COURT OF JUSTICE
OF THE EUROPEAN UNION

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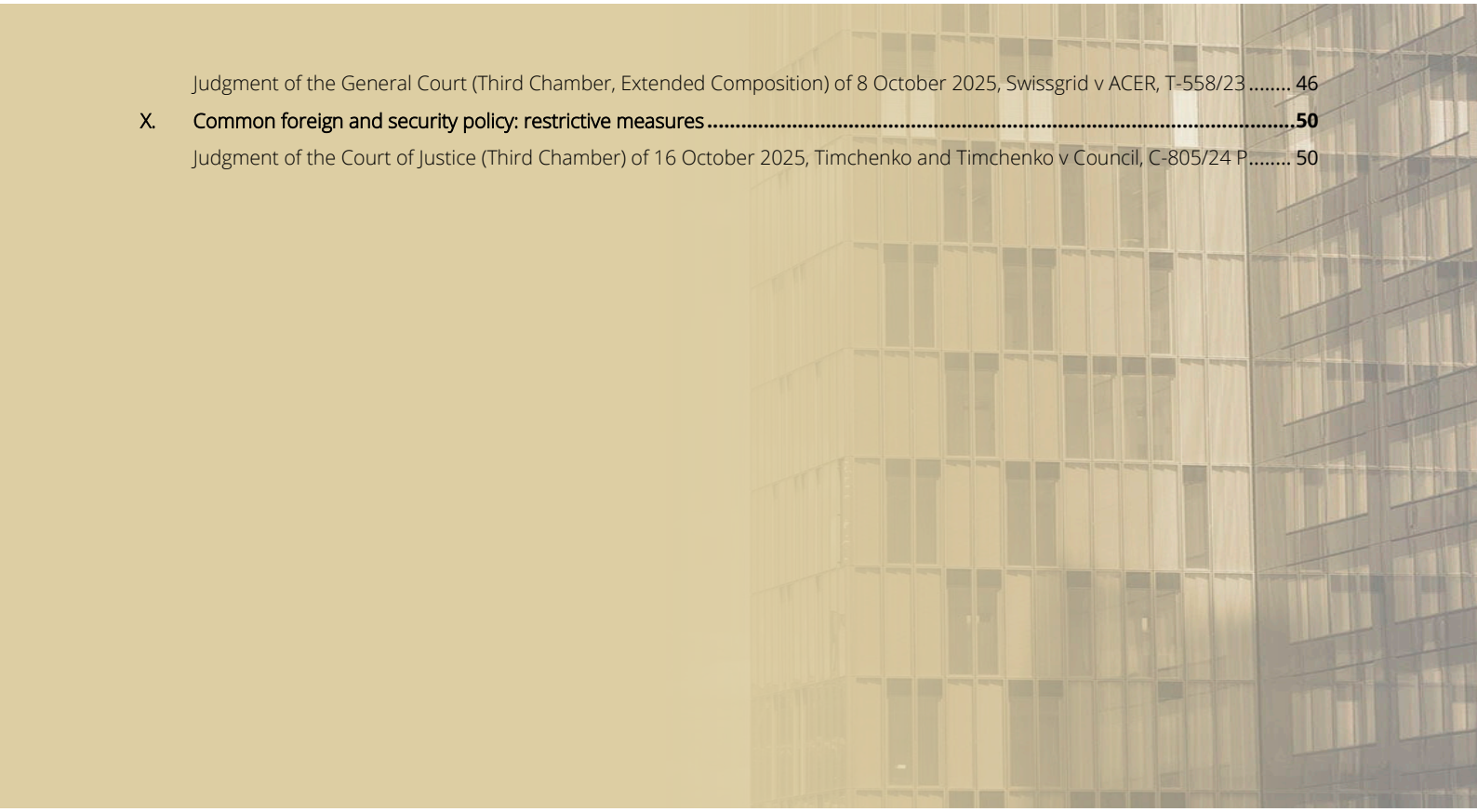

I. PROCEEDINGS OF THE EUROPEAN UNION: COSTS

Order of the General Court (Sixth Chamber) of 7 October 2025, Orgatex v EUIPO, T-25/23 DEP

Link to the order as published in extract form

Procedure – Taxation of costs – Expenses paid by a third party to the proceedings – Recoverability by a party

Ruling on an application for taxation of costs, the General Court provides additional case-law on the virtually unprecedented issue of the recoverability by one party of costs paid by a third party to the proceedings, emphasising in that regard the preponderance of the power of attorney over the invoices produced in support of the application for taxation.

In January 2023, the applicant, Orgatex GmbH & Co. KG, brought an action before the Court seeking annulment of the decision of the Third Board of Appeal of the European Union Intellectual Property Office (EUIPO) in invalidity proceedings between Mr L. Longton, the intervener in the proceedings before the Court, and itself.

In its judgment, [1] the Court dismissed the action and ordered the applicant to pay the costs, including those incurred by the intervener. [2]

Following that judgment, the intervener requested the applicant to reimburse the costs incurred in the main proceedings. However, the latter rejected that request.

It was in that context that the proceedings were brought before the Court, in the absence of agreement between the parties on the amount of recoverable costs.

Findings of the Court

First of all, the Court emphasises that recoverable costs are limited to those incurred for the purposes of the proceedings before the Court and to those which were necessary for that purpose. [3]

In that regard, it notes that the expression 'expenses incurred by the parties' refers to the expenses arising from the proceedings in which the parties have participated. That expression therefore does not refer solely to the expenses that were actually borne by the parties, but also to the expenses incurred for the purpose of the proceedings before the Court and necessary for that purpose, even if they have in fact been paid by a third party to the proceedings.

Next, the Court ruled on whether the intervener could recover the expenses incurred by a third party who had not participated in the main proceedings, namely the intervener's employer.

Thus, it indicates that the power of attorney granted to the intervener's lawyers was signed by the intervener himself, and not on behalf of his employer, which was not a party to the proceedings before the Court. It follows that the intervener is the principal *ad litem* of those lawyers and, consequently, that he has incurred a debt of fees to them that is personal and specific to him.

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1 Judgment of 23 October 2024, Orgatex v EUIPO – Longton (Floor markings) (T-25/23, EU:T:2024:725).

2 On the basis of Article 134(1) of the Rules of Procedure of the General Court.

3 Pursuant to Article 140(b) of the Rules of Procedure of the General Court, which provides that 'expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers' are to be regarded as recoverable costs.

Furthermore, the invoices for lawyer's fees produced by the intervener were sent by his legal representatives, the lawyers, to his employer. Consequently, those fees were actually paid by the intervener's employer, pursuant to an agreement between the intervener and his employer. However, the mere fact that those invoices are addressed to the intervener's employer, a third party to the main proceedings and a third party to the related mandate, has no bearing on the fact that it is the intervener, and not the addressee of the invoices, who is the principal *ad litem*.

Moreover, the Court emphasises that the invoices in question relate to costs incurred for the purposes of the main proceedings in which the parties, including the intervener, were involved, even though those costs were actually paid by a legal person that was not a party to the dispute.

Consequently, the Court finds that the expenses paid by the intervener's employer are, in principle, recoverable by the latter.

Finally, the Court rejects the applicant's arguments, which cannot call that finding into question.

First, it states that the question of the intervener's own economic interest is irrelevant for the purposes of assessing whether the invoices in question actually relate to expenses incurred for the purposes of the main proceedings. The grounds for invalidity relied on in the main proceedings [4] may, in principle, be relied on by any person, as they protect a public and general interest. That interest is, therefore, in any event, common to the intervener and his employer.

Secondly, the fact that the intervener did not participate in the hearing is completely irrelevant, since an intervening party is free to participate or not. [5]

Thirdly, the Court states that the fact that the legal representatives reported not directly to the intervener, but indirectly to the latter through the intellectual property advisers who had previously represented him before EUIPO, is also irrelevant, since those advisers acted on behalf of the principal *ad litem*, namely the intervener. Furthermore, it has not been established, or even alleged by the applicant, that those representatives or advisers reported in any way to the intervener's employer.

Accordingly, the Court finds that, in the circumstances of the present case, where the intervener is the principal *ad litem* and the person liable for his lawyers' fees, the expenses, in particular those fees, incurred for the purposes of the main proceedings and paid on behalf of the intervener by a third party to the dispute, his employer, constitute costs recoverable by the intervener.

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4 The grounds for invalidity in the present case are those referred to in Article 25(1)(a) and (b) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

5 In the light of Article 108(1) of the Rules of Procedure of the General Court.

II. INSTITUTIONAL PROVISIONS: OLAF – CONFIDENTIALITY OF INVESTIGATIONS

Judgment of the General Court (Third Chamber) of 1 October 2025, OC v Commission, T-384/20 RENV

Link to the full text of the judgment

Non-contractual liability – OLAF investigation – Press release – Processing of personal data – Presumption of innocence – Principle of good administration – Duty to act diligently – Confidentiality of OLAF investigations – Sufficiently serious breach of a rule of law conferring rights on individuals – Causal link – Damage

Hearing an action for non-contractual liability of the European Union, the General Court, while contributing to developments in the case-law on the protection of personal data, finds that the European Commission is to pay compensation for the damage caused by the publication of a press release from the European Anti-Fraud Office (OLAF) ('the press release at issue').

In September 2008, the Commission and a Greek university signed a grant agreement relating to the project led by the applicant, who is an academic researcher.

Once the project was completed, the Greek university, under the grant agreement, sought from the European Research Council Executive Agency (ERCEA) – which had replaced the Commission as the other party to the agreement – payment of an amount corresponding to expenditure incurred, including staff costs. Following an *ex post* financial audit, ERCEA concluded that a certain amount thereof was ineligible and thus sought to recover that amount from the Greek university by issuing a debit note to that end.

Meanwhile, the Director-General of OLAF, who had been informed by ERCEA of the results of its audit, decided, in May 2015, to open an investigation into possible irregularities or fraud in carrying out the project. [6]

In its final report on that investigation, OLAF recommended, first, that ERCEA take appropriate steps to recover the sums deemed overpaid to the Greek university concerned and, second, that the national judicial authorities, which had been informed thereof, initiate proceedings, inter alia, against the applicant for fraud and forgery. Thereafter, in May 2020, OLAF published on its website the press release at issue.

The following month, the applicant brought before the Court an action under Article 268 TFEU, seeking an order that the Commission pay compensation for the non-material damage allegedly caused by that press release. By its judgment of 4 May 2022, *OC* v *Commission*, [7] the Court dismissed the applicant's action in its entirety, finding that she had not been able to demonstrate the existence of unlawful conduct by OLAF.

The applicant then brought an appeal before the Court of Justice, seeking to have the General Court's decision set aside. By its judgment of 7 March 2024, *OC* v *Commission*, [8] the Court of Justice found, inter alia, that the General Court had erred in law by ruling that the applicant was not identified or identifiable in the press release at issue and that the information contained therein fell outside the concept of 'personal data'. The Court of Justice thus set aside the judgment of the General Court and referred the case back to it.

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6 Pursuant to Article 5 of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

7 Judgment of 4 May 2022, *OC* v *Commission* (T-384/20, not published, EU:T:2022:273).

8 Judgment of 7 March 2024, *OC* v *Commission* (C-479/22, EU:C:2024:215).

Findings of the Court

In the first place, having recalled the three cumulative conditions for the European Union to incur non-contractual liability, the General Court examines the lawfulness of the processing of personal data that took place when the press release at issue was published.

First, it takes the view that informing the public of OLAF's activities, in particular by issuing press releases, is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in that EU body. [9] Therefore, according to the Court, without prejudice to whether it complied with its obligations, OLAF did not exceed its powers by issuing the press release at issue.

Nevertheless, the Court finds that the information contained in that press release concerning the applicant, namely her age, her nationality and her gender, as well as the fact that her father worked at the Greek university, and the amount of the grant, not only permits identification of the applicant but, in addition, is not necessary, with the exception of the amount of the grant awarded, for the purpose of informing the public of OLAF's anti-fraud activities. Thus, the Court finds that the publication of those data constitutes unlawful processing of the applicant's personal data.

Second, the Court ascertains whether the further processing of the data, as carried out, is compatible with the purposes for which they were initially collected. In the present case, the applicant's personal data were initially collected in the context of the investigation conducted by OLAF, for a specified purpose which reflects the anti-fraud mission vested in OLAF. The data were not collected with a view to the publication of a press release, which corresponds to an admittedly related, yet different, purpose, namely informing the public of OLAF's activities.

Moreover, in addition to the link existing between the purposes of the initial collection of those data and those of the further processing thereof, the Court states that the view cannot be taken that OLAF took into account the nature of the data processed, in particular in so far as they make it possible for the applicant to be identified in connection with alleged criminal offences. Given the allegations made against the applicant, and judging by the content of the press articles following the publication of the press release at issue, the Court finds that OLAF did not take sufficient account of the possible consequences, for the applicant, of the further processing of her data. [10] The Court concludes that, by publishing the press release at issue, OLAF further processed the applicant's personal data in breach of Regulation 2018/1725. [11]

Third, in order to determine whether the breach alleged constitutes a sufficiently serious breach capable of giving rise to the non-contractual liability on the part of the European Union, it is necessary to determine the margin of discretion available to the institutions. In that regard, the Court notes that, even if OLAF has a certain margin of discretion available to it for the purpose of applying the provisions of Regulation 2018/1725, [12] it must be held that OLAF gravely and manifestly disregarded those provisions by publishing, in the press release at issue, the applicant's nationality, age and family ties. Furthermore, the Commission's argument that, without the information included in that press release, the probability that the content thereof would be picked up by the media would have been reduced not only makes it possible to rule out that the error committed was excusable, but also establishes an element of intent.

Accordingly, the Court finds that, by publishing its press release, OLAF unlawfully processed the applicant's personal data in breach of Regulation 2018/1725, [13] which constitutes a sufficiently serious breach capable of giving rise to liability on the part of the European Union.

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9 Within the meaning of Article 5(1)(a) of Regulation 2018/1725.

10 Within the meaning of Article 6(d) of Regulation 2018/1725.

11 In particular, in breach of Article 4(1)(b) and Article 6(c) to (e) of Regulation 2018/1725.

12 In particular, Article 4(1)(a) and (b), Article 5(1)(a) and Article 6(c) to (e) of Regulation 2018/1725.

13 In particular, in breach of Article 5(1)(a) and (b) of Regulation 2018/1725.

In the second place, the Court ascertains the existence of the alleged breach by the applicant of the principle of the presumption of innocence and of the obligation to respect the confidentiality of investigations. In that regard, it recalls that it is apparent from the judgment on appeal that the applicant is identifiable, at least indirectly, on the basis of the information contained in the press release at issue, which is an essential prerequisite for the examination of whether there has been a breach of the principle of the presumption of innocence.

As regards the breach alleged, the Court observes that it has already been held that respect for the principle of the presumption of innocence does not preclude, in the interests of informing the public of actions implemented in the context of possible failures or fraud, an EU institution from reporting the main findings of OLAF's final report concerning one of their members. However, it is for OLAF to do so using balanced and measured wording and in an essentially factual manner. [14]

Consequently, the Court finds that OLAF cannot be criticised for acting in breach of the principle of the presumption of innocence and the confidentiality of investigations merely because it informed the public of the conclusions set out in its final report.

However, it notes that account must be taken of the choice of words used, taking into consideration the actual meaning of the statements and not their literal form. In the present case, it holds that use of the term 'fraud' in the press release at issue is the result of a classification in law of the facts and implies guilt on the applicant's part.

Furthermore, it notes that the fact that the press release at issue came with a description of OLAF's investigative mission stating that it was for the competent national authorities to rule on whether the applicant is guilty is not sufficient to dispel the impression of guilt created by using the term 'fraud'. Moreover, whether 'all researchers' or 'ten researchers' are involved is not decisive for the purpose of establishing whether the applicant is guilty. However, that information, in that it highlights the number of persons concerned, reinforces the sentiment that the applicant is guilty, resulting from the term 'fraud' being used in the press release.

Consequently, use of the term 'fraud' in that context is not measured within the meaning of the abovementioned criteria. Similarly, the classification of the applicant's actions as 'fraud' goes beyond an essentially factual presentation of the conclusions of OLAF's final report.

In the light of the foregoing, the Court finds that OLAF, by using the term 'fraud' in its press release, acted in breach of the principle of the presumption of innocence.

As regards the existence of a sufficiently serious breach, the Court states that, while OLAF enjoys a certain margin of discretion as regards the appropriateness and content of press releases, that discretion ceases when it comes to compliance with the fundamental rights of the persons concerned. First, the Court recalls that it has already been held that the Commission has no margin of discretion with respect to its obligation to respect the principle of the presumption of innocence. [15]

Second, use of the term 'fraud' in the press release at issue cannot be regarded as an excusable fault. It is a classification of the allegations made against the applicant going beyond a mere factual description of the conclusions set out in OLAF's final report and forming part of OLAF's communication strategy, which may be regarded as lacking the restraint expected of an EU body. Consequently, using the term 'fraud' in the press release at issue constitutes a sufficiently serious breach of the principle of the presumption of innocence capable of giving rise to liability on the part of the European Union.

Accordingly, having examined the other breaches alleged by the applicant, the existence of damage and that of a causal link between that damage and the breaches committed by OLAF, the Court orders the Commission to pay the applicant the sum of EUR 50 000 for the damage sustained following the publication of the press release at issue.

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14 Judgment of 30 November 2022, *KN* v *Parliament* (T-401/21, EU:T:2022:736, paragraph 67 and the case-law cited).

15 Judgment of 8 July 2008, *Franchet and Byk* v *Commission* (T-48/05, EU:T:2008:257, paragraphs 219 and 314).

III. FREEDOM OF MOVEMENT: FREE MOVEMENT OF CAPITAL

Judgment of the Court of Justice (First Chamber) of 30 October 2025, Attal et Associés, C-321/24

Link to the full text of the judgment

Reference for a preliminary ruling – Free movement of capital – Article 63(1) TFEU – Succession – Mandatory use of a notary for the purpose of drawing up a declaration of succession in a Member State other than that in which the succession was opened – Legislation of that Member State providing that that notary's fees are calculated on the basis of the total gross assets of the estate – Parallel exercise by the Member States of their powers of taxation – No restriction on the free movement of capital

In the context of a dispute concerning the fees of a French notary whose use was mandatory in the context of a cross-border succession involving assets situated in France and Belgium, the Court of Justice rules on the compatibility with Article 63 TFEU of national legislation which provides that the remuneration of a notary drawing up the declaration of succession is to be calculated on the basis of the total gross assets of the estate, without taking into account the fees paid to a notary established in another Member State, also calculated on the basis of the total gross assets of the estate.

