the assessment of the NAS status of a biological active substance such as that at issue in the present case. The Court thus distinguishes an application to extend an existing MA [150] from the application submitted in the present case, namely a full and independent MA application, [151] accompanied by an application for the recognition of NAS status under Annex I to the Notice to Applicants. Those procedures are based on different legal bases and dossiers and have different objectives. Accordingly, in an application for an extension of an MA for a biological medicinal product, the applicant is seeking to demonstrate that, despite the replacement of the biological active substance with a biological active substance with a slightly different molecular structure, the efficacy or safety characteristics of those two active substances are not significantly different. By contrast, in the present case the applicant was seeking in fact to differentiate avalglucosidase alfa from alglucosidase alfa and therefore relied on their significant differences. The Court therefore concludes that, having regard to the legal basis of the MA application and the request for recognition of NAS status in the present case, and in the absence of a more precise definition laid down by the EU legislature, the CHMP and the Commission were entitled, without erring in law, to assess the NAS status of avalglucosidase alfa in the light of the definition of that concept in Annex I to the Notice to Applicants, and, on that basis, in the light of the criteria to which it refers.

In the second place, the Court finds no error of appreciation in the assessment of the NAS status of avalglucosidase alfa under the criterion contained in the first indent of Annex I to the Notice to Applicants, which requires the applicant for an MA to demonstrate that the active substance under assessment has not been previously authorised in a medicinal product for human use in the European Union. As regards the methodology applied by the CHMP and the Commission, the Court notes that, in the absence of any detailed guidance, the CHMP and the Commission enjoy broad discretion not only for the interpretation and application of the NAS definition in the Notice to Applicants, but also for the identification of the specific scientific concepts to be taken into consideration, since the evaluations required involve the assessment of highly complex scientific and technical facts. Accordingly, the CHMP's methodological choice, endorsed by the Commission, that, in essence, the fact that an active substance has not been previously authorised is not sufficient in and of itself to grant that substance NAS status, despite the first indent of Annex I to the Notice to Applicants not requiring the candidate active substance to bring about an improvement in comparison to a previously authorised active substance, cannot be regarded as a choice that manifestly exceeded the limits of those authorities' discretion, having regard to the scheme of that annex. The first indent cannot be read in isolation from the third indent.

The Commission therefore did not err in concluding that differences between one active substance and another do not preclude those substances from being regarded as constituting the same active substance. Furthermore, the Court holds that the CHMP and the Commission did not fail to take into consideration all the relevant factors and circumstances by rejecting the approach advocated by the applicant and the European Confederation of Pharmaceutical Entrepreneurs (Eucope), according to which changes to an active substance affecting the therapeutic functionality of the medicinal product would automatically lead to the recognition of NAS status under the first indent of Annex I to the Notice to Applicants for the substance thus modified. The fact that such developments may be examined under the third indent means that it is possible to assess their real contribution in terms of significant differences with regard to safety and/or efficacy.

In the third place, the Court rules on the claim for NAS status under the third indent of Annex I to the Notice to Applicants, which requires demonstrating that the active substance under assessment

150 On the basis of point 1(c) of Annex I to Commission Regulation (EC) No 1234/2008 of 24 November 2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products (OJ 2008 L 334, p. 7), as amended by Commission Delegated Regulation (EU) 2021/756 of 24 March 2021 (OJ 2021 L 162, p. 1).

151 On the basis of Article 8(3) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive (EU) 2022/642 of the European Parliament and of the Council of 12 April 2022 (OJ 2022 L 118, p. 4), and of Article 3(1) of Regulation No 726/2004 and point 4 of Annex I thereto.

differs significantly in properties with regard to safety and/or efficacy from those of a previously authorised substance, this being due to differences in one or a combination of aspects, namely the molecular structure, the nature of the source material or the manufacturing process. First of all, the Court observes that the regulatory framework does not specify the standard of proof required. Next, it finds that in order to be classified as significant, the differences must go beyond a certain quantitative or qualitative threshold, involving a positive clinical impact going beyond mere non-inferiority Accordingly, 'sufficient indications' cannot suffice, in particular where there are doubts as to the reliability of the data provided by the applicant. In that context, the Court states that the criterion that the active substance under evaluation must differ 'significantly' in properties with regard to safety and/or efficacy from the already authorised substance is justified by the necessity not unduly to start new periods of regulatory data and marketing protection. Lastly, the Court concludes that the CHMP and the Commission did not commit any manifest error of assessment in considering that the evidence provided was not sufficient for recognising avalglucosidase alfa as an NAS.

In the fourth place, with respect to procedural issues, the Court considers that the procedures for the examination and re-examination of the application for NAS status for avalglucosidase alfa did not breach the principle of good administration, in particular since a lack of information did not render those procedures unlawful and since the applicant's right to be heard was complied with. [152]

First of all, the Court holds that the fact that scientific considerations are applied in an assessment of an application for NAS status, while they may also appear in an outline draft reflection paper that is not yet available to the public, because it has not been adopted by the CHMP, cannot constitute an irregularity. It is on the basis of their experience and in order to provide the best possible scientific advice that the members of the CHMP are appointed and the various CHMP rapporteurs and co-rapporteurs and the members of their teams of assessors are designated. Accordingly, those individuals cannot be expected to set aside scientific approaches, knowledge and practices which may appear to them to be relevant and which, moreover, have been recommended to them by a working party responsible for providing them with support, solely on the ground that those approaches, that knowledge and those practices appear in an outline draft reflection paper. Further, as regards the alleged lack of information provided to the applicant about the role and work of the Biologics Working Party, the Court considers that since the internal rules of the CHMP and that working party are published online, the applicant was in a position to acquaint itself with those documents. Lastly, as regards the alleged infringement of the right to be heard, the Court finds that the opinion of the Biologics Working Party is merely an intermediate act that is preparatory to the opinion of the CHMP and the contested decision and that, consequently, there is no general or absolute right to make oral observations to that working party. Accordingly, the Court also finds that there was no infringement of the principle of good administration.

In the fifth place, as regards the decision not to classify the medicinal product as 'orphan' on the ground that it was not of significant benefit in relation to Myozyme, the Court concludes that the EMA did not apply an overly strict standard of proof. In particular, it points out that Regulation No 141/2000 does not establish any general presumption as to the existence or absence of a significant benefit. It also observes that the analysis is based on a thorough, objective and adversarial comparative assessment of the highly complex scientific and technical facts put forward by the sponsor, which, by their very nature, are not always free of scientific uncertainty. Those factors require the COMP, bound by its duty to provide the best possible scientific advice, to adopt a position according to its assessment of those factors and of the plausibility of the conclusions drawn therefrom as to the significant benefit of the medicinal product under assessment. Since the applicant did not dispute the merits of the COMP's assessments or demonstrated that they were vitiated by a manifest error of assessment, the Court rejects its complaints.

152 As laid down in Article 41 of the Charter of Fundamental Rights of the European Union.

Judgment of the General Court (Fourth Chamber, Extended Composition) of 24 September 2025, Mylan Ireland v Commission, T-256/23

Link to the full text of the judgment

Medicinal products for human use – Variation of the marketing authorisation for Tecfidera – Dimethyl fumarate, a medicinal product for human use – Directive 2001/83/EC – Article 14(11) of Regulation (EC) No 726/2004 – Article 266 TFEU

Hearing an action for annulment, which it upholds, the General Court rules on a novel question relating to the consequences to be drawn from failure to comply, in a Commission decision, [153] with the time limit set [154] for obtaining a 1-year extension of the 10-year period of marketing protection for a medicinal product for human use, where the holder of the marketing authorisation obtains, during the first 8 years of that 10-year period, an authorisation for one or more new therapeutic indications that bring a significant clinical benefit in comparison with existing therapies.

The applicant, Mylan Ireland Ltd, is a pharmaceutical company that develops and markets various medicinal products, including generic medicinal products.

The Intervener, Biogen Netherlands BV, is the current holder of two marketing authorisations for two strengths of a medicinal product called Fumaderm. Following a request from the intervener, submitted to the European Medicines Agency (EMA), the Committee for Medicinal Products for Human Use (CHMP) issued an opinion recommending that a marketing authorisation be granted for the medicinal product for human use Tecfidera – dimethyl fumarate ('Tecfidera'), in so far as Tecfidera's active substance, dimethyl fumarate ('DMF'), was a 'new active substance', different from the active substance of Fumaderm. After the CHMP adopted the European Public Assessment Report for Tecfidera, the European Commission adopted Implementing Decision C(2014) 601 (final) of 30 January 2014 granting marketing authorisation under Regulation No 726/2004 for the medicinal product Tecfidera. The Commission considered that that medicinal product, in so far as it contains the active substance DMF, is different from Fumaderm, the other already authorised medicinal product composed of DMF and monoethyl fumarate salts ('MEF'). It held that Tecfidera and Fumaderm do not belong to the same global marketing authorisation, within the meaning of the second subparagraph of Article 6(1) of Directive 2001/83. [155]

By decision of 30 July 2018, EMA refused to validate an application for a marketing authorisation from Pharmaceutical Works Polpharma S.A. for a generic medicinal product derived from the reference medicinal product Tecfidera, on the ground that that reference medicinal product benefited from its own eight-year regulatory data protection period and that that protection period had not yet expired.

Pharmaceutical Works Polpharma then brought an action for annulment of the decision of 30 July 2018. By judgment of 5 May 2021, [156] the Court upheld the plea of illegality raised in that action against the implementing decision of 30 January 2014, which constituted the legal basis of the decision of 30 July 2018. It held, inter alia, that the Commission was not entitled to conclude that Tecfidera was covered by a different global marketing authorisation than Fumaderm, which had previously been authorised, without, in particular, requesting the CHMP to verify the role played by MEF in Fumaderm.

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153 Commission Implementing Decision C(2023) 3067 (final) of 2 May 2023 amending the marketing authorisation granted by Decision C(2014) 601 (final) for 'Tecfidera – Dimethyl fumarate', a medicinal product for human use ('the contested decision').

154 Provided for in Article 14(11) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

155 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

156 Judgment of 5 May 2021, *Pharmaceutical Works Polpharma* v *EMA* (Case T-611/18, EU:T:2021:241).

In the context of complying with the judgment of 5 May 2021, the CHMP adopted, on 11 November 2021, a new assessment report concerning the therapeutic effect of MEF within Fumaderm. In it, the CHMP took the view, inter alia, that the totality of the available data cannot establish that MEF exerts a clinically relevant therapeutic contribution within Fumaderm.

On 2 June 2021, the intervener submitted an application for a variation of its marketing authorisation for Tecfidera and for a one-year extension of its marketing protection. The Commission responded to that application by adopting, on 13 May 2022, Implementing Decision C(2022) 3251 final amending the marketing authorisation granted by Implementing Decision C(2014) 601 final for Tecfidera. It, first, granted the application to extend the marketing authorisation for Tecfidera by adding a paediatric indication and, second, refused to grant an additional year of marketing protection for that medicinal product. On the same day, the Commission adopted Implementing Decision C(2022) 3252 final granting marketing authorisation under Regulation No 726/2004 for 'Dimethyl fumarate Mylan – dimethyl fumarate', a medicinal product for human use.

Hearing an appeal brought by the Commission, the intervener and EMA, the Court of Justice, by judgment of 16 March 2023, [157] set aside the judgment of 5 May 2021 and, ruling on the dispute, rejected the single plea in law alleging that the implementing decision of 30 January 2014 was unlawful.

On 2 May 2023, the Commission adopted the contested decision, by which it granted the intervener an additional year – until 2 February 2025 – of marketing protection for Tecfidera. On 13 December 2023, the Commission adopted Implementing Decision C(2023) 8920 final, revoking Implementing Decision C(2022) 3252 (final).

Findings of the Court

The Court begins by dismissing the action as manifestly inadmissible in so far as it seeks, under the first head of claim, the annulment of any decisions taken after the contested decision to the extent that they perpetuate and/or replace that measure, including any follow-up regulatory actions, in so far as they relate to the applicant. Neither that part of the first head of claim nor the body of the application include any precision regarding the later decisions which the applicant seeks to have annulled. The Court notes that such heads of claim do not identify the subject matter of the proceedings in a sufficiently precise manner and must therefore be rejected pursuant to Article 76(d) of the Rules of Procedure of the General Court.

As regards the substance, the Court examines the first plea in law, alleging that the Commission failed to observe the time limit, as required by Article 14(11) of Regulation No 726/2004, for obtaining an extension of the marketing protection for a medicinal product for human use. In that regard, it determines the scope of Article 14(11) of Regulation No 726/2004 and, in particular, the consequences of the failure, by the holder of the marketing authorisation for a medicinal product for human use, to comply with the time limit laid down for obtaining an authorisation for one or more new therapeutic indications, in order to be able to benefit from an additional year of marketing protection for the medicinal product in question.

In the first place, the Court finds that, contrary to what is claimed by the Commission, the applicant's rights relating to the placing on the market of a generic version of Tecfidera were affected by the adoption of the contested decision. By granting Tecfidera an additional year of marketing protection, the contested decision extended from 3 February 2024 to 2 February 2025 the period of market exclusivity for that medicinal product. The contested decision therefore made it impossible for any generic version of Tecfidera to be placed on the market between 3 February 2024 and 2 February 2025. The possibility for the applicant to market its generic version of Tecfidera, Dimethyl fumarate Mylan, during that period was therefore affected.

In the second place, the Court observes that it is in a context of balance between two complementary objectives – namely, first, to promote research on new therapeutic indications with a significant clinical benefit and bringing an improvement to the quality of life and welfare of the patient and,

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[157] Judgment of 16 March 2023, *Commission and Others* v *Pharmaceutical Works Polpharma* (C-438/21 P to C-440/21 P, EU:C:2023:213).

second, to favour the production of generic medicinal products – that the EU legislature provided that the additional year of marketing protection, provided for in Article 14(11) of Regulation No 726/2004, may be granted only where the new therapeutic indication is authorised within the first 8 years of that 10-year period.

However, those objectives can be achieved only if all the time limits in question set out in that paragraph are strictly complied with. Moreover, Article 14(11) of Regulation No 726/2004 does not provide for any derogation in that regard. Accordingly, that provision must be interpreted as meaning that only the grant of an authorisation for one or more new therapeutic indications, during the first 8 years of the 10-year period of marketing protection for the medicinal product for human use in question, is capable of allowing that period to be extended from 10 to 11 years. Obtaining that authorisation is therefore the necessary precondition for the grant of an additional year of marketing protection, that is to say, an extension from 10 to 11 years.

As regards the Commission's argument that the only valid interpretation of Article 14(11) of Regulation No 726/2004, in the particular and exceptional circumstances of the present case, was that the Commission decision had to be adopted within a reasonable period of time after the judgment of the Court of Justice of 16 March 2023, the General Court notes that what the applicant contests is, in essence, that the contested decision was adopted without the authorisation for a new therapeutic indication for Tecfidera having been obtained beforehand during the first 8 years of the 10-year period.

First, a medicinal product may be placed on the market in respect of a new therapeutic indication only after a variation of the initial marketing authorisation has been obtained. Second, it follows from a combined reading of Article 6(1) of Directive 2001/83 and Article 14(11) of Regulation No 726/2004 that it is open to the holder of a marketing authorisation for a medicinal product to apply for a variation of that marketing authorisation with a view to obtaining an authorisation for a new therapeutic indication for it, whether or not that medicinal product belongs to a global marketing authorisation for another medicinal product. In addition, it is possible to apply for that authorisation without necessarily also requesting an extension of the marketing protection for the medicinal product in question.

The Court notes that it was indeed in this context that the intervener was able to make an application to obtain authorisation for a new therapeutic indication for Tecfidera almost 1 month after the judgment of the Court of 5 May 2021, and subsequently obtained that authorisation more than 10 months before the judgment of the Court of Justice of 16 March 2023, despite the fact that Tecfidera was at that time considered to belong to the same global marketing authorisation as Fumaderm. [158]

Thus, first, the judgment of the General Court of 5 May 2021 in no way precluded the submission of the application and the grant of an authorisation for the new therapeutic indication. Moreover, there was nothing to prevent the intervener from submitting an application to that effect to the Commission before 2 June 2021. Nor, second, did that judgment prevent the Commission from taking a decision on that application by the intervener in the first 8 years of the initial 10-year period of marketing protection for Tecfidera, irrespective of the application for an extension of that period from 10 to 11 years.

Consequently, the Court concludes that it has not been demonstrated that the judgment of 5 May 2021 had any bearing on the lack of a grant of an authorisation for a new therapeutic indication for Tecfidera within the period laid down in Article 14(11) of Regulation No 726/2004 and, therefore, on the failure to comply with that condition prior to the grant of the extension of the marketing protection period of that medicinal product from 10 to 11 years.

In the third place, the Court recalls that, as a consequence of a judgment annulling an act, which takes effect *ex tunc* and thus has the effect of retroactively eliminating the annulled act from the legal system, the defendant institution is required, by virtue of Article 266 TFEU, to take the necessary

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158 Within the meaning of Article 6(1) of Directive 2001/83.

measures to remove the effects of the illegalities found in the judgment annulling the act, in order to resolve them in accordance with EU law.

Accordingly, it is true that it was for the Commission and EMA, in the context of complying with the judgment of the Court of Justice of 16 March 2023, to examine what measures would be necessary to restore the intervener, as the holder of the marketing authorisations for Fumaderm and Tecfidera, to the situation it was in before the judgment of the General Court of 5 May 2021, which was set aside by the Court of Justice. However, since the obligation to act under Article 266 TFEU does not, in itself, constitute a source of competence for the Commission, the latter cannot rely on its competence under that article to alter the scope of the provisions of the legislation in force. Indeed, the Commission is obliged to comply with the judgments of the Court of Justice in accordance with the applicable EU law, of which it is the guardian.

Obtaining an authorisation for a new therapeutic indication for a medicinal product is a necessary prerequisite for granting an extension of the marketing protection period for that medicinal product from 10 to 11 years.

Therefore, the acts taken in order to comply with the judgment of the General Court of 5 May 2021 did not become incompatible with the judgment of the Court of Justice of 16 March 2023. The Commission could not grant, in Implementing Decision C(2022) 3251 final of 13 May 2022, a one-year extension of the marketing protection period for Tecfidera, since the condition laid down in Article 14(11) of Regulation No 726/2004 was not satisfied.

In that regard, although the intervener submitted an application for authorisation of a new therapeutic indication for Tecfidera on 2 June 2021, the fact remains that, on the date of adoption of Implementing Decision C(2022) 3251 final, the eight-year period during which an authorisation for one or more new therapeutic indications for that medicinal product had to be obtained had already expired.

Consequently, the judgment of the Court of Justice of 16 March 2023 does not alter the conclusion that Tecfidera could benefit from an extension of the period of marketing protection from 10 to 11 years only if the necessary prerequisite for the grant of such an additional year was complied with.

It follows that the necessary measures that the Commission and EMA must take in order to comply with the judgment of the Court of Justice of 16 March 2023 cannot entail an amendment of Implementing Decision C(2022) 3251 final to introduce therein an extension, from 10 years to 11 years, of the marketing protection period for Tecfidera.

The General Court concludes that the contested decision, taken with a view to complying with the judgment of the Court of Justice of 16 March 2023, must be annulled, on the ground that it was not adopted in accordance with EU law and therefore did not comply with Article 266 TFEU.

4. REGULATION OF DIGITAL MARKETS (DMA)

Judgment of the General Court (Seventh Chamber, Extended Composition) of 3 September 2025, Zalando v Commission, T-348/23

Link to the full text of the judgment

Digital Services – Regulation (EU) 2022/2065 – Designation of a very large online platform – Plea of illegality – Article 33(1) and (4) of Regulation 2022/2065 – Legal certainty – Equal treatment – Proportionality – Obligation to state reasons

Dismissing the action for annulment brought by Zalando SE against the European Commission's decision designating its platform as a very large online platform, [159] the General Court applies for the first time Regulation 2022/2065 on digital services. [160] In that context, it clarifies the scope of the criteria governing the designation of a very large online platform by clarifying the concepts of 'online platform' and 'active recipient of the service' as well as the criteria for assessing the average monthly number of such recipients (AMAR).

The applicant is a company incorporated under German law which operates an online shop, accessible in particular on the website 'www.zalando.de' and at the corresponding URL addresses bearing top-level domain names in other countries. Customers of that shop can purchase products which are either sold directly by the applicant through a sales service called 'Zalando Retail' or are sold by third-party sellers participating in the 'Partner Programm'.

On 17 February 2023, in accordance with Article 24(2) of Regulation 2022/2065, the applicant published the AMAR for the Zalando platform, including Zalando Retail and the Partner Programm, namely 83.341 million users. However, as the gross value of the products sold under its Partner Programm corresponded to 37% of the total value of all products sold, it considered that the AMAR for that platform should be set at 37% of the total number of users, namely 30.836 million.

In the contested decision, the Commission designated the Zalando platform as a very large online platform under Article 33(4) of Regulation 2022/2065, since its AMAR amounted to 83.341 million and therefore exceeded the threshold of 45 million provided for in that article. It considered that it follows from Regulation 2022/2065 [161] that the concept of 'active recipient of an online platform' included all recipients actually using the platform in question, in particular by being exposed to information disseminated on it, and that it was not limited to those who carried out transactions on it. In the present case, the products marketed directly by the applicant were displayed alongside those marketed by third-party sellers, with no possibility of distinguishing between the two on the interface. Thus, the Commission considered that it was not possible to identify, among the recipients of the service, those who were exposed only to information relating to the applicant's products and those who were exposed only to information relating to the products of third-party sellers.

Supported by the professional association Bundesverband E-Commerce und Versandhandel Deutschland eV (bevh), Zalando SE has brought an action with the Court for annulment of that decision.

Findings of the Court

In the first place, the Court notes that the Zalando platform is an online platform in so far as third-party sellers market products on it under the Partner Programm. It recalls that, within the meaning of Article 3(i) of Regulation 2022/2065, an online platform is a 'a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public …'. That is a subcategory of the intermediary services referred to in Article 3(g) of that regulation.

The Court finds that, under the Partner Programm, Zalando SE uses information from third-party sellers to market their products, in particular images and descriptions of those products. Although the applicant may modify their presentation or supplement them, that does not alter the fact that that information originates, at least in part, from those sellers. It is not apparent from Regulation 2022/2065, or even from Directive 2000/31 [162] as amended by that regulation, that the storage and dissemination of information, within the meaning of Article 3(i) of that regulation, exclude the storage and dissemination of information the presentation of which has been modified or supplemented by the provider of the online platform.

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159 Commission Decision C(2023) 2727 final of 25 April 2023 ('the contested decision').

160 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ 2022 L 277, p. 1).

161 Recital 77 and Article 3(b) and (p) of that regulation.

162 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

In that regard, the Court notes that the concept of 'information' must be understood in a broad sense in relation to hosting services within the meaning of Directive 2000/31. Accordingly, it is possible for the applicant to communicate information from third-party sellers while modifying the wording of their texts in order to bring them into line with its commercial requirements, the objective of which is limited to 'guaranteeing a unique shopping experience that stands out from those that may be available from competitors'.

Furthermore, the Court points out that data relating to offers of products marketed by third-party sellers constitute 'information', as is clear from the definition of 'illegal content' set out in Regulation 2022/2065. It follows from that regulation [163] that that concept covers 'information' relating to the sale of products or the provision of services which are unlawful, whether that involves in particular the sale of non-conforming or counterfeit products or the sale of products or the provision of services in breach of consumer protection law. Consequently, the mere listing of a product for the purpose of marketing it is likely to constitute illegal content, particularly where that product is unlawful, and must therefore be regarded as constituting information within the meaning of that regulation. It follows that offers of products by third-party sellers under the Partner Programm must be regarded as information provided by recipients of the service within the meaning of Article 3(i) of that regulation.

