COURT OF JUSTICE
OF THE EUROPEAN UNION

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MONTHLY CASE-LAW DIGEST
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I. FUNDAMENTAL RIGHTS: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Judgment of the Court of Justice (Grand Chamber) of 25 November 2025, Wojewoda Mazowiecki, C-713/23

Link to the full text of the judgment

Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Articles 7 and 21 of the Charter of Fundamental Rights of the European Union – Right to move and reside freely within the territory of the Member States – Union citizens of the same sex who have entered into a marriage in the exercise of that right – Obligation on the part of the Member State of origin to recognise and transcribe the marriage certificate in the civil register – National legislation which does not permit such recognition or transcription on the ground that same-sex marriage is not allowed

Hearing a request for a preliminary ruling from the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland), the Court of Justice, sitting as the Grand Chamber, explains that the right to move and reside freely within the territories of the Member States, enshrined in Article 20 and Article 21(1) TFEU, read in the light of Article 7 and Article 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), precludes legislation of a Member State which, on the ground that the law of that Member State does not allow marriage between persons of the same sex, does not permit the recognition of a marriage lawfully concluded between two same-sex nationals of that Member State in the exercise of their freedom to move and reside within another Member State, where they have created or strengthened a family life, or the transcription for that purpose of the marriage certificate in the civil register of the first Member State, where that transcription is the only means provided for by that Member State for such recognition.

The applicants in the main proceedings are two same-sex Union citizens who were married in 2018 in Germany, where they are residing. One is a Polish national and the other has dual Polish and German nationality. They wish to go to Poland and live there as a married couple. In 2019, one of the applicants submitted to the competent authority in Warsaw a request that the marriage certificate issued in Germany be transcribed in the Polish civil register. That request was refused on the ground that Polish law does not provide for marriage between persons of the same sex and that, accordingly, the transcription of such a foreign marriage certificate would be contrary to the fundamental principles enshrined in the Polish legal order. The spouses at issue in the main proceedings challenged that decision, which was nevertheless confirmed by the Wojewoda Mazowiecki (Masovia Province, Poland) and subsequently by the Wojewódzki Sąd Administracyjny w Warszawie (Provincial Administrative Court, Warsaw, Poland), in a judgment of 1 July 2020. The latter court, inter alia, stated that the transcription of a marriage certificate, such as that at issue in the main proceedings, would be contrary to the fundamental principles enshrined in the Polish legal order.

Hearing an appeal on a point of law against that judgment, the referring court decided to refer a question to the Court of Justice on the compatibility with EU law of that refusal to transcribe the marriage certificate issued in Germany in the Polish civil register, on the ground that Polish law does not allow marriage between persons of the same sex.

Findings of the Court

As a preliminary point, the Court states that both of the spouses at issue in the main proceedings enjoy the status of citizen of the Union [1] and therefore the primary and individual right to move and reside freely within the territory of the Member States. Nationals of a Member State who, as citizens of the Union, have exercised their freedom to move and reside within a Member State other than

1 Under Article 20(1) TFEU.

their Member State of origin, may rely, [2] inter alia, on the right to lead a normal family life, including, where appropriate, against the Member State of origin. As regards Union citizens who, as in the case in the main proceedings, live together as a couple in the host Member State and have concluded a marriage there in accordance with the law of that host Member State, the effectiveness of the rights derived from Article 21(1) TFEU requires those citizens to have the certainty to be able to pursue in their Member State of origin the family life that they have created or strengthened in another Member State, in particular by virtue of their marriage.

In the first place, the Court finds that the refusal, by the authorities of a Member State of which two Union citizens of the same sex are nationals, to recognise the marriage which those Union citizens have lawfully concluded pursuant to the procedures laid down for that purpose in another Member State where those Union citizens have exercised their freedom to move and reside, constitutes an obstacle to the exercise of the right enshrined in Article 21(1) TFEU to move and reside freely within the territories of the Member States. Such a refusal will have the effect of depriving those Union citizens of the possibility of returning to their Member State of origin and pursuing there the family life created or strengthened in the host Member State. It forces them to live as unmarried persons and prevents them from pursuing the family life created or strengthened in the latter State, at the same time benefiting from that legal status, which is certain and can be relied on against third parties, after their return to the former State. Therefore, there is a genuine risk that such a refusal will cause the spouses at issue in the main proceedings serious inconvenience at administrative, professional and private levels, and that they will be unable, in many aspects of everyday life – both in the public and in the private spheres – to rely on their marital status, even though that status has been lawfully established in the host Member State.

In the second place, the Court examines whether such an obstacle may be justified. A restriction on the free movement of persons, which, as in the case in the main proceedings, is independent of the nationality of the persons concerned, may be justified if it is based on objective public-interest considerations recognised by EU law and if it is proportionate to a legitimate objective pursued by national law. Furthermore, where a measure of a Member State intended to restrict a fundamental freedom guaranteed by the FEU Treaty is justified by an overriding reason in the public interest, it must be regarded as implementing EU law, within the meaning of Article 51(1) of the Charter, such that it must comply with the fundamental rights enshrined in the Charter.