BC, who resides in France, is, following the death of her sister who resided in Belgium, the sole heir of movable and immovable property situated in both France and Belgium.

The succession was opened in Belgium by a notary established in that Member State. In return for the declaration of succession drawn up by that notary, BC paid that notary fees calculated on the basis of the value of the total gross assets of the estate including the assets situated in France and in Belgium, in accordance with Belgian law.

BC was also required, under French law, to use the services of a notary established in France to draw up the declaration of succession in that Member State for the purpose of calculating the French inheritance tax.

BC brought legal proceedings before the tribunal judiciaire de Paris (Court of Paris, France), which is the referring court, by which she challenged the method of calculating the French notary's fees. She requested that that remuneration be calculated on the basis of the gross assets corresponding solely to assets located in France, and not on the basis of the total gross assets of the estate.

Findings of the Court

The Court finds, first, that the situation at issue falls within the scope of movement of capital within the meaning of Article 63(1) TFEU.

It is apparent from the case-law that the tax treatment of successions falls within the TFEU provisions on the movement of capital, except in cases where their constituent elements are confined within a single Member State. [16]

16 See, to that effect, judgments of 23 February 2006, van Hilten-van der Heijden (C-513/03, EU:C:2006:131, paragraph 41); of 21 December 2021, Finanzamt V (Inheritance – Partial allowance and deduction of reserved portions) (C-394/20, EU:C:2021:1044, paragraph 29); and of 12 October 2023, BA (Inheritance – Public housing policy in the European Union) (C-670/21, EU:C:2023:763, paragraph 38).

In the present case, the succession at issue – opened in Belgium and devolving upon a person resident in France, and which involves assets situated in France and in Belgium and is subject, in each of those Member States, to inheritance tax – is cross-border in nature.

That cross-border nature is not called into question, according to the Court, by the fact that the fees of the notary established in France are not part of the deceased person's estate and do not give rise to a cross-border movement of capital, given that that notary is remunerated independently and separately from the notary established in Belgium.

The declaration of succession drawn up by the notary in France identifies movable and immovable property situated both in France and abroad in order to enable the French tax authorities to calculate the tax duties relating to the estate, pursuant inter alia to the relevant provisions of the Franco-Belgian Convention for the avoidance of double taxation in relation to inheritance tax. [17]

The involvement of a notary in France is therefore a necessary step in the calculation of those duties, so that the method of calculating the notary's fees, determined on the basis of the total gross assets of the estate as recorded by the notary, is inextricably linked to the cross-border nature of the succession in question.

Given that the situation at issue falls within the scope of the free movement of capital, the Court then examines whether the French legislation on the method of calculating notaries' fees in respect of declarations of succession in such a situation constitutes a restriction on the movement of capital prohibited by Article 63 TFEU.

The Court notes, first of all, that the legislation at issue, since it does not introduce any difference in treatment between purely domestic situations and cross-border situations, is not discriminatory. Notaries' fees, which constitute, in principle, just and equitable remuneration of the notary, are calculated in all cases on the basis of the total gross assets of the estate, irrespective of where the assets concerned are located.

It is true that such legislation is liable to place cross-border situations at a disadvantage in that it results in an heir being required, in the case of a cross-border succession, to pay fees in each of the Member States in which the assets of the estate are located and therefore having to bear a heavier burden than that which he or she would have incurred in the case of a purely domestic succession.

Nevertheless, the notary's fees in France are calculated on the basis of the total gross assets of the estate because the declaration of succession drawn up by that notary must list those assets in order to enable the French tax authorities to calculate the tax duties relating to the estate, pursuant, inter alia, to the Franco-Belgian Convention. Those fees must therefore be regarded, in accordance with the case-law of the Court, [18] as disadvantages, in the form of additional costs, arising from the parallel exercise of the tax competences of the French Republic and the Kingdom of Belgium. In the absence of harmonisation at EU level, such disadvantages do not constitute restrictions on the freedoms of movement, provided that such a parallel exercise of tax competences is not discriminatory.

Given that the legislation at issue is not discriminatory and that the additional costs which it creates affect cross-border capital movements between France and Belgium in the same way as those within France, that legislation does not establish a restriction on the free movement of capital prohibited by Article 63(1) TFEU.

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17 Convention between France and Belgium for the avoidance of double taxation and the resolution of certain other questions relating to inheritance tax and registration charges, signed in Brussels on 20 January 1959.

18 See, by analogy, judgments of 8 September 2005, Mobistar and Belgacom Mobile (C-544/03 and C-545/03, EU:C:2005:518, paragraph 31), and of 22 September 2022, Admiral Gaming Network and Others (C-475/20 to C-482/20, EU:C:2022:714, paragraph 43 and the case-law cited).

IV. JUDICIAL COOPERATION IN CRIMINAL MATTERS

1. EUROPEAN ARREST WARRANT

Judgment of the Court of Justice (First Chamber) of 9 October 2025, Abbottly, C-798/23

Link to the full text of the judgment

Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – Article 4a(1) – Surrender procedure between Member States – European arrest warrant – Conditions for execution – Grounds for optional non-execution – Mandatory execution – Exceptions – Concept of 'trial resulting in the decision' – Additional sentence of police supervision – Breach of the conditions imposed in connection with that supervision – Decision converting police supervision into a custodial sentence – Sentence handed down *in absentia*

In the context of proceedings relating to the execution of a European arrest warrant ('the European arrest warrant at issue') in respect of a natural person, with a view to the execution of a custodial sentence imposed after the conversion of an additional sentence of police supervision, the Court has interpreted the concept of 'trial resulting in the decision' in Article 4a(1) of Framework Decision 2002/584. [19]

In 2014, the Latvian courts convicted the person concerned, SH, of two criminal offences. In 2015, the sentences attached to those convictions were combined into one custodial sentence of four years and nine months, accompanied by an additional sentence of police supervision for a term of three years, which would begin to run once SH had served the custodial sentence.

Since SH failed to comply with the obligation, imposed in connection with his placement under police supervision, to report to a police station within three working days of his release, he was found guilty of having committed an administrative offence and was ordered to pay two fines.

On 19 August 2020, on application by the competent Latvian police station, the Latvian court with jurisdiction delivered a decision ordering that the unserved term of SH's additional sentence of police supervision, namely two years and two days, be converted into a custodial sentence of one year and one day, in accordance with the possibility provided for in Latvian criminal law. [20] That decision was handed down following a hearing at which SH, who had not taken delivery of the summons sent to him, did not appear. The decision was not challenged on appeal by SH.

The Latvian court with jurisdiction subsequently issued a European arrest warrant in respect of SH for the purpose of executing the custodial sentence imposed on him on 19 August 2020.

The Minister for Justice and Equality (Ireland) applied to the competent Irish judicial authorities to have SH surrendered to the Republic of Latvia under the European arrest warrant at issue. Following the dismissal of the application at first instance and then on appeal, on the basis of the provision

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19 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), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

20 Where, in the course of one year, a person is found on two occasions to have failed to comply with the conditions governing police supervision, Latvian criminal law provides for the possibility for the national court with jurisdiction to convert the additional sentence of police supervision into a custodial sentence for a period determined on the basis of a fixed ratio, namely one day's imprisonment for every two days of the unserved term of police supervision.

transposing Article 4a(1) of Framework Decision 2002/584 [21] into Irish law, the Minister for Justice and Equality brought an exceptional appeal before the Supreme Court (Ireland), which is the referring court.

According to the referring court, the decision at issue is akin to the revocation of suspension of a sentence which, in accordance with the Court of Justice's findings in its judgment in *Ardic*, [22] does not fall within the scope of Article 4a(1) of Framework Decision 2002/584. It follows from that judgment that the concept of 'decision', within the meaning of that provision, does not cover a decision relating to the execution or application of a custodial sentence previously imposed, such as the revocation of the suspension of execution, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard.

In the present case, since the Latvian court which issued the European arrest warrant at issue did not take a new judicial decision modifying the nature and quantum of the custodial sentence previously imposed, the referring court considers that the surrender of SH should not be refused. In the event of breach of the conditions governing police supervision, the duration of the deprivation of liberty liable to be imposed is determined by an arithmetical calculation provided for by Latvian law. The decision converting the additional sentence of police supervision into a custodial sentence could thus be akin to a decision relating to the execution or application of a custodial sentence previously imposed and would not, therefore, fall within the scope of Article 4a(1) of Framework Decision 2002/584.

The referring court is nevertheless concerned that, although the prospect of a further prison sentence was inherent in the sentences previously imposed on SH and grouped together in 2015, the sentence imposed on 19 August 2020 did not simply require SH to serve the custodial sentences initially imposed.

Against that background, the Supreme Court asks whether the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, covers proceedings at the end of which a national court may order, on account of breach of the conditions attached to a sentence of police supervision previously imposed on the person concerned in addition to a custodial sentence, the conversion of the unserved term of that additional sentence into a custodial sentence.

Findings of the Court

The Court recalls that Article 4a(1) of Framework Decision 2002/584 restricts the possibility of refusing to execute a European arrest warrant by listing exhaustively, in points (a) to (d) of that provision, the situations in which the recognition and enforcement of a decision rendered following a trial at which the person concerned did not appear in person may not be refused.

In each of the situations referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584, the execution of the European arrest warrant does not infringe the rights to an effective judicial remedy and to a fair trial or the rights of the defence of the person concerned.

Before determining whether one of those situations exists, the executing judicial authority must establish whether it is faced with a scenario in which the requested person did not appear in person at the 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584.

According to settled case-law, that expression in the provision at issue must be understood as referring to the proceedings that led to the judicial decision which finally sentenced the person whose surrender is sought in connection with the execution of a European arrest warrant. [23]

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21 That article provides that the executing judicial authority may refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, except in the situations provided for in points (a) to (d) of paragraph 1 of that article.

22 Judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026).

23 See, to that effect, judgment of 21 December 2023, *Generalstaatsanwaltschaft Berlin (Conviction in absentia)* (C-396/22, EU:C:2023:1029, paragraphs 26 and 27 and the case-law cited).

The Court has held that a decision relating to the execution or application of a custodial sentence previously imposed does not constitute a 'decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, except where it affects the finding of guilt or where its purpose or effect is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard. [24]

In the present case, the basis for issuing the European arrest warrant was the decision converting the additional sentence of police supervision into a custodial sentence. Since the referring court is uncertain whether such a decision could fall within the scope of Article 4a(1) of Framework Decision 2002/584, in so far as it does not have the purpose or effect of modifying the nature and/or quantum of the sentence previously imposed on the requested person and the authority which adopted it did not enjoy some discretion in that regard, the Court examined whether the decision at issue may be classified as a 'decision relating to the execution or application of a custodial sentence previously imposed', within the meaning of the case-law, in which case it would not constitute a 'decision' within the meaning of Article 4a(1) of Framework Decision 2002/584.

In that regard, the Court pointed out that Latvian law appears to draw a distinction between a decision imposing a custodial sentence and a decision imposing police supervision, the latter of which is always, by its nature, a penalty additional to a custodial sentence.

Moreover, Latvian law does not appear to lay down a mechanism for the automatic conversion of a sentence of police supervision into a custodial sentence if the person concerned breaches the conditions governing that supervision, since the courts enjoy a discretion in that regard.

Furthermore, the purpose of the custodial sentence which may be imposed following a breach of the conditions governing the additional sentence is to punish not the initial criminal offence which led to the imposition of the sentence of police supervision as an additional sentence, but the specific breaches of the conditions attached to that sentence.

Consequently, a decision imposing a custodial sentence in lieu of the additional sentence of police supervision is not a decision relating to the execution or application of a custodial sentence previously imposed, but must be regarded as a decision imposing a new custodial sentence, which is different in nature from the custodial sentence initially imposed.

Such a decision must be classified as a 'decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, and the proceedings at the end of which it was adopted must be regarded as falling within the concept of 'trial resulting in the decision', within the meaning of that provision.

The Court made clear that what matters for the purposes of the classification as a 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, is that the proceedings relating to the conversion of the sentence be capable of leading to a deprivation of liberty which, while foreseeable in the event of breach of the conditions attached to the sentence of police supervision, was not, as such, part of the initial conviction and therefore required the handing down of a new conviction substituting the first.

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24 Judgments of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026, paragraphs 77 and 88), 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, paragraph 53).

2. COMPENSATION TO CRIME VICTIMS

Judgment of the Court of Justice (Fifth Chamber) of 2 October 2025, Criminal Injuries Compensation Tribunal and Others, C-284/24

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2004/80/EC – Article 12(2) – Compensation to victims of violent intentional crimes – Fair and appropriate compensation – National legislation excluding compensation for pain and suffering endured

Hearing a reference for a preliminary ruling, the Court of Justice rules on the compatibility with Directive 2004/80 [25] of a scheme on compensation to victims of violent intentional crimes which, like the Irish scheme, excludes, as regards non-material harm, any compensation for pain and suffering endured by such victims.

On 12 July 2015, LD was the victim of a violent criminal assault committed by a group of persons in front of his home in Dublin (Ireland). On 1 October 2015, he submitted an application for compensation to the Criminal Injuries Compensation Tribunal (Ireland) under the Irish scheme on compensation to victims. In that application, he stated that, because of that assault, he had suffered, inter alia, a significant eye injury resulting in a permanent partial loss of vision. He maintained that he also suffers from mental distress and anxiety. After finding that LD had suffered personal injuries and material loss arising from the violent intentional crime of which he had been the victim, the Criminal Injuries Compensation Tribunal awarded him the sum of EUR 645.62 in respect of the expenses incurred by him as a direct result of that crime.

On 2 August 2019, LD brought proceedings before the referring court, the High Court (Ireland), alleging inter alia the incompatibility of the Irish scheme on compensation to victims with Directive 2004/80, in that that scheme fails to provide for fair and appropriate compensation by reason of the exclusion of 'general' damages, including in respect of pain and suffering. [26]

Having doubts regarding the interpretation to be given to Article 12(2) of that directive, the referring court made a reference to the Court of Justice for a preliminary ruling.

Findings of the Court

As regards the reparation of non-material harm suffered by victims of violent intentional crimes, the Court states that, while it is true that Article 12(2) of Directive 2004/80 does not contain any express reference to such harm, the broad wording of that provision in no way limits the scope of the compensation provided for therein as regards the types of harm in respect of which it is capable of contributing to reparation.

As is apparent from the case-law of the Court, no distinction can be drawn according to the types of harm which the victims of the crimes committed may have suffered or the consequences to which those victims may be exposed. Even if the wording of Article 18(2) of Directive 2004/80, which, inter alia in its French- and Romanian-language versions refers only to 'personal injuries', might suggest the existence of such a distinction, it must be noted that, in several other language versions of that provision, the term 'injuries' is not accompanied by any adjective intended to limit its scope. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in

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25 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15). In particular, under Article 12(2) of that directive, all Member States are to ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

26 Established in 1974, the Irish scheme on compensation to victims, in its original version, made provision for 'general' damages, including in respect of pain and suffering endured. Following an amendment to that scheme on 1 April 1986, no compensation is awarded for pain and suffering, in respect of 'general' damages, because the scope of the relevant provisions prior to their amendment had serious consequences for the finances of the Irish State which, at that time, was going through a period of profound economic recession.

all the languages of the European Union and, where there is any divergence between those various versions, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part.

In that regard, the Court observes that no other provision of Directive 2004/80 permits the inference that a distinction must be drawn between the types of harm or loss suffered by the victims who fall within its scope. Moreover, it states that measures to facilitate compensation to victims of crimes should form part of the realisation of the objective of ensuring the protection of the persons concerned from harm. [27] In addition, that directive respects the fundamental rights and principles reaffirmed in particular by the Charter of Fundamental Rights of the European Union. [28] As is apparent from Article 3(1) of the Charter, the integrity of the person must be understood as being both physical and mental. Accordingly, the compensation provided for in Article 12(2) of Directive 2004/80 must be capable, where appropriate, of contributing to the reparation of any non-material harm, including harm relating to pain and suffering.

Therefore, the Court rules that Article 12(2) of Directive 2004/80 precludes a national scheme on compensation to victims of violent intentional crimes which, as a matter of principle, excludes, as regards non-material harm, any compensation for pain and suffering endured by such victims. Notwithstanding the need to ensure the financial viability of national compensation schemes, such that the Member States are not necessarily obliged to provide complete reparation of the material and non-material loss suffered by those victims, fair and appropriate compensation, within the meaning of that provision, requires, when determining such compensation, that account be taken of the seriousness of the consequences, for the victims, of the crimes committed and of the reparation that such victims may obtain on the basis of the tortious liability of the offender.

V. COMPETITION

1. ARTICLE 101 TFUE

Judgment of the Court of Justice (Fourth Chamber) of 23 October 2025, Teva Pharmaceutical Industries and Cephalon v Commission, C-2/24 P

Link to the full text of the judgment

Appeal – Competition – Article 101 TFEU – Agreements, decisions and concerted practices – Modafinil market – Patent settlement agreement between two pharmaceutical companies for the purpose of delaying a generic version of modafinil being brought to the market – Decision finding an infringement of Article 101 TFEU – Criteria for assessment – Restriction by object

In dismissing the appeal brought by two manufacturers of medicinal products against the judgment of the General Court of 18 October 2023, [29] the Court of Justice clarifies the criteria governing the making of a finding of a restriction of competition within the meaning of Article 101 TFEU in the context of patent dispute settlement agreements concluded by pharmaceutical companies.

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27 See recital 2 of Directive 2004/80.

28 See recital 14 of Directive 2004/80.

29 Judgment of 18 October 2023, *Teva Pharmaceutical Industries and Cephalon* v *Commission* (T-74/21, 'the judgment under appeal', EU:T:2023:651).

In 1993, Cephalon, a United States biopharmaceutical company, obtained exclusive rights to the active pharmaceutical ingredient ('API') modafinil, marketed for the treatment of certain sleep disorders in a number of countries in the European Economic Area (EEA).

Cephalon's various national compound patents for modafinil in the EEA expired at the latest in 2003, but Cephalon was still using particle size secondary patents and other modafinil-related patents expiring in 2015.

In 2002, Cephalon initiated patent infringement proceedings in the United States against Teva Pharmaceutical Industries Ltd ('Teva') and three other generic companies, seeking to prevent them from marketing their version of the originator product in the United States. Once Teva launched its generic product in the United Kingdom in June 2005, Cephalon also initiated patent court proceedings in that country, against which Teva brought a counterclaim for revocation.

At the end of 2005, Cephalon and Teva concluded a settlement agreement putting an immediate end to their modafinil litigation in the United States and in the United Kingdom ('the settlement agreement'). Pursuant to that agreement, Teva committed not to enter the market independently and not to compete with Cephalon in the modafinil market ('the non-compete clause') and not to challenge Cephalon's modafinil patent rights ('the non-challenge clause') (together, 'the restrictive clauses').