The Court adds that, contrary to what the applicant maintains, the Court of Justice's case-law relating to the exemptions from liability from which the providers of hosting services referred to in Article 14 of Directive 2000/31 could benefit does not make it possible to define the concept of 'intermediary service' within the meaning of Article 3(g) of Regulation 2022/2065.

Article 14 of Directive 2000/31 provides that a hosting service provider may not be liable for information stored at the request of a recipient of the service, in particular where it has no actual knowledge of the 'illegal activity or information'.

In the judgment in *L'Oréal and Others*, [164] the Court of Justice held that, in order for an internet service provider to fall within the scope of Article 14 of Directive 2000/31, it was 'essential that the provider be an intermediary provider within the meaning intended by the legislature in the context of Section 4 of Chapter II of that directive'. It thus ruled that an internet service provider was not such an intermediary provider when, instead of limiting itself to the neutral provision of that service by means of purely technical and automatic processing of the data provided by its customers, it played an active role such as to confer on it knowledge or control of those data. However, by limiting the scope of the concept of 'intermediary service provider' in that way, the Court of Justice sought to circumscribe the scope of the exemptions from liability from which the providers of the services at issue could benefit. Furthermore, the Court of Justice referred to the judgment in *Google France and Google* [165] to define the concept of 'intermediary service provider' within the meaning of Section 4 of Chapter II of Directive 2000/31. It follows from that judgment that the interpretation of that concept is based on recital 42 of that directive, according to which 'the exemptions from liability established [in particular in Article 14 of that directive] cover only cases where the activity of the information society service provider is limited to the technical process of operating', it being specified that '[that] activity is of a mere technical, automatic and passive nature'.

It follows that the Court of Justice's interpretation of the concept of 'intermediary service provider' is limited to 'the meaning intended by the legislature in the context of Section 4 of Chapter II of [Directive 2000/31]' [166] and that that interpretation cannot be used for the purposes of applying Regulation 2022/2065, which provides for its own liability regime. That is all the more so because Article 89(1) of that regulation deleted Section 4 of Chapter II of Directive 2000/31, which was the subject of the Court of Justice's interpretation.

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163 Article 3(h) of Regulation 2022/2065, as interpreted in the light of recital 12 thereof.

164 Judgment of 12 July 2011, *L'Oréal and Others* (C-324/09, EU:C:2011:474, paragraphs 112 and 113).

165 Judgment of 23 March 2010, *Google France and Google* (C-236/08 to C-238/08, EU:C:2010:159, paragraphs 112 to 116).

166 Judgment of 12 July 2011, *L'Oréal and Others* (C-324/09, EU:C:2011:474, paragraph 112).

Furthermore, contrary to the applicant's assertion, the legislature did not indicate that the concept of 'intermediary services', which the Court of Justice had defined by referring to recital 42 of Directive 2000/31, should be maintained for the purpose of applying Regulation 2022/2065.

In the second place, the Court notes that it follows from Article 3(p) of Regulation 2022/2065 that, in order to be classified as an active recipient of an online platform, the recipient of the service must only have engaged with that platform, in particular by being exposed to the information hosted by the online platform and disseminated via its online interface. It notes that the products sold by both the applicant and third-party sellers may be presented on the same web page. It also notes that consumers are likely to view information relating to products marketed exclusively by third-party sellers before ultimately choosing to purchase another product sold directly by the applicant. In so far as the applicant submits that it was unable to distinguish, from among the 83.341 million people included for the purposes of calculating the AMAR, those who had actually been exposed to information from third-party sellers from those who had not been exposed to that information, the Court finds that the Commission was entitled to presume that all of those persons had in fact been exposed to that information.

In the third place, with regard to the argument based on the breach of the principle of legal certainty due to the imprecision of Regulation 2022/2065, on the one hand, the Court notes that Zalando SE relies on the German-language version of Article 2(1) of Regulation 2022/2065, which states that only active recipients with their '*Sitz*' (domicile) in the European Union should be taken into account in calculating the AMAR. It points out in that regard that the wording used in one of the language versions of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority. It finds that it is clear from the other language versions of Article 2(1) of Regulation 2022/2065 that only the place where the recipients of the service in question are located when they are exposed to the information hosted by the online platform is relevant, regardless of where their domicile or habitual residence is located. It therefore concludes that the legislature did not need to define the concept of 'domicile' for the purposes of applying that provision. Furthermore, the Court finds that Zalando SE itself had correctly interpreted that provision in order to calculate the AMAR of its platform, in so far as it had taken account only of the place from which the websites and applications relating to that platform had been consulted.

On the other hand, the Court rejects Zalando SE's argument that Regulation 2022/2065 allows the AMAR of an online platform to be underestimated, in particular when users refuse cookies or when visits are generated by robots. It considers that it follows from recital 77 of Regulation 2022/2065 that online platform providers may be led, first, to count bots when they are unable to exclude them without further processing of personal data or tracking and, secondly, to count the same active recipient several times, even though the aim is, 'where possible' to count them only once. By contrast, it considers that it cannot be inferred from that recital that online platform providers could, for the purposes of calculating the AMAR, disregard certain active recipients on the ground that they would refuse to use cookies and that bots should not be counted. Consequently, while those providers may, in certain circumstances, be led to overestimate the AMAR of their online platform in accordance with that regulation, it does not, however, authorise them to underestimate that number. It is up to those suppliers in particular to choose a reliable method that is likely to ensure compliance with that requirement. The fact that Article 33(1) of that regulation refers to the AMAR and not to the average monthly number of consultations of the online platform concerned is not such as to call that conclusion into question. That provision, as interpreted in the light of recital 77 of that regulation, does not lead to all of those consultations being counted, even though it may lead to an overestimate of the number of active users of the online platform concerned.

In the fourth place, the Court rejects the applicant's argument that Article 33(1) of Regulation 2022/2065 is in breach of the principles of equal treatment and proportionality in so far as it takes account only of the AMAR for the purposes of designation as very large online platforms and not the nature of the online platforms concerned or the risks to society which they may give rise to.

First, the Court notes in that regard that Article 34(1) of Regulation 2022/2065 contains a list of systemic risks that may be caused by very large online platforms. In this case, the applicant does not dispute that marketplaces, in particular those on which sellers have not been subject to a selection process, are capable of facilitating the marketing of dangerous or illegal products. Furthermore, the fact that marketplace providers, such as the applicant, have, to date, carefully selected the sellers

operating on their marketplaces is not such as to rule out the possibility that those marketplaces may, in future, permit the marketing of such products to a significant part of the EU population, provided that their AMAR remains equal to or greater than 45 million.

In those circumstances, the Court finds that marketplaces as a whole are likely to disseminate content which is unlawful in relation to the sale of products and to have an adverse effect on the fundamental right to a high level of consumer protection enshrined in Article 38 of the Charter of Fundamental Rights of the European Union. It follows that the legislature did not commit a manifest error of assessment in considering that marketplaces were likely to give rise to systemic risks within the meaning of Article 34(1) of Regulation 2022/2065. Moreover, the fact, assuming that it is established, that that provision also refers to risks which are not likely to be generated by marketplaces is not such as to establish that the latter do not generate any of the risks referred to in that provision.

Secondly, the Commission's taking into account of the nature of online platforms and the risks to which they may give rise for the purposes of their designation as very large online platforms would make such a process long and costly. Thus, the Court observes that the 'qualitative' criteria relied on by the applicant were such as to delay the implementation of the obligations referred to in Article 33(1) of Regulation 2022/2065 and to deprive the Commission of some of the resources necessary to carry out the tasks entrusted to it by that regulation. Consequently, such criteria do not make it possible to achieve those objectives as effectively as the AMAR criterion.

Therefore, the AMAR criterion for the purposes of designation as a very large online platform does not appear manifestly inadequate or inappropriate for achieving the objectives of Regulation 2022/2065.

Judgment of the General Court (First Chamber, Extended Composition) of 10 September 2025, Meta Platforms Ireland v Commission, T-55/24

Link to the full text of the judgment

Judgment of the General Court (First Chamber, Extended Composition) of 10 September 2025, Tiktok Technology v Commission, T-58/24

Link to the full text of the judgment

Digital services – Regulation (EU) 2022/2065 – Commission decision determining the amount of the supervisory fee for 2023 – Article 43(3) to (5) of Regulation 2022/2065 – Article 4(2) of Delegated Regulation (EU) 2023/1127 – Method for calculating the number of average monthly active recipients – Temporal adjustment of the effects of an annulment

Hearing two actions for annulment against decisions of the European Commission determining the amount of the supervisory fee applicable for 2023 to Facebook and Instagram, on the one hand, and TikTok, on the other, the General Court rules for the first time on the interpretation of provisions relating to the determination of the supervisory fee due from providers of very large online platforms ('VLOPs') [167] to fund the Commission's supervisory tasks, which the DSA confers on it. The Court holds, in the two cases before it, that the Commission erred in law by adopting the common methodology for the calculation of the number of average monthly active recipients ('the AMAR') in an implementing act and not in a delegated act and, consequently, annuls the contested decisions.

The applicants, Meta Platforms Ireland Ltd for the Facebook and Instagram services on the one hand, and TikTok Technology Ltd, for the TikTok service, on the other hand, are companies which provide

[167] Within the meaning of Article 33(4) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ 2022 L 277, p. 1; 'the DSA').

services designated as VLOPs. In accordance with Article 43 of the DSA, they are required to pay an annual supervisory fee intended to cover the supervision costs incurred by the Commission.

By two implementing decisions dated 27 November 2023, the Commission set the amount of that fee applicable for 2023 to Facebook and Instagram, on the one hand, and to TikTok, on the other. [168] That amount was determined, in accordance with the second subparagraph of Article 43(3) of the DSA, by following the methodology and procedures set out in Delegated Regulation 2023/1127, [169] in particular in Article 5 thereof. For the purpose of determining that amount, the Commission followed a methodology common to all VLOPs and to all very large online search engines, which it annexed to each contested decision, in order to calculate the AMAR of the designated services and divide between them the annual supervisory fee, in accordance with the principles set out in Article 43 of the DSA.

The applicants challenged those decisions respectively before the Court by relying, among other pleas, on the illegality of the methodology for calculating the AMAR, in that the Commission exercised its delegated power by means of individual implementing acts.

Findings of the Court

The Court examines, first of all, whether the DSA permits the use of a common methodology for calculating the AMAR before assessing whether, in the present case, the Commission infringed Article 43 of that regulation by adopting such a methodology in the context of an implementing act.

In the first place, it observes that no provision of the DSA or of Delegated Regulation 2023/1127 precludes the Commission from following a given methodology for the calculation of the AMAR. In addition, it notes that the relevant information for the needs of the application of Article 43 of the DSA is not the AMAR of each designated service in absolute terms, but its value in proportion to those of other designated services.

In the present case, the Court considers that the Commission could validly have doubts as to the consistency of all the methods of calculating the AMAR used by the various providers, all the more so since the data of some of them were not available to it. It follows that it had good reason to use a common methodology out of concern for transparency and the equal treatment of those providers, taking account of the fact that, pursuant to Article 43 of the DSA, the allocation of the supervisory fees must be proportionate to the AMAR of each designated service.

Furthermore, since it follows from the wording of the second paragraph of Article 4(2) of Delegated Regulation 2023/1127 that that provision does not impose any hierarchy between the three sources of information indicated, which are clearly presented as being alternatives, the Commission was not required to give precedence to one or to disregard another of them. Therefore, the Commission was fully entitled to decide to rely on any other information available to it within the meaning of that provision.

In the second place, the Court notes that it follows from the general scheme and objectives of the DSA that the concept of 'AMAR' must be understood in a uniform and consistent manner, irrespective of the context and purpose of its implementation. If the intention of the legislature had been to lay down separate legal regimes depending on whether the purpose of the use of the AMAR was the designation of a service as a VLOP or a very large online search engine or the determination of the supervisory fee, it would have expressly provided for that in clear and precise terms.

In the light of those considerations, the Court holds that, although it is certainly lawful for the Commission to adopt a common methodology for the calculation of the AMAR, it cannot, however, circumvent the scrutiny of the procedure for the adoption of delegated acts, as laid down, inter alia, in

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168 Commission Implementing Decision C(2023) 8176 final of 27 November 2023 determining the supervisory fee applicable to Facebook and Instagram pursuant to Article 43(3) of Regulation (EU) 2022/2065 of the European Parliament and of the Council, and Commission Implementing Decision C(2023) 8173 final of 27 November 2023 determining the supervisory fee applicable to TikTok pursuant to Article 43(3) of Regulation (EU) 2022/2065 of the European Parliament and of the Council.

169 Delegated Regulation (EU) 2023/1127 of 2 March 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines (OJ 2023 L 149, p. 16).

Article 87(4) and (6) of the DSA, by limiting itself to annexing that common methodology to each implementing act.

In that regard, while it is true that contrary to Article 33(3) of the DSA, Article 43 of that regulation does not expressly refer to the adoption of a delegated act in order to establish the methodology for calculating the AMAR, it remains the case that that article imposes on the Commission an obligation to ensure that the annual supervisory fees are proportionate to the AMAR of each designated service while laying down the method and procedure to be used for their determination in the context of a delegated act and not an implementing act.

To put it another way, it follows from a contextual and schematic interpretation of the relevant provisions of the DSA that, while Article 43 of the DSA does not expressly refer to the methodology mentioned in Article 33 of that regulation, that article creates an explicit link between the method of determining the annual supervisory fees, which can only be established by the adoption of a delegated act, and the AMAR of the designated services in the light of which those fees must be determined. Consequently, the methodology used for calculating the AMAR is intrinsic to the determination of the supervisory fee and must be regarded as constituting an essential and indispensable element of it.

In the third place, the Court considers that, since the calculation of the AMAR is an essential and indispensable element of the determination of the fee, the Commission's obligation, provided for by Article 43(4) of the DSA, to establish in a delegated act the 'detailed' methodology and procedures for the determination of the fees entails, implicitly but necessarily, the obligation to establish in such an act, at the very least, sufficiently detailed elements of the method for calculating the AMAR.

In any event, that provision requires the Commission, in essence, to elaborate and make specific the DSA by setting out in a delegated act the details which have not been defined by the legislature. To the extent that, in Delegated Regulation 2023/1127, the Commission restricts itself to indicating, generally, three sources of information, namely the data reported by the provider under Article 24(2) of the DSA, the information requested pursuant to Article 24(3) of the DSA or any other information available to it, the Commission cannot be considered to have complied with Article 43(4) of the DSA.

In those circumstances, the Court holds that, since the AMAR is both an essential element of the methodology for determining the supervisory fee and a concept which must be understood uniformly and consistently throughout the DSA, it follows from Article 43(3) of the DSA, read in conjunction with Article 33(3) of that regulation that, by adopting the methodology for calculating the AMAR in an implementing act and not in a delegated act, the Commission infringed Article 43(3) to (5) and Article 87 of the DSA. Consequently, it annuls the contested decisions.

However, the Court decides to maintain the effects of those decisions until the measures necessary to comply with the judgments of the Court are taken, which must occur within a reasonable period that cannot exceed 12 months from the day on which those judgments become final.

Taking into account the reasons underpinning the annulment of the contested decisions, the Court considers that the Commission will not be in a position to adopt new decisions requiring payment of the supervisory fee from the applicants without establishing, beforehand, the methodology for calculating the AMAR by means of a delegated act. Thus, new decisions determining the supervisory fees for 2023 cannot be taken, as the case may be, until after an amendment of Delegated Regulation 2023/1127 or the adoption of a new delegated act establishing the methodology for calculating the AMAR. Consequently, to reject the request for the effects of the contested decisions to be maintained would risk undermining legal certainty and the proper implementation of the supervisory tasks conferred by the DSA on the Commission.

5. CROSS-BORDER HEALTHCARE

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, Casa Judeţeană de Asigurări de Sănătate Mureș and Others, C-489/23

Link to the full text of the judgment

Reference for a preliminary ruling – Social security – Health insurance – Article 56 TFEU – Freedom to provide services – Regulation (EC) No 883/2004 – Article 20(1) and (2) – Medical treatment received in a Member State other than the insured person's Member State of residence – Directive 2011/24/EU – Article 7(7) – Assumption of the costs of treatment incurred by the insured person – Reimbursement – National legislation making reimbursement of those costs conditional upon the completion of a medical assessment, carried out exclusively by a health professional belonging to the public health insurance system of the insured person's Member State of residence, which has given rise to the issuing, by that health professional, of a document authorising the hospitalisation of that insured person – Significant limitation of the reimbursement of the costs of cross-border healthcare

Hearing a request for a preliminary ruling from the Înalta Curte de Casaţie şi Justiţie (High Court of Cassation and Justice, Romania), the Court of Justice specifies the conditions and arrangements for the reimbursement of the costs of cross-border healthcare incurred by an insured person under Directive 2011/24 [170] and Regulation No 883/2004. [171]

In March 2018, AF, a Romanian resident affiliated with the national public health insurance system, was diagnosed with adenocarcinoma of the prostate at a private medical establishment in Romania. In view of the benefits for the patient's health and subsequent recovery, the recommended treatment consisted of an operation carried out with the assistance of a surgical robot, which AF decided to undergo in Germany, at a specialist clinic devoted exclusively to the pathology in question.

However, the request which he submitted after the operation, seeking reimbursement of the costs of the healthcare received in Germany, was refused by the Romanian health insurance fund on the ground, inter alia, that it was not accompanied by a document authorising his hospitalisation. Such a document should, according to the requirements of Romanian law, have been drawn up by a health professional belonging to the Romanian public health insurance system before the beginning of the provision of scheduled treatment.

After his action against the decision of the health insurance fund was dismissed by the Curtea de Apel Târgu Mureș (Court of Appeal, Târgu Mureș, Romania), AF brought an appeal before the referring court. Having doubts as to whether the Romanian rules governing the reimbursement of the costs of cross-border medical services are compatible with EU law, that court has decided to make a reference to the Court of Justice for a preliminary ruling.

Findings of the Court

Carrying out a literal, contextual and teleological interpretation of Article 7(7) of Directive 2011/24, the Court notes, in the first place, that that provision does not preclude – subject to the limits laid down thereby – a Member State of affiliation from requiring, for the purposes of the reimbursement of the costs of cross-border healthcare, an insured person to have undergone a medical assessment, carried out by a health professional belonging to the public health system or health insurance system of that Member State, which has given rise to the issuing, by that health professional, of a document authorising the hospitalisation of that insured person.

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170 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ 2011 L 88, p. 45).

171 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1).

In that regard, the Member States have a broad discretion to determine the arrangements and conditions for reimbursing the costs of cross-border healthcare services, so that they may provide that such services are to be subject to certain conditions, as long as those conditions are not discriminatory and do not constitute an unjustified obstacle to the freedom to provide services guaranteed by Article 56 TFEU. However, in examining the limits thus laid down by Article 7(7) of Directive 2011/24, the Court finds that, by making reimbursement of the costs of cross-border healthcare services subject to the completion of a medical assessment by a health professional belonging to the Romanian public health insurance system and to the obtaining, from that health professional, of a document authorising hospitalisation, the Romanian legislation is capable of having a deterrent effect on the use of cross-border healthcare services and thus constitutes an obstacle to the freedom to provide services for the purposes of Article 56 TFEU. In that regard, the Court notes that, in the context of cross-border hospital treatment, more often than not, such an assessment will be carried out and such a document will normally be drawn up by a health professional operating in the Member State where the healthcare is to be provided.

That obstacle cannot be justified by the general objective pursued by the Romanian legislation of preserving the financial stability of the social security system. Indeed, the health system of the Member State of affiliation is not liable to be faced with a risk of additional costs linked to the assumption of the costs of cross-border healthcare, in view of the twofold limit which Directive 2011/24 places on the reimbursement of those costs. First, that reimbursement is to be calculated on the basis of the rates applicable to healthcare in the Member State of affiliation, and, second, it is not to exceed the actual costs of the healthcare received if the cost of the care provided in the host Member State is lower than that of the care provided in the Member State of affiliation.

Furthermore, even if it cannot be ruled out that the condition laid down by the Romanian legislation enables (i) costs to be controlled and (ii) any waste of financial resources resulting from, inter alia, needless hospitalisations prescribed by health professionals belonging to the private health system who would not be constrained by a need to control public spending to be avoided as far as possible, such a condition does not appear, in any event, to be in line with the principle of proportionality. Indeed, less restrictive measures could have been provided for by the Romanian legislature, such as the implementation of a procedure for accepting equivalent medical certificates or reports, accompanied by review of the apparent accuracy of the diagnosis and the relevance of the proposed treatment.

In the second place, the Court examines whether the application of a calculation method which significantly limits the amount of reimbursement of the costs of cross-border healthcare as compared with the costs actually incurred in the Member State where that healthcare was provided where the prior authorisation required under Regulation No 883/2004 has not been obtained is compatible with Article 20 of that regulation, read in the light of Article 56 TFEU regarding the free movement of services.

As regards, as a preliminary point, the relationship between Directive 2011/24 and Regulation No 883/2004, the Court specifies that, for the sake of consistency, those two acts cannot be applied in combination. Where the patient is entitled to cross-border healthcare under both Directive 2011/24 and Regulation No 883/2004, and the application of that regulation is more advantageous to the patient, the patient's attention should be drawn to this by the Member State of affiliation. As assessing the question of the applicability of Regulation No 883/2004 is thus an assessment of a factual nature, it is for the referring court to verify whether that regulation is applicable in the present case.

That being said, in order to provide the referring court with an answer which will be of use to it, the Court goes on to interpret Regulation No 883/2004.

Under Article 20(1) and (2) of that regulation, an insured person travelling to a Member State other than his or her Member State of residence with the purpose of receiving benefits in kind during his or her stay must seek authorisation from the competent institution. Once authorisation has been received, the insured person is to receive the benefits in kind provided by the institution of the place of stay, in accordance with the provisions of the legislation that institution applies, as though he or she were insured under that legislation.

However, as the applicability of Article 20 of Regulation No 883/2004 to a given situation does not mean that provisions on the freedom to provide services cannot apply to that situation at the same time, the Court interprets that article in the light of Article 56 TFEU and of the case-law relating thereto. In that regard, it recalls that, where an insured person has received cross-border healthcare without having sought and obtained the prior authorisation required for that purpose or where the refusal to issue that authorisation was well founded, the insured person is entitled to reimbursement of the costs of that healthcare only within the limits of the cover provided by the health insurance scheme with which he or she is affiliated. The amount of reimbursement of those costs may be fixed by the Member State of affiliation at a level lower than that of the costs actually incurred by that insured person, provided that the method for calculating that amount is based on objective, non-discriminatory and transparent criteria.

Nevertheless, if, for reasons relating to his or her state of health or to the need to receive urgent treatment in a hospital, that person was prevented from applying for such a prior authorisation or was not able to wait for the decision of the competent institution on the application for authorisation submitted, he or she is entitled to obtain reimbursement of an amount equivalent to that which would ordinarily have been assumed by the competent institution had there been such an authorisation.

Judgment of the Court of Justice (Fourth Chamber) of 11 September 2025, Österreichische Zahnärztekammer, C-115/24

Link to the full text of the judgment

Reference for a preliminary ruling – Public health – Cross-border healthcare – Directive 2011/24/EU – Article 3(d) and (e) – Provision of healthcare through telemedicine – Concept of 'telemedicine' – Cross-border healthcare provided through telemedicine – Complex medical treatment that includes healthcare provided in person and through telemedicine – Member State of treatment – Directive 2000/31/EC – Information society service – Directive 2005/36/EC – Professional qualifications – Freedom to provide services – Scope – Article 56 TFEU

In a judgment on a reference for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria), the Court of Justice gives a ruling on the interpretation of a number of acts of secondary EU law in an expanding field that is still rarely addressed in the case-law, namely telemedicine.