In that regard, first, the Court recalls that the European Union respects the national identity of the Member States, inherent in their fundamental structures, both political and constitutional, and that, pursuant to Article 9 of the Charter, the right to marry and the right to found a family are to be guaranteed in accordance with the national laws governing the exercise of those rights. Moreover, as justification for a derogation from a fundamental freedom, the concept of 'public policy' must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. Therefore, public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.

In the present case, the Court finds that the obligation to recognise a marriage concluded between Union citizens of the same sex in the host Member State in the exercise of their freedom to move and reside, in order to enable them to return to the Member State of which they are nationals and to pursue their family life there, benefiting from their marital status legally established in the host Member State, does not undermine the institution of marriage in the Member State of origin, which is defined by national law and comes within the competence of the Member States. That obligation does not require that Member State to provide, in its national law, for the institution of marriage between persons of the same sex. Confined to guaranteeing the recognition of such marriages, concluded in the host Member State in accordance with the law of that State, for the purpose of enabling such citizens to exercise the rights they enjoy under EU law, such an obligation does not undermine the national identity or pose a threat to the public policy of the Member State of origin.

Second, as regards the question whether the refusal to recognise is consistent with the fundamental rights guaranteed by the Charter, and in particular the right to respect for private and family life,

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2 Under Article 21(1) TFEU.

referred to in Article 7 of the Charter, which corresponds to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court states that, in accordance with the case-law of the European Court of Human Rights ('the ECtHR'), that latter provision imposes on the Member States a positive obligation to establish a legal framework providing for the legal recognition and protection of same-sex couples and that the Republic of Poland has failed to comply with that obligation, which has resulted in the inability of the persons concerned to regulate fundamental aspects of their private and family life. As regards persons of the same sex who have lawfully entered into a marriage abroad, the ECtHR has found, inter alia, that, by refusing to register that marriage under any form, the Polish authorities have left those persons in a legal vacuum and have not provided for the core needs of recognition and protection of same-sex couples in a stable relationship. The ECtHR has thus held that none of the public-interest grounds put forward by the Polish Government prevails over those persons' interest in having their respective relationships adequately recognised and protected by law.

The Court concludes that the refusal to recognise a marriage concluded by two same-sex Union citizens in the exercise of their freedom to move and reside, in accordance with the law of the host Member State, cannot be justified, since it is contrary to the fundamental rights that Article 7 of the Charter guarantees to same-sex couples.

In the third place, the Court explains that the Member States have a margin of discretion as regards the procedures for such recognition and that the transcription of marriage certificates in the civil register is only one of a number of possible procedures. Nevertheless, the Court emphasises that those procedures must not render that recognition impossible or excessively difficult, which is the case where recognition is at the discretion of the administrative authorities. Furthermore, those procedures must respect the prohibition of any discrimination based on sexual orientation, enshrined in Article 21(1) of the Charter. The lack of a procedure for recognition equivalent to that granted to couples of the opposite sex constitutes such discrimination. Accordingly, where a Member State chooses, in exercising that margin of discretion, to provide, in its national law, for a single procedure for recognising marriages concluded by Union citizens in the exercise of their freedom to move and reside within another Member State, such as the transcription of the marriage certificate in the civil register, that Member State is required to apply that procedure without distinction to marriages between persons of the same sex and to those between persons of the opposite sex.

II. INSTITUTIONAL PROVISIONS: ACCESS TO DOCUMENTS

Judgment of the General Court (Fourth Chamber, Extended Composition) of 19 November 2025, SD v EMA, T-623/22

Link to the full text of the judgment

Access to documents – Regulation (EC) No 1049/2001 – EMA documents concerning the messenger RNA vaccine against COVID-19 Comirnaty – Conditional marketing authorisation – Specific obligations – Responses provided by the authorisation holder to the EMA – Partial refusal of access – Communication of partially redacted documents after notification of the contested decision – Action for annulment – Time limit for bringing proceedings – Admissibility – Interest in bringing proceedings – Correcting decision – Action which has become devoid of purpose – No need to adjudicate – Protection of the commercial interests of a third party – Document disseminated on the internet following a cyberattack – Overriding public interest

Hearing an action for annulment which it dismisses, the General Court rules, first, on the question of access to documents containing sensitive data relating to the manufacture of the COVID-19 Comirnaty

vaccine and on the possible existence of an overriding public interest in the disclosure of those data. Second, it provides clarification on the starting point of the period prescribed for bringing annulment proceedings against a decision taken by the EMA in response to an application for access to documents, in the light of the specific consultation procedure laid down in Article 4(4) of Regulation No 1049/2001.

In December 2020, the European Commission adopted an implementing decision on the granting of a conditional marketing authorisation for the medicinal product for human use Comirnaty – COVID-19 mRNA vaccine (nucleoside modified). [3]

That authorisation was granted to BioNTech Manufacturing GmbH ('BioNTech') subject to compliance with certain specific obligations. Under the first of those obligations, BioNTech had to provide additional data in order to complete the characterisation of the active substance and the finished product at issue.