The settlement agreement also provided for a package of commercial transactions relating to, inter alia, the grant of a licence from Teva to Cephalon in respect of its intellectual property rights for modafinil, the supply of the modafinil API by Teva to Cephalon and the distribution by Teva of Cephalon's products in the United Kingdom. The payments and royalties envisaged under the various transactions involved significant transfers of value to Teva. Moreover, the settlement agreement granted to Teva a non-exclusive licence to launch its generic modafinil product, including in the EEA, from 2012 at the latest.

Finding that the settlement agreement infringed the prohibition on agreements, decisions and concerted practices laid down in Article 101 TFEU and Article 53 of the EEA Agreement, the Commission imposed fines on Cephalon and Teva amounting to EUR 30 480 000 and EUR 30 000 000, respectively. [30]

On 5 February 2021, the parties found to have committed an infringement brought an action before the General Court seeking, primarily, the annulment of that decision and, in the alternative, the cancellation or reduction of the amount of the fines.

By the judgment under appeal, the General Court dismissed that action and held, in particular, that the Commission had not erred in classifying the settlement agreement as a 'restriction of competition by object' as referred to in Article 101(1) TFEU.

Cephalon and Teva then brought an appeal against that judgment before the Court of Justice.

Findings of the Court

In support of their appeal, the appellants submit, inter alia, that the General Court erroneously applied the legal test resulting from the judgment in *Generics (UK)* [31] in order to establish that there was a restriction of competition by object in the context of a settlement agreement.

Under that test, settlement agreements must be classified as restrictions of competition by object where it is plain from examining them that the transfers of value made by the manufacturer of the originator medicine to the manufacturer of the generic medicine can ultimately have as their sole explanation the commercial interest of those operators not to engage in competition on the merits.

Applying that principle to the present case, the General Court considered that, in order to determine whether each of the commercial transactions found in the settlement agreement had as its sole plausible explanation the objective of incentivising Teva to accept the restrictive clauses and thereby,

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30 Commission Decision C(2020) 8153 final of 26 November 2020 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39686 – CEPHALON).

31 Judgment of 30 January 2020, *Generics (UK) and Others* (C-307/18, EU:C:2020:52).

to refrain from competing with Cephalon on the merits, or whether those transactions would in any event have been concluded under normal market conditions, it was necessary to analyse whether the commercial transactions contained in that agreement would actually have been concluded or whether they would have been concluded on the same terms absent the restrictive clauses. In order to do so, the Commission had to compare what had actually happened with what would have happened absent the restrictive clauses.

From that perspective, the Court of Justice analyses, first of all, whether, as the appellants maintained, the test confirmed by the General Court amounts, in reality, to a counterfactual analysis which is part of an assessment of the agreements as a restriction by effect.

In that regard, the Court of Justice finds that the General Court undertook a detailed analysis and an overall assessment of the settlement agreement, following which it concluded that the transfer of value made by Cephalon to Teva by means of commercial transactions constituted consideration for the inclusion of restrictive clauses in the settlement agreement and, therefore, for Teva's commitment to refrain from entering the generic medicinal products market independently.

For the purposes of that analysis, the General Court intended to establish, based on a hypothetical scenario, whether the commercial transactions between the appellants departed from normal market conditions by focusing, in particular, on the objectives and the economic and legal context of those transactions at the time the settlement agreement was concluded, in order to determine the incentive effect of the transfers of value provided for by that agreement.

The Court of Justice notes that there is nothing to prevent the counterfactual elements from being taken into account by the General Court in order to make a finding of a restriction of competition by object. However, the taking into account of a hypothetical situation cannot be conflated with the so-called 'counterfactual' method, as made clear by the General Court in the judgment under appeal.

Unlike the so-called 'counterfactual' method, which consists of comparing the situation of the agreement concerned with the situation which would exist in its absence, in order to assess whether an agreement between undertakings has anticompetitive effects, the General Court's analysis sought to determine whether those clauses constituted an incentive for Teva to refrain from competing with Cephalon on the merits in order to determine the objective seriousness of the practice concerned, and did not seek to assess whether the settlement agreement had anticompetitive effects.

Therefore, contrary to the appellants' assertions, the test confirmed by the General Court does not require an assessment, for each commercial transaction, of whether it would actually have been concluded, or whether it would have been concluded on the same terms, absent the settlement agreement taken as a whole. On the contrary, that test is intended to establish, in accordance with the case-law, whether the transfers of value cannot have any explanation other than the commercial interest of both the operators concerned not to engage in competition on the merits.

In addition, the General Court's assessment necessarily had to be based on an analysis of the commercial transactions and the settlement agreement together where those transactions and that agreement formed part of the same contractual framework.

In order to determine whether an agreement may be characterised as a restriction of competition by object, it is essential, in particular because of the close links between the non-challenge, non-marketing and exclusive supply clauses of a settlement agreement, not to analyse each of the restrictive clauses separately, but to assess whether that agreement, taken as a whole, reveals a degree of economic harm to the proper functioning of competition in the market concerned which justifies such a characterisation.

That is all the more so where, as in the present case, the objective of that analysis consists of identifying whether the transfers of value had an incentive effect and of determining whether the insertion of the restrictive clauses in the settlement agreement represented the consideration for the transfers of value made by Cephalon through the commercial transactions covered by the settlement agreement.

If it is found that, absent the restrictive clauses contained in the settlement agreement, the parties would not have concluded the commercial transactions provided for by that agreement, it may be

inferred that those transactions cannot have any explanation other than the restriction of competition agreed therein.

Next, the Court of Justice examines whether the General Court did not err in holding that the Commission was required to ascertain whether the commercial transactions covered by the settlement agreement would also have been concluded, on equally favourable terms, absent the restrictive clauses.

In that regard, it is for the Commission to demonstrate that, in the relevant context, the restrictive clauses concluded in the context of the settlement agreement gave rise to an agreement which restricts competition by object and therefore to demonstrate that it is plain from the examination of that agreement that the transfers of value provided for therein cannot have any explanation other than the commercial interest of both the holder of the patent at issue and the party allegedly infringing the patent not to engage in competition on the merits.

Since the appellants maintained at first instance that the commercial transactions in the settlement agreement had a plausible explanation other than to act only as consideration for the restrictive clauses, the General Court ascertained whether, for each of the commercial transactions provided for in that agreement, the Commission had made an error of assessment in concluding that the purpose of those transactions was to serve as a transfer of value from Cephalon to Teva in consideration for Teva's commitment not to enter the markets for generic medicines independently and not to compete with Cephalon in relation to modafinil.

Following a detailed analysis of the decision at issue and of each commercial transaction provided for in the agreement, the General Court found that the Commission had applied the appropriate legal test by establishing that each of the commercial transactions provided for in the settlement agreement had had no other purpose than to increase the level of the overall value transfer made to Teva under that agreement with a view to inducing it to agree to the restrictive clauses.

Therefore, according to the Court of Justice, the General Court did not make an error of law in holding that the Commission had duly proven, as required by the judgment in *Generics (UK)*, that the transfers of value conducted in the context of the commercial transactions provided for in the settlement agreement could have no explanation other than the commercial interest of Teva and Cephalon not to engage in competition on the merits.

Lastly, the Court of Justice rejects the appellants' argument that the test established by the General Court is impossible to meet in practice in that it necessarily precludes the conclusion of commercial transactions concomitantly with a settlement agreement.

In that regard, the Court of Justice states, in the first place, that, contrary to the appellants' assertions, the overall assessment carried out by the General Court did not relate to whether the appellants would have concluded a given commercial transaction independently of the settlement agreement, but sought to determine whether the commercial transactions contained in the settlement agreement could have any explanation other than the commercial interest of the appellants not to engage in competition on the merits.

In the second place, it is also not apparent from the judgment under appeal that the General Court excluded the conclusion of commercial transactions concomitantly with a settlement agreement. On the contrary, the General Court recognised that possibility by examining all the commercial transactions concluded between the parties in the context of the settlement of their disputes.

Consequently, the relevant question, in the present case, to establish a restriction of competition by object is whether the commercial transactions concluded in the context of a settlement agreement can be explained in a plausible manner, in the sense that their aim must not be to restrict or distort competition on the market by inducing a potential competitor not to enter the market in exchange for a transfer of value not justified by the need to compensate for the costs or disruption caused by the litigation between the parties to that agreement.

Since none of the grounds of appeal has been upheld, the Court dismisses the appeal in its entirety.

2. STATE AID

Judgment of the Court of Justice (First Chamber) of 9 October 2025, On Air Media Professionals and Different Media, C-416/24 and C-417/24

Link to the full text of the judgment

Reference for a preliminary ruling – State aid – Regulation (EU) No 651/2014 – Exemption for certain categories of aid compatible with the internal market – Translation error in the Romanian language version of that regulation – Legal effects of the regulation correcting that error – Possibility of recovering aid that was granted before the correction in compliance with the conditions set out in the version of the regulation containing the translation error – Protection of legitimate expectations – Legal certainty

Hearing a reference for a preliminary ruling from the Curtea de Apel Bacău (Court of Appeal, Bacău, Romania), the Court clarifies the scope of a regulation correcting a translation error in the Romanian language version of Regulation No 651/2014 [32] declaring certain categories of aid compatible with the internal market.

In August 2020, Romania notified to the Commission an aid scheme to support small and medium-sized enterprises ('SMEs') and large enterprises in the context of the economic crisis caused by the COVID-19 pandemic. That aid scheme was authorised by the Commission's decision of 27 August 2020, under which one of the general eligibility criteria to be met by beneficiaries applying for funding was that they were not in difficulty within the meaning of Article 2(18) of Commission Regulation No 651/2014 on 31 December 2019.

On Air Media Professionals and Different Media, two limited companies under Romanian law, each received a micro-grant forming part of the aid at issue. A recovery decision was issued in respect of each of those micro-grants, as the Romanian authorities had found that, on 31 December 2019, those companies were 'undertakings in difficulty' because the capital losses recorded by the applicants on that date far exceeded half of their subscribed capital.

Both those companies brought actions against those recovery decisions before a first instance national court, claiming, inter alia, that they did not possess the characteristics of undertakings in difficulty within the meaning of Article 2(18) of the GBER. In the Romanian language version of that regulation, the provision in question excluded 'SME[s] that [have] been in existence for at least three years' from that category. On Air Media Professionals and Different Media had existed for 13 and 18 years respectively on the date on which they concluded their financing contracts.

The first instance national court dismissed those actions on the ground that, after the aid at issue had been granted, the Romanian language version of the GBER had been the subject matter of a correcting regulation, [33] from which it was clear that only SMEs existing for less than three years fall outside the scope of the concept of 'undertakings in difficulty' and are therefore eligible for the aid at issue. Consequently, in accordance with the corrected version of Article 2(18) of the GBER, the applicants did not meet all the eligibility criteria on the date of their grant applications.

The applicants then lodged appeals against the first instance decisions before the referring court. That court is uncertain whether the correcting regulation correcting the language version of the GBER can appropriately be applied retroactively from the date on which the GBER entered into force. It also wishes to ascertain whether the principles of legal certainty and of the protection of legitimate

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32 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1, 'the GBER').

33 Commission Regulation (EU) 2021/452 of 15 March 2021 correcting the Romanian language version of Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2021 L 89, p. 1, 'the correcting regulation').

expectations preclude recovery, on the basis of the correcting regulation, of aid granted in compliance with the conditions initially contained in the Romanian language version of the GBER.

Findings of the Court

As a preliminary point, the Court notes that, according to settled case-law, it is manifestly in the interests of the EU legal order that, in order to forestall future differences of interpretation, any provision of EU law should be given a uniform interpretation, which the Court's jurisdiction under Article 267 TFEU is designed to ensure. That need for a uniform interpretation requires that, in case of doubt, the text of a provision must be interpreted and applied in the light of the versions existing in the other official languages.

Nevertheless, as all the language versions of a provision of EU law must, in principle, be recognised as having the same weight, where there is divergence between those versions, the provision in question must be interpreted according to the purpose and general scheme of the rules of which it forms part. It also remains true that such an interpretation cannot have the result of depriving the clear and precise wording of that provision of all effectiveness.

In the present case, the Commission adopted the correcting regulation after becoming aware of the discrepancy between the Romanian language version of Article 2(18) of the GBER, the clear and unambiguous wording of which excluded SMEs existing for at least three years from the category of undertakings in difficulty, and the other language versions of that provision, which, no less clearly, excluded from that category SMEs existing for less than three years.

It is in that context that the Court is called upon to examine, first, whether that correcting regulation produces its effects retroactively, from the date on which the GBER entered into force.

In that regard, it notes that, unlike procedural rules, which are generally taken to apply from the date on which they enter into force, the substantive rules of EU law must be interpreted, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such effect must be given to them.

Although the correcting regulation, which concerns a substantive rule, states that it is to enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union* and does not expressly provide that it is to take effect at an earlier date, its retroactive effect clearly follows from its objective, which is to restore the uniformity of interpretation that must be given to Article 2(18) of the GBER in all the language versions of that provision, by correcting *ab initio*, retroactively, the translation error that affected the Romanian language version of the GBER.

If the correcting regulation had corrected the Romanian language version of the GBER only for the future, it would have allowed incompatible versions of that regulation, all of them founded on clear and precise wording, to coexist for the period between the entry into force of the GBER and that of the correcting regulation, which would have been contrary to the requirement that EU law must be interpreted and applied uniformly.

Second, the Court answers the question as to whether the principles of legal certainty and the protection of legitimate expectations preclude recovery, on the basis of the correcting regulation, of the State aid granted by Romania before that regulation was adopted, under the aid scheme authorised by the Commission's decision of 27 August 2020.

In that regard, the Court notes that a finding that aid is unlawful must in principle give rise to its recovery by the national authorities, in order to restore the previous situation. However, when they implement EU law, those authorities must observe the fundamental principles thereof, including the principles of legal certainty and of the protection of legitimate expectations.

The principle of legal certainty means that rules must enable those concerned to know precisely the extent of the obligations which they impose on them. Although in general that principle precludes an EU measure from taking effect from a point in time before its publication or notification, it may exceptionally be otherwise where a purpose in the general interest so demands and where the legitimate expectations of those concerned are duly respected, and in so far as it follows clearly from the terms, objectives or general scheme of the rules of the law concerned that such effect must be given to them.

The right to rely on the principle of the protection of legitimate expectations, for its part, presupposes that precise, unconditional and consistent assurances originating from authorised, reliable sources have been given to the person concerned by the competent authorities of the European Union.

In the area of State aid, first, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in Article 108 TFEU and, second, an economic operator exercising due care should normally be able to determine whether that procedure has been followed. However, it has been accepted that a recipient of unlawfully granted aid may rely on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and may object, in consequence, to the refunding of that aid.

In the present case, the expectations which the applicants were entitled to entertain of receiving the aid in question were founded not only on the conduct of the Romanian authorities, in particular on the national aid scheme and the decisions awarding that aid made under it, but also on the clear, although incorrect, wording of the Romanian language version of the GBER published in the *Official Journal of the European Union*, to which that aid scheme referred.

In that regard, the applicants cannot be criticised for failing to check the other language versions of Article 2(18) of the GBER, since nothing in the wording of the initial Romanian language version of that article gave rise to any difficulty of interpretation.

Moreover, by its decision of 27 August 2020, the Commission had authorised the national aid scheme at issue after duly receiving notification of it, a circumstance that was likewise such as to give rise to legitimate expectations that the aid granted on the basis of that scheme was lawful.

In the light of the foregoing, the Court finds that the correcting regulation must be applied retroactively, as from the date on which the GBER entered into force. However, the principles of legal certainty and of the protection of legitimate expectations preclude recovery, on the basis of the correcting regulation, of the aid granted by Romania before the adoption of that regulation by virtue of the aid scheme authorised by the Commission's decision of 27 August 2020.

VI. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (Sixth Chamber) of 22 October 2025, Puma v EUIPO – CMS (CMS Italy), T-491/24

Link to the full text of the judgment

EU trade mark – Opposition proceedings – International registration designating the European Union – Figurative mark CMS Italy – Earlier international figurative marks representing a feline bounding to the left – Relative ground for refusal – Injury to reputation – Article 8(5) of Regulation (EC) No 207/2009 – Strength of reputation – Obligation on EUIPO expressly to take into account the best-case scenario for the losing party before it – Duty of diligence

By its judgment, the General Court annuls the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) [34] and states that EUIPO, in the assessments in which it

[34] Decision of the Fifth Board of Appeal of EUIPO of 4 July 2024 (Case R 2215/2019-5).

uses expressions such as ‘at least’ or ‘at most’ and, in particular, the assessment relating to the strength of the reputation, must take into account the best-case scenario for the losing party before it.

On 21 December 2012, CMS Costruzione macchine speciali SpA designated the European Union in the context of the application for protection of the international registration of the figurative mark CMS Italy. On 21 November 2013, Puma SE, the applicant, filed a notice of opposition to that registration [35] on the basis of two earlier international figurative marks.

That opposition was rejected by the Opposition Division and the appeal subsequently brought by the applicant was dismissed by the Second Board of Appeal of EUIPO. Nevertheless, by order of 22 May 2019, the Court annulled that decision. [36] The case was therefore referred back to the Fourth Board of Appeal of EUIPO, which also dismissed the applicant’s appeal. That decision was also overturned by the Court. [37]

Hearing the case, the Fifth Board of Appeal of EUIPO again dismissed the applicant’s appeal, finding, inter alia, that, although the examination of the evidence submitted by the applicant showed that the earlier marks had ‘at least’ an average degree of reputation, the existence of a link between the marks at issue had not been established. The applicant therefore lodged an action for annulment of that decision before the Court.

Findings of the Court

First of all, the Court notes that, where, as in the present case, EUIPO examines the application of Article 8(5) of Regulation No 207/2009, it is not sufficient for it to find that the earlier mark has ‘at least an average degree of reputation’, but it is required either to determine precisely the degree of strength of that reputation, which is a relevant factor for the overall assessment of the link between the marks at issue, or expressly to take into account the best-case scenario for the losing party before it. It states that, in this context, the concept of ‘losing party’ refers to the party whose arguments concerning the strength of the reputation are rejected by EUIPO.

In that regard, the Court notes that EUIPO is not required to define a precise degree of reputation in all cases: in certain specific cases, it is open to EUIPO, in order to assess the strength of the reputation, to use expressions such as ‘at least’ or ‘at most’. It is then for EUIPO expressly to take into account the best-case scenario for the losing party before it, before being able to reason a fortiori for the other less favourable scenarios for that losing party.