UJ, a dentist who is established in Austria and is authorised to provide dental care there, participates, as a partner, in activities in the field of dentistry carried out in that State by two German companies belonging to a group of undertakings that is active in dental medicine and operates worldwide. One of those companies, Urban Technology GmbH, advertises on its website dental aligners which consist of dental splints and are marketed under the brand name DrSmile. Potential customers can, via that website, request an appointment with a 'partner dentist' in Austria, such as UJ. During that appointment, that partner dentist, at his or her surgery, takes a medical history, provides an initial consultation, makes a 3D scan of the jaw, and carries out any pre-treatments that might be necessary for the future dental splint therapy. That partner dentist then sends the images and a recommendation regarding the dental alignment procedure to another company, DZK Deutsche Zahnklinik GmbH.

DZK Deutsche Zahnklinik has, in accordance with German law, a licence and the other authorisations necessary to operate a dental clinic in Germany. Only that company concludes treatment contracts with the patients. It obtains the dental splints from Urban Technology, which orders them from third parties; after the dental splint therapy starts, DZK Deutsche Zahnklinik subsequently provides follow-up care for the patients by means of an application. That company has a contractual relationship with the partner dentist and remunerates him or her for the services provided.

In that context, the Österreichische Zahnärztekammer (Austrian Dental Chamber) brought an action seeking an injunction against UJ before the Landesgericht Klagenfurt (Regional Court, Klagenfurt, Austria), together with an application for interim relief seeking to prohibit UJ from participating,

directly or indirectly, in activities in the field of dentistry carried out in Austria by foreign companies that do not have the authorisations required under Austrian law. Following the dismissal of that application, the Austrian Dental Chamber brought an appeal before the Oberlandesgericht Graz (Higher Regional Court, Graz, Austria), which upheld the application for interim relief; subsequently, UJ brought an appeal on a point of law before the Supreme Court, which made a reference to the Court of Justice for a preliminary ruling.

Findings of the Court

In the first place, the Court rules on the concept of cross-border healthcare provided through telemedicine for the purposes of Directive 2011/24. [172]

After noting that the term 'telemedicine' amounts to an autonomous concept of EU law, first, the Court points out that, according to a literal interpretation, the usual meaning of that term, by its very etymology, refers to medical services which are supplied at a distance, the prefix 'tele' conveying precisely the idea of distance. Likewise, in order for healthcare provided in the case of telemedicine to be covered by the concept of cross-border healthcare, it is necessary for that healthcare to be provided or prescribed in a Member State other than the Member State of affiliation.

Second, as regards the contextual interpretation, the Court notes that Directive 2011/24 lays down the general rule that applies, in principle, to all healthcare, and pursuant to which the Member State of treatment is that on whose territory the healthcare is actually provided. For telemedicine, that directive permits an exception pursuant to which healthcare is considered to be provided in the Member State where the healthcare provider is established. That exception, which is to be interpreted strictly, means that the Member State of treatment in respect of care other than that provided through telemedicine must be determined on the basis of the territory where that care is actually provided.

The Court observes also that, since the concept of healthcare can cover a wide range of services, a service provided in the context of telemedicine is, consequently, liable to amount to cross-border healthcare. Moreover, the provisions of Directive 2011/24 clearly state that healthcare provided or prescribed through means of telemedicine may come within the scope of 'cross-border healthcare', defined therein. [173]

Furthermore, referring to the concept of information society services, [174] the Court states that cross-border health services supplied by a provider to a patient, where both are simultaneously present in the same location, even if those services involve the use of information and communication technologies (ICT), cannot be regarded as information society services and cannot therefore be covered by the concept of telemedicine for the purposes of Directive 2011/24. By contrast, health services which are actually supplied at a distance, that is to say, without the provider and the patient being simultaneously physically present in the same location, via ICT, are liable to be covered by the concept of information society service and therefore by that of 'telemedicine', even where they are provided in the framework of a complex medical treatment that includes healthcare provided by a provider who is physically present in the same place as the patient.

Third, as regards the teleological interpretation, the Court points out that telemedicine is a medical practice – in the present case a cross-border practice – allowing the attainment of the objectives of Directive 2011/24, that is to say, facilitating access to healthcare provided in a Member State where the provider of that care is established, which is different from the Member State of affiliation where

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172 Article 3(d) and (e) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ 2011 L 88, p. 45).

173 See Article 7(7) of Directive 2011/24, which provides that the Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare, 'including healthcare received through means of telemedicine', the same conditions as those set for care provided in that State. Thus, the expression 'including healthcare received through means of telemedicine' confirms that finding.

174 Pursuant to Article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1), read in conjunction with Article 1(1)(b) of and Annex I to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1).

the patients receiving the care reside. In that context, the Court observes that, by reason of the nature and specific features of that practice – relating, inter alia, to the provision of care at a distance, in other words, without the health professional and the patient being simultaneously present in the same location, and the use of ICT – the EU legislature provided for derogating rules concerning the determination of the Member State of treatment and the law applicable to a practice of that kind.

Fourth, the Court notes that the origins of the relevant provisions of Directive 2011/24, and more specifically the definition of the concept of 'telemedicine' in the *travaux préparatoires*, further support the conclusion that the decisive aspect of that concept lies in the fact that the health service is supplied, via ICT, to a patient by a healthcare provider established in a Member State other than the Member State of affiliation, at a distance and therefore without that patient and that provider being simultaneously physically present in the same location.

Thus, the Court concludes that, under Directive 2011/24, the concept of cross-border healthcare provided in the case of telemedicine corresponds solely to healthcare provided, exclusively via ICT, to a patient by a healthcare provider established in a Member State other than that patient's Member State of affiliation, at a distance and therefore without that patient and that provider being simultaneously physically present in the same location.

In the second place, the Court provides clarification on the scope of Directive 2011/24.

In that regard, first, the Court states that it follows both from the very objective and structure of that directive that its scope and therefore the scope of the provision of that directive defining 'Member State of treatment' [175] are not limited to the reimbursement of the costs of cross-border healthcare. Second, it finds that cross-border healthcare that is provided via telemedicine, since it is regarded as being provided in the Member State where the healthcare provider is established, must comply with that Member State's legislation and standards and guidelines on quality and safety, as well as with EU legislation on safety standards. Furthermore, the Court observes that, under both Directive 2011/24 and Directive 2000/31, the provision of healthcare in the case of telemedicine is governed by the legislation of the Member State where the provider is established in so far as it may be covered by the concept of 'information society service'.

In the third and last place, the Court rules on the scope, in the context of the recognition of professional qualifications, of the principle of the freedom to provide services, referred to in Directive 2005/36. [176]

In that regard, the Court finds that that directive applies neither to a provider of cross-border healthcare in the case of telemedicine nor to a provider, established in a Member State, that, without moving, has a provider established in another Member State provide healthcare in person to a patient residing in that second Member State.

First, Directive 2005/36 expressly states that its provisions relating to the freedom to provide services are to apply only where the service provider moves to the territory of the host Member State. Telemedicine necessarily means that the health service is provided without anyone moving. Second, the Court finds that, in the present case, there is nothing to suggest that a healthcare provider moves to the territory of a host Member State where that provider provides such care there via another provider established in that State.

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175 Article 3(d) of Directive 2011/24.

176 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

XI. ECONOMIC AND MONETARY POLICY: RECOVERY AND RESOLUTION OF CREDIT INSTITUTIONS

Judgment of the Court of Justice (First Chamber) of 11 September 2025, Banco Santander (Resolution of Banco Popular III), C-687/23

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 2014/59/EU – Resolution of credit institutions and investment firms – General principles – Article 34(1)(a) and (b) – Bail-in – Write-down of capital instruments – Effects – Article 53(1) and (3) – Article 60(2), first subparagraph, points (b) and (c) – Protection of the rights of shareholders and creditors – Purchase of capital instruments – Flawed and incorrect information provided in the prospectus to be published, inter alia, when securities are offered to the public – Action for a declaration of nullity in respect of the agreement for the purchase of capital instruments – Action for damages – Actions brought before the adoption of resolution measures

Hearing a request for a preliminary ruling from the Tribunal Supremo (Supreme Court, Spain), the Court of Justice rules on the relationship between rights arising from an action for a declaration of nullity of a contract for the subscription of subordinated bonds which are converted into shares and from an action for damages, based on the failure to comply with the information requirements arising from Directive 2004/39, [177] brought prior to the resolution of a credit institution entailing a total write-down of shares in that institution's share capital, and on their classification as a claim which has accrued at the time of resolution, within the meaning of Directive 2014/59. [178]

That judgment of the Court follows the judgments in *Banco Santander (Resolution of Banco Popular)* [179] and *Banco Santander (Resolution of Banco Popular II)*, [180] in which it held, in essence, that Directive 2014/59 precludes actions for a declaration of nullity and for damages where those actions are brought after the date on which the resolution decision is taken.

On 3 October 2009, D.E., as sole director of the company Lera Blava SLU, subscribed to convertible subordinated bonds that could be exchanged into subordinated bonds issued by Banco Popular Español SA, which were subsequently converted into other mandatory convertible subordinated bonds. Lera Blava assigned D.E. ownership of those bonds on 14 January 2013 and the transfer was authorised by Banco Popular. Those bonds were mandatorily converted into Banco Popular shares on 25 November 2015.

In 2016, D.E. brought an action at first instance against Banco Popular seeking a declaration of nullity in respect of the purchase of the convertible subordinated bonds and the repayment of the sum initially invested. In the alternative, he sought compensation for the damage caused by Banco Popular's failure to comply with the information requirements when those bonds were marketed and subsequently converted. That court upheld that action and declared the initial subscription null and void. Subsequently, the appeal court set aside that judgment on the ground that D.E. did not have standing to bring proceedings. D.E. then brought an appeal on a point of law against the appeal judgment before the Supreme Court.

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177 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

178 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).

179 Judgment of 5 May 2022, *Banco Santander (Resolution of Banco Popular)* (C-410/20, EU:C:2022:351).

180 Judgment of 5 September 2024, *Banco Santander (Resolution of Banco Popular II)* (C-775/22, C-779/22 and C-794/22, EU:C:2024:679).

On 7 June 2017, the SRB adopted the resolution scheme in respect of Banco Popular, which was endorsed by the European Commission on the same day and implemented by a decision of the Fondo de Reestructuración Ordenada Bancaria (Fund for Orderly Bank Restructuring, Spain; 'the FROB'). That decision reduced Banco Popular's share capital to zero by means of the write-down of all of Banco Popular's outstanding shares. As a result of that decision, D.E ceased to be the owner of the Banco Popular shares resulting from the conversion of the subscribed bonds, without receiving any consideration for them. In addition, the FROB decided to convert Banco Popular's Tier 2 instruments and to transfer to Banco Santander the new shares issued following that conversion, without the consent of the former holders of those instruments. In 2018, Banco Santander became the universal successor to Banco Popular, by means of a merger by acquisition of that institution.

In that context, the referring court asks, in essence, whether the provisions of Article 34(1)(a) and (b), Article 53(1) and (3) and points (b) and (c) of the first subparagraph of Article 60(2) of Directive 2014/59 must be interpreted as precluding the rights arising from an action for a declaration of nullity in respect of a contract for the subscription of subordinated bonds which are converted into shares and from an action for damages, based on the failure to comply with the information requirements arising from Directive 2004/39, from being regarded as falling within the category of obligations or claims which have 'accrued' at the time of the resolution of the credit institution concerned, within the meaning of Article 53(3) and point (b) of the first subparagraph of Article 60(2) of Directive 2014/59, where those actions were brought before the total write-down of shares in that credit institution in the course of resolution proceedings.

Findings of the Court

In the first place, as regards the wording of Article 53(3) and point (b) of the first subparagraph of Article 60(2) of Directive 2014/59, the Court notes that the use of the concept of 'liability already accrued' or the reference to accrued claims does not, in itself, provide any indication as to whether actions for a declaration of nullity and for damages must only have been brought at the time of the resolution or, in addition, have already been the subject of a final judgment. That said, Article 53(3) of that directive states that the obligations or claims arising from written-down liabilities, which have not accrued at the time of resolution, are treated as discharged for all purposes, and cannot be proven against the credit institution under resolution or any successor entity 'in any subsequent proceedings'. Accordingly, that clarification is an indication that such obligations or claims remain enforceable against such an institution or such an entity when they are the subject of judicial proceedings brought before resolution. By placing the focus on subsequent procedures, that provision does not in any way rule out the enforceability of those obligations or claims in the context of proceedings pending at the time of resolution.

In the second place, as regards the context of the same provisions of Directive 2014/59, the Court notes, first, that Article 34(1)(a) and (b) of that directive provides that the shareholders, followed by the creditors, of a credit institution under resolution are required to bear the first losses incurred as a result of the application of that procedure. However, in so far as the relevant provisions refer expressly to the obligations and claims arising from a 'liability' which is written down or existing against the holder of the written down capital instruments, they apply, inter alia, to the claims and obligations of persons who are shareholders or creditors of a credit institution under resolution. In so far as those obligations or claims have 'accrued' at the time of resolution, it follows from those provisions that they remain enforceable against the credit institution under resolution or any successor entity. Therefore, the Court finds that it cannot be inferred from Article 34(1)(a) and (b) of Directive 2014/59 that only persons who have lost the status of shareholder or creditor of such an institution, following a final judgment upholding the annulment of the contract for the subscription of the capital instruments at issue, may benefit from the enforceable nature of the obligations or claims which have 'accrued', within the meaning of the relevant provisions of that directive, at the time of the resolution.

Further, the Court finds that, where the resolution procedure involves the application of a 'bail-in tool', [181] Article 48(1) of Directive 2014/59 provides that, in the exercise of the write-down and

[181] Within the meaning of Article 2(1)(57) of Directive 2014/59.

conversion powers, resolution authorities are to reduce, in the first place, the different categories of capital instrument. That directive provides that the measures permitted by the bail-in for the reduction of the share capital or the conversion or cancellation of those instruments are immediately binding on the affected shareholders and creditors, [182] thus showing that, in such a context, the write-down and conversion of capital instruments contributes directly to the achievement of the objectives of the resolution procedure. From that perspective, no compensation is to be paid to the holders of the relevant capital instruments, [183] other than in cases where the conversion of such instruments is provided for by that directive, [184] which will then take the form of an issuance of capital instruments to those holders. That limit prevents that compensation from being able retroactively to reduce the amount of capital used for the purposes of resolution. [185]

Accordingly, as regards actions for a declaration of nullity or for damages brought after resolution, the Court has already held that such actions would entail the risk that the amount of the capital instruments subject to a bail-in in the context of the resolution procedure would be retroactively reduced, and would therefore be liable to call into question the objectives of that resolution measure. [186] Furthermore, it stated that such actions require the institution under resolution, or its successor, to compensate shareholders for the losses incurred in the exercise of the write-down and conversion powers in relation to liabilities or to reimburse the sums invested during the subscription of shares covered by that write-down. Given their retroactive effect, those actions would call into question the entire valuation on which the resolution decision – a component of which is the breakdown of the capital – is based, and, consequently, they would be capable of affecting both the resolution procedure and the objectives pursued by Directive 2014/59. [187]

However, the Court considers that actions brought prior to resolution, unlike those brought after resolution, cannot be regarded as having retroactive effect and are not capable of calling into question either the valuation [188] or the resolution decision based on that valuation, since the financial risks arising from such disputes are necessarily taken into account in the accounts of listed banks. Furthermore, the Court considers, as regards the fact that the valuation might not take into account all the actions brought, that such a level of uncertainty is apparent in any 'stock-taking' exercise, and so can be regarded as forming part of the general risk to be accepted in cases of resolution, in particular by the entity acquiring the credit institution under resolution. Directive 2014/59 provides for a 'fair, prudent and realistic valuation' of the assets and liabilities of such a credit institution, without requiring those assets and liability to be evaluated in an exhaustive manner. In addition, the Court points out that that directive also allows for only a provisional valuation of the assets and liabilities where it is not possible to draw up a list of outstanding on balance sheet and off balance-sheet liabilities due to the urgency in the circumstances of the case. [189]

In those circumstances, the Court holds that, where actions for a declaration of nullity and/or for damages have been brought before resolution, they are not capable of calling into question the valuation provided for in Article 36(1) of Directive 2014/59 and the resolution decision based on that valuation.

In the third place, as regards the objectives pursued by Directive 2014/59, the Court points out that the resolution tools should apply only to credit institutions and investment firms that are failing or likely to fail, and only when it is necessary to pursue the objective of financial stability in the general

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182 Article 53(1) of Directive 2014/59.

183 Article 60(2), first subparagraph, point (c), and (3) of Directive 2014/59.

184 Article 60(3) of Directive 2014/59.

185 Paragraph 54 of the judgment in *Banco Santander (Resolution of Banco Popular II)* (C-775/22, C-779/22 and C-794/22).

186 Paragraph 53 of the judgment in *Banco Santander (Resolution of Banco Popular II)* (C-775/22, C-779/22 and C-794/22).

187 See, to that effect, paragraphs 59 and 62 of the judgment in *Banco Santander (Resolution of Banco Popular II)* (C-775/22, C-779/22 and C-794/22).

188 Article 36(1) of Directive 2014/59.

189 Article 36(2), (3), (6) and (9) of Directive 2014/59.

interest. [190] It adds that the resolution procedure is intended to reduce moral hazard in the financial sector by making shareholders bear first losses incurred as a result of the liquidation of a credit institution or investment firm, so as to avoid situations where such liquidations might reduce public funds and affect the protection of depositors. Accordingly, Directive 2014/59 creates an insolvency regime derogating from the ordinary law governing insolvency proceedings, which may only be applied in exceptional circumstances and must be justified by an overriding public interest. That implies that the application of other provisions of EU law may be disregarded where these are likely to hinder the implementation of the resolution procedure or deprive it of practical effect.

Furthermore, the Court points out that the provisions laid down in Directive 2014/59 derogating from the mandatory rules for the protection of shareholders and creditors of institutions which fall within the scope of Union company law directives, which may hinder effective action and use of resolution tools and powers, should not only be appropriate but should also be clearly and narrowly defined, in order to guarantee the maximum degree of legal certainty for stakeholders. [191] Among those directives is Directive 2004/39. Accordingly, Directive 2014/59 makes it possible to derogate from provisions of Directive 2004/39 which are likely to hinder the implementation of a resolution procedure or deprive it of practical effect. However, actions for a declaration of nullity and for damages based on a failure to comply with the information requirements laid down by Directive 2004/39 are not liable to render ineffective or impede the implementation of a resolution procedure, where those actions were brought prior to resolution.

In the fourth and last place, the Court observes that the provisions of Directive 2014/59 must be interpreted in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and, in particular, the right to an effective remedy enshrined in Article 47 thereof, which may be subject to restrictions justified by objectives of general interest pursued by the European Union, provided that those restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and unacceptable interference that undermines the substance itself of the enshrined right. In that regard, the Court points out, first of all, that the interpretation that the rights arising from actions for a declaration of nullity and/or for damages brought before resolution do not constitute obligations or claims which have 'accrued', within the meaning of Directive 2014/59, which may be enforced against the credit institution under resolution and the successor entity, would have the consequence that the resolution decision would render the pending court proceedings devoid of purpose and that those proceedings would therefore have to be closed. It considers that the interference resulting from that interpretation with the right guaranteed by Article 47 of the Charter of Fundamental Rights is not made any less severe by the possibility of bringing an action against the resolution decision. According to that interpretation, the resolution decision modifies, with retroactive effect, the legal framework relevant to the resolution of a dispute which has already been brought before the adoption of that decision, or even directly modifies the legal situation underlying that dispute. The possibility of bringing an action against the resolution decision would thus have no bearing on the effects which that decision would have, in that case, from the time of its adoption, on disputes already in progress. Next, the Court considers that the enforceability of the rights arising from actions for a declaration of nullity and/or for damages cannot depend on the existence of a final judgment before resolution, in that the duration of judicial proceedings depends, in particular, on the workload of the court seised and the procedural conduct of the other party, namely circumstances which are essentially beyond the influence of the person who brought such actions. Furthermore, by bringing such actions before the national courts, that person has, in principle, demonstrated the necessary diligence to obtain payment of the claims arising from those actions before resolution, unlike persons who brought such actions after resolution. The Court finds, lastly, that the enforceability of the rights arising from actions for a declaration of nullity and for damages is not, where those actions were brought before the resolution of a credit institution, such as to jeopardise the public interest in ensuring the financial stability of the Union. In addition, it considers that such an interpretation does not disproportionately undermine the rights of potential purchasers of such a credit institution and of

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190 Recital 49 of Directive 2014/59.

191 Recital 120 of Directive 2014/59.

the successor entity following the resolution, in so far as those persons are also likely to become aware of the liabilities of that institution consisting of the rights arising from actions for a declaration of nullity and/or liability brought before resolution, before making their offer with a view to acquiring that institution.

In the light of those considerations, the Court holds that Directive 2014/59 must be interpreted as not precluding the rights arising from an action for a declaration of nullity in respect of a contract for the subscription of subordinated bonds which are converted into shares and from an action for damages, based on the failure to comply with the information requirements arising from Directive 2004/39, from being regarded as falling within the category of obligations or claims which have 'accrued' at the time of the resolution of the credit institution concerned, where those actions were brought before the total write-down of shares in that credit institution in the course of resolution proceedings.

XII. SOCIAL POLICY

1. EQUAL TREATMENT IN EMPLOYMENT AND SOCIAL SECURITY

Judgment of the Court of Justice (First Chamber) of 11 September 2025, Bervidi, C-38/24

Link to the full text of the judgment

Reference for a preliminary ruling – Social policy – United Nations Convention on the Rights of Persons with Disabilities – Articles 2, 5 and 7 – Articles 21, 24 and 26 of the Charter of Fundamental Rights of the European Union – Directive 2000/78/EC – Equal treatment in employment and occupation – Article 1 – Article 2(1) and (2)(b) – Prohibition of discrimination on grounds of disability – Indirect discrimination – Difference of treatment in respect of an employee who does not himself or herself have a disability but cares for his or her child who has a disability – Article 5 – Employer's obligation to make reasonable accommodation

Hearing a request for a preliminary rule from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the Court of Justice develops its case-law concerning the concept of 'discrimination by association' on grounds of disability, for the purposes of Directive 2000/78, [192] by clarifying both the scope of that concept and the obligations on the employer to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination in the case of a worker who provides assistance to his or her child who has a disability.

G.L. was employed by the company AB as a 'station operator' and was responsible for monitoring and supervising an underground station.

She asked AB, on several occasions, to appoint her permanently to a position with fixed working hours to enable her to care for her minor son, who has a severe disability and requires care at a fixed time.

AB did not grant those requests. However, it did provide G.L. with some provisional accommodation in respect of her working conditions, for example by assigning her a fixed workplace and providing her with a preferential working schedule as compared to other operators.

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192 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

On 5 March 2019, G.L. brought an action before the Tribunale di Roma (District Court, Rome, Italy) seeking a declaration that her employer's refusal to grant her request for accommodation in respect of her working conditions on a permanent basis was discriminatory. After her action was dismissed, both at first instance and on appeal, G.L. brought an appeal on a point of law before the referring court.

That court, referring to the principles arising from the judgment in *Coleman*, [193] decided to make a reference to the Court in order to establish whether an employee who does not himself or herself have a disability may rely before a court on the protection against indirect discrimination on grounds of disability provided for in Directive 2000/78, because of the assistance that that person provides to his or her child who has a disability. If so, it also wishes to ascertain whether the employer of such a person is required to make, in that regard, reasonable accommodation, within the meaning of Directive 2000/78, in order to remedy the discrimination.

Findings of the Court

In the first place, the Court finds, in the light of, inter alia, the judgment in *Coleman* that the prohibition of discrimination, provided for in Directive 2000/78, also covers indirect discrimination 'by association' on grounds of disability. That prohibition applies therefore to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition.

The Court's analysis is also based on the finding that the purpose of Directive 2000/78 consists in combating all forms of discrimination on grounds of disability in employment and occupation. The principle of equal treatment to which that directive refers applies not to a particular category of person, but by reference to the grounds mentioned in Article 1 of that directive.