On 28 December 2021, the applicant sent the European Medicines Agency (EMA) an application for access to documents [4] concerning, inter alia, part (a) of the first specific obligation referred to above ('SO1(a)'). In response to that application for access, the EMA stated that it had identified three documents ('the documents at issue').

On 8 April 2022, after consulting BioNTech concerning the disclosure of the documents at issue, [5] the EMA informed the applicant that he would be granted partial access to those documents ('the initial decision to grant access'). On 29 April 2022, the EMA sent the applicant the documents at issue, the content of which had been partially redacted. The following month, the applicant made a confirmatory application seeking full disclosure of the documents at issue.

By letter of 21 July 2022, the EMA replied to the applicant that, following re-examination of the initial decision to grant access, the documents at issue could be disclosed to a greater extent, but that a partial redaction of their content was still necessary in order to protect BioNTech's commercial interests [6] ('the contested decision'). On 8 August 2022, after notifying BioNTech of its intention to that effect, the EMA transmitted the documents at issue, in part redacted, to the applicant.

It was in those circumstances that the applicant filed an action before the General Court for annulment of the contested decision, brought on 7 October 2022.

In the course of the proceedings, the applicant informed the Court that he had found, by chance while searching the internet, information likely to be analogous to the data redacted in the documents at issue. In response, the EMA explained that that information corresponded, in part, to that contained in an assessment report that it had already disclosed in July 2022, following an application for access to documents lodged by a third party.

Therefore, after acknowledging that that information had already entered the public domain at the time the contested decision was adopted and should therefore have been communicated to him, the EMA corrected the contested decision by agreeing to send the applicant the data that had already been disclosed, while maintaining the other redactions in the documents at issue for the reasons set out in the contested decision.

Findings of the Court

In the first place, with regard to the rules applicable to the calculation of the period for bringing an action for annulment, the Court notes that the date to be taken into account for determining the starting point of such a period is the date of notification of the act in question where it specifies the

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3 In accordance with Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

4 Under Article 4(4) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

5 Pursuant to Article 4(4) of Regulation No 1049/2001 and document EMA/729522/2016 of 4 October 2018, entitled 'European Medicines Agency policy on access to documents'.

6 Under the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001.

person to whom it is addressed. [7] A decision is properly notified if it is communicated to the person to whom it is addressed and the latter is put in a position to become acquainted with it.

In the present case, the EMA implements a specific procedure pursuant to Article 4(4) of Regulation No 1049/2001 when it intends to adopt a decision on an application for access to documents originating from a third party. In such a situation, it informs the third party concerned of its decision to disclose certain information and of the possible legal remedies against that decision. The person concerned then has a time limit of 10 working days in which to notify his or her intention to challenge the proposed disclosure before the Court, in which case the EMA refrains from communicating the documents until the outcome of the proceedings. Furthermore, when it notifies the person making an application of its decision on the application for access, that notification is not accompanied either by immediate or by automatic communication of the requested documents.

Therefore, when the EMA notifies the applicant of its decision on the application for access to documents, the communication of the documents at issue is neither immediate nor automatic and, therefore, that decision can be regarded as having been notified to the applicant in its entirety only once the documents at issue have actually been communicated to him or her.

In that particular context, the Court holds that, in the present case, the time limit for bringing the action for annulment of the contested decision did in fact begin to run at the earliest on the date on which the documents at issue were sent to the applicant, with the result that it is admissible in light of the time limit laid down in the sixth paragraph of Article 263 TFEU.

In the second place, the Court examines the subject matter of the application for access to the documents. In the present case, the applicant complained that the EMA had not communicated to him monthly reports relating to SO1(a).

The Court recalls that provision was made for the application of a two-stage administrative procedure in order ensure the right of public access to documents of the EU institutions. [8] That procedure is intended, first, to enable applications for access to documents of the institutions concerned to be dealt with quickly and easily and, second, as a priority, a friendly settlement of disputes which may arise.

In order for that two-stage procedure to achieve its objective, the EU institution, body, office or agency to which a confirmatory application has been made must be able to rely on the terms of that application in order to determine which documents the person making an application wishes to be disclosed following the adoption of an initial decision to grant access. It is therefore for any person making an application to satisfy himself or herself that the documents the disclosure of which he or she has requested were communicated to him or her following his or her initial application and to define the scope of his or her confirmatory application accordingly.

In the present case, having regard to the explicit and clear reference to the monthly reports in the documents communicated to the applicant and to the wording of his confirmatory application, intended solely to challenge the redactions in the documents at issue, the Court considers that the applicant cannot criticise the EMA for having limited its examination to those redactions in order to adopt the contested decision and for not having communicated to him the monthly reports which were not mentioned therein.

In the third place, the Court rules on the nature of the information the redaction of which was maintained. Having consulted the full version of the documents at issue, it finds that the information which remains redacted in those documents is numerical results of tests associated with the characterisation of the active substance and the finished product Comirnaty as well as information on the parameters used to carry out those tests. Those data are therefore information of a highly technical nature obtained through BioNTech's know-how.