Thus, in cases where EUIPO concludes that there is no link or no injury to the reputation of the earlier mark at issue, it is open to it to classify the degree of reputation as ‘at most’ high, to take into account the maximum degree, namely the high degree, and to reason a fortiori for the scenarios less favourable to the losing party, which is the opponent, namely an average (or low) degree. By contrast, in such cases, EUIPO is not permitted to classify the degree of reputation as ‘at least’ average without expressly taking into account the best-case scenario for the opponent, such as a high, or even very high, degree of reputation. Conversely, where EUIPO concludes that there is a link between the marks at issue or injury to the reputation of the earlier mark at issue, it is open to it to classify the degree of reputation as ‘at least’ average, to take into account the minimum degree of reputation, namely the average degree, and to reason a fortiori for scenarios less favourable to the losing party, in this case the proprietor of the mark at issue, namely a high, or even very high, degree. Nevertheless, in such cases, EUIPO is not permitted to classify the degree of reputation as ‘at most’ high without expressly taking into account the best-case scenario for the proprietor of the contested mark, such as an average (or low) degree of reputation.

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35 The ground relied on was that set out in Article 8(5) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

36 Order of 22 May 2019, *Puma* v *EUIPO – CMS (CMS Italy)* (T-161/16, EU:T:2019:350).

37 Judgment of 5 October 2022, *Puma* v *EUIPO – CMS (CMS Italy)* (T-711/20, EU:T:2022:604).

The failure to take into account the best-case scenario for the losing party is likely to vitiate the overall assessment of the existence of the link, in respect of which the strength of the reputation of the earlier mark is a relevant factor, or the overall assessment of whether there is injury to reputation.

Next, the Court adds that, more generally, where, in the context of any assessment, EUIPO chooses to use expressions such as 'at least' or 'at most', it must expressly take into account the best-case scenario for the losing party before it, namely the party whose arguments concerning the assessment in question it rejects. That obligation constitutes, for EUIPO, a particular statement of the duty of diligence, under which the relevant institution is required to examine carefully and impartially all the relevant factual and legal aspects of the case in question.

Lastly, the Court notes that, in the present case, the Fifth Board of Appeal did not expressly take into account the best-case scenario for the losing party, in this case the applicant, namely that of a 'very high' degree of reputation, in the overall assessment of the link between the marks at issue. It therefore concludes that it erred in law and annuls its decision in its entirety.

Judgment of the General Court (Sixth Chamber) of 29 October 2025, Devin v EUIPO – Haskovo Chamber of Commerce and Industry (DEVIN), T-351/24

Link to the full text of the judgment

EU trade mark – Invalidity proceedings – EU word mark DEVIN – Absolute grounds for refusal – Descriptive character – Article 7(1)(c) of Regulation (EC) No 207/2009 – Right to be heard following an annulment judgment of the General Court – Distinctive character acquired through use – Article 7(3) and Article 52(2) of Regulation No 207/2009

Since 2011, the applicant, Devin EAD, had been the proprietor of the EU word mark DEVIN registered for all of the goods in Class 32. [38]

In 2014, the intervener, Haskovo Chamber of Commerce and Industry (HCCI, Bulgaria), filed an application with the European Union Intellectual Property Office (EUIPO) for a declaration of invalidity of that mark.

The Board of Appeal of EUIPO initially declared that mark invalid on the ground that it was descriptive of the goods covered, on the basis of Article 52(1)(a) of Regulation No 207/2009, [39] read in conjunction with Article 7(1)(c) of that regulation.

However, following the examination of that case, on two occasions, by the General Court [40] and by the Court of Justice, the case was referred back to the Board of Appeal. The Board of Appeal concluded, first, that the contested mark was valid for two goods in Class 32, namely 'mineral water [and] seltzer mineral water', on the ground that it had acquired distinctive character through use in respect of those goods, on the basis of Article 52(2) of Regulation No 207/2009. Second, it declared that mark invalid in respect of the other goods.

By its action, the applicant seeks the alteration of that decision of the Board of Appeal.

Findings of the Court

In the context of the second plea in law, the applicant claims that the Board of Appeal erred in finding that it had claimed distinctive character acquired through use solely for 'mineral water [and] seltzer mineral water' in Class 32.

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38 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.

39 Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

40 See judgments of 25 October 2018, *Devin* v *EUIPO – Haskovo (DEVIN)* (T-122/17, EU:T:2018:719), and of 14 December 2022, *Devin* v *EUIPO – Haskovo Chamber of Commerce and Industry (DEVIN)* (T-526/20, not published, EU:T:2022:816).

In that regard, the Court notes at the outset that, pursuant to Article 7(3) and Article 52(2) of Regulation No 207/2009, it is for the proprietor of the trade mark to provide specific and substantiated information to show that the contested mark has distinctive character acquired through use. Thus, where a trade mark has been registered contrary to Article 7(1)(b), (c) or (d) of Regulation No 207/2009, its registration may be maintained only for the goods and services for which distinctive character acquired through use has been proved. Accordingly, the Court examines whether the Board of Appeal was right to limit its analysis of the distinctive character acquired through use of the contested mark to 'mineral water [and] seltzer mineral water'.

In the first place, the Court rejects the intervener's complaint that all of the applicant's arguments before the Board of Appeal relating to the distinctive character acquired through use of the contested mark in respect of goods other than 'mineral water [and] seltzer mineral water' are inadmissible, relying on an alleged finding of EUIPO's Cancellation Division that the applicant claimed distinctive character acquired through use only for mineral water, which has the force of *res judicata*. The Court recalls that the principle of *res judicata* does not apply to EUIPO decisions, which are administrative and not judicial in nature. In any event, if that argument was to be understood as meaning that the Cancellation Division found that the applicant had claimed distinctive character acquired through use solely in respect of mineral water and that, in the absence of any challenge to that finding in the applicant's appeal before the Board of Appeal, that finding would have become final and would have acquired the force of *res judicata*, the Court notes that the intervener appears to refer to the Cancellation Division's summary of the applicant's arguments, which was not disputed by the applicant during the proceedings before EUIPO. However, a summary of the arguments of one of the parties is not a matter of fact or law decided by the Cancellation Division and cannot, therefore, have the force of *res judicata*.

In the second place, the Court observes that the applicant stated on several occasions, in its observations before the Cancellation Division, that the contested mark had acquired distinctive character 'with [regard] to goods in Class 32, namely mineral water'. The applicant reiterated that claim of distinctive character acquired through use of the contested mark, which was limited to mineral water, in its subsequent observations before the Cancellation Division. In that regard, the general assertions made by the applicant in its observations before the Cancellation Division that the contested mark is a well-known mark in Bulgaria and therefore has distinctive character acquired through use, without reference to the goods covered by that mark, cannot be regarded as a claim of distinctive character acquired through use within the meaning of Article 7(3) of Regulation No 207/2009. Moreover, the line of argument relating to distinctive character acquired through use, put forward by the applicant during the administrative proceedings before EUIPO, and the evidence referred to in that regard relates almost entirely to 'mineral water [and] seltzer mineral water'.

Thus, since the burden of proving the distinctive character acquired through use lies with the applicant, its generic observations regarding the recognition of the contested mark and the fact that the evidence produced by the applicant before the Cancellation Division did not refer exclusively to 'mineral water [or] seltzer mineral water' did not allow the Board of Appeal to infer that the claim had to be regarded as extending to all the goods in Class 32, contrary to its express assertions in that regard.

Accordingly, the Court rejects the second plea in law. After examining the other pleas in law put forward by the applicant, it dismisses the action in its entirety.

2. PUBLIC PROCUREMENT

Judgment of the Court of Justice (Third Chamber) of 16 October 2025, Polismyndigheten, C-282/24

Link to the full text of the judgment

Reference for a preliminary ruling – Public procurement – Directive 2014/24/EU – Article 72 – Modification of a framework agreement during its term – Value of the modification below the values laid down in Article 72(2) – Modification of the remuneration model of a framework agreement – Substantial modification of a framework agreement – Alteration of the overall nature of a framework agreement

In the context of a dispute concerning a fine imposed on a contracting authority for making modifications of lesser value to framework agreements during their term without having initiated a new procurement procedure, the Court of Justice interprets the concept of 'alteration of the overall nature of a contract' in Article 72(2) of Directive 2014/24, [41] which entails the initiation of a new procurement procedure.

After issuing a call for tenders for a contract for vehicle towing services, the Polismyndigheten (Swedish Police Authority, Sweden) concluded, in 2021, a framework agreement with Lidköpings Biltjänst Hyr AB. The call for tenders provided for a fixed price for the towing of vehicles within a 10 kilometre radius of the place where the vehicle was to be returned, and for an additional price per kilometre for transportation outside that radius.

In the same year, the Swedish Police Authority agreed with Lidköpings Biltjänst Hyr AB to amend the terms of remuneration laid down in the framework agreement, with the aim of evening out the distribution of costs between the various police areas. The effect of the modification was that the balance between fixed and variable prices was altered and the price levels were adjusted in such a manner that the total contract value did not change to more than a marginal degree.

The Konkurrensverket (Swedish Competition Authority) brought an action before the Förvaltningsrätten i Stockholm (Administrative Court, Stockholm, Sweden) seeking the imposition of a fine on the Swedish Police Authority for having modified that framework agreement without having initiated a new procurement procedure. That court upheld that action, taking the view that the modifications at issue had to be regarded as substantial and altered the overall nature of the framework agreement concluded with Lidköpings Biltjänst Hyr.

Following the dismissal of the appeal brought by the Swedish Police Authority, that authority brought an appeal on a point of law before the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden), which is the referring court. The Supreme Administrative Court finds that, according to the calculation made by the Swedish Police Authority, the value of the modifications made to that framework agreement is lower than the values laid down in Article 72(2) of Directive 2014/24. It is therefore necessary to determine whether the modifications can be regarded as having altered the overall nature of the framework agreement.

The referring court thus raises the question as to whether a modification of the method of remuneration provided for in a framework agreement which was awarded on the basis of the criterion of the lowest price, whereby the balance between fixed and variable prices is altered and the price levels are adjusted in such a manner that the total value of that framework agreement does not change to more than a marginal degree, must be regarded as altering the overall nature of that framework agreement, within the meaning of Article 72(2) of Directive 2014/24.

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41 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65). In essence, Article 72(2) of that directive provides for the possibility of making modifications of limited value to a public contract or a framework agreement without the need for a new procurement procedure, provided, however, that those modifications do not alter the overall nature of the contract or framework agreement.

The Court concludes that such a modification must not be regarded as altering the overall nature of that framework agreement, unless the modification leads to a fundamental change in the balance of that agreement.

Findings of the Court

In order to determine the scope of the concept of an 'alteration of the overall nature of a framework agreement' in Article 72(2) of Directive 2014/24, the Court takes into account the wording of that provision, its context and the objectives pursued by that directive.

In the first place, by its terms, taken in their usual sense, that concept refers exclusively to modifications to framework agreements of such a kind that they result in the transformation of the contract or framework agreement in its entirety. Article 72(2) of Directive 2014/24 specifies that it is to apply 'without any need to verify whether the conditions set out under … paragraph 4 [(a) to (d)] are met'. A modification which satisfies one of those conditions must, in accordance with Article 72(4) of that directive, be regarded as being substantial. Therefore, the question whether or not a modification to a framework agreement is substantial was not regarded by the EU legislature as being decisive for the purpose of determining whether that modification alters the 'overall nature' of that framework agreement within the meaning of Article 72(2) of Directive 2014/24.

In the second place, as regards the context of the latter provision, the Court points out that, in the light of Article 72(5) of Directive 2014/24, it constitutes a derogation from the principle that a framework agreement must not be modified without following a new procurement procedure, with the result that the power to modify laid down in Article 72(2) must be interpreted strictly. In that regard, it is true that the first paragraph of recital 107 of Directive 2014/24 refers implicitly to the case-law of the Court relating to situations prior to the application of Directive 2014/24, according to which, in essence, a new procurement procedure must be initiated where substantial modifications are made to the initial contract, such as modifications liable to call into question the award of the contract.

However, in providing, in the second paragraph of that recital, that 'modifications to the contract resulting in a minor change of the contract value up to a certain value should always be possible without the need to carry out a new procurement procedure', the EU legislature intended to qualify that case-law. It thus lays down a broad possibility of effecting, in a simplified manner, modifications which would normally require the use of a new procurement procedure, provided that those modifications remain below certain value thresholds, even though such a possibility has no basis in the case-law of the Court relating to situations prior to the application of Directive 2014/24.

In addition, it is apparent from a comparison of Article 72(1), (2) and (4) of Directive 2014/24 that the EU legislature chose to use different expressions to refer, first, to modifications altering the overall nature of a framework agreement and, second, to substantial modifications thereto.

Moreover, in the light of the structure of Article 72 of Directive 2014/24, an interpretation of that provision which would equate the concepts of substantial modifications and modifications altering the overall nature of a contract or a framework agreement would deprive Article 72(1)(a) and (c) and (2) of that directive of all effectiveness. Since those provisions are not applicable to modifications altering the overall nature of the contract or framework agreement concerned, equating those concepts would mean that those provisions allow only modifications which are not substantial to be adopted, which may, in any event, be done under Article 72(1)(e) of Directive 2014/24, without the need to carry out a new procurement procedure.

In the last place, as regards the objectives of Directive 2014/24, the Court notes that Article 72 of that directive aims to ensure compliance with the principles of equal treatment and transparency, while allowing contracting authorities to adopt a pragmatic solution for dealing with unforeseen circumstances requiring an adaption of a public contract during its term.

On the basis of all of those considerations, the Court considers that the concept of an alteration of the overall nature of a framework agreement is distinct from that of a substantial modification thereto. The former concept covers only the most significant substantial modifications which entail a fundamental change in the subject matter of the framework agreement or in the type of framework agreement concerned or a fundamental change in its balance, with the result that they may be

regarded as being of such a kind that they result in the transformation of the framework agreement in its entirety.

It follows that the mere fact that a modification would have been capable of influencing the outcome of the initial procurement procedure for the award of the framework agreement concerned, as referred to in Article 72(4)(a) of Directive 2014/24, cannot, in itself, suffice to establish that that modification alters the overall nature of that framework agreement.

In that context, the Court points out that a modification to the method of remuneration of a framework agreement resulting in a marginal change in its total value cannot, in any event, entail a fundamental change in the subject matter of that framework agreement or in the type of framework agreement concerned.

However, it cannot be entirely ruled out that such a modification may lead, in exceptional circumstances, to a fundamental change in the balance of that framework agreement and therefore to an alteration of its overall nature. That will be the case if the revision of the remuneration method of the framework agreement concerned completely alters the general structure of that framework agreement, leading to the successful tenderer or tenderers being placed in a significantly more favourable position than that which would have resulted from the application of the method of remuneration initially agreed on.

VII. CONSUMER PROTECTION: CONSUMER CREDIT CONTRACTS

Judgment of the Court of Justice (Fourth Chamber) of 30 October 2025, Mercedes-Benz Bank and Volkswagen Bank, C-143/23

Link to the full text of the judgment

Reference for a preliminary ruling – Consumer protection – Credit agreement for the purchase of a motor vehicle – Directive 2008/48/EC – Article 10(2)(l) – Requirements relating to the information to be included in the agreement – Obligation to specify the late-payment interest rate – Article 14(1) – Right of withdrawal – Commencement of the withdrawal period in the absence of any reference to the late-payment interest rate – Abusive nature of the exercise of the right of withdrawal – Consequences of exercising the right of withdrawal in the context of a credit agreement linked to a vehicle purchase agreement – Consumer's obligations towards the creditor – Method of calculating compensation for loss of value of the financed asset – Article 14(3)(b) – Payment of interest following withdrawal from a credit agreement linked to a contract for the supply of goods

Hearing a request for a preliminary ruling from the Landgericht Ravensburg (Regional Court, Ravensburg, Germany), the Court rules, with regard to Directive 2008/48, [42] on the starting point of the withdrawal period for, and on the possibility of classifying as abusive the exercise by a consumer of the right to withdraw from, a credit agreement linked to a vehicle purchase agreement. It also examines the consequences of exercising that right and specifies, in particular, the obligations incumbent on the consumer towards the creditor.

In accordance with their requests of 1 March 2019 and 30 November 2017, KI and FA entered into credit agreements with Mercedes Benz Bank and Volkswagen Bank, respectively (the 'banks in

42 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

question'), for the purchase of a motor vehicle for private use. Acting as credit intermediaries for the banks in question, the car dealers from whom the vehicles were purchased received the loan amounts directly. None of the credit agreements stated, as a percentage figure, the late-payment interest rate applicable at the time they were concluded.

After paying deposits and making monthly loan repayments, KI and FA indicated, by letters of 31 October 2019 and 20 July 2020, that they were exercising their right of withdrawal in respect of the credit agreements in question. They considered that the withdrawal period provided for by national law had not yet begun on the grounds that those agreements did not state the late-payment interest rate as a specific percentage.

KI and FA brought actions before the referring court seeking reimbursement of the monthly loan repayments made up to the date of their withdrawal from the credit agreements in question and of the deposit paid to the dealer, as well as a declaration that they were not liable for any sums under those agreements, whether in respect of the borrowed capital or interest, due to that withdrawal. For his part, KI also claimed that he did not owe any compensation for the depreciation of the vehicle purchased.

The referring court questions, first of all, whether, where the borrower exercises his or her right of withdrawal in respect of a credit agreement linked to a vehicle purchase agreement, the creditor may claim compensation for the loss in value of that vehicle and, if so, for what amount. Next, it questions the starting point of the withdrawal period where the late-payment interest rate applicable is not stated at the time of the conclusion of the credit agreements in question. Furthermore, the referring court has doubts as to whether the consumer's exercise of his or her right of withdrawal can be considered abusive when he or she continues to use the vehicle until the national courts have ruled on the validity of the withdrawal and refuses to pay compensation for the loss in value of the vehicle resulting from that use. Lastly, it questions whether Directive 2008/48 has completely harmonised the obligation for the borrower to pay interest on the capital, including where the credit financed is linked to a contract for the purchase of goods. If the answer is in the negative, the referring court questions whether it is compatible with that directive for the borrower, after exercising his or her right of withdrawal in respect of a credit agreement linked to a vehicle purchase agreement, to be required to pay the interest provided for in that credit agreement for the period between the payment, to the seller of the vehicle, of the amounts due under the loan and the date of the return of that vehicle to the creditor or seller.

Findings of the Court

In the first place, ruling on the starting point of the withdrawal period, [43] the Court recalls that that period is to begin only from the day on which, in particular, the information referred to in Article 10 of Directive 2008/48 has been received by the consumer. [44] Thus, where information provided by the creditor to the consumer under Article 10(2) of that directive proves to be incomplete or incorrect, that period is to begin only if the incomplete or incorrect nature of that information is not such as to affect the consumer's ability to assess the extent of the rights and obligations conferred on him or her by the directive in question. However, a situation characterised by the provision of incomplete or incorrect information must be distinguished from a situation in which there has been a failure to provide the required information.