Further, in accordance with recital 12 and Article 2(1) of that directive, 'any direct or indirect discrimination' on grounds of disability must be prohibited and the wording of Article 13 EC, which constitutes the legal basis of Directive 2000/78, conferred, like Article 19 TFEU which replaced it, on the European Union the competence to take appropriate action to combat discrimination based, inter alia, on disability.

Moreover, Directive 2000/78 must be interpreted in the light of Articles 21, 24 and 26 of the Charter of Fundamental Rights of the European Union ('the Charter'). The general principle of non-discrimination laid down in Article 21(1) of the Charter also covers indirect discrimination 'by association' on grounds of disability. That principle prohibits 'any discrimination' based, inter alia, on disability, ensuring therefore a broad application of that fundamental guarantee.

In addition, Article 21(1) of the Charter contains, at the very least, the same guarantees as those provided for in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, [194] which must be taken into account by virtue of Article 52(3) of the Charter as a minimum threshold of protection.

Furthermore, under the UN Convention, [195] which may, like the Charter, be relied on in order to interpret Directive 2000/78, the States Parties to that convention are to prohibit 'all forms of discrimination' on the basis of disability. They are to guarantee to persons with disabilities equal and effective legal protection against 'discrimination on all grounds' and take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children by making the best interests of the child who has a disability the primary consideration in all actions concerning that child.

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193 Judgment of 17 July 2008, *Coleman* (C-303/06, EU:C:2008:415) ('the judgment in *Coleman*'). In that judgment, the Court held, inter alia, that Directive 2000/78 and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to persons who themselves have a disability (paragraph 56 and operative part 1).

194 Convention signed in Rome on 4 November 1950.

195 The United Nations Convention on the Rights of Persons with Disabilities, which was concluded in New York on 13 December 2006 and entered into force on 3 May 2008 ('the UN Convention').

In the second place, the Court examines whether, in order to ensure compliance with the principle of equal treatment of workers and the prohibition of indirect discrimination referred to in Article 2(2)(b) of Directive 2000/78, reasonable accommodation, within the meaning of Article 5 thereof, must be put in place in respect of an employee, such as the employee in the present case, who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition.

With a view to the interpretation of Article 5 of Directive 2000/78 in conformity with the Charter, the Court recalls that it is apparent from Articles 24 and 26 of the Charter, first, that children are to have the right to such protection and care as is necessary for their well-being and, second, that the European Union is to recognise and respect the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Moreover, reasonable accommodation, defined in Article 2 of the UN Convention, is not limited to the needs of persons with disabilities in the workplace, but must, where necessary, also be provided to a worker who provides the assistance which enables a person with a disability to receive the primary care required by virtue of his or her condition. Furthermore, it follows from Article 7(1) of the UN Convention that an employee must be able to provide, to his or her child who has a disability, the assistance that that child requires, which implies an obligation, on the employer, to adapt the working conditions of that employee.

The Court finds that, in the absence of such an obligation, the prohibition of indirect discrimination 'by association' would be deprived of an important element of its effectiveness.

Consequently, an employer is required to make reasonable accommodation, within the meaning of Article 5 of Directive 2000/78, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer. As regards the types of reasonable accommodation that the employer of such a caregiver is required to make, the Court states that the reduction of working time or, in certain circumstances, the reassignment to another job may constitute one of the measures of accommodation referred to in Article 5 of Directive 2000/78. In order to determine whether those measures give rise to a disproportionate burden on the employer, account should be taken, in particular, of the financial costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or other assistance.

2. PROTECTION OF FIXED-TERM WORKERS

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, Gnattai, C-543/23

Link to the full text of the judgment

Reference for a preliminary ruling – Social policy – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Teachers who have acquired professional experience in certain schools that are not operated or organised by the State – Recruitment on a permanent basis at a State school – Determination of length of service for the purposes of determining salary – National legislation not providing for account to be taken of periods of service completed in certain schools not operated or organised by the State – Difference in treatment based on a criterion other than the permanent or fixed-term nature of the employment relationship – Articles 20 and 21 of the Charter of Fundamental Rights of the European Union – Applicability – No implementation of EU law

Ruling on a request for a preliminary ruling from the Tribunale di Padova (District Court, Padova, Italy) concerning recruitment on a permanent basis in State schools, the Court adjudicates, in the light of

Clause 4.1 of the framework agreement on fixed-term work annexed to Council Directive 1999/70/EC, [196] on the failure of national legislation to take account, when determining length of service, of periods of professional experience acquired by teachers in schools that are not operated or organised by the State, but which are treated in the same way as State schools.

AR, a teacher qualified to teach Italian, history and geography, worked at a *scuola paritaria* (State-equivalent school), as defined under Italian law, [197] during the period from 2002 to 2007, under five fixed-term employment contracts. On 1 September 2008, AR was recruited by the Ministero dell'Istruzione e del Merito (Ministry of Education and Merit, Italy; 'the Ministry of Education') on a permanent basis to work as a teacher in a State school. Upon recruitment, the Ministry of Education classified that teacher in the salary band corresponding to 'zero years of service', on the ground that Article 485 of Legislative Decree No 297/1994 [198] did not permit account to be taken, for the purposes of calculating AR's length of service, of the years of service which he had completed in the service of that *scuola paritaria* (State-equivalent school).

AR brought an action before the Tribunale di Padova (District Court, Padova), seeking an order that the Ministry of Education take into account the length of service which he claims to have accrued by virtue of his employment in the *scuola paritaria* (State-equivalent school), claiming that Article 485 of Legislative Decree No 297/1994 constitutes an infringement of Clause 4 of the framework agreement and of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

In that context, the referring court has made a reference to the Court of Justice for a preliminary ruling. In particular, it questions whether the failure to take into account, when determining that teacher's salary, professional experience previously acquired in *scuole paritarie* (State-equivalent schools) is compatible with Clause 4 of the framework agreement.

Findings of the Court

As a preliminary point, the Court recalls that the principle of non-discrimination laid down in Article 21(1) of the Charter is a specific expression of the principle of equal treatment, which is a general principle of EU law and which is enshrined in Article 20 of the Charter. As regards the differences in treatment between fixed-term workers and permanent workers in a comparable situation, those principles have been implemented and given specific expression by Directive 1999/70, and in particular by Clause 4 of the framework agreement annexed to that directive.

As regards the applicability of the framework agreement to a teacher in AR's situation, that framework agreement applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer. The mere fact that the person concerned has obtained the status of permanent worker does not mean that it is impossible for him or her to rely, in certain circumstances, on the principle of non-discrimination laid down in Clause 4 of the framework agreement. Since AR claimed that he was subject to a difference in treatment as regards the taking into account of teaching periods completed as a fixed-term worker, the framework agreement does apply, in principle, to a teacher in the applicant's situation.

The Court notes that Clause 4.1 of the framework agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, solely because they are employed for a fixed term, unless different treatment is justified on objective grounds. Clause 4.4 of the framework agreement lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment.

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196 Framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

197 Article 1(2) of Legge n. 62 – Norme per la parità scolastica e disposizioni sul diritto allo studio e all'istruzione (Law No 62 – Rules relating to school equality and provisions on the right to study and education) of 10 March 2000 (GURI No 67 of 21 March 2000).

198 Decreto legislativo n. 297 – Approvazione del testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado (Legislative Decree No 297 approving the consolidated text of the applicable legislative provisions on education relating to schools of all types and levels) of 16 April 1994 (GURI No 115 of 19 May 1994, Ordinary Supplement No 79; 'Legislative Decree No 297/1994').

Although rules, such as those provided for in Article 485 of Legislative Decree No 297/1994, concerning periods of service to be completed in order to be classified in a salary band are covered by the concept of 'employment conditions' within the meaning of Clause 4.1 of the framework agreement, the principle of non-discrimination was implemented and given specific expression by Clause 4 of the framework agreement only as regards differences in treatment between fixed-term workers and permanent workers in a comparable situation. That clause seeks to apply the principle of non-discrimination to fixed-term workers only in order to prevent an employer from using such an employment relationship to deny those workers rights which are recognised for permanent workers. It follows that a difference in treatment that is based on a criterion other than whether the employment relationship is fixed-term or permanent is not covered by the prohibition laid down in Clause 4 of the framework agreement.

The Court finds, in the present case, that the difference in treatment resulting from Article 485 of Legislative Decree No 297/1994 is based not on the fixed-term or permanent nature of the employment relationship but on the nature of the school at which the professional experience was acquired by the workers concerned.

In those circumstances, even if it could be considered that teachers who had been employed on a fixed-term basis in *scuole paritarie* (State-equivalent schools) [199] before being recruited on a permanent basis by the Ministry of Education, and teachers employed on a permanent basis in State schools work in the same establishment, within the meaning of Clause 3.2 of the framework agreement, and that those two groups of workers are in comparable situations, a difference in treatment such as that resulting from Article 485 of that legislative decree is not covered by the prohibition laid down in Clause 4 of the framework agreement.

Consequently, the Court holds that Clause 4 of the framework agreement does not preclude national legislation which does not provide for account to be taken, when determining the length of service and the salary of teachers upon their recruitment on a permanent basis at a State school, of periods of service previously completed by those teachers in the context of fixed-term or permanent employment in certain schools that are not operated or organised by the State, but which are treated, under that legislation, as State schools, even though that legislation provides that periods of service completed by teachers employed in State schools, in particular on a permanent basis, are to be taken into account when determining their length of service and their salary.

As regards the question whether the principles of equal treatment and non-discrimination, enshrined in Articles 20 and 21 of the Charter, preclude that national legislation, the Court concludes that the Charter is not applicable to the same national legislation, since that legislation does not implement EU law, within the meaning of Article 51(1) of the Charter. The Court finds that, since the difference in treatment brought about by Article 485 of Legislative Decree No 297/1994 is not based on the fixed-term or permanent nature of the employment relationship of the workers concerned, there is no direct link between the application of Article 485 and the prohibition of discrimination laid down in Clause 4 of the framework agreement. Moreover, Article 485 does not appear to have any connection with any other provision of EU law. Therefore, the Court does not have jurisdiction to answer that question.

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199 Within the meaning of Article 1(2) of Law No 62/2000.

Judgment of the Court of Justice (Fourth Chamber) of 4 September 2025, Pelavi, C-253/24

Link to the full text of the judgment

Reference for a preliminary ruling – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Equal treatment in employment and occupation – Honorary and ordinary members of the judiciary – Clause 5 – Measures intended to prevent and penalise misuse of successive fixed-term contracts – Directive 2003/88/EC – Article 7 – Right to paid annual leave – Article 31 of the Charter of Fundamental Rights of the European Union – Assessment procedure in order to be permanently confirmed as an honorary member of the judiciary – Waiver, by operation of law, of claims arising from service as an honorary member of the judiciary prior to the assessment procedure – Loss of a right to paid annual leave conferred by EU law

Hearing a request for a preliminary ruling from the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila, Italy), the Court of Justice clarifies the relationship between the right to paid annual leave as guaranteed by EU law and the protection offered by the framework agreement on fixed-term work, [200] in the case of national legislation which requires honorary members of the judiciary wishing to convert their successive fixed-term employment relationships into an employment relationship of indefinite duration to waive certain rights, including the right to paid annual leave.

That case is part of a series of Italian preliminary ruling cases on equal treatment between honorary and ordinary members of the judiciary. [201] The Italian legislature introduced, in 2021, for honorary members of the judiciary already in service, the possibility of being confirmed until the age of 70, subject to passing an assessment procedure, while establishing a requirement to waive any other claim arising from their previous honorary employment relationship. [202] That procedure is intended to implement the obligation, arising from Clause 5(1) of the Framework Agreement, to adopt effective measures to prevent and penalise the misuse of successive fixed-term contracts.

NZ has served, since 14 February 2001, alongside her profession as a lawyer, as an honorary member of the judiciary at the Tribunale di Vasto (District Court, Vasto, Italy). As an honorary member of the judiciary, she did not receive any allowance during the judicial vacation period, unlike ordinary members of the judiciary who were entitled to paid leave. NZ's appointment as an honorary member of the judiciary was extended and renewed every four years, until 13 December 2022, the date of her permanent confirmation.

Claiming to be the victim of an unlawful difference in treatment concerning the remuneration for her service before that confirmation, NZ brought an action against her employer, the Ministero della Giustizia (Ministry of Justice), seeking recognition of economic and legal treatment equivalent to that of workers performing comparable duties in the service of that ministry, including in so far as it relates to annual leave. The court of first instance upheld that action in part. The Ministry of Justice brought an appeal against that decision before the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila), which is the referring court, maintaining, inter alia, that the dispute had become devoid of purpose, since NZ's confirmation at the end of the assessment procedure entails the waiver of any other claim arising from her previous honorary employment relationship.

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200 Framework agreement set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43; 'the Framework Agreement').

201 See judgments of 16 July 2020, Governo della Repubblica italiana (Status of Italian magistrates) (C 658/18, EU:C:2020:572), and of 7 April 2022, Ministero della Giustizia and Others (Status of Italian magistrates) (C-236/20, EU:C:2022:263), and of 27 June 2024, Peigli (C-41/23, EU:C:2024:554).

202 By Article 29 of decreto legislativo n. 116 – Riforma organica della magistratura onoraria e altre disposizioni sui giudici di pace, nonché disciplina transitoria relativa ai magistrati onorari in servizio, a norma della legge 28 aprile 2016, n. 57 (Legislative Decree No 116 on the organic reform of the honorary judiciary and other provisions relating to magistrates, and transitional provisions relating to serving honorary members of the judiciary, in accordance with Law No 57 of 28 April 2016) of 13 July 2017 (GURI No 177 of 31 July 2017, p. 1), as amended by legge n. 234 – Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024 (Law No 234 on the State Budget for the 2022 financial year and multiannual accounts for the three-year period 2022-2024) of 30 December 2021 (GURI No 310 of 31 December 2021, p. 1).

In those circumstances, the referring court questions the compatibility of that waiver by operation of law with Clauses 4 and 5 of the Framework Agreement, Article 7 of Directive 2003/88 [203] and Article 31 of the Charter of Fundamental Rights of the European Union ('the Charter'), as regards, in particular, the right to paid annual leave.

Findings of the Court

After recalling its case-law on measures aimed at penalising the misuse of fixed-term employment contracts, [204] the Court finds that the request to participate in the assessment procedure entails waiving the right to paid annual leave for the period prior to permanent confirmation, guaranteed by Article 7 of Directive 2003/88 and Article 31(2) of the Charter. The waiver of that right constitutes, according to the Italian Government, appropriate consideration for confirmation as an honorary member of the judiciary, given that passing the assessment procedure does not create a mere opportunity to have the previous employment relationship made permanent, but results in the effective conversion of that employment relationship to a permanent status. Moreover, that requirement makes it possible to avoid reverse discrimination against ordinary members of the judiciary to whom the principles of competitive appointment and the exclusivity of the judicial service fully apply.

It is true that the existence of a method of recruitment by means of a competition reserved solely for positions of ordinary members of the judiciary for the purposes of access to the judiciary, which does not apply to the recruitment of honorary members of the judiciary, allows the latter to be excluded from entitlement to the benefit of all the rights afforded to ordinary members of the judiciary. However, although certain differences in treatment may be justified by the differences in the qualifications required and by the nature of the duties entrusted to ordinary members of the judiciary, complete exclusion of honorary members of the judiciary from any right to paid leave cannot be accepted in the light of Clause 4 of the Framework Agreement.

That right is contained in Article 7(1) of Directive 2003/88. Furthermore, the right to a period of paid annual leave, enshrined in Article 31(2) of the Charter, is both mandatory and unconditional in nature, as that provision does not need to be given concrete expression by the provisions of EU or national law. It follows that that provision may be relied on in a dispute between workers and their employer in a field covered by EU law and therefore falling within the scope of the Charter.

Thus, Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Article 31(2) of the Charter preclude national legislation which, in contrast to what it provides in respect of ordinary members of the judiciary, does not give honorary members of the judiciary in a comparable situation any entitlement to remuneration during the vacation period when judicial activity is suspended.

It follows that, first, in order to satisfy the conditions laid down in Clause 5(1) of the Framework Agreement, national legislation must provide, where there is misuse of successive fixed-term employment contracts, effective guarantees to penalise that abuse and to nullify its consequences, since the conversion of the fixed-term employment relationship into an employment relationship of indefinite duration constitutes, in principle, an effective penalty for such abuse. Second, the right to a period of paid annual leave constitutes an individual right of each worker, which is granted to that worker in a mandatory and unconditional manner by EU law.

In the light of those factors, the Framework Agreement cannot be interpreted as meaning that the application of measures taken by a Member State to penalise the misuse of successive fixed-term employment contracts and to nullify the consequences thereof could be conditional on a requirement, for the worker concerned, to waive a right conferred on him or her by EU law pursuant to Clause 4 of that agreement.

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203 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299 p. 9).

204 See, in particular, judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti* (C-494/17, EU:C:2019:387, paragraphs 39 to 43 and 45).

XIII. PUBLIC HEALTH

Judgment of the General Court (Sixth Chamber) du 24 September 2025, Mowi Poland v Commission, T-354/24

Link to the full text of the judgment

Public health – Specific hygiene rules for food of animal origin – Regulation (EC) No 853/2004 – Point 3(e) of the Annex to Delegated Regulation (EU) 2024/1141 – Action for annulment – *Locus standi* – Interest in bringing proceedings – Admissibility – Concept of 'frozen product' – Lack of consultation with EFSA – Article 13 of Regulation No 853/2004

Hearing an action for annulment, which it upholds, the General Court rules, for the first time, on the European Commission's obligation to consult the European Food Safety Authority (EFSA) before adopting a provision that could have a significant impact on public health under Article 13 of Regulation No 853/2004. [205]

The applicant, Mowi Poland S.A., is a company which uses, to slice smoked salmon, the 'stiffening' technique, which consists of cutting smoked salmon fillets by lowering their initial temperature to a level between –7 °C and –14 °C.

By its action, the applicant seeks, in essence, the annulment of point 3(e) of the annex to Delegated Regulation 2024/1141, [206] adopted by the Commission ('the contested provision'). That provision adds point 4 to Chapter VII of Section VIII of Annex III to Regulation No 853/2004, that point 4, first, providing for the possibility of using stiffening as a stage of production, whilst specifying that maintaining fishery products at the temperature required by this technique must be limited to 'a period of time as short as possible and in any case not exceeding 96 hours' and, secondly, providing that storage and transport at that temperature are not allowed.

Findings of the Court

In examining the admissibility of the action, the Court finds, initially, that the applicant has standing to bring proceedings. The regulation to which the contested provision belongs is a regulatory act which does not entail implementing measures and is of direct concern to the applicant, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU.

As regards direct concern, the Court finds that the two criteria provided for by the case-law are met. First, the implementation of the contested provision is purely automatic and results from the relevant regulation alone without requiring the application of intermediate rules. Secondly, the contested provision imposes obligations on the applicant. In this regard, the Court notes that, before the adoption of the contested provision, there was no legally binding obligation governing the use of stiffening as a stage of production. As regards the requirements relating to storage, it was not clear from the provisions in force before the adoption of the contested provision that it was prohibited to keep smoked salmon at stiffening-required temperature for a period exceeding 96 hours. In the first place, since those provisions do not define the concept of 'storage', they do not specify from what point a fishery product should be considered to be stored. In the second place, smoked salmon, as a processed fishery product, did not fall within the scope of Chapter VII, point 1, of Section VIII of

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205 Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55).

206 Commission Delegated Regulation (EU) 2024/1141 of 14 December 2023 amending Annexes II and III to Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards specific hygiene requirements for certain meat, fishery products, dairy products and eggs (OJ L, 2024/1141).

Annex III to Regulation No 853/2004. With regard to point 2, neither Regulation No 853/2004 nor Regulations No 178/2002 [207] and No 852/2004 [208] define the concept of 'frozen product'. However, the Court observes that, in various provisions of Regulation No 853/2004, the concept of 'frozen product' is associated with a temperature not exceeding –18 °C. Thus, it was not apparent from the provisions in force before the adoption of the contested provision that smoked salmon, placed at a temperature used for stiffening, which varies, as far as the applicant's practice is concerned, between –7 °C and –14 °C, had be considered to be a 'frozen product' within the meaning of Chapter VII, point 2, of Section VIII of Annex III to Regulation No 853/2004. It follows that, before the adoption of the contested provision, operators of 'stiffened' smoked salmon were subject to the requirements laid down in Chapter IX, point 5, of Annex II to Regulation No 852/2004 which refers to the possibility of removing products from the temperatures necessary for 'limited periods', without indicating a time limit, and providing that no health risk results therefrom.

Next, the Court finds that the applicant has an interest in bringing proceedings, because that the possible annulment of the contested provision is likely to procure an advantage to the applicant, namely that of not having to comply with the requirements imposed by that provision under Article 3(1) of Regulation No 853/2004. Thus, the Court finds that the action is admissible.

As regards the merits of the case, the Court examines the fourth plea in law, according to which, by failing to consult EFSA in the procedure for drafting the contested provision, the Commission infringed Article 13 of Regulation No 853/2004. The latter provides that the Commission is to consult EFSA on any matter falling within the scope of that regulation that could have a significant impact on public health.

In the present case, it is common ground between the parties that the Commission did not consult EFSA prior to the adoption of the contested provision. First, the issue to which the contested provision relates falls within the scope of Regulation No 853/2004. Secondly, as regards the assessment of the significant impact on public health, it can be inferred from the *travaux préparatoires* for Delegated Regulation 2024/1141 and the Commission's arguments put forward in the context of the present action that the reason which led to the adoption of the contested provision is linked to the fact that there were 'ambiguities' in the previous legal framework regarding stiffening and the prohibition on storing and transporting fishery products at the temperature required by that technique, while maintaining smoked salmon at that temperature for a long period would be likely to lead to health risks. Such an issue must be categorised as a matter that could have a significant impact on public health. It is apparent from the Commission's own arguments that maintaining smoked salmon at stiffening-required temperature for a long period could have an impact on the health of consumers and, therefore, have an impact on public health. Furthermore, such an impact on public health appears to be significant since, according to the Commission, accepting the interpretation adopted by the applicant with regard to Chapter VII, point 2, of Section VIII of Annex III to Regulation No 853/2004 would lead to a situation that is 'manifestly dangerous for the health of consumers'. Accordingly, the Commission was required to consult EFSA under Article 13 of Regulation No 853/2004 before adopting the contested provision.

That finding is borne out by the fact that it is apparent from recital 27 of Regulation No 853/2004 that scientific advice should underpin EU legislation on food hygiene. The scientific basis taken into account by the Commission for the purposes of drafting the contested provision is not apparent from Delegated Regulation 2024/1141 or from its explanatory memorandum. Admittedly, the President of the European Parliament requested EFSA, by letter of 14 May 2024, to issue a scientific opinion on the impact of the stiffening and thawing procedures on the survival and development of biological hazards, to which the Executive Director of EFSA replied by letter of 12 June 2024. However, that exchange is subsequent to the date of adoption of Delegated Regulation 2024/1141, namely 14 December 2023, and, therefore, it is, in any event, without impact on the legality of this regulation.

Accordingly, the Court upholds the fourth plea in law and annuls the contested provision.

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207 Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

208 Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1).

XIV. ENVIRONMENT

1. CONSERVATION OF WILD BIRDS

Judgment of the Court of Justice (Fifth Chamber) of 1 August 2025, Voore Mets and Lemeks Põlva, C-784/23

Link to the full text of the judgment

Reference for a preliminary ruling – Environment – Directive 2009/147/EC – Conservation of wild birds – Article 5 – Prohibitions to ensure the protection of birds – Article 9 – Derogations – Articles 16 and 17 of the Charter of Fundamental Rights of the European Union – Prohibition on felling trees during the period of bird breeding and rearing

Hearing a request for a preliminary ruling from the Riigikohus (Supreme Court, Estonia), the Court of Justice specifies the conditions under which the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive [209] are capable of applying to an activity, such as forestry work, the purpose of which is manifestly different from the capture, killing or disturbance of birds, or the destruction of, or damage to, their nests and eggs.