In addition, in the contested decision, the EMA explained that the disclosure of such information would enable competing pharmaceutical companies, using similar technology and operating in the

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7 Under the sixth paragraph of Article 263 and the third subparagraph of Article 297(2) TFEU.

8 As is apparent from the wording of recital 13 of Regulation No 1049/2001.

same therapeutic field, to obtain a concrete advantage by saving scientific efforts and human and economic resources.

Consequently, the Court holds that the matters set out in the contested decision justify the view that the redacted data at issue constitute commercially sensitive information and are sufficient to support the conclusion that there is a reasonably foreseeable and not purely hypothetical risk that the disclosure of that information could undermine the protection of BioNTech's commercial interests.

Furthermore, the Court states that Regulation No 1049/2001 in no way requires that the alleged harm to the commercial interests must be quantified, or that the EMA examine the market situation in order specifically to quantify it. It is sufficient that such harm is reasonably foreseeable and not purely hypothetical.

In the fourth place, in the Court's view, as regards whether the redacted data may belong to the public domain, the mere fact that the redacted data had been provided to the EMA in the context of a conditional marketing application cannot have the consequence that those data automatically belong to the public domain. Such an assertion would deprive Article 4 of Regulation No 1049/2001 of all substance, in that it provides for the exceptions justifying refusal to grant access to documents. The same is true of the fact that the redacted data relate to the quality of the vaccine, in so far as, as in the present case, those data relate to new technology and are commercially confidential.

In the fifth place, the Court ascertains whether there is an overriding public interest which could justify the disclosure of the redacted data at issue. In that regard, it notes that the person intending to object to a reason for refusing disclosure must, first, assert the existence of a public interest capable of prevailing over that reason. Second, that person must demonstrate precisely that disclosure of the documents concerned would contribute specifically to ensuring the protection of that public interest to the extent that the principle of transparency prevails over the protection of the interests that provided the basis for the refusal to disclose, namely, in the present case, the protection of the commercial interests of the holder of the conditional marketing authorisation.

Although it is for the person making an application to rely on specific circumstances justifying the disclosure of specific data, such a requirement cannot be interpreted as meaning that the person making an application for access must indicate in that application the grounds or reasons why he or she is making such an application. On the other hand, it is not for the EMA to examine of its own motion any evidence which might have justified the existence of an overriding public interest.

In the present case, there is no doubt that informed patient information and the need to ensure safe and quality vaccines are in the public interest. However, the applicant has not indicated in any way how the partial disclosure of the documents at issue by the EMA did not sufficiently safeguard those interests, even though a large amount of information had already been disclosed, the conclusions drawn on the basis of those data as regards SO1(a) had been disclosed and the data which remained redacted were relatively limited, precise and technical. Moreover, after weighing BioNTech's specific commercial interests which had to be protected by non-disclosure of the data concerned against the public interest in them being made accessible, the EMA had set out in the contested decision that disclosure of those data would be of use only to BioNTech's direct competitors.

In the last place, the Court recalls that it is only where the particular circumstances of the case substantiate a finding that the principle of transparency is especially pressing that that principle can constitute an overriding public interest capable of prevailing over the need for protection of the commercial interests of the undertakings and, accordingly, capable of justifying the disclosure of the redacted data.

In the case of medicinal products such as the Comirnaty vaccine, developed in the exceptional context of the COVID-19 pandemic, the public has a clear interest in being informed of the essential elements of the EMA's action regarding the grant of a conditional marketing authorisation. However, the existence of that public interest does not oblige the EMA to grant generalised access to any detailed information obtained from the holder of that authorisation in the context of such a procedure. Such generalised access would jeopardise the balance which the EU legislature sought to ensure, between the obligation on the applicant for a marketing authorisation to communicate to the EMA sensitive commercial information and the guarantee of increased protection connected, by virtue of the requirement of professional secrecy and business secrecy, to the information so provided to the EMA.

In addition, the Court adds that general considerations on the protection of human health cannot either provide an appropriate basis for establishing that, in the present case, the principle of transparency was especially pressing and capable, therefore, of prevailing over the reasons justifying the refusal to disclose the documents at issue. Consequently, it considers that the applicant has not demonstrated that the need to ensure transparency constituted an overriding public interest justifying disclosure of the redacted data at issue.

In the light of the foregoing, the Court considers that there is no longer any need to adjudicate on the application for annulment of the contested decision in so far as it concerns the data disclosed after correction and dismisses the action as to the remainder.

III. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (First Chamber) of 13 November 2025, Inteligo Media, C-654/23

Link to the full text of the judgment

Reference for a preliminary ruling – Processing of personal data and the protection of privacy in the electronic communications sector – Directive 2002/58/EC – Article 13(1) and (2) – Unsolicited communications – Concept of communication 'for the purposes of direct marketing' – Obtaining electronic contact details 'in the context of the sale of a product or a service' – Registration on an online platform giving access to additional content – Sending of a daily newsletter via email – Regulation (EU) 2016/679 – Article 6 – Lawfulness of processing – Article 95 – Relationship with Directive 2002/58

Ruling on a request for a preliminary ruling from the Curtea de Apel București (Court of Appeal, Bucharest, Romania), the Court provides clarification regarding the concepts of communication 'for the purposes of direct marketing' and of electronic contact details obtained 'in the context of the sale of a product or a service', within the meaning of Article 13(1) and (2) of the Directive on privacy and electronic communications, [9] in the context of registration on an online platform giving access to an electronic newsletter. The Court also clarifies the relationship between that directive and the GDPR, [10] concerning the conditions of lawfulness applicable to the processing of personal data carried out in the context of an unsolicited communication, within the meaning of Article 13 of that directive.