With regard to the stating in a credit agreement of the late-payment interest rate applicable at the time of the conclusion of that agreement, the Court points out that the requirement to state that rate as a specific percentage [45] enables consumers to be aware of the consequences of any delay in payment. The stating of that interest rate as a specific percentage appears to be essential in order for

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43 As provided for in Article 14(1) of Directive 2008/48.

44 Point (b) of the second subparagraph of Article 14(1) of Directive 2008/48.

45 In accordance with Article 10(2)(l) of Directive 2008/48.

consumers to assess the extent of their contractual commitment, in particular with regard to the financial consequences that may result from a failure to fulfil, or a delay in fulfilling, their payment obligation. That information is therefore likely to influence not only the consumer's decision to enter into the agreement, but also their ability to organise the repayment of the loan. Consequently, the Court rules that the withdrawal period provided for in Article 14(1) of Directive 2008/48 is not to begin where the credit agreement does not state, as a specific percentage, the late-payment interest rate applicable at the time of the conclusion of the agreement, and that this is the case as long as that information has not been duly communicated to the consumer.

In the second place, the Court examines the question of whether there may have been abusive exercise, by the consumer, of the right of withdrawal. After pointing out that EU law cannot be relied on for abusive or fraudulent ends, it emphasises that the creditor cannot legitimately claim that, because a considerable length of time has elapsed between the conclusion of the agreement and the exercise of the right of withdrawal, the consumer has abused that right, where some of the mandatory information listed in Article 10(2) of Directive 2008/48 was not included in the credit agreement and, further, was not duly communicated at a later stage, irrespective of whether that consumer was unaware of the existence of his or her right of withdrawal. In those circumstances, a creditor cannot claim that the exercise of the right of withdrawal was abusive where the credit agreement does not state, as a specific percentage, the late-payment interest rate applicable at the time of its conclusion, which is part of that mandatory information. In such a case, the withdrawal period has not begun. Consequently, the Court concludes that Article 14(1) of Directive 2008/48 precludes the creditor from validly claiming that there has been abusive exercise, by the consumer, of the right of withdrawal due to that consumer's behaviour between the conclusion of the agreement and the exercise of the right of withdrawal, or even after that exercise, where a statement, as a specific percentage, of the late-payment interest rate applicable at the time of the conclusion of that agreement was not included in the credit agreement and, further, was not duly communicated at a later stage.

In the third place, the Court considers that Article 14(1) of Directive 2008/48, read in the light of the principle of effectiveness, precludes national case-law according to which, where a consumer exercises his or her right of withdrawal in respect of a credit agreement linked to a vehicle purchase agreement, the amount of compensation for loss of value owed by that consumer to the creditor when the vehicle is returned is calculated by deducting from the sale price charged by the dealer at the time of the consumer's purchase of the vehicle the purchase price paid by the dealer at the time of the return of that vehicle, provided that that calculation method includes factors unrelated to the use of the vehicle by that consumer.

In reaching that conclusion, the Court emphasises that Directive 2008/48 does not contain any provisions governing the consequences of the exercise, by the consumer, of his or her right of withdrawal in respect of a credit agreement linked to a contract for the supply of goods. It is therefore for the Member States to regulate questions concerning the return of the goods financed by the credit or any related questions, provided that the national legislation and case-law governing the consequences of the exercise of the right of withdrawal do not undermine the effectiveness and efficiency of that right to such an extent as to make its exercise impossible or excessively difficult in practice. That would be the case if the amount of compensation for loss of value of goods, payable by the consumer to the creditor when the goods are returned, were to appear disproportionate in relation to the purchase price of those goods.

In that context, the Court specifies that the assessment of the proportionality of the compensation that may be claimed from the consumer following the exercise of his or her right of withdrawal must be carried out on the basis of a detailed analysis, taking into account the specific terms and conditions of use of the goods concerned and the condition of the vehicle at the time of its return, in particular with regard to any mechanical damage or aesthetic deterioration resulting from such use. In that regard, the mere fact that the compensation thus determined may be high in relation to the purchase price of the vehicle by the consumer cannot, in itself, establish that that compensation is disproportionate and that the method of calculating it makes the exercise of the right of withdrawal impossible or excessively difficult in practice. That is the case provided that the amount of that

compensation objectively reflects the actual depreciation of the vehicle resulting from its use by the consumer and its condition at the time of its return.

By contrast, a calculation method based solely on the difference in price between the purchase and resale of the vehicle, which includes factors unrelated to the use made thereof, such as commercial margins and resale costs, determined unilaterally by the car dealer, as well as value added tax, does not allow for an assessment of the depreciation of that vehicle resulting from its use by the consumer. Furthermore, inasmuch as those factors apply even where the vehicle has not been registered or used prior to the exercise of the right of withdrawal, that method appears to impose on the consumer a burden that results exclusively from the exercise of his or her right of withdrawal. In those circumstances, such a method of calculating compensation for the loss of value of goods is liable to result in an amount of compensation that is disproportionate in relation to the purchase price of those goods and to make the exercise of the right of withdrawal impossible or excessively difficult in practice.

In the fourth place, the Court finds that Directive 2008/48 does not completely harmonise the rules relating to the legal consequences that may arise from the consumer's exercise of his or her right to withdraw from a credit agreement linked to a vehicle purchase agreement. In that regard, it points out that that directive does not contain any provisions governing the consequences, for a contract for the supply of goods, of the consumer's exercise of that right in respect of a credit agreement linked to that contract for the supply of goods. More specifically, Directive 2008/48 does not specify the fate of the financed asset or the possible interactions between the linked credit agreement and the vehicle purchase agreement. [46] Furthermore, no provision of that directive deals with the situation in which the right of withdrawal exercised by the consumer concerns the linked credit agreement itself. In the absence of specific EU rules governing the matter, the rules implementing the consumer protection provided for by Directive 2008/48 are a matter for the domestic legal order of the Member States in accordance with the principle of procedural autonomy of the Member States. It is therefore for the Member States, in accordance with the principles of equivalence and effectiveness, to specify the effects of the exercise of that right in the context of a credit agreement linked to a contract for the supply of goods, including, where applicable, the obligation to pay the interest accrued on the capital borrowed and the terms and conditions thereof.

In the fifth and last place, the Court states that Article 14(1) of Directive 2008/48 does not preclude national legislation under which, after exercising his or her right to withdraw from a credit agreement linked to a vehicle purchase agreement, the consumer is required to pay the interest provided for in that credit agreement for the period between the payment of the loan proceeds to the seller of the financed vehicle and the date of the return of the vehicle to the creditor or seller. The first sentence of Article 14(3)(b) of Directive 2008/48 aims to strike a balance between consumer protection and the free movement of credit offers. In those circumstances, the obligation that may be imposed on the consumer to pay interest calculated on the basis of the actual period during which the funds were made available serves to maintain the contractual balance and prevents one party, by exercising its right of withdrawal, from obtaining an undue advantage to the detriment of the other party, thus ensuring a fair distribution of the costs and benefits arising from the performance, albeit partial and temporary, of the credit agreement. First, the creditor has temporarily relinquished the amount of credit paid to the seller of the vehicle for the benefit of the consumer, which represents a tie-up of funds and a financial risk for the creditor. Secondly, the interest accrued on the borrowed capital does not represent a penalty, but rather the consideration for access to credit, which is, in principle, a paid transaction, regardless of whether the right of withdrawal is exercised.

46 First sentence of Article 14(3)(b) of Directive 2008/48.

VIII. ENVIRONMENT: WASTE

Judgment of the Court of Justice (First Chamber) of 23 October 2025, Naturvårdsverket (Waste treatment after take-back), C-221/24 and C-222/24

Link to the full text of the judgment

References for a preliminary ruling – Environment – Waste – Regulation (EC) No 1013/2006 – Article 24(2) – Shipment – Take-back when a shipment is illegal – Take-back of the waste by the competent authority of dispatch – Obligation or possibility for that authority to recover or dispose of the waste despite opposition by the initial dispatcher – Article 17(1) of the Charter of Fundamental Rights of the European Union – Right to property – Validity

Hearing two requests for a preliminary ruling from the Svea hovrätt, Mark-och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal, Stockholm, Sweden), the Court of Justice rules that where the competent authority of a country of dispatch discovers an illegal shipment of waste and decides to take back the waste under point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006, [47] that provision requires that authority to recover or dispose of that waste.

UQ and IC are two dispatchers who sought to ship containers from Sweden to, respectively, Cameroon (via Belgium) and the Democratic Republic of the Congo (via Germany).

Being of the view that the containers contained waste, including hazardous waste, the Naturvårdsverket (Environmental Protection Agency, Sweden) ('the agency') concluded that UQ and IC had engaged in the illegal shipment of waste to third countries and informed them that the two containers had to be returned to Sweden.

As UQ and IC were unable to ensure the return of the containers to Sweden, the agency decided to make arrangements for that return itself. With a view to the return of the containers to Sweden, the agency submitted notifications of the shipments of waste in accordance with the third subparagraph of Article 24(2) of Regulation No 1013/2006. In those notifications, the agency named itself as the notifier and person responsible for the shipments, and a licensed waste reception facility in Sweden was designated as the consignee of the waste. Furthermore, it was stated in those notifications that the waste was being shipped with a view to its recovery.

In that context, UQ and IC each brought an action before the court of first instance against the agency's decisions. Upholding both actions in part, that court explained that, in so far as those decisions provided for the treatment by the agency of the content of the containers, they were in breach of the right to property, whereas there was no legal basis authorising the agency to proceed in that manner. Indeed, nothing in the wording of the provisions of Regulation No 1013/2006 authorised the agency to decide that the goods belonging to UQ and IC, classified as waste by the agency, had to be recovered after being returned to Sweden, contrary to UQ and IC's wishes.

The agency has brought appeals against those judgments before the referring court, arguing that, if point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 were to be interpreted as not permitting the competent authority of the country of dispatch to recover waste in the country of dispatch where the exporter has not taken back the waste and is considered not to be in a position to treat that waste in an appropriate manner, point (d) of the first subparagraph of Article 24(2) of that regulation, which provides for waste which has been the subject of an illegal shipment to be 'alternatively' recovered or disposed of, would then be the appropriate legal basis therefor.

In that context, the referring court questions, first, whether points (c) and (d) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 are to be applied alternatively, and, second, whether the

47 Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).

take-back of waste under point (c) of that subparagraph entails an obligation for the agency to dispose of or recover the waste, or merely a possibility for it to do so. Furthermore, that court questions whether such an effect is compatible with the right to property.

Findings of the Court

First of all, the Court analyses whether point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 and point (d) of that subparagraph are to be applied alternatively.

The first subparagraph of Article 24(2) of that regulation designates, according to the order of precedence established in points (a) to (c) thereof, the authorities and natural or legal persons who are required, in turn, to take back waste when a shipment is illegal. These are, first, the authority or person who notified the shipment, known as the 'notifier de facto', next, where there is no notification, the authority or person who should have notified that shipment, but who did not do so, known as the 'notifier de jure', and, lastly, where take-back by the notifier is impracticable, the competent authority of the country of dispatch or its representative.

For its part, point (d) of that subparagraph provides for the recovery or disposal 'alternatively' of the waste in the country of destination or dispatch by the competent authority of the country of dispatch. As is apparent from the linking phrase which connects point (c) of that subparagraph with point (d) thereof, namely 'or, if impracticable', point (d) of that subparagraph can be applied only if there is no take-back of the waste by the competent authority of the country of dispatch under point (c) thereof.

In addition, the scenario referred to in point (d) of that subparagraph concerns a different situation from that covered by points (a) to (c) thereof. Whereas those points concern a situation where the waste in question has left the country of dispatch, requiring a 'return' to that country, point (d) concerns situations where the waste has never left the country of dispatch, has already arrived in the country of destination, or is located in another country but cannot be redirected to the country of dispatch. In such a case, the waste must be recovered or disposed of in the country in which that waste is located.

Thus, in situations, such as those at issue in the main proceedings, where the waste has left the country of dispatch, has been the subject of an illegal shipment to a Member State, and has not been taken back by its dispatchers, it is point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 which is to be applied.

Next, the Court examines the consequences deriving from the application of point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 and, in particular, whether the take-back of waste by the competent authority of the country of dispatch necessarily involves the recovery or disposal of that waste.

In that regard, the Court notes, in the first place, that, unlike, inter alia, the Spanish, French and Italian language versions of point (d) of the first subparagraph of Article 24(2) of Regulation No 1013/2006, in the German and English language versions of that provision, the term 'alternatively' ('d'une autre manière') could be understood as referring to the recovery or disposal of waste by means of a process which does not involve that waste being taken back beforehand. That provision would thus mean that recovery and disposal must always take place after take-back, but that, in the alternative, they may take place without the waste being taken back beforehand, where take-back proves to be impracticable.

As all the language versions of a text of EU law must, in principle, be given equal value, the provision in question must be interpreted, where there is divergence between those language versions, in line with the purpose and general scheme of the rules of which it forms part.

To that end, the Court points out, in the second place, that, by adopting Regulation No 1013/2006, the EU legislature established rules to curtail and control shipments of waste; rules designed, inter alia, to

make the existing Community system for the supervision and control of waste movements comply with the requirements of the Basel Convention, [48] to which the Union is a party.

Article 9(2) of the Basel Convention refers, in points (a) and (b) thereof, respectively, to waste being taken back or, if impracticable, to that waste being 'otherwise' disposed of. Such wording tends to suggest, like the German and English language versions of point (d) of the first subparagraph of Article 24(2) of Regulation No 1013/2006, that the take-back obligation implies in itself the disposal of the waste concerned and that, where this is impracticable, the waste may be 'otherwise' disposed of. Consequently, disposal or recovery, whether following the take-back of waste or 'otherwise' where the take-back of that waste proves to be impracticable, appears to be the aim to be achieved following a finding of an illegal shipment of waste.

In the third place, such an interpretation of the take-back obligation is also necessary in the light of the main objective pursued by Regulation No 1013/2006, namely the protection of the environment and human health, as well as in the light of the environmentally sound management of waste involved.

If, following the redirection of illegally shipped waste, the competent authority were to return that waste to its owner, there would be a risk of that waste being shipped illegally again and, in any event, of that waste not being treated, which would undermine the objective of the environmentally sound management of waste, as well as the requirement to reduce shipments of waste to a minimum, consistent with the environmentally sound and efficient management of such waste, laid down by the Basel Convention and recalled in recital 8 of Regulation No 1013/2006.

Thus, point (c) of the first subparagraph of Article 24(2) of that regulation must be interpreted as requiring the competent authority of the country of dispatch, where it discovers a shipment which it considers to be illegal, to recover or dispose of the waste taken back following such a shipment.

Lastly, the Court answers the question whether the obligation to recover or dispose of waste taken back by the competent authority of the country of dispatch, despite opposition by the initial dispatcher, is valid in the light of the protection of the right to property enshrined in Article 17(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

It is apparent from the very wording of point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 that the take-back, by the competent authority of the country of dispatch, of waste which has been the subject of an illegal shipment with a view to the recovery or disposal of that waste, is to be applied alternatively, with that authority intervening only if the illegal shipment of waste is the responsibility of the notifier and that notifier has neither taken back the waste nor, a fortiori, shown that he, she or it is willing or able to manage that waste in an environmentally sound manner, or that notifier is likely to make another attempt to ship the waste illegally.

Thus, in view of the alternative nature of the intervention by the competent authority, the take-back of waste by that authority does not constitute a person being deprived of his or her possessions for the purposes of Article 17(1) of the Charter. The fact remains that such a measure constitutes a limitation on the exercise of the right to property which forms part of the regulation of the use of property within the meaning of the third sentence of Article 17(1) of the Charter, given that the fate of that waste must necessarily be recovery or disposal.

In that regard, it should be borne in mind that the right to property guaranteed by Article 17(1) of the Charter is not absolute and that the exercise of that right may, under the conditions laid down in Article 52(1) thereof, be subject to restrictions which are justified by objectives of general interest pursued by the Union.

In this instance, in the first place, the requirement laid down in Article 52(1) of the Charter that restrictions of the exercise of the right to property must 'be provided for by law' is met, because point (c) of the first subparagraph of Article 24(2) of Regulation No 1013/2006 must be interpreted as

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48 Convention on the control of transboundary movements of hazardous wastes and their disposal, signed at Basel on 22 March 1989, approved on behalf of the European Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1) ('the Basel Convention').

requiring the competent authority of the country of dispatch to recover or dispose of the waste taken back, which may restrict the right to property of the owners of that waste.

In the second place, the protection of the environment and human health, which is the main objective of Regulation No 1013/2006, is one of the objectives of general interest capable of justifying restrictions that may be imposed on the right to property.

In the third place, the take-back of waste by the competent authority of the country of dispatch for the purposes of the recovery or disposal of that waste following an illegal shipment, inasmuch as it guarantees the treatment of that waste, is consistent with the principle of proportionality. On the one hand, such take-back is appropriate for preserving the objective of the protection of the environment and human health, and, on the other, the disadvantages caused, namely – in this instance – the restrictions imposed on the right to property, are not disproportionate in relation to that objective.

Consequently, the interpretation of the first subparagraph of Article 24(2) of Regulation No 1013/2006 used by the Court enables a high level of protection of the environment and human health to be guaranteed – an objective also pursued by the Charter – and is thus consistent with Article 17(1) of the Charter.

IX. ENERGY

Judgment of the Court of Justice (Fourth Chamber) of 23 October 2025, Gaso and Conexus Baltic Grid, C-87/24

Link to the full text of the judgment

Reference for a preliminary ruling – Approximation of laws – Natural gas – Directive 2009/73/EC – Article 41(8) – Concept of an 'appropriate incentive' – Regulation (EC) No 715/2009 – Article 13(1) – Concept of an 'appropriate return on investments' – Transmission and distribution networks – Storage facility – Criteria to be taken into account for setting natural gas transmission and distribution tariffs fixed by the national regulatory authority – Rate of return on capital – Obligation of consistent interpretation – Obligation to state reasons

Ruling on a request for a preliminary ruling from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), the Court interprets the concepts of an 'appropriate incentive' within the meaning of Directive 2009/73 [49] and an 'appropriate return on investment' within the meaning of Regulation No 715/2009. [50] In particular, the Court recognises the direct effect of the provision by which Directive 2009/73 obliges national regulatory authorities for the market in natural gas to guarantee an appropriate incentive for natural gas transmission and distribution system operators when calculating and fixing the tariffs for access to those systems.