The dispute in the main proceedings is between two Estonian undertakings, OÜ Voore Mets and AS Lemeks Põlva, and the Keskkonnaamet (Environmental Board, Estonia) concerning injunctions issued by the latter to suspend clear-cutting or shelterwood cutting on certain forest plots in order to protect bird breeding.

Some of those injunctions are based on the finding that it has been scientifically proven that there is at least one pair of breeding birds per hectare in each forest, and that continued felling would pose a real risk of disturbing the birds during the breeding and rearing season and of destroying or damaging nests. Some of those injunctions also show that visits to the land in question revealed that there were confirmed, probable or possible nesting sites for 10 different bird species on the land in question.

Since the referring court was uncertain about the scope and extent of the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive, it decided to make a reference to the Court.

Findings of the Court

The Court first recalls that Article 5 of the Birds Directive requires the Member States to adopt the requisite measures to establish a general system of protection for all species of birds referred to in Article 1 of that directive, without prejudice to Articles 7 and 9 of that directive. That regime includes, inter alia, under Article 5(a), (b) and (d) of that directive, the prohibition, first, of 'deliberate killing or capture by any method', second, 'deliberate destruction of, or damage to, their nests and eggs or removal of their nests' and, third, 'deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of [that directive]'.

In that regard, in the first place, it is apparent both from the wording of Article 5 of the Birds Directive, read in the light of Article 1(1) thereof, and from the context of which Article 5 forms part as well as from the object and purpose of that directive that the prohibitions laid down in the latter article apply

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209 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7; 'the Birds Directive').

to all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaties apply, without the application of those prohibitions being, therefore, limited to certain specific bird species or species which are at some level at risk, or are suffering a long-term decline in population.

In the second place, the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive apply not only to human activities the purpose of which is the capture or killing, disturbance of birds or the destruction of, or damage to, their nests and eggs, but also to human activities which do not manifestly have such a purpose and involve the acceptance of the possibility of such capture, killing, disturbance, destruction or damage.

In the third place, in the absence, in Article 5(a) and (b) of the Birds Directive, of a condition equivalent to that set out in Article 5(d) of that directive, which provides for the prohibition of deliberate disturbance of birds during the period of breeding and rearing 'in so far as disturbance would be significant having regard to the objectives of [the Birds Directive]', it must be held that the application of the prohibitions set out in Article 5(a) and (b) is not subject to such a condition, irrespective of whether or not the purpose of the human activities concerned is the capture or killing of birds or the destruction of, or damage to, their nests and eggs.

Consequently, unlike Article 5(d) of the Birds Directive, Article 5(a) and (b) of that directive does not exclude from its scope human activities which do not bring about the risk of having a significant effect on the objective of maintaining populations of bird species, within the meaning of Article 2 of that directive, at a satisfactory level or adapting them to that level, with the result that the examination of the effect of a human activity on the population level of the bird species concerned is not relevant for the purposes of applying the prohibitions laid down in that provision.

Such an examination is, however, relevant in connection with derogations from those prohibitions, adopted under Article 9 of the Birds Directive. It is in the context of examining those derogations that, in order to verify the proportionality of the derogation sought, in particular, an assessment must be made of both the impact of the activity at issue on the level of the population of the bird species concerned and the need for that activity, as well of the alternative solutions for achieving the objective relied on in support of that derogation.

With regard to the need to assess the risk posed by the proposed measure to birds, the Court recalls, as regards the fact that the scientific data and the observations of the various birds at issue do not make it possible to establish the presence, on the land concerned, of bird species which have an unfavourable conservation status, that the scope of Article 5 of the Birds Directive is not limited solely to bird species in such a condition.

Next, the Court notes that, where there is a nesting of approximately 10 pairs of breeding birds per hectare in a forest which is to be felled, the fact that clear-cutting and shelterwood cutting are carried out there during the period of bird breeding and rearing implies acceptance of the possibility that birds may be killed or disturbed during that period, or that their nests or eggs may be destroyed or damaged. Thus, measures aimed at carrying out such felling fall, in any event, within the scope of the prohibitions laid down in Article 5(a) and (b) of the Birds Directive and, in so far as the disturbance which they entail would have a significant effect on the objective of maintaining populations of the bird species concerned at a satisfactory level or adapting them to that level, of the prohibition laid down in Article 5(d) of that directive.

Finally, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, it does not appear unjustified to base the finding of a nesting of a certain number of pairs of birds per hectare on scientific data and on the observations of the various birds and, in particular, on the type and age of the forest and on the identification, during an inspection of the land concerned, of a number of specimens.

2. ENERGY FROM RENEWABLE SOURCES

Judgment of the Court of Justice (Fourth Chamber) of 1 August 2025, Tiberis Holding, C-514/23

Link to the full text of the judgment

Reference for a preliminary ruling – Environment – Promotion of the use of energy from renewable sources – Directive 2009/28/EC – Article 3 – Directive (EU) 2018/2001 – Article 4 – National incentives for the production of energy from renewable sources – Aid scheme – State aid – Article 108 TFEU – Exclusive competence of the European Commission to rule on the compatibility of aid measures with the internal market – Commission decision finding such an aid scheme compatible with the internal market – Action brought before a national court by a beneficiary of aid under that scheme challenging a modality of that scheme which is inextricably linked to its functioning – Inadmissibility, in the context of that action, of a request for a preliminary ruling concerning the interpretation of those provisions of those directives

The Court declares inadmissible the request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy) seeking an interpretation of provisions of Directive 2009/28 [210] and Directive 2018/2001, [211] on the ground that the clarification sought is irrelevant for the purposes of resolving the dispute in the main proceedings. Indeed, that dispute concerns a challenge to a modality of implementation of a State aid scheme that is inextricably linked to the operation of that scheme even though the compatibility of that scheme with the internal market has been established by means of a Commission decision. The referring court cannot assess that compatibility in the light of the provisions of the directives to which the question referred relates without encroaching on the Commission's exclusive competence to assess the compatibility of an aid scheme with the internal market.

By its decision of 28 April 2016, [212] the Commission declared, pursuant to Article 107(3)(c) TFEU, an aid scheme notified by the Italian Republic and intended to promote the production of electricity from renewable energy sources other than photovoltaic energy to be compatible with the internal market.

Following that decision, the Ministero dello Sviluppo economico (Ministry of Economic Development, Italy) adopted the decree of 23 June 2016, [213] which introduced a system of incentives for the production of electricity subject to various access procedures, including entry in the appropriate register, determined according to the energy source and type of installation, and participation in descending auction procedures.

To that end, producers who sell energy on the free market and who benefit from the incentive by virtue of their entry in the register are required to reimburse Gestore dei servizi energetici (GSE) SpA the difference between the market price and the incentive tariff guaranteed by GSE where the former is higher than the latter ('the negative incentive mechanism'). That mechanism does not apply to producers that are eligible for the incentive by participating in an auction procedure.

Tiberis Holding Srl ('Tiberis') operates a hydroelectric power plant on the River Tiber. In September 2017, GSE granted its application to benefit from the abovementioned incentive scheme by virtue of

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210 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16).

211 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82).

212 Decision C(2016) 2726 final of 28 April 2016 on State Aid SA.43756 (2015/N) – Italy, Support to electricity from renewable sources in Italy ('Decision SA.43756').

213 Decreto del Ministero dello Sviluppo Economico – Incentivazione dell'energia elettrica prodotta da fonti rinnovabili diverse dal fotovoltaico (Decree of the Ministry of Economic Development on the promotion of electricity produced from renewable sources other than photovoltaic energy), of 23 June 2016 (GURI No 150 of 29 June 2016, p. 8; 'the decree of 23 June 2016').

its entry in a register. From 2017 to 2021, Tiberis received a total of EUR 4 044 340.75 in aid under that scheme. However, in 2022, GSE demanded repayment of part of the aid received, in the amount of EUR 1 224 210.86.

Tiberis challenged the requests for repayment and the contractual and regulatory provisions on which they were based before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), alleging infringement of Article 3 of Directive 2009/28 and Article 4 of Directive 2018/2001. That action was dismissed as unfounded. Tiberis then brought an action against that judgment before the Conseil d'État (Council of State), the referring court, on the same grounds.

The referring court considers that the decree of 23 June 2016, in so far as it provides for a negative incentive mechanism, appears to fail to comply with the cumulative criteria laid down in Article 3 of Directive 2009/28 and Article 4 of Directive 2018/2001 for the purpose of ensuring that incentives are lawful. In those circumstances, it asks the Court whether those provisions preclude national legislation that provides for such a mechanism, which applies only to producers benefiting from an incentive as a result of their entry in the relevant register and does not apply to those who access the incentive by participating in an auction procedure.

Findings of the Court

The Court notes, first of all, that it is in principle bound to give a preliminary ruling on questions concerning the interpretation of EU law, but that it must examine the circumstances in which cases are referred to it by a national court, in order to assess whether it has jurisdiction or whether the request submitted to it is admissible.

In the present case, the action in the main proceedings concerns a challenge to the lawfulness, in the light of Article 3 of Directive 2009/28 and Article 4 of Directive 2018/2001, of the negative incentive mechanism provided for by the decree of 23 June 2016, which constitutes a modality of the application of the scheme for the promotion of electricity produced from renewable sources other than photovoltaic energy, established by that decree. However, that scheme constitutes a State aid scheme which the Italian authorities notified to the Commission and which the Commission declared compatible with the internal market by Decision SA.43756.

Consequently, the Court considers that it must determine whether a national court before which such an action has been brought by a beneficiary of that scheme may assess that action in the light of the provisions of Article 3 of Directive 2009/28 and Article 4 of Directive 2018/2001.

In that regard it recalls that, within the system established by the FEU Treaty for monitoring State aid, the national courts and the Commission fulfil complementary but separate roles. In particular, national courts ensure the safeguarding, until the final decision of the Commission, of the rights of individuals faced with a possible breach by State authorities of the prohibition on putting measures into effect until the conclusion of the Commission's preliminary examination procedure referred to in Article 108(3) TFEU. By contrast, they do not have jurisdiction to give a ruling on whether aid measures or a State aid scheme are compatible with the internal market, since that assessment falls within the exclusive competence of the Commission, subject to review by the EU judicature.

It also notes that the preliminary examination procedure provided for in Article 108 TFEU must never produce a result which is contrary to the specific provisions of the FEU Treaty. Accordingly, State aid which, as such or by reason of some modalities thereof, contravenes provisions or general principles of EU law cannot be declared compatible with the internal market.

Where the modalities of an aid measure or an aid scheme are so indissolubly linked to the object of the aid or the scheme, or to their functioning, that it is impossible to assess them separately, their effect on the compatibility or incompatibility of the aid or scheme viewed as a whole must necessarily be assessed by means of the procedure prescribed in Article 108 TFEU. The assessment of such modalities therefore falls outside the jurisdiction of the national courts.

The Court also recalls that the application of EU rules on State aid is based on an obligation of sincere cooperation between, on the one hand, the national courts and, on the other hand, the Commission and the Courts of the European Union, in the context of which each acts on the basis of the role assigned to it by the FEU Treaty. Therefore, national courts must, in particular, refrain from taking

decisions which run counter to a decision adopted by the Commission, pursuant to its exclusive jurisdiction, on the compatibility of State aid with the internal market.

In the present case, the negative incentive mechanism at issue in the main proceedings ultimately determines the amount of aid granted individually to economic operators benefiting from the aid scheme in question by virtue of their entry in a register. It was thus that mechanism which enabled the Commission to conclude that, precisely for projects entered in a register, that aid scheme satisfied the condition of proportionality. Accordingly, that mechanism constitutes a modality that is inextricably linked to the functioning of the aid scheme that is the subject of Decision SA.43756 and cannot be assessed in isolation from that scheme.

It follows that, if a national court were allowed, in turn, to rule on the lawfulness of that negative incentive mechanism in the light of Article 3 of Directive 2009/28, it could substitute its own assessment for that made by the Commission in Decision SA.43756. The court concerned would thus encroach on that institution's exclusive competences as regards the assessment of the compatibility of State aid with the internal market and would breach its duty of sincere cooperation.

Furthermore, the Commission could not declare the aid scheme at issue compatible with the internal market, pursuant to Article 107(3)(c) TFEU, without first ensuring that it does not infringe other relevant provisions or general principles of EU law.

The fact that Decision SA.43756 does not expressly mention Directive 2009/28, in particular Article 3 thereof, mentioned in the question referred, is irrelevant in that regard, since the Commission necessarily took that directive into account when it assessed the compatibility of the aid scheme at issue with the internal market.

Indeed, the notified scheme, which corresponds to the scheme at issue in the main proceedings, was assessed in particular in the light of the Guidelines on State aid for environmental protection and energy 2014-2020. [214] Those guidelines, to which Decision SA.43756 refers, note that the European Union has set itself ambitious climate change and energy sustainability targets, that several EU legislative acts, such as Directive 2009/28, already support the achievement of those objectives, and that State aid can be an appropriate instrument to contribute to the achievement of the EU objectives.

As regards the assessment of the compliance of the negative incentive mechanism with Article 4 of Directive 2018/2001, the Court notes that that directive admittedly was adopted subsequently to Decision SA.43756, with the result that it cannot be considered that, by that decision, the Commission necessarily assessed that mechanism by ensuring that it does not infringe that provision.

However, since the aid scheme established by the decree of 23 June 2016 was authorised by the Commission under that decision, it comes within the concept of 'existing aid' within the meaning of Article 1(b)(ii) of Regulation 2015/1589. [215]

Article 108(1) TFEU confers competence on the Commission to keep existing aid under constant review, in cooperation with the Member States. That review may prompt the Commission to propose to the Member State concerned the appropriate measures required by the progressive development or by the functioning of the internal market and, if necessary, to decide to abolish or alter aid which it considers to be incompatible with the internal market. In the context of that review, the legal situation does not change until such time as the Member State concerned accepts proposals for appropriate measures or the Commission adopts a final decision.

Consequently, the assessment of the compatibility of an existing aid scheme, such as that at issue, with the internal market continues to come within the exclusive competence of the Commission, subject to review by the EU judicature.

Moreover, any amendment to the negative incentive mechanism at issue in the main proceedings would, as a result of any increase in the aid intensity which might result from it, be liable to affect the assessment of the compatibility of the aid scheme at issue with the internal market. Indeed, in the

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214 Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020 (OJ 2014 C 200, p. 1).

215 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

absence of that mechanism, which is inextricably linked to the functioning of that scheme, it is possible that the Commission would have considered that that aid scheme was not proportionate and, therefore, not compatible with the internal market. Such an amendment would therefore amount to an alteration to existing aid constituting 'new aid', within the meaning of Article 1(c) of Regulation 2015/1589, subject to the notification obligation laid down in Article 108(3) TFEU, the compatibility of which with the internal market falls within the exclusive competence of the Commission.

That also applies in the event that the amendment to the incentive mechanism is not made *erga omnes*, but solely for the benefit of a particular beneficiary, such as Tiberis, since an aid scheme implemented at an individual level which does not correspond to the aid scheme notified to and authorised by the Commission could also be considered to be 'new aid'. The establishment as such of State aid cannot result from a judicial decision but entails a decision as to the appropriate course of action, which falls outside the scope of a court's powers and obligations.

In the light of those considerations, the Court concludes that EU law precludes the referring court from assessing whether the negative incentive mechanism at issue complies with the provisions of Article 3 of Directive 2009/28 or Article 4 of Directive 2018/2001. Since the interpretation sought is therefore not relevant to the resolution of the dispute in the main proceedings, the Court declares the preliminary ruling inadmissible.

3. TAXONOMY

Judgment of the General Court (Sixth Chamber, Extended Composition) of 10 September 2025, ClientEarth v Commission, T-579/22

Link to the full text of the judgment

Environment – Aarhus Convention – Rejection of a request for internal review – Article 10 of Regulation (EC) No 1367/2006 – Delegated Regulation (EU) 2021/2139 – Bioenergy activities – Forest biomass – Manufacture of organic basic chemicals – Manufacture of plastics in primary form – Taxonomy – Requirements for technical screening criteria – Article 19 of Regulation (EU) 2020/852 – Substantial contribution to climate change mitigation – Article 10 of Regulation 2020/852 – Transitional activities – Quantitative threshold – Conclusive scientific evidence – Life cycle – Precautionary principle – Principle of 'do no significant harm' to environmental objectives – Article 17 of Regulation 2020/852 – Circular economy – Water and marine resources – Pollution

The General Court upholds the decision of the European Commission to reject a request for internal review of Delegated Regulation 2021/2139 [216] supplementing Regulation 2020/852 on the establishment of a framework to promote sustainable investment [217] ('the Taxonomy Regulation'). In so doing, it rules for the first time on certain provisions of the Taxonomy Regulation relating to economic activities related to bioenergy, the manufacture of organic base chemicals and the manufacture of plastics in primary form.

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216 Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1; 'the Delegated Regulation').

217 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

The Taxonomy Regulation establishes a unified classification system in order to harmonise, at EU level, the criteria for determining whether an economic activity qualifies as environmentally sustainable in the light of various environmental objectives, such as climate change mitigation. [218]

In that context, the Commission adopted the Delegated Regulation to supplement the Taxonomy Regulation. Technical screening criteria are defined therein for determining the conditions under which certain economic activities related to bioenergy, the manufacture of organic base chemicals and the manufacture of plastics in primary form may qualify as contributing substantially to the climate change mitigation objective and for determining whether those economic activities cause no significant harm to any of the other environmental objectives established by that same regulation.

ClientEarth, a non-profit organisation governed by Belgian law and whose objective is, in particular, the protection of the environment, submitted to the Commission, under the Aarhus Regulation, [219] a request for internal review of the Delegated Regulation, which, in its view, infringed the Taxonomy Regulation.

The Commission rejected the request for internal review by decision of 6 July 2022 ('the contested decision'), which is the subject of the present action.

Findings of the Court

The Court examines, in the first place, ClientEarth's plea according to which, in essence, the Commission committed errors of law in relation to the requirements applicable to the technical screening criteria under Article 19 of the Taxonomy Regulation.

In accordance with paragraph 1(f) of that provision, the technical screening criteria are to be based on conclusive scientific evidence and the precautionary principle enshrined in Article 191 TFEU.

In that context, the Court rejects, first, the complaint that the Commission interpreted the concept of 'conclusive scientific evidence' too restrictively as corresponding to 'scientific evidence that allows … conclusions [to be reached]'.

First of all, the Court notes that ClientEarth does not explain how the Commission's interpretation would render the contested decision unlawful, or why it does not correspond to the 'best available evidence' or to the 'most up-to-date and reliable scientific evidence'.

Next, it rejects ClientEarth's argument that the Commission considered that it could ignore the best and most up-to-date scientific evidence on the ground that the Delegated Regulation was updated on an ongoing basis. That argument is based on a misreading of the contested decision, which states only that an overly strict interpretation of the requirement to take such evidence into consideration would undermine the objectives of the Taxonomy Regulation and deprive of all effectiveness its obligation to review regularly the technical screening criteria in line with scientific and technological developments.

Last, ClientEarth has also failed to demonstrate a breach of the precautionary principle, in so far as it does not explain how the interpretation of Article 19(1)(f) of the Taxonomy Regulation adopted in the contested decision infringes that principle. In the present case, it merely maintains that, in the absence of conclusive scientific evidence, the Commission is prevented from classifying a given activity under that regulation.

Second, the General Court rejects the argument that the Commission erred in its interpretation of Article 19(1) of the Taxonomy Regulation by considering that the various requirements laid down therein had to be balanced against one another. In that regard, it notes that that provision sets out a series of requirements which concern both the substance and the form of the technical screening criteria. The latter must also take into account a number of factors, pursuing different objectives, including environmental, scientific, economic, financial and feasibility objectives. Thus, when

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218 Articles 9 and 10 of the Taxonomy Regulation.

219 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').

establishing those criteria, the Commission must take into account all of the requirements provided for in Article 19(1) of the Taxonomy Regulation, striking, where appropriate, the appropriate balance or a practical concordance between them.

Third, the Court considers the error of law allegedly committed by the Commission by relying solely on the EU legislation in force, in particular the RED II Directive [220] and the LULUCF Regulation. [221] According to ClientEarth, those legislative acts, which the Commission took into consideration in order to establish the technical screening criteria for bioenergy activities, perform functions different from those of the Taxonomy Regulation and are based on outdated scientific evidence which does not meet the requirements of Article 19(1) of that regulation.

The Court begins by noting that, in accordance with the said regulation, the Commission must take into account 'any relevant existing Union legislation' during the establishment of the technical screening criteria, with the result that it cannot be criticised for having taken into account existing EU legislation.

As regards, more specifically, the alleged obsolete nature of the criteria established in the RED II Directive and the LULUCF Regulation, the Court notes that the date of adoption of the legislation is not capable in itself of demonstrating non-compliance with the requirements established by the Taxonomy Regulation. Moreover, in view of their purpose, that directive and that regulation cannot be deemed irrelevant for the purpose of the establishment of the technical screening criteria for bioenergy activities. To that effect, the Court adds that the Taxonomy Regulation refers expressly to the RED II Directive and indirectly to the LULUCF Regulation, and that the criteria established by those two acts are intrinsically linked as regards biofuels, bioliquids and biomass fuels produced from forest biomass.

Fourth, the Court holds that, contrary to what ClientEarth contends, the Commission did not disregard the obligation, laid down in Article 19(1)(g) of the Taxonomy Regulation, to take the life cycle into account as regards the activities of manufacture of organic base chemicals and the manufacture of plastics in primary form.

In that regard, it observes that, in the contested decision, the Commission did indeed maintain that the integration of life-cycle considerations universally into the technical screening criteria proved difficult for the lack of usable and comparable data. However, as regards the manufacture of organic base chemicals, it took into account, inter alia, direct greenhouse gas emissions and, as regards the manufacture of plastics in primary form, the technical screening criteria were based on expert opinions and on a life-cycle assessment.

Furthermore, the Court points out that Article 19(1)(g) of the Taxonomy Regulation does not require the provision of technical screening criteria relating specifically to the life cycle or the carrying out of a life-cycle assessment in all cases. On the contrary, the Commission is required to take into account the life cycle, and in particular the already existing assessments of that cycle, when adopting the technical screening criteria.

In the second place, the Court addresses ClientEarth's plea alleging manifest errors of assessment as regards bioenergy activities.

First, the applicant alleged a manifest error of assessment in that the Commission had concluded that the combustion of forest biomass contributes substantially to climate change mitigation and causes no significant harm to the environmental objectives. More specifically, it criticised the Commission for having treated all forest feedstocks in a uniform manner without following the recommendations of the technical expert group on sustainable finance. On that point, the Court finds that the applicant has not demonstrated that the reasons given by the Commission for not following those recommendations were vitiated by a manifest error of assessment capable of calling into question

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220 Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82; 'the RED II Directive').

221 Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1; 'the LULUCF Regulation').

their plausibility. The Court adds that, contrary to ClientEarth's claims, imported timber was also considered for the purposes of establishing the technical screening criteria for economic activities linked to bioenergy, having regard to Article 29(6) and (7) of the RED II Directive.

Second, according to the applicant, the Commission was wrong to consider that there was insufficient scientific evidence to define technical screening criteria relating to the principle of 'do no significant harm' to the objective of transition to a circular economy as regards the use of forest biomass in bioenergy activities, in order to take account of the principle of cascading forest biomass use.

In that regard, the Court observes that, in the contested decision, the Commission contended that that principle was highly complex and that sufficient scientific evidence was paramount in order to define appropriate criteria. In that context, it considered that it could use a step-by-step approach, in accordance with Article 19(5) of the Taxonomy Regulation. In particular, the Commission considered that the RED II Directive already imposed obligations on operators on waste hierarchy and on the circular economy, and that the proposal for a directive amending the RED II Directive provided that Member States were to ensure that energy from biomass was produced in a way that took into account the waste hierarchy and the principle of cascading use.