Inteligo Media is the publisher of the online news publication avocatnet.ro, intended to inform the general public, which does not specialise in the legal field, about day-to-day legislative amendments in Romania. In July 2018, that company introduced a paid subscription system for part of the content supplied to its readers. At the time of the facts in the main proceedings, Inteligo Media allowed free access to a maximum number of articles per month, beyond which the user concerned had to create a free account on the online platform operated by Inteligo Media. Registering for that service gave the user the right to access a number of additional articles per month, and to receive, free of charge, via email, a daily newsletter containing a summary of new legislation discussed in articles within the publication, including hyperlinks to those articles. The user also had the possibility of accessing, for a

9 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

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

fee, all the articles of the publication. Users could choose either not to receive that newsletter or to unsubscribe at any time.

In September 2019, the Romanian data protection authority ('the ANSPDCP') drew up an infringement report, by which it imposed a fine on Inteligo Media. The ANSPDCP took the view that that company had not been able to prove that it had obtained express consent from a number of users to the processing of their personal data (email address, password, username) and that those data, initially collected for the purpose of performing the contract at issue, had been processed in a manner incompatible with that purpose, namely for the purpose of transmitting the newsletter.

By judgment delivered in 2021, the Tribunalul București (Regional Court, Bucharest, Romania) upheld in part Inteligo Media's application seeking the annulment of the infringement report drawn up by the ANSPDCP. In particular, it reduced the amount of the fine imposed on that company, while maintaining the finding of the administrative offence set out in the report.

Hearing the appeals brought against that judgment, the referring court is uncertain as to the legal basis for the processing of personal data at issue in the main proceedings and as to the conditions which must be satisfied in order for such processing to be regarded as lawful, in the light of the Directive on privacy and electronic communications and the GDPR. According to that court, it is necessary to clarify, inter alia, the conditions under which a user's email address may be regarded as having been obtained 'in the context of the sale of a product or a service', within the meaning of Article 13(2) of the Directive on privacy and electronic communications, and the scope of the concept of 'direct marketing' referred to in Article 13 of that directive.

Findings of the Court

In the first place, the Court notes that the provisions laid down in Article 13(1) and (2) of the Directive on privacy and electronic communications are intended to apply only to communications 'for the purposes of direct marketing'.

The Court thus examines, first, the question whether the purpose of communicating a newsletter, such as that at issue in the main proceedings, is 'direct marketing' within the meaning of Article 13(1) and (2) of that directive. The Court thus recalls that the concept of communication 'for the purposes of direct marketing', provided for by that provision, covers communications which pursue a commercial purpose and are addressed directly and individually to a consumer. [11]

The Court finds that the communication at issue in the main proceedings consists of a daily newsletter distributed in the form of an email, which contains a summary of new legislation discussed in the articles of an online news publication and hyperlinks to those articles. According to the Court, the fact that that communication also has informative content does not mean that it should be excluded from the concept of communication 'for the purposes of direct marketing' within the meaning of Article 13(1) and (2) of the Directive on privacy and electronic communications and, therefore, from the scope of that provision.

On the contrary, the Court observes that such a communication is intended to entice the users concerned to access the paid content provided by a newspaper publisher, by promoting the exhaustion of the number of articles which can be viewed free of charge on the online platform in question and the taking out of a full subscription. It thus seeks to promote the sale of that content and thus pursues a commercial purpose. Furthermore, in so far as that communication, distributed in the form of an email, is directly displayed in the inbox of the private email service of its recipients, the Court holds that it is 'for the purposes of direct marketing', [12] irrespective of whether that purpose can be inferred solely from the content of the communication or from the structure of the sender's offer of that communication.

The Court states that that interpretation of the concept of communication 'for the purposes of direct marketing' is supported by its context and by the objectives pursued by the Directive on privacy and electronic communications.

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11 Judgment of 25 November 2021, *StWL Städtische Werke Lauf a.d. Pegnitz* (C-102/20, EU:C:2021:954, paragraph 47).

12 Within the meaning of Article 13(1) and (2) of the Directive on privacy and electronic communications.

In that regard, the Court notes that Article 13(1) of the Directive on privacy and electronic communications lays down a rule of principle which makes the transmission of unsolicited communications falling within its scope subject to the requirement to obtain prior consent from the recipient. In the absence of that consent, such communication is permitted only if the conditions laid down in Article 13(2) of that directive are satisfied. That provision requires, first of all, that the sender of the communication concerned has obtained from the recipients their electronic contact details for electronic mail, in the context of the sale of a product or a service, in accordance with the EU data protection rules. [13] Subsequently, those electronic contact details may be used for direct marketing, provided that such marketing concerns similar products or services provided by that sender itself. Lastly, that use is subject to the condition that the recipients are clearly and distinctly able to object, free of charge and in an easy manner, to such use of their electronic contact details when those details are collected and on the occasion of each message in case they have not initially refused such use.