By decision of 20 August 2020, the Sabiedrisko pakalpojumu regulēšanas komisija (Public Utilities Commission, Latvia; 'the Latvian regulatory authority') fixed the rate of return on capital of the natural gas transmission system, the natural gas distribution system and the natural gas storage system for the calculation of access tariffs ('the decision at issue').

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49 Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

50 Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ 2009 L 211, p. 36).

AS ‘Gaso’ is the natural gas distribution system operator in Latvia, and AS ‘Conexus Baltic Grid’ is the natural gas transmission and storage system operator in that Member State. Considering that the Latvian regulatory authority had made errors in the determination of the criteria and in the calculation of the rate of return on capital and infringed its obligation to state reasons by fixing that rate at an abnormally low rate, each of them brought an action for annulment of the decision at issue before the referring court.

In particular, according to them, the decision at issue infringes Directive 2009/73, which imposes on the national regulatory authorities the obligation to provide investors with sufficient incentives to make necessary infrastructure investments, as well as Regulation No 715/2009, which obliges those authorities, when determining tariffs, to allow for an appropriate return on investments made.

In that context, the referring court asks the Court to clarify the scope of those tariff principles provided for in the abovementioned directive and regulation and the concepts of ‘appropriate incentive’, within the meaning of that directive, and ‘appropriate return on investments’, within the meaning of that regulation.

Findings of the Court

After declaring the questions referred for a preliminary ruling to be admissible, the Court addresses, first of all, the question of whether the tariff principles provided for in Article 41(8) of Directive 2009/73 and the first subparagraph of Article 13(1) of Regulation No 715/2009 apply not only to natural gas transmission and distribution systems operators, but also to storage facilities for that gas.

It starts by recalling that Directive 2009/73, the aim of which is to achieve an internal market in natural gas that is entirely and effectually open and competitive, makes a distinction between, respectively, a ‘transmission system operator’, a ‘distribution system operator’, a ‘storage facility’ and a ‘storage system operator’ of natural gas.

That directive seeks to ensure non-discriminatory access to natural gas transmission and distribution systems by entrusting to national regulatory authorities the duty of fixing or approving, in accordance with transparent criteria, at least the methodologies used to calculate or establish the terms and conditions for access to national networks, including transmission and distribution tariffs.

It follows that the rules relating to the tariffs provided for in Directive 2009/73, like those established by Regulation No 715/2009, do not apply to a natural gas ‘storage facility’ and its operator. Those facilities, unlike ‘networks’, are not generally regarded as natural monopolies and may therefore compete with other facilities.

The Court clarifies however that neither that directive nor that regulation prohibit national regulatory authorities from extending those principles to access to those storage facilities for objectively justified reasons.

Next, the Court clarifies the scope of the concept of an ‘appropriate incentive’ as well as of the obligation to state reasons incumbent on the national regulatory authority, under Article 41(8) and (16) of Directive 2009/73. It declares, in that regard, that that provision precludes national legislation according to which an ‘appropriate incentive’, within the meaning of that provision, is ensured only by the fact that tariff payments by users cover the economically substantiated costs of public utilities and ensure a profit, even at a minimum level, without any obligation being imposed on the national regulatory authority to set out the reasons for the manner in which it provides that natural gas transmission and distribution system operators benefit from that incentive.

It finds, to that effect, that in accordance with that directive, the national regulatory authorities are required, either at the time of adopting the methodology for the calculation of tariffs for the transmission and distribution of natural gas, or on the actual fixing of those tariffs, to provide for, in addition to coverage of the actual costs borne by the transmission and distribution system operators to enable access to those networks, on the one hand, coverage of the investments necessary for the viability of those networks and, on the other hand, an ‘appropriate incentive’, over both the short and long term, to encourage transmission and distribution system operators to increase efficiencies, foster market integration and security of supply and support the related research activities. Furthermore, those authorities must give reasons and justify their decisions to allow for judicial review.

As regards the transposition into Latvian law of Article 41(8) of Directive 2009/73, the Court finds that the relevant law does not appear to reproduce expressly the obligation for the Latvian regulatory authority to provide, either at the time of adopting the methodology for the calculation of tariffs for the transmission or distribution of natural gas, or on the actual fixing of those tariffs, an 'appropriate incentive'. That law merely requires the authority to ensure that the tariffs paid by users cover the economically substantiated costs of public utilities and ensures their profitability.

However, the Court recalls that, in accordance with the principle of consistent interpretation, the referring court is required to interpret national law, so far as possible, in the light of the wording and the purpose of the directive in question in order to achieve the result sought by it. It is for the referring court therefore to ascertain whether Latvian law may be interpreted so that the profitability which must be guaranteed to natural gas transmission and distribution system operators also means that in so doing they benefit from an 'appropriate incentive', as referred to in Article 41(8) of Directive 2009/73.

If such a consistent interpretation is impossible, the referring court would be obliged to disapply the national law which is contrary to Article 41(8) of Directive 2009/73. That provision has direct effect since it lays down, unconditionally and sufficiently precisely, the obligation to guarantee to natural gas transmission and distribution system operators that, when fixing or approving the tariffs for transmission and distribution, the national regulatory authorities provide for the appropriate incentive referred to in that provision.

As regards the concept of 'appropriate incentive', the Court observes that Directive 2009/73 neither defines that concept nor specifies the form in which the national regulatory authorities should establish it. The directive therefore grants those authorities discretion as to the form that those incentives must take but also as to the assessment and determination of whether they are appropriate.

Nevertheless, either in the context of the methodology for the calculation of tariffs for the transmission and distribution of natural gas, or, later, in fixing or approving those tariffs, the national regulatory authority is obliged to set out clearly, unequivocally and sufficiently precisely how it considers that those tariffs may be deemed to ensure that operators of those systems are given an appropriate incentive within the meaning of Article 41(8) of Directive 2009/73.

Finally, the Court examines whether the discretion available to national regulatory authorities as to the choice of methods applicable to the calculation of the rate of return on capital and as to the parameters of that calculation when fixing tariffs for the transmission and distribution of natural gas is framed, or even limited, by the need for those authorities to provide for an 'appropriate incentive', within the meaning of Directive 2009/73, or, as regards tariffs for the transmission of natural gas, an 'appropriate return on investments', within the meaning of Regulation No 715/2009.

In that regard, the Court observes that neither that directive nor that regulation specify the methods in accordance with which those national regulatory authorities must fix or approve, with reasons, the tariffs for the transmission and/or distribution of natural gas.

Regulation 2017/460, [51] adopted by the European Commission on the basis of Regulation No 715/2009, admittedly provides, with the objective of increasing the transparency of the tariff structure for natural gas transmission system operators, for certain information to be published before each tariff period, including, in particular, the 'cost of capital and its calculation methodology', 'incentive mechanisms and efficiency targets' and 'inflation indices'. However, that regulation does not specify the content of those concepts nor, inter alia, the methods or procedures by which the 'cost of capital' or 'incentive mechanisms' can or should be calculated.

Consequently, in order to take into account such complex economic and technical factors, the national regulatory authorities must have a wide margin of discretion in fixing the tariffs for the transmission or distribution of natural gas, inter alia, as the case may be, in relation to fixing the rate of return on capital of the operators concerned.

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[51] Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (OJ 2017 L 72, p. 29).

Thus, those authorities cannot be required, as regards the need to provide an 'appropriate incentive', within the meaning of Directive 2009/73, and an 'appropriate return on investments', within the meaning of Regulation No 715/2009, to adopt a particular methodology, such as that based on the weighted average cost of capital, or to compare the cost of capital with that of companies or non-regulated entities. Nor are they obliged to carry out the calculation of natural gas transmission tariffs by taking into account inflation or corporation tax.

By contrast, when determining appropriate incentive measures, the national regulatory authority is required to take into account the past individual performance of the natural gas transmission and distribution system operators concerned since those incentives must make it possible for there to be improvements in the performance of natural gas transmission and distribution system operators and therefore requires that an incentive may be adapted or adjusted in accordance with the past performance of those operators.

In addition, the Court states that, in the event of a challenge by one of the natural gas transmission or distribution entities to which those tariffs apply, the assessment of the various parameters for calculating those tariffs carried out by the national regulatory authorities cannot be subject to the involvement of a third party, such as a firm of experts, whose report has been drawn up exclusively at the request of one of those entities. Those authorities must exercise their powers independently, without being subject to external instructions from other public or private bodies.

It remains permissible, however, for the operators concerned to rely on expert reports and for the national regulatory authority or, as the case may be, the national court to have recourse to independent experts to assist them in their duties.

Judgment of the General Court (Third Chamber, Extended Composition) of 1 October 2025, BNetzA and Germany v ACER, T-600/23 and T-612/23

Link to the full text of the judgment

Energy – Internal market for electricity – Regulation (EU) 2015/1222 – Regulation (EU) 2019/943 – Allocation of cross-zonal capacity between bidding zones and congestion management – Determination of common regional methodologies for the calculation of daily and intraday capacity – Proposals from the transmission system operators of the 'Core' capacity calculation region – Internal critical network elements – Economic efficiency – Power transfer distribution factor (PTDF) – Decision of the Board of Appeal of ACER

The General Court partially annuls the decision of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) by which ACER confirmed a decision it had adopted, laying down the common methodologies for the calculation of day-ahead and intraday cross-zonal capacity for the exchange of electricity in respect of a region comprising several Member States.

On 24 July 2015, the European Commission adopted Regulation (EU) 2015/1222, [52] setting out a series of requirements relating to the allocation of cross-zonal capacity between bidding zones and congestion management in the day-ahead and intraday markets in the electricity sector. Those requirements included, inter alia, the determination of common methodologies relating to the calculation of the day-ahead and intraday cross-zonal capacity ('capacity calculation') within each relevant capacity calculation region using a 'flow-based approach'. [53]

52 Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ 2015 L 197, p. 24).

53 According to point 9 of the second paragraph of Article 2 of Regulation 2015/1222, a flow-based approach is a capacity calculation method in which energy exchanges between bidding zones are limited by power transfer distribution factors and available margins on critical network elements.

Pursuant to that regulation, [54] the transmission system operators for electricity ('TSOs') for the region comprising Belgium, the Czech Republic, Germany, France, Croatia, Luxembourg, Hungary, the Netherlands, Austria, Poland, Romania, Slovenia and Slovakia ('the "Core" region') submitted to all the national regulatory authorities ('NRAs') of that region proposals for methodologies for capacity calculation in their region. Since the NRAs of that region were unable to reach an agreement on those proposals, ACER, by a decision of 21 February 2019 ('the initial decision'), adopted amended versions of those methodologies ('the methodologies at issue').

The Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA), as the German NRA, brought an appeal before the Board of Appeal of ACER against the initial decision. Since its appeal was dismissed, it brought an action for annulment before the General Court, inter alia, against the initial decision, which was upheld by the judgment in *BNetzA* v *ACER*. [55] In that judgment, the General Court found, inter alia, that the Board of Appeal had erred in law by failing to determine whether the methodologies at issue complied with the requirements of Articles 14 to 16 of Regulation 2019/943, [56] which were in force and applicable at the time the decision of the Board of Appeal was adopted.

Following that judgment, the Board of Appeal of ACER, by decision of 7 July 2023 ('the contested decision'), confirmed the initial decision, stating, in particular, that the methodologies at issue complied with those provisions.

BNetzA and the Federal Republic of Germany then brought an action for the annulment of the contested decision.

Findings of the Court

As a preliminary point, the Court states that the applicants seek the annulment of the contested decision only in so far as it imposes on the TSOs of the 'Core' region certain requirements to be complied with when they propose an internal network element for inclusion on the list of critical network elements ('CNEs') to be taken into account when calculating cross-zonal capacity.

Pursuant to those requirements, at the time of the proposal to include an internal network element on the list of CNEs, the TSO must provide, in addition to the list of internal network elements significantly influenced by cross-zonal exchanges, as measured by their PTDF, [57] an impact assessment of increasing the threshold for inclusion and an analysis demonstrating that the inclusion of that element is the most economically efficient solution to address the congestions, taking into account other available solutions.

According to the applicants, the imposition of the requirements at issue is contrary to Articles 14 to 16 [58] of Regulation 2019/943 and to Article 29(3)(b) of Regulation 2015/1222, since, in their submission, it follows from those provisions that the capacity calculation must include all internal network elements (and the relevant contingencies) that are significantly influenced by cross-zonal exchanges, whether or not those elements are structurally congested.

In order to examine the merits of that complaint, the Court carries out a literal, contextual and teleological interpretation of the provisions relied on by the applicants.

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54 Article 9(1) and Article 20(2) of Regulation 2015/1222.

55 Judgment of 7 September 2022, *BNetzA* v *ACER* (T-631/19, EU:T:2022:509).

56 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54).

57 The calculation of the power transfer distribution factor ('PTDF') is a mathematical tool used to measure the influence exerted on the CNE by cross-zonal exchanges in the context of the flow-based approach. In the present case, it is apparent from the methodologies at issue that the Board of Appeal accepted, in the contested decision, the TSOs' proposal to consider that an internal network element whose PTDF was less than 5% did not satisfy the criterion of being significantly influenced by cross-zonal exchanges.

58 Article 14 lays down rules on the bidding zone review, in order to prevent those zones from containing long-term, structural congestions in the transmission network. Article 15 provides a framework for the possibility given to Member States with identified structural congestion in their networks of developing action plans, in cooperation with their NRAs, in order to achieve, progressively and by 31 December 2025 at the latest, the minimum levels of capacity which the TSOs must make available for cross-zonal trade. Article 16 governs those minimum levels of capacity.

As regards, first of all, the literal interpretation of those provisions, the Court notes that it does not follow from the definition of 'critical network element' [59] that, in the context of Regulation 2019/943, requirements concerning the classification of internal network elements (and the relevant contingencies) other than that of being significantly influenced by cross-zonal exchanges may be introduced into the methodologies at issue and thus lead to some elements that significantly limit cross-zonal trade, on account of being influenced by structural congestions, not being regarded as critical and being excluded from the capacity calculation and from the application of the rules on the calculation of that capacity.

That interpretation is borne out by the content of Article 29(3)(b) of Regulation 2015/1222, according to which the CNEs that are not significantly influenced by cross-zonal exchanges are disregarded when calculating capacity. It follows that, as EU law currently stands, the view must be taken that CNEs include all the internal network elements which satisfy the criterion of being significantly influenced by cross-zonal exchanges, as measured by their PTDF.

Therefore, it does not follow from the wording of that provision that, in the context of the capacity calculation methodology, internal network elements that are significantly influenced by cross-zonal exchanges may be regarded as not being critical and may be excluded from the capacity calculation and from the application of the rules on that calculation on the ground that they do not meet additional requirements, intended, in particular, to take account of the fact that those elements are structurally congested.

Nor is it apparent from the wording of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943 that requirements other than that of being significantly influenced by cross-zonal exchanges could be introduced, into the methodologies at issue, in order to determine the internal network elements that should be regarded as 'critical' and, as such, be included on the list of CNEs (and the relevant contingencies) taken into account in the capacity calculation and subject to the rules on that calculation.

That provision governs the minimum levels of capacity, providing, inter alia, that, where the flow-based approach is used, the minimum capacity is 70% of the capacity respecting the operational security limits of internal and cross-zonal CNEs, taking into account contingencies, determined in accordance with the capacity allocation and congestion management guideline adopted on the basis, in essence, of Regulation 2015/1222. The total remaining share of capacity, namely 30%, may be used for the reliability margins, loop flows and internal flows.

In that regard, the Court rejects ACER's arguments that the reference in the text of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943, in particular, to Regulation 2015/1222 permitted the classification of 'internal network elements' as 'critical' and, accordingly, their inclusion in the capacity calculation and the application to those elements of the rules on the calculation of that capacity to be made subject to additional requirements.

In order to determine, in the various language versions of that provision, what it is that, from a grammatical point of view, must be determined in accordance with the capacity allocation and congestion management guideline adopted on the basis, in essence, of Regulation 2015/1222, the Court recalls that, where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and purpose of the rules of which it forms part.

Most of the language versions of the second sentence of point (b) of the first subparagraph of Article 16(8) of Regulation 2019/943 confirm the reading of that provision advanced by BNetzA and the Federal Republic of Germany. According to the applicants' interpretation, the EU legislature sought to refer, in it, to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies), and not only to the contingencies or only to the CNEs. By contrast, none of those versions supports a finding that that provision authorises the TSOs, the NRAs or ACER itself to make the classification of 'internal network elements' as 'critical' and, accordingly,

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59 According to Article 2(69) of Regulation 2019/943, a 'critical network element' is a network element either within a bidding zone or between bidding zones taken into account in the capacity calculation process, limiting the amount of power that can be exchanged.

their inclusion in the capacity calculation and the application to those elements of the rules on that calculation subject to additional requirements.

That conclusion, borne out by the *travaux préparatoires* for Regulation 2019/943, is not called into question by recital 31 of that regulation, since the preamble to an EU legislative act cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner clearly contrary to their wording. In any event, the content of that recital confirms that the EU legislature sought to point, by the reference, in essence, to Regulation 2015/1222, to the determination of the capacity respecting the operational security limits of each CNE (and the relevant contingencies).

Furthermore, the Court finds that the methodologies at issue implement Article 21 of Regulation 2015/1222, which lays down the elements that the methodology proposal developed by the TSOs must 'at least' include, inter alia 'methodologies for the calculation of the inputs to capacity calculation'; [60] those methodologies must also include the parameters listed. [61]

The obligation to include, in the proposed list of internal CNEs (and the relevant contingencies), an impact assessment of increasing the threshold for inclusion and an analysis of the most economically efficient solution to address congestions goes beyond the parameters set by that provision for the calculation of the inputs to capacity calculation and does not correspond to the objectives referred to by that provision.

It follows that it is not clear from the wording of the provisions of Regulations 2019/943 and 2015/1222 that ACER could, without committing an error, introduce the requirements at issue into the methodologies at issue.

Next, the Court notes that that conclusion is borne out by the context of which the provisions of Regulation 2019/943 are part.

In that regard, the Court observes, in the first place, that Article 16(8) of Regulation 2019/943 lays down a rule of principle according to which TSOs should not limit cross-zonal capacity to manage internal congestion problems. That rule of principle is deemed to be complied with when the levels of capacity available for cross-zonal trade reach, for borders using a flow-based approach, the minimum capacity of 70% and the TSOs manage the internal congestion problems with the remaining total amount of 30%. Thus, when those levels are complied with, the TSOs of the 'Core' region are considered not to be unlawfully undermining the maximisation of economic efficiency and of cross-zonal trading opportunities.