The applicant, however, has not put forward any specific arguments capable of contradicting the Commission's conclusion that there was insufficient scientific evidence and has not demonstrated that the assessment which led to the adoption of the step-by-step approach referred to above is vitiated by a manifest error of assessment.

In the third place, the General Court addresses the plea alleging manifest errors of assessment as regards the manufacture of organic base chemicals, which the Commission wrongly classified as a transitional activity within the meaning of Article 10(2) of the Taxonomy Regulation. [222]

In that context, ClientEarth claimed, inter alia, that the Commission had failed to take into account the impact of the life cycle of the products. The Court, however, recalls that the Commission was not required to provide technical screening criteria relating specifically to the life cycle or the carrying out of a life-cycle assessment in all cases.

The applicant further submitted that, in classifying the activity of manufacturing organic base chemicals as a transitional activity, where it is intended exclusively for uses which are essential for society, the Commission had committed a manifest error of assessment as regards the criteria for applying the principle of 'do no significant harm' to the objective of pollution prevention and control.

However, the Court notes that it follows from the contested decision that classification as a transitional activity can be accepted only if the manufacture of organic base chemicals is carried out using a less-carbon-intensive process. In addition, that classification does not apply to the manufacture of organic base chemicals, provided that it concerns the manufacture of substances which may be classified for certain hazards and hazard categories, 'except where their use has been proven to be essential for the society'. Consequently, the applicant could not criticise the Commission for not having put forward sufficient evidence on the downstream use of hazardous substances and on their uses which are essential for society.

The Court adds that, contrary to ClientEarth's claims, the REACH [223] and CLP Regulations, [224] to which the contested decision refers, are relevant in that regard. It follows from the legal requirements relating to chemical safety, provided for inter alia in the said regulations, that downstream uses of organic base chemicals are regulated and that the manufacturers of those products, as well as other

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222 Transitional activities are those for which there is no low-carbon alternative which is technologically and economically feasible, but which promote the transition to a climate-neutral economy, subject to compliance with certain criteria.

223 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).

224 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).

actors in the supply chain, are subject to a range of obligations as regards, inter alia, registration, information and data sharing.

In the fourth and last place, the Court analyses ClientEarth's plea relating to the manufacture of plastics in primary form.

According to the applicant, for that activity, the Commission should have set a quantitative criterion establishing a minimum proportion of renewable raw materials necessary for that manufacture to be classified as an activity contributing substantially to climate change mitigation. The Court nevertheless points out that, in the Delegated Regulation, the Commission established, on the one hand, a qualitative criterion which requires the use of renewable raw materials in undetermined quantities and, on the other hand, a quantitative criterion which requires greenhouse gas emissions not to exceed established thresholds. That decision is consistent with Article 19 of the Taxonomy Regulation, which does not make it mandatory to include quantitative criteria or thresholds in the technical screening criteria in all situations.

Likewise, the Commission cannot be criticised for having referred, in the contested decision, to future revisions of the technical screening criteria. Under the first and last subparagraphs of Article 19(5) of the Taxonomy Regulation, such a review is mandatory at least every three years for activities classified as transitional, which include the manufacture of plastics in primary form.

Furthermore, ClientEarth complained that the Commission had failed to establish technical screening criteria for determining whether the activity of manufacturing plastics in primary form causes significant harm to the objective of transition to a circular economy. It also did not follow a recommendation of the expert group on sustainable finance on that subject.

In that regard, the Court points out, first of all, that the recommendations of the expert group are not binding on the Commission. In addition, under Article 19(1)(g) and (k) of the Taxonomy Regulation, the technical screening criteria must take into account the life cycle of the activity in question, but must also be easy to use and to verify. The Commission found, in the contested decision, that the integration of life-cycle elements universally into the criteria had proved difficult for the lack of usable and comparable data and the multiplicity of applications of bio-based plastics. The Court, however, cannot substitute itself for the Commission in its assessment of the operational nature or the sufficiency of scientific and complex evidence for the purposes of determining whether it was possible to set such a technical screening criterion.

The Court, having rejected all of ClientEarth's arguments, dismisses the action in its entirety.

Judgment of the General Court (Sixth Chamber, Extended Composition) of 10 September 2025, Fédération environnement durable and Others v Commission, T-583/22

Link to the full text of the judgment

Environment – Aarhus Convention – Rejection of a request for internal review – Article 10 of Regulation (EC) No 1367/2006 – Delegated Regulation (EU) 2021/2139 – Electricity generation from wind power – Taxonomy – Requirements for technical screening criteria – Article 19 of Regulation (EU) No 2020/852 – Substantial contribution to climate change mitigation – Substantial contribution to climate change adaptation – No significant harm to other environmental objectives

The General Court upholds the decision of the European Commission to reject a request for internal review of Delegated Regulation 2021/2139 [225] supplementing Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment [226] ('the Taxonomy Regulation').

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[225] Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1; 'the Delegated Regulation').

The Taxonomy Regulation establishes a unified classification system in order to harmonise, at EU level, the criteria for determining whether an economic activity qualifies as environmentally sustainable in the light of various environmental objectives which are defined therein, such as climate change mitigation and adaptation. [227]

In that context, the Commission adopted the Delegated Regulation to supplement the Taxonomy Regulation by establishing technical screening criteria for determining the conditions under which certain economic activities contribute substantially to the environmental objectives pursued by that delegated regulation.

The applicants, Fédération environnement durable, Bundesinitiative Vernunftkraft eV, Vent de Colère ! Fédération nationale and Vent de Raison Wind met Redelijkheid (VdR-WmR), submitted to the Commission, pursuant to the Aarhus Regulation, [228] a request for internal review of the Delegated Regulation. In their view, that delegated regulation did not demonstrate that the generation of electricity from wind energy constitutes an economic activity which contributes substantially to the environmental objectives pursued by it.

The Commission rejected the request for internal review by decision of 7 July 2022 ('the contested decision'), which is the subject of the present action.

Findings of the Court

As a preliminary point, the Court provides clarification on the admissibility of the arguments relied on in support of an action for annulment brought against a decision rejecting a request for internal review of an administrative act in the field of the environment.

Such an action for annulment cannot be founded on new grounds or on evidence not appearing in the request for review, as otherwise the requirement relating to the statement of grounds for such a request would be made redundant and the object of the procedure initiated by the request would be altered.

Nevertheless, on the one hand, the applicant must be able to raise arguments intended to challenge, in law, the merits of the response to its request for internal review, provided that those arguments do not alter the object of the procedure initiated by that request. On the other hand, an argument which was not raised at the stage of the request for review does not constitute a new argument if it is simply an amplification of an argument already developed in the context of that request, that is to say, if it presents a sufficiently close connection with the pleas or heads of claim initially put forward in the application in order to be considered as forming part of the normal evolution of the debate in proceedings before the Court.

Those reminders having been made, the Court rejects, in the first place, the plea concerning the preparation of the Delegated Regulation.

The applicants claimed, inter alia, that, in the contested decision, the Commission had not responded to the argument, put forward in the request for internal review, that the timetable for the adoption of delegated acts provided for by the Taxonomy Regulation had not been complied with. In particular, they maintained that Delegated Regulation 2021/2139 should have been prepared in full knowledge of the content of Delegated Regulation 2023/2486, [229] and thus adopted after it.

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226 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

227 Articles 9 and 10 of the Taxonomy Regulation.

228 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').

229 Commission Delegated Regulation (EU) 2023/2486 of 27 June 2023 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the sustainable use and protection of water and marine resources, to the transition to a circular economy, to pollution prevention and control, or to the protection and restoration of biodiversity and ecosystems and for determining whether that economic activity causes no significant harm to any of the other environmental objectives and amending Commission Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ L, 2023/2486).

On that point, the Court finds that the two delegated regulations were indeed adopted late. However, it is clear that the sequence of the two delegated regulations advocated by the Taxonomy Regulation was fully respected, such that the applicants' argument cannot give rise to serious doubts as to the assessments made by the Commission in the Delegated Regulation.

The applicants further alleged that it had not properly consulted the Platform on Sustainable Finance, provided for by the Taxonomy Regulation, prior to the adoption of the Delegated Regulation. According to them, the opinion issued by that platform was not complete, since it merely examined general questions without discussing the specific technical screening criteria.

Given that the abovementioned platform was consulted on the draft Delegated Regulation and its annexes detailing the technical screening criteria, however, it is irrelevant that it did not comment in detail on those criteria and merely made comments of a general nature. The provisions of the Taxonomy Regulation cannot be interpreted as precluding the adoption of delegated acts where, as in the present case, the platform in question has not explicitly adopted a position on all aspects of the draft delegated acts submitted to it for an opinion.

The Court examines, in the second place, the applicants' plea alleging failure to have regard to the climate change mitigation objective laid down in the Taxonomy Regulation.

First of all, it declares inadmissible arguments contained in a letter produced by the applicants after the close of the written part of the procedure.

In that regard, it recalls that no new plea in law, complaint or argument may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

It is true that, in the case at hand, the arguments in question were based on a notice from the Commission, [230] annexed to the abovementioned letter, which was published in the Official Journal only after the close of the written part of the procedure. However, as the two specific passages of that notice referred to by the applicants were already contained, in identical form, in an earlier version of that notice which had already been published in the Official Journal before the action was brought, they cannot be regarded as matters of law or of fact which came to light in the course of the procedure.

As to the substance, the applicants argued inter alia that, in so far as the Delegated Regulation does not lay down an obligation to carry out an actual quantitative measurement of CO_2 emissions per kWh of electricity generated from wind power, it infringes Article 10(3) of the Taxonomy Regulation, according to which it is necessary to determine whether and to what extent the activity contributes substantially to the stabilisation of greenhouse gas concentrations in the atmosphere.

Under Article 10(3)(a) of the said regulation, however, the Commission must establish technical screening criteria for determining the 'conditions under which' a specific economic activity qualifies as contributing substantially to climate change mitigation. Thus, that provision does not contain any reference to the idea of a necessarily quantitative assessment, in the sense of compliance with a defined threshold. The Court also finds that, in the contested decision, the Commission did indeed explain that it had applied a quantitative threshold of 100 g of CO_2 per kWh and found that that threshold was always complied with by the generation of electricity from wind power.

The applicants, however, criticised the Commission for not having taken into account, in taking the view that that threshold was always complied with, of the intermittency of the generation of electricity from wind power or of the CO_2 emissions from the power plants called upon to compensate for the under-production of wind power plants.

In that regard, the Court begins by noting that it is apparent from the Taxonomy Regulation that that regulation is based on the idea that it is specific economic activities which are subject to the criteria laid down by or on the basis of that regulation in order to assess their environmental sustainability, without assessing other activities linked to them.

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230 Commission Notice entitled 'Technical guidance on the application of do no significant harm under the Recovery and Resilience Facility Regulation' (OJ C, C/2023/111).

The Commission was therefore entitled to structure the Delegated Regulation by providing, in Annexes I and II thereto, points for each economic activity it covers. More specifically, the economic activity defined in those annexes is the 'electricity generation from wind power', such that, on the one hand, it covers only the generation of electricity and, on the other hand, the only relevant source of energy is wind power.

Furthermore, it is true that the Commission noted that the generation of electricity from wind power was intermittent, in that it involved not continuous electrical power, but power which varied according to weather conditions. However, it took the view that it was not possible to factor in that intermittency, since the compensation of the under-production of electricity from wind power from other energy sources was not part of that first activity and that such 'other activities' that are 'related' in that way would not be assessed in that context.

The Court holds that that position is free from a manifest error of assessment. On the one hand, according to the Taxonomy Regulation, an economic activity must in principle be assessed individually. On the other hand, the Commission rightly considered that it would be very difficult to quantify the intermittency of electricity generation from wind power and to establish its impact.

First, existing historical data do not make it possible to deduce with certainty the actual future generation of a specific installation generating electricity from wind power. Second, the impact of intermittency in the generation of electricity from wind power depends above all on the technologies used to compensate for the potentially low generation of wind power. It is not possible to predict which exact technologies will be used to that end. Third, in any event, taking those external factors into account would create particular difficulties for the operators of installations generating electricity from wind power, which would infringe the Taxonomy Regulation, pursuant to which the technical screening criteria are to be easy to use and be set in a manner that facilitates the verification of their compliance.

In the third place, the Court examines the plea alleging breach of the obligation to state reasons under Article 10(2) of the Aarhus Regulation in that the contested decision failed to address a number of points raised in the request for internal review with regard to the technical screening criteria for assessing the substantial contribution to climate change adaptation.

The Court notes, in that regard, that the abovementioned obligation to state reasons must be interpreted in the same way as that under the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, which enshrines the right to good administration.

According to the case-law, the statement of reasons must be adapted to the nature of the legal act at issue and to the context in which it was adopted. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question and, in particular, in the light of the interest which the addressees of the act may have in obtaining explanations. Thus, it has been held that the reasoning may be implicit on condition that it enables the persons concerned to know why the measures in question were taken and provides the General Court with sufficient material for it to exercise its power of review.

The Court infers from this that the Commission was not required to respond separately to each specific point raised in the request for internal review, such that the contested decision does not breach the obligation to state reasons under Article 10(2) of the Aarhus Regulation in that it rejects implicitly points raised by the applicants in that request.

In the fourth place, the Court analyses the plea alleging that the contested decision does not respond to the arguments, raised in the request for internal review, relating to the principle that the activity in question must do no significant harm to the other environmental objectives.

As regards, in particular, the objective of the transition to a circular economy, the applicants claimed that the Commission should have established clear quantitative thresholds or benchmarks concerning the availability and usability of the necessary equipment and components, their respective durability and recyclability and their ease of dismantlement and refurbishing.

The Court begins by finding that the Commission was not justified in declaring that claim inadmissible on the ground that, first, it was not supported by evidence and, second, it did not indicate the provision on which it was based. It was not possible to substantiate that claim with factual evidence. What is more, that is a question of law, and such questions do not fall within the factual framework to be established by the parties through the production of evidence.

However, the Court rejects that claim on the merits, noting that, in accordance with the Taxonomy Regulation, the technical screening criteria are to be quantitative and contain thresholds to the extent possible, and otherwise be qualitative. In the response to the request for internal review, the Commission also clearly indicated that, in its view, the concepts of 'availability', 'usability', 'durability', 'ease of dismantlement' and of 'refurbishing', used in the technical screening criteria, were highly complex, limiting the effectiveness of general thresholds within the EU taxonomy. Moreover, the wording of the Taxonomy Regulation in no way indicates that the criteria for determining whether an economic activity does significant harm to the objective of the transition to a circular economy must be quantitative in the sense that they establish precise thresholds or clear benchmarks.

As for the objective of pollution prevention and control, the applicants disputed the absence of a technical screening criterion to ensure that the generation of electricity from wind power does no significant harm to that objective.

The Court holds that the Commission also could not declare that claim inadmissible on the ground that it was not supported by evidence. As the Commission appears to accept that, in principle, the Taxonomy Regulation requires such criteria, it may come as a surprise that the Delegated Regulation does not, in fact, establish any technical screening criteria in so far as it merely indicates 'N/A'. The applicants could therefore simply argue that precise criteria should have been indicated instead of 'N/A', without further reasons for their request for internal review.

Having failed to prove that the Commission had committed a manifest error of assessment, the applicants' argument is, however, refuted on the merits.

The Court rejects the applicants' other arguments and pleas and, accordingly, dismisses the action in its entirety.

Judgment of the General Court (Grand Chamber) of 10 September 2025, Austria v Commission, T-625/22

Link to the full text of the judgment

Environment – Delegated Regulation (EU) 2022/1214 – Taxonomy – Economic activities in the fossil gas and nuclear energy sectors – Inclusion in sustainable economic activities – Investments – Contribution to the transition towards a carbon-neutral economy in accordance with the 1.5 °C objective fixed by the Paris Agreement – Objective of net zero emissions by 2050 – Substantial contribution to climate change mitigation and adaptation – Articles 10 and 11 of Regulation (EU) 2020/852 – Concept of 'low-carbon activity' – Significant harm to environmental objectives – Risks associated with serious reactor accidents – Risks associated with high-level radioactive waste – Risks associated with droughts and climate hazards – Precautionary principle – Technical screening criteria – Reduction of greenhouse gas emissions – Article 290 TFEU – Concept of 'essential elements' of a legislative act – Scientific evidence – Commission's margin of discretion – Manifest error of assessment

The General Court dismisses the action for annulment brought by the Republic of Austria against Commission Delegated Regulation 2022/1214 [231] supplementing Regulation 2020/852 on the

[231] Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (OJ 2022 L 188, p. 1; 'the contested regulation').

establishment of a framework to facilitate sustainable investment [232] ('the Taxonomy Regulation'). On that occasion, it rules for the first time on the application of the criteria laid down in the Taxonomy Regulation to economic activities in the fossil gas sector and the nuclear energy sector.

The Taxonomy Regulation harmonises the criteria at EU level for determining whether an economic activity qualifies as environmentally sustainable, in the light of different environmental objectives, such as climate change mitigation and adaptation. [233]

In that context, the Commission adopted Commission Delegated Regulation 2021/2139 [234] supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the abovementioned environmental objectives and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

In March 2022, the Commission adopted the contested regulation, which amends Delegated Regulation 2021/2139 by establishing technical screening criteria to include certain activities in the nuclear energy and fossil gas sectors in the category of activities deemed to contribute substantially to climate change mitigation and climate change adaptation.

The Republic of Austria brought an action before the General Court seeking annulment of the contested regulation which, in its view, infringes a number of provisions of the Taxonomy Regulation.

Findings of the Court

As a preliminary point, the Court notes that, in the exercise of its powers under a delegated power for the purposes of Article 290 TFEU, the Commission enjoys broad discretion where it is called on, inter alia, to undertake complex assessments and evaluations. The judicial review carried out by the Courts of the European Union of the merits of a decision taken in the exercise of such discretion must not lead it to substitute its own assessment for that of the Commission, but must seek to ascertain that such a decision is not based on materially incorrect facts and that it is not vitiated by a manifest error of assessment or misuse of powers.

In that regard, the Courts of the European Union must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it. Where an institution enjoys broad discretion, observance of procedural guarantees is of fundamental importance, including the obligation for that institution to examine carefully and impartially all the relevant aspects of the situation in question.

However, as regards questions of law, the General Court carries out a comprehensive review. It has jurisdiction to interpret legal provisions on the basis of objective factors and verify whether or not the conditions for the application of such a provision are satisfied.

Moreover, in order to establish that that institution committed a manifest error in assessing complex facts, the evidence adduced by the applicant must be sufficient to make the factual assessments used in the act implausible.

It is in the light of those considerations that the Court dismisses, in the first place, the pleas in law alleging, inter alia, infringement of the procedural provisions laid down in the Taxonomy Regulation for the adoption of the contested regulation.

It notes in that regard that the contested regulation forms part of the continuity of Delegated Regulation 2021/2139. In particular, in the procedure that led to the adoption of the latter regulation,

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232 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

233 Articles 3 and 9 of the Taxonomy Regulation.

234 Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1).

Technical expert group on sustainable finance ('the TEG') had taken account of economic activities in the nuclear energy sector and had recommended that other studies be carried out, which were done.

Consequently, the Commission could legitimately base itself on the expert assessments carried out for the adoption of Delegated Regulation 2021/2139 for the purposes of the adoption of the contested regulation. The two delegated regulations complement the Taxonomy Regulation and the procedures that led to their adoption are mutually complementary as regards the examination of economic activities in the nuclear energy sector. Thus, the Commission was not required to carry out any additional, specific impact assessment and public consultation.

The same holds true for emission thresholds for activities in the fossil gas sector, since the expert assessments and public consultations for that sector had already been carried out for the adoption of Delegated Regulation 2021/2139.

In the second place, the Court rejects the plea alleging infringement of Article 290 TFEU inasmuch as the categorisation of activities in the nuclear energy sector as sustainable activities comes within the essential elements of the Taxonomy Regulation, which could not be the object of a delegated act due to the political and controversial nature of the inclusion of nuclear energy in the taxonomy.

On that point, the Court finds that, in view of the objective and content of the Taxonomy Regulation, the essential elements thereof consist, inter alia, in the definition of environmental objectives, the environmental sustainability criteria and the requirements applicable to the technical screening criteria. As a result, the determination of economic activities per se, and the establishment of technical screening criteria for each economic activity implementing the sustainability criteria, apart from expressly excluded fossil fuels, do not fall within the essential elements of the Taxonomy Regulation.

Moreover, in leaving the Commission the possibility of determining the technical screening criteria for all types of activities meeting the sustainability criteria, the EU legislature also allows it to adapt the technical screening criteria in step with technological developments. Nor can that legislature be required to list all existing or envisaged technologies, since that would not enable the legislation to withstand the test of time and would make it technologically obsolete, because it would be unable to take account of inevitable and desirable technological innovation.

That conclusion is not called into question by the fact that the inclusion of economic activities in the nuclear energy sector carries a political aspect and is controversial amongst the Member States, since the EU legislature did not opt to exclude that activity, unlike power generation activities that use solid fossil fuels. In any event, that fact is not relevant in relation to Article 290 TFEU, under which the essential elements of an area, and not the political and controversial elements thereof, are to be reserved for legislative acts.

In the third place, the Court rejects the plea alleging infringement of Article 10(2) on the ground that that provision is not applicable to low-carbon economic activities, such as economic activities in the nuclear energy sector, and that the conditions of application of that provision are not satisfied.

There are no technologically and economically feasible low-carbon alternatives that can qualify as 'transitional' activities, that is to say, as contributing substantially to climate change mitigation by supporting the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1.5 °C above pre-industrial levels.

In that regard, the Court observes that the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part.

Thus, it is apparent from a literal, teleological and systematic interpretation of Article 10(2) of the Taxonomy Regulation that transitional activities may include activities which are not low-carbon and for which there are no technologically and economically feasible low-carbon alternatives, but also, a

fortiori, low-carbon activities which do not satisfy the conditions of application of Article 10(1) thereof, [235] provided that the specific conditions of Article 10(2) are satisfied.

Moreover, in retaining in the contested regulation the lack of availability 'at a sufficient scale' of low-carbon alternatives to nuclear energy in order 'to cover the energy demand in a continuous and reliable manner', the Commission did not expand the scope of Article 10(2) of the Taxonomy Regulation.

The Court observes, first, that measures adopted by the Commission in the context of the establishment and functioning of the internal market, such as the contested regulation, must comply with the principle of energy solidarity, enshrined in Article 194 TFEU, and ensure, inter alia, security of energy supply in the European Union.

Secondly, the objective of the Taxonomy Regulation is to support the transition to a safe, climate-neutral, climate-resilient, more resource-efficient and circular economy. Yet that objective would be compromised if the use of energy sources qualifying as contributing substantially to climate change mitigation did not allow for securing energy supply at a sufficient scale to cover the energy demand.

Thirdly, that Article 10(2) of the Taxonomy Regulation refers to a situation where there is no 'technologically and economically feasible' low-carbon alternative. Thus, the EU legislature emphasised the practicability and availability of those alternatives, which underlies the imperative of security of supply and meeting EU energy needs. That provision must accordingly be interpreted as referring to transitional activities for which there are no realistic and practicable alternatives enabling the European Union to continue to cover its energy needs.

As to the arguments alleging that economic activities in the nuclear sector do not satisfy the conditions laid down in Article 10(2) of the Taxonomy Regulation, the Court observes that, for the purpose of interpreting a treaty, there must be taken into account, inter alia, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, and any subsequent practice in the application of that treaty which establishes that agreement. [236]

In the present case, it is apparent from the Paris Agreement that, in order to reduce greenhouse gas ('GHG') emissions, the parties to that agreement committed to undertake to contribute to global efforts, including by accelerating zero- and low-emission technologies, such as nuclear.