Furthermore, Article 13(4) of the Directive on privacy and electronic communications prohibits the practice of sending electronic mail for the purposes of direct marketing which disguise or conceal the identity of the sender on whose behalf the communication is made, which contravene Directive 2000/31, [14] which do not have a valid address to which the recipient may send a request that such communications cease or which encourage recipients to visit websites that infringe Article 6 of the Directive on electronic commerce.

The Court states that all of those safeguards are intended to achieve the objectives of the Directive on privacy and electronic communications, which seek to provide safeguards for subscribers against any intrusion of their privacy by unsolicited communications for direct marketing purposes in particular by means of automated calling machines, telefaxes and e-mails, including SMS messages. Any other interpretation would risk undermining the effectiveness of Article 13 of that directive and calling into question the level of protection of privacy envisaged thereby. Therefore, the Court concludes that a communication such as that at issue in the main proceedings must be regarded as being 'for the purposes of direct marketing', within the meaning of Article 13(1) and (2) of the Directive on privacy and electronic communications.

Second, the Court examines whether the electronic contact details of the users concerned by the sending of the newsletter were obtained 'in the context of the sale of a product or a service' within the meaning of Article 13(2) of that directive.

The Court points out that, according to a commonly accepted definition, the term 'sale' can cover only transactions which involve the payment of remuneration. In addition, Article 13(2) of the Directive on privacy and electronic communications makes no distinction according to the type of service concerned. Thus, as regards services falling within the scope of the Directive on electronic commerce, the Court recalls that the remuneration of a service supplied by a service provider within the course of its economic activity does not require the service to be paid for by those for whom it is performed. That is the case, inter alia, where the performance of a service free of charge is provided by a service provider for the purposes of advertising the goods sold and services provided by that service provider, since the cost of that activity is incorporated into the price of those goods or services. [15] Those considerations can be transposed in the context of the interpretation of Article 13(2) of the Directive on privacy and electronic communications.

The Court finds that that is the case here, in so far as Inteligo Media obtained the electronic contact details of the users concerned when those users created a free account on the online platform operated by that company. By subscribing to that service, users obtained the right to access, free of charge, a number of articles published in the publication concerned and to receive the newsletter in question. The provision of such a service has, above all, an advertising purpose consisting of

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13 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) or, as the case may be, the GDPR.

14 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ 2000 L 178, p. 1, Article 6).

15 Judgment of 15 September 2016, *Mc Fadden* (C-484/14, EU:C:2016:689, paragraphs 41 and 42).

promoting the paid content provided by Inteligo Media, the cost of that service being included in the price of that content.

In those circumstances, indirect remuneration, included in the price of the full subscription offered by the service provider, such as that at issue in the main proceedings, satisfies the requirement inherent in the concept of 'sale', entailing payment as consideration for a service. Consequently, a transaction such as that in the context of which Inteligo Media obtained electronic contact details from users is capable of falling within the concept of 'sale of … a service' under the Directive on privacy and electronic communications.

The Court adds that that interpretation is consistent with the context in which that concept is used and the objectives pursued by the rules of which it is part. In that regard, the Court states, first, that, although the exception provided for in Article 13(2) of that directive must be interpreted strictly, it does not exclude the possibility that the remuneration required in respect of a 'sale', within the meaning of that provision, may be paid by a person other than the recipient of the product or service which is the subject of that transaction. On the contrary, it follows from the wording of that provision that the EU legislature merely required that the electronic contact details of the users concerned be obtained 'in the context of the sale of a product or a service'.

Second, the interpretation of the wording of Article 13(2) of the Directive on privacy and electronic communications must, in any event, be consistent with the objective pursued by that provision. Therefore, the need for a strict interpretation of that provision cannot be understood as permitting an interpretation of those terms that would deprive them of their effectiveness. As regards the objective pursued by that provision, the EU legislature intended to provide for a derogation from the principle set out in Article 13(1) of that directive where the electronic contact details of the users concerned were obtained 'within the context of an existing consumer relationship', without further characterising that relationship. [16]

Consequently, and subject to the verifications which it is for the referring court to carry out, it appears that, in the present case, both the condition that the electronic contact details of the users concerned must have been collected 'in the context of the sale of a product or a service' and the condition relating to the similar nature of the service which is the subject of the marketing at issue are satisfied. In the light of the foregoing, the Court concludes that Article 13(1) and (2) of the Directive on privacy and electronic communications must be interpreted as meaning that the email address of a user is obtained by the publisher of an online publication 'in the context of the sale of a product or a service', within the meaning of Article 13(2) of that directive, where that user creates a free account on that publisher's online platform giving him or her the right to access, free of charge, a certain number of articles of that publication, to receive, free of charge, via email, a daily newsletter containing a summary of the new legislation discussed in articles within that publication, including hyperlinks to those articles, and the right to access, for a fee, additional articles and analyses of that publication. The transmission of such a newsletter constitutes a use of electronic mail 'for the purposes of direct marketing' for 'similar products or services' within the meaning of that provision.