In the second place, the EU legislature provided that any Member State with identified structural congestion may, in cooperation with its NRA, decide to develop an action plan containing a concrete timetable ('the linear trajectory') for adopting measures to reduce that congestion and to enable its TSOs to reach, by 31 December 2025 at the latest, the minimum capacity of 70%. [62]

In that context, TSOs are required to use remedial actions to maximise available capacities for cross-zonal trade only for the purpose of achieving the minimum capacity of 70% provided or, if an action plan is currently being implemented, the values corresponding to the linear trajectory. [63]

In the third and last place, a zone should not be reconfigured against the will of the Member State concerned, provided that the minimum capacity is reached, namely that of 70% or the values corresponding to the linear trajectory.

It follows that, where the minimum capacity has been reached by the TSOs, the application of the economic efficiency criterion, in so far as it requires the TSOs to ascertain whether a reconfiguration of their zone or the use of remedial actions might not be solutions that are more economically efficient as compared to capacity allocation for the purpose of addressing congestion on their internal

60 Article 21(1)(a).

61 Article 21(1)(a)(i) to (iv).

62 Article 14(7) and Article 15 of Regulation 2019/943.

63 Article 16(4) of Regulation 2019/943.

network elements, is, in practice, wholly irrelevant, since it is not legally binding on the Member State or the TSOs concerned.

Lastly, as regards the teleological interpretation of the provisions of Regulation 2019/943, the Court rejects ACER's argument that it is apparent from an overall reading of those various provisions that that regulation contains a general rule favouring the most cost-effective solutions and that ACER was authorised, on the basis of that rule, to introduce the requirements at issue into the methodologies at issue.

In that regard, the Court recalls that, in any event, any general rule may be limited or excluded, according to the principle that a special rule derogates from the general rule (*lex specialis derogat legi generali*), where there are special rules governing specific matters. Thus, as special rules, the capacity-allocation and congestion-management provisions in Articles 15 and 16 of Regulation 2019/943 should prevail over the general rule relied on by ACER.

Moreover, it is clear from the legislative history of Regulation 2019/943 that the special rules laid down in those provisions were adopted by the EU legislature even though it was fully aware, inter alia, of ACER's recommendation [64] arguing in favour of the systematic application, as regards capacity allocation and congestion management, of the most cost-effective solutions.

As is apparent from Article 16(8) of Regulation 2019/943, the EU legislature intended to implement a more balanced approach, by requiring, inter alia, TSOs to comply with minimum levels of cross-zonal capacity corresponding to the minimum capacity of 70% or, as the case may be and by 31 December 2025 at the latest, with the values corresponding to the linear trajectory, while allowing TSOs to use the total remaining 30% to manage, in particular, internal congestion problems.

ACER is therefore not justified in claiming that, pursuant to a general rule favouring the most cost-effective solutions, it was authorised to limit, by the requirements at issue, the scope of Articles 15 and 16 of Regulation 2019/943, and the mere fact that, in the present case, there were solutions that were alleged to be more economically efficient as compared to those adopted by the EU legislature could not be such as to warrant the disregard of the solutions adopted by the EU legislature.

In the light of the foregoing, the Court finds that Articles 14 to 16 of Regulation 2019/943 and Article 29(3)(b) of Regulation 2015/1222 did not permit the Board of Appeal of ACER to introduce the requirements at issue into the common capacity calculation methodologies for the 'Core' region. In the light of those considerations, the Court annuls the contested decision in so far as it imposes on the TSOs of the 'Core' region compliance with those requirements when proposing an internal network element for inclusion on the list of critical network elements to be taken into account in the calculation of cross-zonal capacity.

Judgment of the General Court (Third Chamber, Extended Composition) of 8 October 2025, Swissgrid v ACER, T-556/23

Link to the full text of the judgment

Energy – Internal market for electricity – Guideline on electricity balancing – Article 1 of Regulation (EU) 2017/2195 – European platform for the imbalance netting process – Non-participation of the Swiss Transmission System Operator – ACER decision amending the Implementation Framework for the platform – Appeal brought before the ACER Board of Appeal – Specific conditions and arrangements for appeals – Article 28 of Regulation (EU) 2019/942 – Inadmissibility for lack of standing to bring proceedings before the Board of Appeal – Direct and individual concern

By its judgment, the General Court annuls the decision of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) dismissing, as inadmissible, the appeal

64 ACER Recommendation No 02/2016 of 11 November 2016 on the common capacity calculation and redispatching and countertrading cost sharing methodologies.

brought by a Swiss electricity transmission system operator ('TSO') against a decision of ACER excluding it from participating in the European platform for the imbalance netting process ('the IN Platform') under Regulation 2017/2195. [65] In so doing, the General Court rules on the scope of that regulation and on the standing of such an operator to bring proceedings against a decision of ACER of which it is not the addressee.

Since 2012, the applicant, Swissgrid AG, in its capacity as the sole TSO in Switzerland, has participated in the International Grid Control Cooperation (IGCC), a structure for cooperation among TSOs the purpose of which is to optimise the automated operation of frequency restoration reserves through an imbalance netting process.

On 2 August 2017, the European Commission adopted Regulation 2017/2195, which provides, in Article 22 thereof, for the establishment of a European platform for the imbalance netting process.

Pursuant to that provision, ACER adopted Decision 13/2020 on the creation of a European platform for the IN Platform, including, in the annex to that decision, a framework for implementing that platform ('the Implementation Framework').

On 30 September 2022, ACER adopted Decision 16/2022 amending the designation of the entities that would perform the functions defined in the Implementation Framework. In that regard, the definition of 'member TSO' which previously covered 'any TSO which has joined the IN Platform, including TSOs from multi-TSO [load-frequency control] areas from different Member States or third countries' was amended so that it now covers 'any TSO to which Regulation 2017/2195 applies and which has joined the IN Platform, including TSOs from multi-TSO [load-frequency control] areas'.

Taking the view that that amendment excludes it from participating in the IN Platform, the applicant lodged an appeal against that decision with the ACER Board of Appeal, which dismissed the appeal as inadmissible under Article 28(1) of Regulation 2019/942. [66] According to the Board of Appeal, participating in the IN Platform is reserved to EU TSOs, with the result that the amendment of the Implementation Framework for that platform did not affect the legal position of the applicant as a Swiss TSO.

It is against that background that the applicant brought proceedings before the General Court for the annulment of the Board of Appeal's decision.

Findings of the Court

The General Court starts by examining the Board of Appeal's conclusion that, in principle, Regulation 2017/2195 limits participation in the platforms which it governs solely to EU TSOs and therefore excludes Swiss TSOs from the IN Platform.

Based on a textual and contextual interpretation of Regulation 2017/2195, the General Court notes that, although Article 1(2) of that regulation does not expressly refer only to EU TSOs for the purpose of determining its scope, the fact that the Commission is afforded the possibility, under Article 1(6) and (7) of that regulation, of accepting the participation of Swiss TSOs alone, in certain platforms and under certain conditions only, must be interpreted as an exception, revealing the absence of a rule of principle that includes the participation of TSOs from outside the European Union in the platforms provided for by Regulation 2017/2195, including the IN Platform.

That conclusion is reinforced by a teleological interpretation of Regulation 2017/2195, in so far as that regulation aims to create a fully functioning and interconnected internal energy market based on a level-playing field. In the present case, since the Swiss Confederation has not joined the internal market of the European Union and Swiss TSOs are not, therefore, subject to the same rules as those applicable to TSOs of the EU Member States, excluding them from participating in the platforms provided for in Regulation 2017/2195, without prejudice to any alternative bilateral arrangement which always remains a possibility, is fully justified in the light of the objective pursued by that regulation.

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65 Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6).

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

It follows that the Board of Appeal did not err in law in finding that the participation of Swiss TSOs, outside the situations provided for in Article 1(6) and (7) of Regulation 2017/2195, was excluded.

However, the Board of Appeal infringed Article 28(1) of Regulation 2019/942 in finding that Decision 16/2022 did not bring about a distinct change in the applicant's legal position and in dismissing its appeal as inadmissible as a result.

Under that provision, any natural or legal person may appeal against a decision of ACER which is addressed to that person, or against a decision which is of direct and individual concern to that person. Interpreting that provision in the light of the case-law on the fourth paragraph of Article 263 TFEU on which it is modelled, the General Court recalls that a natural or legal person other than the person to whom an act is addressed may claim to be individually concerned only if the act in question affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of these factors, distinguishes them individually just as in the case of the person addressed.

In the light of those clarifications, the General Court states, as a preliminary observation, that the finding in the Board of Appeal's decision that the applicant's legal position was directly governed by Regulation 2017/2195 and not by Decisions 13/2020 and 16/2022 was not capable of substantiating the conclusion that the appeal brought before it was inadmissible. Since Decision 16/2022 was based on Article 22(1) of Regulation 2017/2195, the applicant was entitled to challenge its legality, irrespective of the scope of that regulation. Thus, the fact that Regulation 2017/2195 does not provide for the possibility of the applicant participating in the IN Platform was a relevant consideration for the examination of the substance of the appeal, rather than for the assessment of its admissibility.

As regards whether Decision 16/2022 was of direct and individual concern to the applicant, the General Court observes, first, that the applicant is a party to a (principal) agreement regarding the balancing platforms concluded with other TSOs, and has also been a 'participating member' of a cooperation agreement on the IGCC since March 2012, that the IGCC is the implementation project that is to evolve into the IN Platform and that the adoption of an implementation framework for the IN Platform has not made the contracts to which the applicant is a party irrelevant, since those contracts continue to govern the operation of that platform in line with that implementation framework.

Second, it was not clear from the Implementation Framework, as annexed to Decision 13/2020, that the applicant could not continue to participate in the IN Platform on the basis of its contractual rights. The Implementation Framework then defined a 'member TSO' by the fact that it joined the IN Platform and expressly included 'TSOs from multi-TSO [load-frequency control] areas from different Member States or third countries'.

Even an interpretation of the relevant provisions of the Implementation Framework in conformity with Regulation 2017/2195 cannot be regarded as having been capable of dispelling any doubt as to whether the applicant could continue to participate in the IN Platform on the basis of its contractual rights. First, Article 1 of Regulation 2017/2195 had not, at that time, been interpreted by the Courts of the European Union. Second, the way in which that regulation was drafted could have led the applicant to believe that it was able to continue to participate in the IN Platform given, in particular, the fact that that regulation does not refer only to EU TSOs in the definition of its scope in Article 1(2).

In the light of those clarifications, the General Court notes that it was only with the adoption of Decision 16/2022 amending the definition of 'member TSO' in the Implementation Framework to now refer only to TSOs to which Regulation 2017/2195 applies that a formal position explicitly excluding the applicant's participation in the IN Platform was adopted by ACER.

As a result of the amendment made by Decision 16/2022, the applicant could no longer continue to participate in the IN Platform under the agreements to which it was a party, with the result that that decision must be regarded as depriving the applicant of the exercise of its contractual rights and, therefore, as directly affecting its legal position. Similarly, the applicant must be regarded as being affected by Decision 16/2022 by reason of certain attributes which are peculiar to it and by reason of circumstances in which it is differentiated from all other persons.

Since the IGCC is, according to the Implementation Framework itself, the project which evolves into the IN Platform, the applicant, as a participant in that platform since 2012, is in a different situation

from other third-country TSOs which have not been entitled to participate. In addition, as the sole Swiss TSO, the applicant is, taking into account the purpose of Regulation 2017/2195, in a different situation from TSOs from other third countries, since Switzerland has the geographical uniqueness of being, de facto, surrounded by EU Member States.

In the light of the above, the General Court annuls the Board of Appeal's decision.

Judgment of the General Court (Third Chamber, Extended Composition) of 8 October 2025, Swissgrid v ACER, T-557/23

Link to the full text of the judgment

Energy – Internal market for electricity – Guideline on electricity balancing – Article 1(6) and (7) of Regulation (EU) 2017/2195 – European platform for the exchange of balancing energy from frequency restoration reserves with manual activation – Non-participation of the Swiss Transmission System Operator – Appeal brought before the ACER Board of Appeal – Specific conditions and arrangements for appeals – Article 28 of Regulation (EU) 2019/942 – Inadmissibility for lack of standing to bring proceedings before the Board of Appeal – Lack of direct concern – Plea of illegality

By its judgment, the General Court confirms the validity of the decision of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) dismissing as inadmissible the appeal brought by a Swiss electricity transmission system operator ('TSO'). In so doing, the Court rules on the conditions for such an operator's participation in European platforms for the exchange of balancing energy under Regulation 2017/2195, [67] on that operator's standing to bring proceedings against a decision of ACER of which it is not the addressee, and on the conformity of Regulation 2017/2195 with the principle of prevention under customary international law.

On 2 August 2017, the European Commission adopted Regulation 2017/2195, which provides, in particular, for the establishment of a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation.

Pursuant to that regulation, ACER adopted a decision on the creation of a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation ('the mFRR Platform'), including, in the annex to that decision, the framework for implementing the mFRR Platform ('the Implementation Framework').

The applicant, Swissgrid AG, in its capacity as the sole TSO in Switzerland, participated in the Manually Activated Reserves Initiative ('MARI'), a form of cooperation between various TSOs aimed at establishing a platform for the cross-border exchange of frequency restoration reserves with manual activation.

On 1 July 2020, the member TSOs of MARI, including the applicant, entered into the MARI platform cooperation agreement ('the MARI Cooperation Agreement'), which is subject to a principal agreement regarding the balancing platforms, common to all the platforms ('the Principal Agreement').

However, by letter of 17 December 2020, the Director of the Commission's Directorate-General for Energy stated that she did not see grounds for adopting a decision which would allow Swiss participation in the European balancing platforms under Article 1(7) of Regulation 2017/2195.

On 30 September 2022, ACER adopted Decision 14/2022 amending the designation of the entities that would perform the functions defined in the Implementation Framework. Thus, the definition of 'member TSO' which previously covered 'any TSO which has joined the mFRR platform' was amended so that it now covers 'any TSO to which Regulation 2017/2195 applies and which has joined the mFRR Platform'.

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67 Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6).

On 30 November 2022, the applicant lodged an appeal against that decision with the ACER Board of Appeal.

The Board of Appeal, finding that Decision 14/2022 did not constitute an act capable of affecting the applicant's legal position in the absence of a Commission decision authorising it to participate in the mFRR platform, rejected the applicant's appeal as being inadmissible under Article 28(1) of Regulation 2019/942. [68]

It is against that background that the applicant brought proceedings before the General Court for the annulment of the Board of Appeal's decision.

Findings of the Court

In the first place, the General Court endorses the Board of Appeal's conclusion that the applicant was not entitled to participate in the mFRR Platform in the absence of a Commission decision under Article 1(7) of Regulation 2017/2195. As set out in that provision, the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy is to be decided by the Commission based on an opinion given by ACER and all TSOs, subject to the conditions of Article 1(6).

It follows from both a textual and a contextual interpretation of Regulation 2017/2195 that it is for the Commission to adopt a decision on Switzerland's participation in the platforms under Article 1(7) of that regulation and, in that context, to examine whether the conditions laid down in Article 1(6) are satisfied. The applicant cannot, therefore, criticise the Board of Appeal for not having examined whether those conditions were satisfied or whether the Commission should have adopted a decision under Article 1(7) of Regulation 2017/2195.

In that regard, the fact that both ACER and the Board of Appeal are not able to examine whether the conditions for the applicant's participation in the mFRR platform are satisfied does not constitute a lacuna in the judicial review of Article 1(6) and (7) of Regulation 2017/2195. In the event that the Commission were to refuse to adopt a decision under that latter provision, the applicant would be able to avail itself of the legal remedy provided for in Article 265 TFEU, which relates to a failure to act in the sense of a failure to take a decision or to define a position.

In the second place, the General Court holds that the Board of Appeal did not infringe Article 28(1) of Regulation 2019/942 in finding that the amendment of the definition of 'member TSO' resulting from Decision 14/2022 to refer to 'any TSO to which Regulation 2017/2195 applies and which has joined the mFRR Platform' did not bring about a distinct change in the applicant's legal position.

Indeed, the concept of 'TSO to which Regulation 2017/2195 applies' now found in the definition of 'member TSO' is capable of including the applicant should it obtain a Commission decision approving its participation in the mFRR Platform under Article 1(7) that regulation.

In addition, the amendment of the definition of 'member TSO' likewise did not affect the applicant's legal position from the perspective of the claim that it was prevented from exercising its contractual rights.

It is true that the applicant is a signatory to both the Principal Agreement and the MARI Cooperation Agreement, the purpose of which is to govern the operation of the mFRR Platform in line with Regulation 2017/2195 and the Implementation Framework. However, even prior to Decision 14/2022, the applicant did not have an unconditional contractual right to use the mFRR Platform.

First, that possibility is not open to all 'member TSOs', but only to those that can be categorised as 'participating TSOs' and, second, the contracts to which the applicant is a party make its participation in the mFRR Platform conditional on the adoption of a Commission decision under Article 1 of Regulation 2017/2195.

Accordingly, in so far as, prior to Decision 14/2022, the applicant did not have the contractual right to use the mFRR Platform to exchange standard balancing energy products without a Commission

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

decision to that effect, irrespective of whether it could be categorised as a 'member TSO', it cannot be held that Decision 14/2022 deprived it of such a right and, therefore, directly affected its legal position.

Since the Board of Appeal did not err in law in dismissing the appeal as inadmissible on the ground that the conditions laid down in Article 28(1) of Regulation 2019/942 were not satisfied, the General Court analyses the plea of illegality raised by the applicant against Article 1(6) and (7) of Regulation 2017/2195.

First, the General Court notes that Regulation 2017/2195, in accordance with the objectives set out in Regulations No 714/2009 [69] and 2019/943, [70] seeks the integration of balancing energy markets, which should be facilitated with the establishment of common European platforms with a view to the creation of a fully functioning and interconnected internal energy market. However, since the Swiss Confederation has not joined the internal market of the European Union and the Swiss TSOs are not, therefore, subject to the same rules as those applicable to TSOs of the EU Member States, their exclusion from participation in the platforms provided for in Regulation 2017/2195, without prejudice to any alternative bilateral arrangement which always remains a possibility, is fully justified in the light of the objectives pursued by that regulation and, in particular, that of the creation of an internal market.

Second, there is no contradiction between the limitation of the range of TSOs that may participate in the mFRR Platform set out in Article 1 of Regulation 2017/2195 and the objective laid down in Regulation 2019/943 of removing barriers to cross-border electricity flows and cross-border transactions on electricity markets and related services markets. For that latter purpose, where EU TSOs and third-country TSOs are present within the same synchronous area, Regulation 2017/1485 [71] expressly provides for the conclusion of agreements setting the basis for their cooperation concerning secure system operations and setting out arrangements for the compliance of the third-country TSOs with the obligations set by the regulation.