Thus, an interpretation of Article 10(2) of the Taxonomy Regulation consistent with that agreement tends to confirm that economic activities in the nuclear energy sector may constitute transitional activities within the meaning of that provision.

It further follows from that provision, the lawfulness of which is not disputed, that those climate objectives are met when the economic activity in question supports the transition to a climate-neutral economy through inter alia phasing out of GHG emissions. In the present case, the Commission stated, on the basis of opinions gathered in the procedure for adopting the contested regulation, that economic activities in the nuclear energy sector are low-carbon activities, that nuclear energy generation has near to zero GHG emissions and that evidence on the potential substantial contribution of nuclear energy to climate change mitigation objectives was extensive and clear.

In the fourth place, in including economic activities in the nuclear sector in transitional activities and in establishing technical screening criteria for those activities, the Commission did not infringe the precautionary principle or Article 19(1)(f) and (g) of the Taxonomy Regulation, or fail to adhere to the DNSH criterion, that is to say, the criterion according to which the economic activity in question must not cause significant harm to any of the environmental objectives pursued by that regulation, provided for in Article 17 thereof.

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235 That provision defines economic activities which qualify as contributing substantially to climate change mitigation.

236 Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331).

As a preliminary point, the Court recalls that the application of the precautionary principle presupposes a scientific assessment of the risks, the determination of the risk deemed acceptable and, if necessary, the adoption of appropriate protective measures.

In the present case, fist of all, the Court rejects the line of argument put forward by the Republic of Austria to the effect that, in the examination of compliance with the precautionary principle, the lack of scientific evidence of significant harm is not a relevant criterion; the only material question is whether any reasonable doubt of such harm could be ruled out. The precautionary principle does not require that all reasonable scientific doubt as to the existence of environmental harm be ruled out, as that would amount to requiring a zero risk of the Commission, contrary to the case-law. Thus, the criterion of the lack of scientific evidence of significant harm complies with Article 19(1)(f) of the Taxonomy Regulation, which only requires the Commission to base itself on conclusive scientific evidence.

Next, as to the line of argument to the effect that the Commission failed to take account of the possible consequences that serious reactor accidents may have on the environmental objectives laid down in the Taxonomy Regulation, the Court states that compliance with the DNSH criterion cannot be verified in the abstract; rather, it must be done in the light of the technical screening criteria established in the contested regulation.

Economic activities in the nuclear energy sector are strictly regulated in EU law, which is intended to reduce the probability of serious reactor accidents and the severity of such accidents for human health and the environment. In that regard, the technical screening criteria refer expressly to all EU nuclear energy safety rules, and also to the most recent international guidelines of the International Atomic Energy Agency and the Western European Nuclear Regulators Association.

Moreover, the Republic of Austria has failed to demonstrate that the Commission made a manifest error of assessment in finding that, under the EU nuclear energy safety rules referred to in the contested regulation, the DNSH criterion had been complied with and, in particular, that it had not been established that economic activities in the nuclear energy sector were detrimental to the good ecological status of bodies of water or marine waters, or led to a significant increase in the emissions of pollutants into water, air or land.

The same holds true for the risks of high-level radioactive waste, as the Republic of Austria has failed to demonstrate that the Commission's finding that there was no significant harm to the environment due to the management of nuclear energy waste is vitiated by a manifest error of assessment.

On that point, first, the Court notes that Directive 2011/70 Euratom [237]establishes a framework for ensuring, in EU law, responsible and safe management of spent fuel and radioactive waste. It also ensures that Member States provide for appropriate national arrangements for a high level of safety in spent fuel and radioactive waste management. The contested regulation refers to that directive.

Nor can the Commission be required to be required to rely on scientific evidence which is beyond doubt and which proves that the final disposal of high-level radioactive waste will not significantly harm the environmental objectives referred to in Article 17(1)(c) to (f) of the Taxonomy Regulation, as that would amount to imposing zero risk on it, contrary to the case-law.

Lastly, as regards the line of argument to the effect that the Commission failed to take account of the entire life-cycle of nuclear energy, namely the mining and processing of uranium ore, refining, conversion, uranium enrichment, fuel assembly, transport and potential armed conflicts, the Court notes that those activities are situated upstream or downstream from the activities in the nuclear energy sector referred to in the contested regulation. Yet it is apparent from the wording of Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation that the requirement to take the life cycle of an activity into account does not necessarily extend to activities situated upstream or downstream from the economic activity in question.

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237 Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (OJ 2011 L 199, p. 48).

In the fifth and last place, as regards fossil gas activities, the Republic of Austria claims that the condition laid down in Article 10(2) of the Taxonomy Regulation, requiring that there not be a low-carbon alternative is not satisfied because renewable energy, intelligent networks and energy disposal and consumption reduction techniques are all low-carbon alternatives that are substitutable for economic activities in the fossil gas sector.

In that regard, the Court states that that condition involves taking into account the aspects relating to security of supply. It is apparent from the contested regulation that, in certain sectors, there are not yet enough low-carbon alternatives guaranteeing the necessary energy supply.

Thus, the Commission took the view that provision should be made for an approach other than direct limitation of GHG emissions, which should deliver similar results over a 20-year period. Under that other approach, facilities may achieve such results by limiting the number of hours of operation or by advancing the date of their transition to renewable or low-carbon gases. In addition, the technical screening criteria for the use of fossil gas should also ensure that robust evidence is available to demonstrate that the same energy capacity cannot be generated with renewable sources, and that effective plans are put in place for each facility, in line with the best performance in the sector, to switch entirely to renewables or low carbon gases by a specific date.

It follows that Article 10(2) of the Taxonomy Regulation must be interpreted as meaning that, in order to preclude a categorisation as environmentally sustainable, it is not sufficient that alternative sources exist; they must also be able to attain the same capacity as existing sources.

Next, the Court rejects the line of argument to the effect that, first, the emissions thresholds laid down in the contested regulation for fossil gas activities are not compatible, inter alia, with the 1.5 °C objective fixed by Article 10(2) of the Taxonomy Regulation and, second, the other technical screening criteria do not contribute to climate change mitigation.

On that point, the Court notes that the Commission applied a threshold higher than 100 grams (g) of CO_2 equivalent (CO_2eq) per kilowatt (kWh) [238] because the 100 g CO_2e/kWh threshold is not feasible at the current juncture for gas-fired power plants that do not have a CO_2 capture system. Thus, in applying a higher threshold to that type of facility, the Commission brought them within the scope of the contested regulation and made them subject to the other technical screening criteria. Such an approach is compatible with the objective of the Taxonomy Regulation consisting in avoiding inaction or delayed action.

This holds all the more true since the activities in question must also replace an existing high-emitting electricity generation activity that uses solid or liquid fossil fuels and lead to a reduction in GHG emissions of at least 55% over the lifetime of the newly installed production capacity, and the Member State must have committed to phase out the use of energy generation from coal.

Lastly, nor did the Commission make a manifest error of assessment in taking account of direct GHG emissions from the activity, and not life-cycle GHG emissions. It is apparent from the wording of the Taxonomy Regulation [239] that the requirement to take the life cycle of an activity into account does not necessarily extend to activities situated upstream or downstream from the economic activity in question. Thus, the obligation to take account of production, use and end-of-life of those products and services provided by economic activities in the fossil gas sector does not entail taking account of the extraction and distribution of fossil gas, upstream from combustion, as those activities do not per se come within the generation of electricity.

Moreover, the Taxonomy Regulation is aimed at establishing a unified classification system for economic activities considered to be environmentally sustainable. That classification or taxonomy therefore concerns given economic activities. Thus, the establishment, by the Commission, of technical screening criteria for determining whether an activity may be regarded as contributing

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238 The TEG considers that the threshold limit of 100 g CO_2eq/kWh frames scientifically the compliance with the condition consisting in supporting the transition to a climate-neutral economy and that it should be lowered every five years.

239 Article 17(2) and Article 19(1)(g) of the Taxonomy Regulation.

substantially to climate change mitigation and does not cause significant harm to environmental objectives targets, on a case-by-case basis, a specific economic activity.

Since the other pleas in law put forward have also been shown to be unfounded, the Court dismisses the action in its entirety.

XV. COMMON FOREIGN AND SECURITY POLICY

1. RESTRICTIVE MEASURES

Judgment of the General Court (Eighth Chamber, Extended Composition) of 10 September 2025, Positive Group v Council, T-573/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Inclusion and maintenance of the applicant's name on the lists – Definition of 'entities operating in the Russian IT sector with a license administered by the FSB' – Article 2(1)(i) of Decision 2014/145/CFSP – Article 3(1)(i) of Regulation (EU) No 269/2014 – Plea of illegality – Error of assessment – Obligation to state reasons – Rights of the defence

In its judgment, the General Court dismisses the action for annulment brought by the company Positive Group PAO against the acts by which its name was included by the Council of the European Union on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. This case affords the Court the opportunity, in particular, to rule for the first time on the lawfulness of criterion (i) of Decision 2014/145 [240] which permits the Council to take restrictive measures against legal persons, entities or bodies operating in the Russian IT sector with a license from the FSB.

This judgment arises in the context of a series of restrictive measures adopted by the European Union in response to the military aggression perpetrated by the Russian Federation against Ukraine on 24 February 2022. The funds and economic resources of Positive Group PAO were frozen within the European Union in June and September 2023, [241] then in March and September 2024, [242] on the

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240 Article 2(1)(i) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision (CFSP) 2023/1218 of 23 June 2023 (OJ 2023 L 159I, p. 526) ('criterion (i)'):

'1. All funds and economic resources belonging to, or owned, held or controlled by: …

(i) legal persons, entities or bodies operating in the Russian IT-sector with a license administered by the Federal Security Service of the Russian Federation (FSB) Centre for Licensing, Certification, and Protection of State Secrets or a "weapons and military equipment" license administered by the Russian Ministry of Industry and Trade …

… shall be frozen.'

241 Council Decision (CFSP) 2023/1218 of 23 June 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 159I, p. 526), and Council Implementing Regulation (EU) 2023/1216 of 23 June 2023 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 159I, p. 335) ('the initial acts'); Council Decision (CFSP) 2023/1767 of 13 September 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 104), and Council Implementing Regulation (EU) 2023/1765 of 13 September 2023 implementing Regulation (EU) No 269/2014 concerning restrictive

ground that it is an entity operating in the Russian IT sector and holds a license administered by the FSB. In September 2024, the Council amended the grounds for including the applicant's name on the lists at issue by stating that the latter is the holding company of a conglomerate established in Russia which includes AO Pozitiv Teknolodzhiz, which operates in the Russian IT sector and holds a license administered by the FSB.

In support of its action for annulment, the applicant raises a plea of illegality in respect of criterion (i) and also relies, in particular, on errors of assessment on the part of the Council.

Findings of the Court

As regards the plea of illegality in respect of criterion (i), the Court rules, in the first place, that that criterion is consistent with the principles of foreseeability and legal certainty since it is sufficiently clear and foreseeable, and that the Council's discretion is circumscribed by the objectives pursued by the legislation governing the restrictive measures at issue. The Court observes, in that regard, that the conditions for the application of criterion (i) objectively establish a defined category of persons. The application of that criterion in fact presupposes that two objective criteria are satisfied, namely that, on the one hand, the legal person, entity or body concerned operates in the Russian IT sector and, on the other hand, it holds a license from the FSB or a 'weapons and military equipment' license. Furthermore, criterion (i) forms part of a legal framework that is circumscribed by the objectives pursued by the restrictive measures at issue, namely the need to exert maximum pressure on the Russian authorities so that they bring an end to their actions destabilising Ukraine and to the military aggression against that country. Those restrictive measures are therefore consistent with the objective referred to in Article 21(2)(c) TEU.

The Court states that, in the scenario where a parent company owns or controls one of its subsidiaries in such a way that it exerts decisive influence over that subsidiary, they form a single 'entity' for the purposes of criterion (i). Thus, the conditions for listing the entity formed by the parent company and its subsidiary under criterion (i) will be met where the subsidiary operates in the Russian IT sector and holds a license from the FSB.

In the second place, the Court finds that criterion (i) is not manifestly disproportionate in the light of the objectives pursued by the restrictive measures. That criterion is such as to limit the means available to the Government of the Russian Federation in order to conduct information warfare, since, by having ties to the Russian security services, those legal persons, entities or bodies contribute, directly or indirectly, to the capacity of the Russian Federation to pursue its actions and policies undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. That criterion is thus necessary to the aim of increasing the pressure on the Russian authorities, so that they put an end to their actions and policies destabilising Ukraine, as these are pursued in particular through information warfare. The Court specifies that criterion (i) undermines the capacity of such entities to provide their support to the Russian security services and that it is not manifestly inappropriate having regard to the objectives referred to above and cannot, therefore, be regarded as disproportionate inasmuch as it does not require that the Council establish actual participation in information warfare on the part of the entity concerned. The Court considers, in that connection, that the requirement laid down by criterion (i) relating to holding a license from the FSB or a 'weapons and military equipment' license, in so far as it serves to cover not only entities in the Russian IT sector which actually participate in information warfare, but also those capable of being mobilised by the

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measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2023 L 226, p. 3) ('the first set of maintaining acts').

242 Council Decision (CFSP) 2024/847 of 12 March 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L, 2024/847), and Council Implementing Regulation (EU) 2024/849 of 12 March 2024 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L, 2024/849) ('the second set of maintaining acts'); Council Decision (CFSP) 2024/2456 of 12 September 2024 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L, 2024/2456) and Council Implementing Regulation (EU) 2024/2455 of 12 September 2024 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L, 2024/2455) ('the third set of maintaining acts').

Russian security services to assist those services, is appropriate and necessary to achieve the objective pursued by that criterion.

In the third place, the Court rules that the criterion is not a disproportionate interference in the freedom to conduct a business. [243] It finds, in particular, having regard to the overriding importance of the objectives pursued by the restrictive measures, that the Council was able to find, without overstepping the bounds of its discretion, that the interference in the freedom to conduct a business that would result from the application of criterion (i) was appropriate and necessary for the purposes of increasing pressure on the Russian Federation. Since those measures do not prevent Russian IT undertakings from conducting their business activities, such interference cannot be considered, in relation to the objectives pursued, to be a disproportionate and intolerable interference that would impair the very substance of the freedom to conduct a business of the entities falling within the scope of that criterion.

As regards the errors of assessment on which the applicant relies, the Court states that the person designated in the initial acts and the first set of maintaining acts – from which it must be established that that person satisfies the conditions laid down by criterion (i) – is the applicant as an entity, also known as Positive Technologies or Gruppa Pozitiva, and not the applicant as a company or a legal person. Furthermore, even though Pozitiv Teknolodzhiz is a legal person that is legally separate from the applicant, the Council could validly take the view that, having regard to the fact that the applicant owns 100% of that subsidiary, it exercised decisive influence over that subsidiary, and that the latter was not an entity independent from the applicant. Accordingly, in so far as it is established that its subsidiary, Pozitiv Teknolodzhiz, holds a license from the FSB, the conditions for listing the applicant as an entity on the basis of criterion (i) have been met. In that context, the fact that the tax identification number on the licenses from the FSB does not match that of the applicant as a legal person is irrelevant for the purposes of establishing that the applicant as an entity satisfies the conditions for inclusion under criterion (i). The Court finds that the Council did not make an error of assessment by including and maintaining the applicant's name on the lists at issue.

2. ACTIONS FOR DAMAGES

Order of the General Court (Sixth Chamber) of 25 September 2025, KS and KD v Council and Others, T-771/20 RENV

Link to the full text of the order

Actions for damages – Common foreign and security policy – Damage resulting from the alleged infringement of fundamental rights – Serious offences committed in Kosovo in 1999 – European Union Rule of Law Mission in Kosovo (Eulex Kosovo) – Failure to meet formal requirements – Article 76(d) of the Rules of Procedure – Manifest inadmissibility in part – Non-attributability of the alleged omissions – Action in part manifestly lacking any foundation in law

Hearing the case referred back from the Court of Justice, the General Court dismisses the action brought by KS and KD seeking compensation for the damage which they claim they have suffered as a result of the acts and omissions attributed to the Council of the European Union, the European Commission and the European External Action Service (EEAS) in the context of the implementation of Joint Action 2008/124 [244] relating to the Eulex Kosovo mission, in particular during investigations into the disappearance and killing of their family members in that third country in 1999. Following on from

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243 Freedom enshrined in Article 16 of the Charter of Fundamental Rights of the European Union.

244 Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (OJ 2008 L 42, p. 92).

the judgment in *Eulex Kosovo*, [245] the order of the General Court helps to clarify and consolidate the principles governing the responsibility of the Eulex Kosovo mission for the implementation of its executive mandate.

The applicants, KS and KD, are relatives of persons tortured, killed or missing in connection with the war crimes perpetrated in Kosovo between June and July 1999. Established under Joint Action 2008/124, the purpose of the Eulex Kosovo mission was, inter alia, to assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability. In 2009, on the basis of that joint action, the European Union established the Human Rights Review Panel ('the review panel'), with a mandate to examine complaints of human rights violations by the Eulex Kosovo mission in the exercise of its mission statement. Where it found such violations to be established, the review panel could issue non-binding recommendations with a view to the Head of the mission taking remedial action.

Accordingly, having received complaints from KS and KD, the panel concluded, in November 2015 and October 2016, that a number of fundamental rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') [246] had been violated and made recommendations to the Head of the Eulex Kosovo mission with a view to remedial action being taken.

In November 2021, by the order in *KS and KD* v *Council and Others*, [247] the General Court dismissed the action for damages brought by the applicants seeking compensation for the damage they claim to have suffered as a result of various acts and omissions of the Council, the Commission, the EEAS and the Eulex Kosovo mission during the investigations into the disappearance and killing of their family members on the ground that it manifestly lacked jurisdiction to hear and determine that action. It held, in essence, that the action arose from acts or conduct concerning political or strategic issues connected with defining the activities, priorities and resources of the Eulex Kosovo mission, and the decision to set up the review panel as part of that mission, which came within the scope of the European Union's common foreign and security policy ('CFSP'). The General Court recalled that a Court of the European Union did not have jurisdiction, [248] in principle, either with respect to the provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions and took the view that the exceptions to that principle were not applicable in the present case.

Hearing the appeals brought in 2022 by KS and KD and by the Commission respectively, the Court of Justice, by its judgment in *KS and Others* v *Council and Others* [249] ('the judgment on appeal'), set aside the initial order in part in so far as the General Court had declared that it manifestly lacked jurisdiction to hear and determine certain complaints raised by the applicants and referred the case back to the General Court for a ruling on the admissibility and, if appropriate, on the substance of that action.

In parallel, in the judgment in *Eulex Kosovo*, [250] the Court of Justice, hearing a request for a preliminary ruling under Article 267 TFEU, held that Article 16(5) of Joint Action 2008/124, [251] according to which 'EULEX KOSOVO shall be responsible for any claims and obligations arising from the implementation of the mandate starting from 15 June 2014, with the exception of any claims relating to serious misconduct by the Head of Mission, for which the Head of Mission shall bear the responsibility' had to be interpreted as specifying the date from which the Eulex Kosovo mission had to be regarded as assuming responsibility for any harm and any obligation which arose or which may arise from the implementation of the mission entrusted to it, and therefore, starting from that date, as being

245 Judgment of 24 February 2022, Eulex Kosovo (C-283/20, EU:C:2022:126).

246 Signed in Rome on 4 November 1950.

247 Order of 10 November 2021, KS and KD v Council and Others (T-771/20, EU:T:2021:798) ('the initial order').

248 In accordance with the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU.

249 Judgment of 10 September 2024, KS and Others v Council and Others (C-29/22 P and C-44/22 P, EU:C:2024:725).

250 Paragraph 41.

251 As amended by Council Decision 2014/349/CFSP of 12 June 2014 (OJ 2014 L 174, p. 42).

subrogated to the rights and obligations of the person or persons previously responsible for the implementation of that mission, with the exception of obligations arising from serious misconduct by the Head of the mission, for which the Head of the mission is to bear the responsibility.

Findings of the General Court

In the first place, the General Court rejects the complaint alleging, first, that the lack of adequate investigations into the disappearance of the applicants' relatives, resulting from a lack of appropriate personnel in the Eulex Kosovo mission, constitutes an infringement of certain fundamental rights [252] by that mission, responsibility for which must be borne jointly or severally by the Council, the Commission and the EEAS, and, second, that that infringement also stems from omissions attributable to those institutions and that body, in so far as they failed to ensure that that mission had appropriate personnel to implement its mandate.

The General Court recalls that, with effect from 15 June 2014, [253] Joint Action 2008/124 generally transfers to the Eulex Kosovo mission responsibility for any claims and obligations which have already arisen or may arise in respect of the implementation of its mandate.

Moreover, as the Court of Justice held in the judgment on appeal, the Eulex Kosovo mission's capacity to employ staff is an element of its day-to-day management forming part of the implementation of its mandate. Accordingly, the General Court concludes that the alleged lack of appropriate personnel is the result of failures in the day-to-day management of the Eulex Kosovo mission, the harmful consequences of which, assuming they are established, come within the exclusive responsibility of that mission in the implementation of its executive mandate. Therefore, in so far as the applicants allege failures in human resource management by the Eulex Kosovo mission, against which the action for damages is not directed, the General Court finds that the complaint is vitiated by an error in terms of the defendant it identifies and rejects that complaint as manifestly inadmissible.

As to the remainder, in so far as the Council, the Commission and the EEAS are criticised for not having ensured that the Eulex Kosovo mission has appropriate personnel to implement its mandate, the General Court notes that, as is apparent from the judgment on appeal, that task falls to the Eulex Kosovo mission. Accordingly, it rejects the complaint as manifestly lacking any foundation in law on the ground that the omissions cannot be attributed to them.

In the second place, the General Court rejects the complaint alleging that, by establishing and maintaining the review panel without allowing it to grant legal aid, without conferring on it the power to enforce its decisions and without providing interested parties with a remedy once infringements are found by that panel, the Council, the Commission and the EEAS infringed the right to an effective remedy and to a fair trial. [254]

The General Court holds that, even if the detailed rules governing recourse to the review panel do not, in themselves, satisfy the effective remedy and fair trial requirements, that fact cannot lead it to uphold that complaint, in so far as actions before the Courts of the European Union constitute a legal remedy open to the applicants following the infringements found by that panel. That remedy offers them all the guarantees provided for by the provisions relied on, in particular the possibility of claiming legal aid and the possibility of obtaining an enforceable judgment which has the force of *res judicata*.

In the third place, the General Court rejects the complaint alleging that the persistent failure to take remedial action capable of remedying the infringements found by the review panel resulted in a sufficiently serious infringement of EU law. First, it rejects the applicants' argument that the absence of those measures arises from the continuing refusal by the Council, the Commission and the EEAS to

252 As enshrined in Articles 2, 3 and 8 ECHR and Articles 2 and 4 of the Charter of Fundamental Rights of the European Union ('the Charter').

253 Article 16(5) of the Joint Action, as amended by Decision 2014/349.

254 Article 6(1) and Article 13 ECHR and Article 47 of the Charter.

provide the Eulex Kosovo mission with appropriate personnel. It recalls that the alleged failures in the day-to-day management of that mission cannot be attributed to the Council, the Commission and the EEAS, in so far as they come within the implementation of the executive mandate of that mission and, as such, give rise to the exclusive responsibility of that mission. [255]

Second, the General Court rejects the applicants' argument that the Council, the Commission and the EEAS failed to use their power to issue instructions vis-à-vis the Eulex Kosovo mission, in particular by failing to adopt individual measures relating to the applicants' individual situations. It finds, in the light of Articles 7, 8, 11 and 12 of Joint Action 2008/124, that the adoption of such individual measures falls outside the exercise of the political control and strategic direction incumbent on the Council, the Commission and the EEAS through the Political and Security Committee (PSC) and the Civilian Operation Commander of the mission, in so far as, in particular, the power of investigation vested in the latter is exercised at a strategic level, and not at the theatre of operations level coming within the activities of the Head of the mission.