In the second place, the Court clarifies the relationship between the Directive on privacy and electronic communications and the GDPR in the context of the conditions of lawfulness applicable to the processing of personal data carried out in the context of an unsolicited communication.

The Court notes that, according to the express terms of Article 95 of the GDPR, that regulation is not to impose additional obligations on natural or legal persons in relation to processing in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in that directive. Furthermore, it is also apparent from the GDPR [17] that that regulation should apply to all matters concerning the protection of fundamental rights and freedoms vis-à-vis the processing of personal data which are not subject to specific obligations with the same objective set out in the Directive on privacy and electronic communications, including the obligations

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16 Recital 41 of the Directive on privacy and electronic communications.

17 Recital 173 of the GDPR.

on the controller and the rights of natural persons. However, Article 13(2) of that directive governs comprehensively the conditions and purposes of the processing as well as the rights of the data subject. It also imposes 'specific obligations' on the controller, within the meaning of Article 95 of the GDPR.

Consequently, the lawfulness of the processing of personal data carried out in the context of a communication falling within the scope of Article 13(2) of the Directive on privacy and electronic communications may be established on the basis of that provision, without it being necessary to assess it in the light of the conditions of lawfulness laid down by the GDPR. [18] In the light of the foregoing, where the controller uses the email address of a user in order to send him or her an unsolicited communication, in accordance with Article 13(2) of that directive, the conditions for lawful processing laid down in Article 6(1) of the GDPR are not applicable.

Judgment of the Court of Justice (Fifth Chamber) of 20 November 2025, Policejní prezidium (Storage of biometric and genetic data), C-57/23

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of their personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data – Directive (EU) 2016/680 – Article 4(1)(c) and (e) – Minimisation of data processing – Storage limitation of personal data – Article 10 – Collection and storage of biometric and genetic data – Strict necessity – Article 6(a) – Obligation to make a distinction between personal data of different categories of persons – National legislation which provides for the collection of biometric and genetic data of any person suspected or accused of having committed an intentional criminal offence – Article 5 – Appropriate time limits for erasure or for a periodic review of the need for the storage of those data – No maximum time limit for storage – Assessment of the need for the storage of biometric and genetic data by the police on the basis of internal rules – Article 8(2) – Lawfulness of the processing of those data – Concept of 'Member State law' – Whether national case-law may be classified as 'Member State law'

Hearing a request for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), the Court of Justice rules on the lawfulness, under Directive 2016/680, [19] of the collection and storage of biometric and genetic data of any person accused or suspected of having committed an intentional criminal offence.

On 11 December 2015, the Czech police brought criminal proceedings against JH for the offence of breach of duty in the administration of the property of another. The police then questioned JH in the context of the criminal proceedings and, despite JH's objections, carried out various identification procedures, including the taking of fingerprints and the taking of a buccal smear in order to create a genetic profile. [20] The Czech police recorded that information in the relevant databases.

By judgment handed down in 2017, the Městský soud v Praze (Prague City Court, Czech Republic) convicted JH of the offences charged. In 2022, that court upheld the appeal brought by JH in 2016, finding that the identification procedures, as well as the storage and the recording of the information concerning JH by the Czech police were unlawful. It therefore ordered the police to erase all of JH's

18 Article 6(1)(a) to (f) of the GDPR.

19 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

20 In accordance with Article 65 of the zákon č. 273/2008 Sb., o Policii České republiky (Law No 273/2008 on the Police of the Czech Republic), in the version applicable to the dispute in the main proceedings.

personal data resulting from those procedures. The Czech police brought an appeal on a point of law against that decision before the referring court.

It is against that background that the Court is asked to clarify, in the light of Directive 2016/680, whether national case-law may be classified as 'Member State law' for the purposes of governing the processing of sensitive personal data, whether national legislation which permits the collection of biometric and genetic data of any person accused or suspected of having committed an intentional criminal offence is acceptable and whether national legislation which does not provide for any maximum period of storage of those data may be permissible.

Findings of the Court

In the first place, the Court clarifies the concept of 'Member State law' within the meaning of Articles 8 and 10 of Directive 2016/680, which lay down the conditions for the lawful processing of personal data, including sensitive data, and which provide that such processing may be authorised by Member State law.