Third, Article 1(6) and (7) of Regulation 2017/2195 cannot be interpreted as allowing the Commission to refuse to authorise the applicant's participation in the balancing platforms in the event that an agreement between the Swiss Confederation and the European Union were concluded. The primacy of international agreements concluded by the European Union over instruments of secondary law means that such instruments must, so far as is possible, be interpreted in a manner that is consistent with those agreements.

Fourth, excluding the applicant from participating in the mFRR Platform cannot be regarded as a quantitative restriction on imports of balancing energy, or as a measure having equivalent effect, which would be contrary to Article 13(1) of the Free Trade Agreement between the European Economic Community and the Swiss Confederation. [72] In any event, since the applicant is not subject to compliance with the same common rules as EU TSOs and cannot, therefore, be regarded as being in a situation comparable to that of EU TSOs in relation to the objective of creating an internal market in electricity, it cannot meaningfully rely on the existence of arbitrary discrimination against it.

Fifth, excluding it from participating in the mFRR Platform cannot be regarded as manifestly contrary to the principle of prevention under customary international law, which, when adopting acts, the European Union is bound to observe pursuant to Article 3(5) TEU.

In that regard, it is true that the International Court of Justice has emphasised, as one of a number of general and well-recognised principles, every State's obligation not to allow knowingly its territory to

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69 Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 15).

70 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54).

71 Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1).

72 Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 (OJ English Special Edition: Series I Volume 1972, p. 191).

be used for acts contrary to the rights of other States, from which it follows, in essence, that a person subject to international law is under a duty to act with due diligence when exercising their powers.

Nevertheless, in order for a principle of customary international law to be relied on by an individual for the purposes of the examination by the Courts of the European Union of the validity of an act of the European Union, it is necessary, first, that it is capable of calling into question the competence of the European Union to adopt that act and, second, that the act in question is liable to affect rights which the individual derives from EU law or to create obligations under EU law in his or her regard.

In the present case, it is common ground that Switzerland is part of the Continental Europe Synchronous Area and, from that perspective, it could be considered that the principle of prevention is capable of calling into question the competence of the European Union to adopt legislation capable of affecting the whole of that synchronous area, including Switzerland. Furthermore, since the applicant is the sole operator of the Swiss electricity network, in the event that its non-participation in the mFRR Platform were to result in it having to take the measures required by unscheduled physical power flows, the view could be taken that Regulation 2017/2195 creates obligations with regard to the applicant.

Nevertheless, since a principle of customary international law does not have the same degree of precision as a provision of an international agreement, judicial review must necessarily be limited to the question whether, in adopting the act in question, the institutions of the European Union made manifest errors of assessment concerning the conditions for applying that principle. It cannot be found that the Commission manifestly disregarded the European Union's due diligence obligation by limiting, in principle, participation in the mFRR Platform solely to EU TSOs.

First, EU law makes express provision for the conclusion of agreements between EU TSOs and third-country TSOs present within the same synchronous area. It follows that the applicant's non-participation in the mFRR Platform in no way precludes collaboration between the applicant and EU TSOs as regards system security in the synchronous area, which, on the contrary, is encouraged.

Second, Article 1(6) and (7) of Regulation 2017/2195 provides for the possibility of the applicant participating in the mFRR Platform, should the Commission find that the exclusion of Switzerland may lead to unscheduled physical power flows via Switzerland endangering the system security of the region, provided that the rights and responsibilities of Swiss TSOs are consistent with those of TSOs operating in the European Union.

In the light of the above, the General Court dismisses the action for annulment in its entirety.

Judgment of the General Court (Third Chamber, Extended Composition) of 8 October 2025, Swissgrid v ACER, T-558/23

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By its judgment, the General Court confirms the validity of the decision of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER) dismissing as inadmissible the appeal brought by a Swiss electricity transmission system operator ('TSO'). In so doing, the Court rules on the conditions for such an operator's participation in European platforms for the exchange of balancing energy under Regulation 2017/2195, [73] on that operator's standing to bring proceedings

[73] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (OJ 2017 L 312, p. 6).

against a decision of ACER of which it is not the addressee, and on the conformity of Regulation 2017/2195 with the principle of prevention under customary international law.

On 2 August 2017, the European Commission adopted Regulation 2017/2195, which provides, in particular, for the establishment of a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation. Pursuant to that regulation, ACER adopted a decision on the creation of a European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation ('the aFRR Platform'), including, in the annex to that decision, the framework for implementing the aFRR Platform ('the Implementation Framework').

The applicant, Swissgrid AG, in its capacity as the sole TSO in Switzerland, concluded a memorandum of understanding with other TSOs formalising the terms of its participation in a project aimed at establishing a Platform for the International Coordination of Automated Frequency Restoration and Stable System Operation ('Picasso').

On 1 July 2020, the member TSOs of Picasso, including the applicant, entered into the Picasso platform cooperation agreement ('the Picasso Cooperation Agreement'), which is subject to a principal agreement regarding the balancing platforms, common to all the platforms ('the Principal Agreement').

However, by letter of 17 December 2020, the Director of the Commission's Directorate-General for Energy stated that she did not see grounds for adopting a decision which would allow Swiss participation in the European balancing platforms under Article 1(7) of Regulation 2017/2195.

On 30 September 2022, ACER adopted Decision 15/2022 amending the designation of the entities that would perform the functions defined in the Implementation Framework. Thus, the definition of 'member TSO' which previously covered 'any TSO which has joined the aFRR platform' was amended so that it now covers 'any TSO to which Regulation 2017/2195 applies and which has joined the aFRR Platform'.

On 30 November 2022, the applicant lodged an appeal against that decision with the ACER Board of Appeal.

The Board of Appeal, finding that Decision 15/2022 did not constitute an act capable of affecting the applicant's legal position in the absence of a Commission decision authorising it to participate in the aFRR platform, rejected the applicant's appeal as being inadmissible under Article 28(1) of Regulation 2019/942. [74]

It is against that background that the applicant brought proceedings before the General Court for the annulment of the Board of Appeal's decision.

Findings of the Court

In the first place, the General Court endorses the Board of Appeal's conclusion that the applicant was not entitled to participate in the aFRR Platform in the absence of a Commission decision under Article 1(7) of Regulation 2017/2195. As set out in that provision, the participation of Switzerland in the European platforms for the exchange of standard products for balancing energy is to be decided by the Commission based on an opinion given by ACER and all TSOs, subject to the conditions of Article 1(6).

It follows from both a textual and a contextual interpretation of Regulation 2017/2195 that it is for the Commission to adopt a decision on Switzerland's participation in the platforms under Article 1(7) of that regulation and, in that context, to examine whether the conditions laid down in Article 1(6) are satisfied. The applicant cannot, therefore, criticise the Board of Appeal for not having examined whether those conditions were satisfied or whether the Commission should have adopted a decision under Article 1(7) of Regulation 2017/2195.

In that regard, the fact that both ACER and the Board of Appeal are not able to examine whether the conditions for the applicant's participation in the aFRR platform are satisfied does not constitute a

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

lacuna in the judicial review of Article 1(6) and (7) of Regulation 2017/2195. In the event that the Commission were to refuse to adopt a decision under that latter provision, the applicant would be able to avail itself of the legal remedy provided for in Article 265 TFEU, which relates to a failure to act in the sense of a failure to take a decision or to define a position.

In the second place, the General Court holds that the Board of Appeal did not infringe Article 28(1) of Regulation 2019/942 in finding that the amendment of the definition of 'member TSO' resulting from Decision 15/2022 to refer to 'any TSO to which Regulation 2017/2195 applies and which has joined the aFRR Platform' did not bring about a distinct change in the applicant's legal position.

Indeed, the concept of 'TSO to which Regulation 2017/2195 applies' now found in the definition of 'member TSO' is capable of including the applicant should it obtain a Commission decision approving its participation in the aFRR Platform under Article 1(7) that regulation.

In addition, the amendment of the definition of 'member TSO' likewise did not affect the applicant's legal position from the perspective of the claim that it was prevented from exercising its contractual rights.

It is true that the applicant is a signatory to both the Principal Agreement and the Picasso Cooperation Agreement, the purpose of which is to govern the operation of the aFRR Platform in line with Regulation 2017/2195 and the Implementation Framework. However, even prior to Decision 15/2022, the applicant did not have an unconditional contractual right to use the aFRR Platform.

First, that possibility is not open to all 'member TSOs', but only to those that can be categorised as 'participating TSOs' and, second, the contracts to which the applicant is a party make its participation in the aFRR Platform conditional on the adoption of a Commission decision under Article 1 of Regulation 2017/2195.

Accordingly, in so far as, prior to Decision 15/2022, the applicant did not have the contractual right to use the aFRR Platform to exchange standard balancing energy products without a Commission decision to that effect, irrespective of whether it could be categorised as a 'member TSO', it cannot be held that Decision 15/2022 deprived it of such a right and, therefore, directly affected its legal position.

Since the Board of Appeal did not err in law in dismissing the appeal as inadmissible on the ground that the conditions laid down in Article 28(1) of Regulation 2019/942 were not satisfied, the General Court analyses the plea of illegality raised by the applicant against Article 1(6) and (7) of Regulation 2017/2195.

First, the General Court notes that Regulation 2017/2195, in accordance with the objectives set out in Regulations No 714/2009 [75] and 2019/943, [76] seeks the integration of balancing energy markets, which should be facilitated with the establishment of common European platforms with a view to the creation of a fully functioning and interconnected internal energy market. However, since the Swiss Confederation has not joined the internal market of the European Union and the Swiss TSOs are not, therefore, subject to the same rules as those applicable to TSOs of the EU Member States, their exclusion from participation in the platforms provided for in Regulation 2017/2195, without prejudice to any alternative bilateral arrangement which always remains a possibility, is fully justified in the light of the objectives pursued by that regulation and, in particular, that of the creation of an internal market.

Second, there is no contradiction between the limitation of the range of TSOs that may participate in the aFRR Platform set out in Article 1 of Regulation 2017/2195 and the objective laid down in Regulation 2019/943 of removing barriers to cross-border electricity flows and cross-border transactions on electricity markets and related services markets. For that latter purpose, where EU

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75 Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ 2009 L 211, p. 15).

76 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ 2019 L 158, p. 54).

TSOs and third-country TSOs are present within the same synchronous area, Regulation 2017/1485 [77] expressly provides for the conclusion of agreements setting the basis for their cooperation concerning secure system operations and setting out arrangements for the compliance of the third-country TSOs with the obligations set by the regulation.

Third, Article 1(6) and (7) of Regulation 2017/2195 cannot be interpreted as allowing the Commission to refuse to authorise the applicant's participation in the balancing platforms in the event that an agreement between the Swiss Confederation and the European Union were concluded. The primacy of international agreements concluded by the European Union over instruments of secondary law means that such instruments must, so far as is possible, be interpreted in a manner that is consistent with those agreements.

Fourth, excluding the applicant from participating in the aFRR Platform cannot be regarded as a quantitative restriction on imports of balancing energy, or as a measure having equivalent effect, which would be contrary to Article 13(1) of the Free Trade Agreement between the European Economic Community and the Swiss Confederation. [78] In any event, since the applicant is not subject to compliance with the same common rules as EU TSOs and cannot, therefore, be regarded as being in a situation comparable to that of EU TSOs in relation to the objective of creating an internal market in electricity, it cannot meaningfully rely on the existence of arbitrary discrimination against it.

Fifth, excluding it from participating in the aFRR Platform cannot be regarded as manifestly contrary to the principle of prevention under customary international law, which, when adopting acts, the European Union is bound to observe pursuant to Article 3(5) TEU.

In that regard, it is true that the International Court of Justice has emphasised, as one of a number of general and well-recognised principles, every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States, from which it follows, in essence, that a person subject to international law is under a duty to act with due diligence when exercising their powers.

Nevertheless, in order for a principle of customary international law to be relied on by an individual for the purposes of the examination by the Courts of the European Union of the validity of an act of the European Union, it is necessary, first, that it is capable of calling into question the competence of the European Union to adopt that act and, second, that the act in question is liable to affect rights which the individual derives from EU law or to create obligations under EU law in his or her regard.

In the present case, it is common ground that Switzerland is part of the Continental Europe Synchronous Area and, from that perspective, it could be considered that the principle of prevention is capable of calling into question the competence of the European Union to adopt legislation capable of affecting the whole of that synchronous area, including Switzerland. Furthermore, since the applicant is the sole operator of the Swiss electricity network, in the event that its non-participation in the aFRR Platform were to result in it having to take the measures required by unscheduled physical power flows, the view could be taken that Regulation 2017/2195 creates obligations with regard to the applicant.

Nevertheless, since a principle of customary international law does not have the same degree of precision as a provision of an international agreement, judicial review must necessarily be limited to the question whether, in adopting the act in question, the institutions of the European Union made manifest errors of assessment concerning the conditions for applying that principle. It cannot be found that the Commission manifestly disregarded the European Union's due diligence obligation by limiting, in principle, participation in the aFRR Platform solely to EU TSOs.

First, EU law makes express provision for the conclusion of agreements between EU TSOs and third-country TSOs present within the same synchronous area. It follows that the applicant's non-participation in the aFRR Platform in no way precludes collaboration between the applicant and EU TSOs as regards system security in the synchronous area, which, on the contrary, is encouraged.

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77 Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (OJ 2017 L 220, p. 1).

78 Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 (OJ English Special Edition: Series I Volume 1972, p. 191).

Second, Article 1(6) and (7) of Regulation 2017/2195 provides for the possibility of the applicant participating in the aFRR Platform, should the Commission find that the exclusion of Switzerland may lead to unscheduled physical power flows via Switzerland endangering the system security of the region, provided that the rights and responsibilities of Swiss TSOs are consistent with those of TSOs operating in the European Union.

In the light of the above, the General Court dismisses the action for annulment in its entirety.

X. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the Court of Justice (Third Chamber) of 16 October 2025, Timchenko and Timchenko v Council, C-805/24 P

Link to the full text of the judgment

Appeal – Restrictive measures taken in view of the situation in Ukraine – Regulation (EU) No 269/2014 – Article 2 – Freezing of funds and economic resources – Article 9(2) – Obligation requiring persons subject to a fund-freezing measure to report funds and economic resources – Legal classification of such an obligation – Legal basis – Article 215(2) TFEU – Articles 24, 26 and 29 TEU – Implementation of the common foreign and security policy by the Member States

By its judgment, the Court of Justice dismisses the appeal brought by Mr and Mrs Timchenko against the judgment of the General Court of 11 September 2024, [79] by which the General Court dismissed their action seeking, in essence, annulment of Article 9(2) of Regulation No 269/2014. [80] That provision requires persons, entities and bodies whose funds and economic resources are subject to a freezing measure to report those funds and resources to the competent authorities of the Member States ('the disputed reporting obligation').

This judgment arises in the context of a series of restrictive measures adopted by the European Union since 2014 in response to actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. In 2022, Mr Timchenko, a businessman with Russian and Finnish nationalities, and his wife had some of their funds and economic resources frozen pursuant to Decision 2014/145 [81] and Regulation No 269/2014. [82]

In support of their appeal, Mr and Mrs Timchenko claimed, inter alia, that the reasoning given was inadequate and that Article 215 TFEU had been misinterpreted and misapplied.

Findings of the Court

As regards, in the first place, the ground of appeal alleging inadequate reasoning, the Court of Justice observes that the General Court clearly and unequivocally identified the legal basis for the disputed reporting obligation, namely Article 215(2) TFEU, and the legal nature of that obligation, namely a measure intended to implement Decision 2014/145 in such a way as to ensure the uniform

79 Judgment of 11 September 2024, *Timchenko and Timchenko* v *Council* (T-644/22, EU:T:2024:621).

80 Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Regulation 2022/1273.

81 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) 2022/337 of 28 February 2022 (OJ 2022 L 59, p. 1) and by Council Decision (CFSP) 2022/582 of 8 April 2022 (OJ 2022 L 110, p. 55).

82 Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 (OJ 2022 L 58, p. 1), and Council Implementing Regulation (EU) 2022/581 of 8 April 2022 implementing Regulation No 269/2014 (OJ 2022 L 110, p. 3).

application of the restrictive measure freezing funds and economic resources provided for in that decision.

It is true that the wording of Article 215(2) TFEU uses only the expression 'restrictive measures' and the General Court found that the disputed reporting obligation was established on the sole basis of that provision of the FEU Treaty. However, that does not mean that that obligation must necessarily be classified as a 'restrictive measure'. Measures adopted by the Council in a regulation adopted under that provision may be intended to give effect to restrictive measures provided for in a CFSP decision, where such measures fall within the scope of the FEU Treaty, and to apply those measures in a uniform manner in all the Member States. [83] To that end, the Council may reproduce the main content of the CFSP decision and provide definitions or clarification relating to the application of the restrictive measures provided for in that decision.

In those circumstances and having regard also to the fact that, under the second subparagraph of Article 26(2) TEU, the Council is to ensure the unity, consistency and effectiveness of EU action in the field of the CFSP, that institution may find it necessary to adopt, in such a regulation, measures intended to ensure the uniform, consistent and effective application of the restrictive measures set out in a CFSP decision, without those implementing measures themselves constituting restrictive measures. The Court of Justice concludes in that regard that that is the very purpose of the disputed reporting obligation as a measure which relates to the restrictive measure freezing funds and economic resources. [84]

As regards, in the second place, the ground of appeal alleging, inter alia, misinterpretation and misapplication of Article 215 TFEU, the Court of Justice rules that, by adopting on the basis of Article 215(2) TFEU a regulation intended to implement a CFSP decision taken on the basis of Article 29 TEU, the Council in no way encroaches upon the implementing powers of the Member States laid down in the second subparagraph of Article 24(1) and in Article 26(3) TEU. Although such a regulation is intended to give effect, at EU level, to the restrictive measures provided for in a CFSP decision while ensuring the uniform, consistent and effective application of those measures, the implementing powers of the Member States referred to in those provisions of the EU Treaty relate not to the implementation of CFSP decisions and to the application of restrictive measures at EU level, but to the implementation of those measures by the competent authorities of each Member State on its national territory.

The Court of Justice recalls in that regard that, according to the very wording of Article 26(3) TEU, the CFSP is implemented by the Member States 'using … Union resources'. That means that Member States must ensure the implementation of restrictive measures in their respective territories by complying with the measures adopted by the Council on the basis of Article 215(2) TFEU in order to ensure the uniform, consistent and effective application, at EU level, of the restrictive measures set out in CFSP decisions.

Nota bene:

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

- Judgment of the General Court (Ninth Chamber, Extended Composition) of 29 October 2025, ClientEarth and Collectif Nourrir v Commission, T-399/23

83 Judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 89).

84 Article 2 of Decision 2014/145 and Article 2 of Regulation No 269/2014.