In the fourth place, the General Court rejects, for the same reason, the complaint alleging misuse or abuse of executive power by the Council and the EEAS, in so far as they stated that the Eulex Kosovo mission had done the best it could to investigate the disappearance of the applicants' relatives. The General Court holds that, even if that statement were to be regarded not as a factual assessment with no independent legal scope but as a position of a decision-making nature, reflecting the Council's refusal and that of the EEAS to intervene with a view to adopting individual measures relating to the applicants' particular situations, such intervention falls outside the scope of the powers exercised by that institution and that body vis-à-vis the Eulex Kosovo mission. Since the adoption of such individual measures is outside of the exercise of political control and strategic direction incumbent on the Council and the EEAS, the positions allegedly adopted by them cannot be regarded as unlawful.

255 In accordance with Article 16(5) of Joint Action 2008/124, as amended by Decision 2014/349.

XVI. PREVIOUS DECISIONS

1. COMPETITION

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

Judgment of the General Court (Second Chamber) of 9 July 2025, Compagnie générale des établissements Michelin v Commission, T-188/24

Link to the full text of the judgment

Competition – Agreements, decisions and concerted practices – Administrative procedure – Decision ordering an inspection – Article 20(4) of Regulation (EC) No 1/2003 – Subject matter and purpose of the inspection – Obligation to state reasons – Sufficiently serious indicia – Protection of privacy – Judicial review

The General Court annuls in part the decision of the European Commission [256] ordering Compagnie générale des établissements Michelin ('Michelin') to submit to an inspection concerning its potential participation in anticompetitive agreements or practices in the tyres sector. In so doing, it recalls the criteria for assessment of the serious nature of the indicia capable of substantiating such a decision.

On 10 January 2024, suspecting anticompetitive practices relating to the coordination of prices by the main tyre manufacturers in the European Economic Area (EEA), the Commission adopted, as part of an investigation opened *ex officio*, a decision ordering Michelin to submit to an inspection ('the contested decision'). That decision was adopted pursuant to Article 20(4) of Regulation No 1/2003 [257] on the implementation of the rules on competition, which define the Commission's powers in relation to inspections.

Between January and March 2024, the Commission carried out the inspection at Michelin's premises. In that context, it visited offices, collected equipment (laptops, mobile telephones, tablets, storage devices), interviewed a number of people and copied the contents of the equipment collected.

By its action before the Court, Michelin seeks the annulment of the contested decision, relying, first, on infringement of the obligation to state reasons and, secondly, on infringement of the right to inviolability of the home.

Findings of the Court

As a preliminary point, the Court observes that some of the applicant's arguments relate to the conduct of the inspection carried out by the Commission to give effect to the contested decision. In that regard, it finds that an undertaking cannot rely on the illegality of the conduct of the inspection procedures to contest the legality of the measure on the basis of which the Commission conducted that inspection.

That said, Michelin draws attention to the conduct of the inspection solely to illustrate the lack of clarity or of precision vitiating the statement of reasons or the extent of the interference authorised by a decision ordering the inspection. It is therefore from that perspective that the Court assesses the arguments relied on in support of the pleas for annulment of the contested decision.

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256 Commission Decision C(2024) 243 final of 10 January 2024 ordering Compagnie Générale des Établissements Michelin, and all companies directly or indirectly controlled by it, to submit to an inspection in accordance with Article 20(4) of Council Regulation (EC) No 1/2003 (Case AT.40863 – Hoops).

257 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

The Court examines, in the first place, the plea alleging that the contested decision does not satisfy the obligation to state reasons set out in Article 296 TFEU. It observes first of all that the statement of reasons for a measure of the European Union must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted it. It is not necessary for the reasoning to specify all the relevant facts and points of law, since that reasoning must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.

In competition matters, Regulation No 1/2003 confers inspection powers on the Commission so that it can perform its task of protecting the internal market from distortions of competition and of penalising any infringements of the competition rules on that market. It is apparent from Article 20(4) of that regulation that the Commission's inspection decisions must indicate, inter alia, the subject and the objective of the inspection. That obligation to state specific reasons constitutes a fundamental requirement not only to show that the intervention envisaged within the undertakings concerned was proportional, but also to put those undertakings in a position to understand the scope of their duty to cooperate, while at the same time preserving their rights of defence.

However, provided that the inspection decision contains those essential elements, it is not essential that it defines the relevant market precisely, sets out the exact legal nature of the suspected infringements or indicates the period during which those infringements were committed. Since the inspections take place at the beginning of an investigation, the Commission still generally lacks precise information to make a specific legal assessment and must first of all verify the accuracy of its suspicions and the scope of the incidents which have taken place.

In the light of those principles, the Court analyses Michelin's claims that the use of the words 'and/or', 'in particular', 'including' and 'at least' in the contested decision makes the material and the temporal scope of the suspected infringement ambiguous, unjustified or unreasonable.

It observes that the use of the alternative construction 'and/or' in the description of the form taken by the suspected coordination (anticompetitive agreements and/or concerted practices) does not have any particular consequence for the applicant, since the exact legal nature of the suspected coordination, whether an agreement between undertakings or a concerted practice, is dependent on an assessment which cannot be required when the inspection decision is drafted.

As regards the use of the words 'in particular' or 'including' to describe the Commission's suspicions, their use makes it easier to understand the statements in which they appear, that is to say, a coordination of prices, 'in particular wholesale prices', and exchanges of commercially sensitive information 'including via generally accessible public channels'. Those words enable the applicant to gain a better understanding of what it is alleged to have done. They illustrate the substance of the suspected coordination, whilst explaining that the examples provided are not exhaustive indications of the material scope of the suspected infringement.

Lastly, by stating that the conduct began 'at least' during a main period and that evidence points to prior coordination 'at least' during an earlier period, the Commission provided, on its own initiative, certain indications as to the temporal scope of the suspected coordination. Those indications, which form part of the statement of reasons, thus allow the view to be taken that the applicant was not in a situation in which it was prevented from understanding the Commission's suspicions clearly and, therefore, was denied the opportunity to protect its rights of the defence fully.

Thus, under Article 296 TFEU, the statement of reasons for the contested decision enables the applicant to ascertain the reasons for the measure adopted and the Court to exercise its power of review. It also indicates, in accordance with Article 20(4) of Regulation No 1/2003, the subject and the objective of inspection in a sufficient manner.

The Court addresses, in the second place, the plea alleging infringement of the right to inviolability of the applicant's home.

It begins by recalling that a legal person may rely on that right, which forms part of the protection of privacy. The need for protection against arbitrary or disproportionate intervention by the public authorities in the sphere of private activities of a person is a general principle of EU law, which is expressed in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

Article 52(1) of the Charter states in that regard that any limitation on the exercise of that right must be provided for by law and respect both the essence of that right and the principle of proportionality.

In practice, the purpose of a decision ordering an inspection must be to gather the documentation needed to verify the reality and the scope of specified situations of fact and of law in respect of which the Commission already has information, which constitutes reasonable grounds for suspecting an infringement of the competition rules. Having such grounds is thus a prerequisite for the Commission to order an inspection pursuant to Article 20(4) of Regulation No 1/2003.

In addition, since the statement of reasons for a decision ordering an inspection circumscribes the powers conferred on the Commission's agents, a search may be made only for those documents coming within the scope of the subject matter of the inspection. Such a decision cannot therefore be worded in terms that would extend that scope beyond that which arises from the reasonable grounds which the Commission had at its disposal when it adopted the decision.

Having recalled those points, the Court examines whether the contested decision is arbitrary, as alleged by the applicant.

In that regard, it observes first of all that a decision ordering an inspection does not necessarily have to refer to all the information in the Commission's possession at that stage of the investigation, since a balance must be struck between preserving the effectiveness of the investigation and upholding the rights of the defence of the undertaking concerned.

Thus, the Commission is obliged to indicate in the inspection decision, as precisely as possible, the suspicions which it intends to investigate, that is to say, the evidence sought and the matters to which the investigation must relate. However, it cannot be required also to indicate the evidence, that is to say, the indicia leading it to consider that Article 101 TFEU has possibly been infringed.

In the present case, the Commission cannot therefore be criticised for having stated that it '[had] information' and 'evidence' relating to the suspected coordination or to certain aspects of it without providing further information about the nature, form, date and originator of that information and evidence.

The Court's analysis goes on to consider the sufficiently serious nature of the indicia submitted by the Commission to justify the contested decision.

The Court observes, as a preliminary point, that when the undertaking which is the recipient of an inspection decision produces some evidence casting doubt on whether the Commission had reasonable grounds, the Court must examine those grounds and determine whether they are reasonable.

That in-depth, post-inspection judicial review of legality is capable of offsetting the lack of prior judicial authorisation and ensuring the compatibility of the inspection measure with the fundamental right to inviolability of the home. Its purpose is not to ascertain whether the corresponding indicia can establish, and not just be grounds for suspecting, the existence of the suspected anticompetitive conduct, as such a question is as yet premature at that stage of the investigation.

Unlike evidence of an infringement, indicia forming the basis of a decision ordering an inspection do not have to demonstrate the existence or the content of an infringement, unless the powers of investigation conferred on the Commission are to be entirely deprived of their purpose. Therefore, the fact that the evidence held by the Commission may be subject to different interpretations does not preclude it from constituting reasonable grounds, since the interpretation favoured by the Commission is plausible.

The Court also observes, first, that the various indicia on the basis of which an infringement can be suspected must not be assessed separately but as a whole, and can be mutually corroborative. Secondly, the context of the present case is that of a case in the preliminary investigation stage, that is to say, at a time when the Commission has not yet taken a view on whether the suspected infringement actually exists and the applicant enjoys the presumption of innocence.

In the present case, the Commission provided in the defence explanations and material elements to enable the Court to determine whether the Commission had reasonable grounds to support its suspicions and to justify the inspection, which facilitated the review by the Court. In the light of those

elements, the Court concludes that the Commission had reasonable grounds solely as regards the coordination suspected during the main period, and not the earlier period to which the contested decision refers. The contested decision must therefore be annulled in part in that respect.

Lastly, the Court rejects the complaint alleging infringement of the principle of proportionality. It recalls in that regard that that principle is a general principle of EU law pursuant to which measures adopted by the EU institutions are not to exceed the limits of what is appropriate and necessary in order for the desired objective to be attained. However, when there is a choice between several appropriate measures, recourse must be had to the least onerous one, and the disadvantages caused must not be disproportionate to the aims pursued.

In the case of an inspection decision, that principle presupposes that the intended measure does not constitute, in relation to the aim pursued, a disproportionate and intolerable interference. Specifically, the Commission's choice between a request for information and an inspection ordered by a decision does not depend on matters such as the particular seriousness of the situation, extreme urgency or the need of absolute discretion, but rather on the need of an appropriate inquiry. Therefore, where a decision ordering an inspection is intended solely to enable the Commission to gather the information needed to assess whether the Treaty has been infringed, such a decision is not contrary to the principle of proportionality.

In the present case, the Commission could not rule out the existence of a risk of the evidence sought being concealed or destroyed. The applicant has not demonstrated, first, that the contested decision is not necessary as there was no risk in respect of the evidence and recourse could have been had to a less onerous measure or, secondly, that that decision gave rise to excessive harmful consequences.

In the light of the foregoing, given the absence of sufficiently serious indicia to support the suspicions concerning the period preceding the main period, the Court annuls the contested decision in part in that regard on account of its arbitrary nature and of the corresponding infringement of the applicant's right to respect for its home and its communications. It dismisses the action as to the remainder.

1.2. CONCENTRATIONS

Judgment of the General Court (Sixth Chamber, Extended Composition) of 2 July 2025, Brasserie Nationale and Munhowen v Commission, T-289/24

Link to the full text of the judgment

Competition – Concentrations – Market for the wholesale distribution of beverages – Article 22 of Regulation (EC) No 139/2004 – Referral request to the Commission from a Member State competition authority not having competence under national law to examine the concentration – Commission decision to examine the concentration – Time limit for submitting the referral request – Concept of 'made known' – Informing the undertakings concerned of the referral request – Language rules – Time limit for notifying the Commission decision to examine the concentration – Effect on trade between Member States – Threat of a significant effect on competition – Appropriateness of the referral

Sitting in extended composition, the General Court dismisses the action for annulment brought against the decision of the European Commission [258] granting the request of the Autorité de concurrence du Grand-Duché de Luxembourg (Competition Authority of the Grand Duchy of Luxembourg) ('the ACL') to examine the compatibility with the internal market of a concentration announced by the Luxembourg undertaking Brasserie Nationale. In that context, the Court clarifies

[258] Decision C(2024) 1788 final of the European Commission of 14 March 2024, adopted pursuant to Article 22(3) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1) and Article 57 of the EEA Agreement ('the contested decision').

the starting point of the time limit laid down in Regulation No 139/2004 [259] for the submission of such a request by a national competition authority.

On 22 December 2023, Brasserie Nationale, which is engaged in the production of beer and mineral water, contacted the ACL to inform it that its 100% subsidiary in Luxembourg, Munhowen, intended to acquire Boissons Heintz. Both Munhowen and Boissons Heintz, whose registered office is also in Luxembourg, are engaged in the wholesale distribution of beverages, the former in Luxembourg and in the neighbouring regions of France and Belgium, and the latter only in Luxembourg.

The announced concentration did not have a European dimension within the meaning of Article 1 of Regulation No 139/2004 and therefore did not have to be notified to the Commission. In the absence of a merger control system in Luxembourg, there was also no obligation to notify on that basis in that Member State. Nor did the concentration have to be notified in another EU Member State or in any of the States party to the Agreement on the European Economic Area (EEA).

On 7 February 2024, following several exchanges with Brasserie Nationale, Munhowen and third parties, the ACL requested the Commission to examine the concentration at issue, pursuant to Article 22(1) of Regulation No 139/2004 ('the referral request').

On 8 February 2024, the Commission informed the competition authorities of the other Member States and the EFTA Surveillance Authority of the referral request. However, no Member State or State party to the EEA Agreement requested to join the referral request.

By letter of the same date, the Commission informed Brasserie Nationale of the referral request and invited it to submit its observations. On 9 February 2024, the Commission sent that letter to the legal representatives of Brasserie Nationale and Munhowen.

After receiving Brasserie Nationale's observations on the referral request, the Commission granted that request by decision of 14 March 2024.

Brasserie Nationale and its subsidiary Munhowen then brought an action for annulment of that decision before the General Court.

Findings of the Court

In support of their action, the applicants submitted, inter alia, that the ACL had made the referral request to the Commission after the expiry of the time limit applicable under Regulation No 139/2004.

In that regard, the Court observes that, in accordance with the second subparagraph of Article 22(1) of Regulation No 139/2004, 'a [referral request] shall be made at most within 15 working days of the date on which the concentration was notified, or if no notification is required, otherwise made known to the Member State concerned'. The Court also notes that, in the absence of a merger control system in Luxembourg, there was no requirement to notify the concentration at issue in that Member State. Accordingly, the point from which the time limit of 15 working days started to run was, in the present case, the date on which that concentration was 'made known' to the ACL.

In the contested decision, the Commission confirmed that the time limit of 15 working days had been complied with, on the ground that the concentration was made known to the ACL at the earliest on 17 January 2024, namely the date on which the ACL had first received relevant information on that concentration and its effects, enabling it assess, in a preliminary manner, whether the conditions for a referral request under the first subparagraph of Article 22(1) of Regulation No 139/2004 were satisfied.

That argument of the Commission was, however, disputed by the applicants, which contended that a concentration's being 'made known', within the meaning of the second subparagraph of Article 22(1) of Regulation No 139/2004, does not require the active transmission of relevant information enabling the national competition authority to assess, in a preliminary manner, whether the conditions for a referral request have been satisfied.

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259 Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

Referring to settled case-law, the Court recalls that the meaning of the term 'made known', for the purposes of the second subparagraph of Article 22(1) of Regulation No 139/2004, must be determined on the basis of a literal, contextual, teleological and historical interpretation of that provision.

Accordingly, having held that the different language versions of that provision do not match, the Court points out that, from a historical perspective, the use of the term 'made known' was necessary in order to enable Member States which do not have national merger control rules to request the Commission to scrutinise concentrations that may have adverse effects in their territory, where those concentrations also affect trade between Member States. Nevertheless, although the historical interpretation puts the second subparagraph of Article 22(1) of Regulation No 139/2004 into perspective, it does not clarify the wording of that provision.

By contrast, the contextual interpretation of the second subparagraph of Article 22(1) of Regulation No 139/2004 reveals that a concentration's being 'made known' must consist of an active transmission of information to the competent authority of the Member State concerned enabling it to carry out a preliminary assessment of the conditions, laid down in the first subparagraph of Article 22(1), in which a referral request may be made.

That contextual interpretation is confirmed by the teleological interpretation of the second subparagraph of Article 22(1) of Regulation No 139/2004, in so far as it makes it possible to ensure the control of mergers within deadlines compatible with both the requirements of good administration and the requirements of the business world.

Furthermore, since that interpretation ensures that the starting point of the time limit laid down in the second subparagraph of Article 22(1) of Regulation No 139/2004 is clearly defined, it is also necessary in the light of the principle of legal certainty.

Thus, the Court concludes that a concentration's being 'made known' within the meaning of the second subparagraph of Article 22(1) of Regulation No 139/2004 must, as regards its form, consist of the active transmission of relevant information to the competent authority of the Member State concerned and, as regards its content, contain sufficient information to enable that authority to carry out a preliminary assessment of the conditions laid down in the first subparagraph of Article 22(1). In that context, it is irrelevant whether that information was transmitted by the undertakings concerned or by third parties or by any other source.

In the light of the foregoing, the Court finds that, in the absence of evidence of the active transmission to the ACL, before 17 January 2024, of all the relevant information for a preliminary assessment of the conditions of the first subparagraph of Article 22(1) of Regulation No 139/2004, the Commission cannot be criticised for having taken that date, in the contested decision, as the starting point of the time limit of 15 working days, as provided for in the second subparagraph of Article 22(1).

The Court also rejects the plea for annulment challenging the Commission's finding in the contested decision that, in the absence of a national merger control system in Luxembourg, the acceptance of the referral request was appropriate and in line with its discretion.

In that regard, the applicants argued that Article 22 of Regulation No 139/2004 constitutes a legal regime the conditions for the application of which are laid down in paragraph 3 of that article. Considerations of expediency have no place in such a regime, with the result that the question of the appropriateness of that acceptance does not arise.

After recalling that Article 22 of Regulation No 139/2004 allows the Grand Duchy of Luxembourg to refer the examination of a concentration to the Commission, despite the absence of national merger control rules in that Member State, the Court points out that, under paragraph 3 of that article, the Commission 'may' decide to examine a concentration which is the subject of such a referral request if the formal and substantive conditions laid down in that provision have been satisfied.

While it follows that those conditions must be satisfied in order for a referral request to be accepted, the word 'may' indicates that the Commission is not obliged to accept it, but has a margin of discretion in that regard. Consequently, in the present case, the Commission was entitled to assess the appropriateness of the referral of the concentration by taking into account the factors characterising the situation in question.

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

2. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the General Court (First Chamber, Extended Composition) of 23 July 2025, OT v Council, T-1095/23

Link to the full text of the judgment

Common foreign and security policy – Restrictive measures taken in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Freezing of funds – List of persons, entities and bodies subject to the freezing of funds and economic resources – Maintenance of the applicant's name on the list – Article 2(1)(g) of Decision 2014/145/CFSP – Error of assessment – Rights of the defence – Proportionality

In its judgment, the General Court dismisses the action for annulment brought by the applicant against the acts by which, in September 2023 [260] and in March 2024, [261] the Council of the European Union maintained his name on the lists of persons and entities subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. This case enables the Court, inter alia, to clarify what evidence a person whose name is included on the lists at issue must submit in order to demonstrate the effective transfer of that person's shares in a company.

The present judgment has been given in connection with the restrictive measures adopted by the European Union following the military aggression launched against Ukraine by the Russian Federation on 24 February 2022. The applicant's funds and economic resources were frozen, by the Council, including as a result of the fact that he is a businessperson operating in Russia (first part of the amended (g) criterion) and a businessperson involved in economic sectors constituting a substantial source of revenue for the Government of the Russian Federation (third part of the amended (g) criterion). [262]

Findings of the Court

As regards the error of assessment claimed by the applicant, the Court found that, where persons subject to restrictive measures claim that their personal situation has changed compared with facts established by the Council, they must provide evidence demonstrating that such a change has in reality occurred and, therefore, that there has been an error of assessment.

In the present case, the Council had a body of evidence demonstrating that the applicant was one of the largest shareholders of the Alfa Group consortium as a result of his capital holdings in a number of companies belonging to that consortium, in particular via ABH Holdings and CTF Holdings. It was

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

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

262 Article 2(1)(g) of Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision 2023/1094 of 5 June 2023 (OJ 2023 L 146, p. 20) ('the amended (g) criterion').

therefore for the applicant to demonstrate that, before the restrictive measures were taken against him, he had in fact transferred his shares in those companies and had in fact relinquished his prerogatives as a shareholder of those companies and of the entities associated with them. That requirement does not constitute a reversal of the burden of proof since it is the applicant who is relying on the change in his personal situation. Since the evidence of the procedures, arrangements and conditions for transferring shares in companies takes the form of documents to which neither the Council nor the Member States have access, the applicant is best placed to provide such evidence in order to substantiate the change in his personal situation.

In the present case, according to the applicant, his shares in ABH Holdings and CTF Holdings were transferred to the purported transferee on 14 March 2022, that is to say, the day before his name was included on the lists at issue.

It was therefore for the applicant to submit evidence to demonstrate that, before that inclusion, the purported transfers had constituted an effective transfer of ownership of his holdings to an identifiable transferee at arm's length. The evidence of the transfers to the purported transferee of the shares owned by the applicant in ABH Holdings and CTF Holdings must serve to establish that the transfer complied with the provisions of EU law relating to restrictive measures, which, in the present case, involved establishing that the share transfers had become effective, in accordance with national law and the applicable provisions of the statutes, before the measures to freeze the applicant's funds came into force. The evidence of the effective transfers of shares in those two holding companies had to include, inter alia, the documents relating to the transfer of those shares, the relevant provisions of the applicable national law and the provisions of the statutes of the holding companies in question.

In addition, in order to demonstrate that he had in actual fact relinquished his prerogatives as shareholder, the applicant was required to provide evidence of the conditions and arrangements for the purported transfers and of the other contracting parties, and in particular of the transfer price of those shares. Where a transferor sells shares for a price manifestly below the value of the assets transferred, the transfer cannot be regarded as being made to a third party at arm's length. In those circumstances, by reason of the favour that that price would represent for the transferee, the transferor might continue, through the transferee, to exert influence over the business of the company whose shares were transferred, which would cast doubt on the credibility of that transfer.

Moreover, in circumstances involving significant share transfers that allegedly took place the day before measures to freeze the applicant's funds came into force and the use of legal arrangements entailing companies established in several countries, the efficiency and effectiveness of the restrictive measures could be jeopardised if purported transfers of company shares were taken into account without any evidence to demonstrate that they were genuine.

In the present case, the Court finds that the evidence produced by the applicant is insufficient to demonstrate an effective transfer of his shares in ABH Holdings and CTF Holdings and an effective relinquishment of his prerogatives as a shareholder of those companies and of the entities associated with them before the restrictive measures came into force. Accordingly, the Council was correct to find that the applicant was still one of the main shareholders of the Alfa Group consortium at the time when the contested acts were adopted. In view of the importance of the business carried on in Russia by the companies in the Alfa Group consortium, the Council was entitled, without thereby making an error of assessment, to find that the applicant was a leading businessperson operating in Russia within the meaning of the first part of the amended (g) criterion.