In that context, the Court recalls that any processing of personal data that is not based on the consent of the person concerned must be carried out on some other legitimate basis laid down by 'law', [21] which is a term that must be understood in its substantive sense and not its formal sense [22] and as referring to the provision in force as the competent courts have interpreted it. [23] Furthermore, the requirement set out in Article 52 of the Charter that any limitation on the exercise of the fundamental rights recognised by the Charter must be provided for by law, does not preclude, on the one hand, the limitation in question from being formulated in terms which are sufficiently open to be able to adapt to different scenarios and keep pace with changing circumstances and, on the other hand, that the competent court may, where appropriate, specify, by means of interpretation, the actual scope of that limitation in the light of the very wording of that act which allows the interference as well as the general scheme of that act and the objectives pursued by it. [24]

The Court concludes that the concept of 'Member State law' must be understood as being capable of referring to a provision expressly envisaging the carrying out of processing of personal data falling within the scope of Directive 2016/680, as interpreted by the case-law of the national courts. That being so, first, that reference to Member State 'law' 'regulating' the processing implies that the objectives of the processing, the personal data to be processed and the purposes of the processing are, at least in principle, laid down in a provision of general application. Second, Article 8(2) of Directive 2016/680 seeks to ensure that Member State law regulating the processing is clear and precise and its application foreseeable for those subject to it, as required by the case-law of the Court [25] and the European Court of Human Rights. [26]

Thus, the Court holds that Articles 8 and 10 of Directive 2016/680 must be interpreted as meaning that, as regards the collection, storage and erasure of biometric and genetic data, the concept of 'Member State law', within the meaning of those articles, must be understood as referring to a provision of general application laying down the minimum conditions for collection, storage and erasure of those data, as interpreted by the case-law of the national courts, in so far as that case-law is accessible and sufficiently foreseeable.

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21 Article 8(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

22 Judgment of 16 November 2023, *Roos and Others* v *Parliament* (C-458/22 P, EU:C:2023:871, paragraph 61).

23 See, to that effect, ECtHR, 23 January 2025, *H.W. v. France*, CE:ECHR:2025:0123JUD001380521, § 65.

24 See, by analogy, judgment of 21 June 2022, *Ligue des droits humains* (C-817/19, EU:C:2022:491, paragraph 114).

25 In that regard, see judgments of 8 April 2014, *Digital Rights Ireland and Others* (C-293/12 and C-594/12, EU:C:2014:238, paragraph 54), and of 6 October 2015, *Schrems* (C-362/14, EU:C:2015:650, paragraph 91).

26 See, to that effect, inter alia, ECtHR, 26 April 1979, *the Sunday Times v. the United Kingdom*, CE:ECHR:1979:0426JUD000653874, §§ 25 and 52; ECtHR 1 July 2008, *Liberty and Others v. the United Kingdom*, CE:ECHR:2008:0701JUD005824300, §§ 62 and 63; and ECtHR, 4 December 2008, *S. and Marper v. the United Kingdom*, CE:ECHR:2008:1204JUD003056204, § 95.

In the second place, the Court addresses the question of whether Directive 2016/680 [27] precludes national legislation which permits the indiscriminate collection of biometric and genetic data of any person accused or suspected of having committed an intentional criminal offence.

First, the Court states that Article 6 of Directive 2016/680, which requires the Member States to ensure that the controller, 'where applicable and as far as possible', makes a clear distinction between the personal data of different categories of data subjects essentially in accordance with their criminal status, does not preclude national legislation which allows for the indiscriminate collection of biometric and genetic data of persons falling within the category of persons 'accused of having committed an intentional criminal offence' and persons falling within the category of persons 'suspected of having committed such an offence' within the meaning of national law, where the purposes of that collection do not require a distinction to be made between those two categories of persons whose data may be collected on the basis of that regulation.

Second, the Court rules on Article 4(1)(c) of Directive 2016/680, which sets out the principles relating to the processing of personal data, read in conjunction with Article 10 of that directive, which refers to the specific requirements applicable to the processing of sensitive personal data, including biometric and genetic data. It finds, inter alia, that that processing must be strictly necessary, which is to be assessed with particular rigour in respect of the purposes pursued by such processing.

The Court holds that the concept of 'purposes of processing', although it is not defined in Directive 2016/680, must be understood as referring to the specific and real aims pursued by the processing of personal data in the light of the task of the controller, such as a specific task connected with the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties.

In that respect, the Court recalls the requirements concerning the 'strictly necessary' condition, in particular the taking account of the specific importance of the purpose of the processing and all of the relevant factors and the strict checking as to whether the principle of minimisation of processing of the data concerned is observed. [28] It concludes that, while a Member State may comply with Directive 2016/680 either by delegating to the competent authorities the responsibility of ensuring, in each individual case, that for all processing of sensitive personal data the condition that that processing is strictly necessary is satisfied, or by laying down in legislation the assessment criteria that the authorities must apply subsequently in a non-discriminatory manner, the fact remains that, in that second situation, those criteria must be capable of meeting all of the requirements that arise from that same condition.

The Court infers from this that Article 6 and Article 4(1)(c) of Directive 2016/680, read in conjunction with Article 10, do not preclude national legislation which permits the indiscriminate collection of biometric and genetic data of any person accused or suspected of having committed an intentional criminal offence, in so far as, first, the purposes of that collection do not require a distinction to be made between those two categories of persons and, second, the controllers are required, in accordance with national law, including the case-law of the national courts, to comply with all of the principles and specific requirements laid down in Articles 4 and 10 of that directive.

In the third and last place, the Court examines whether the requirements laid down by Directive 2016/680 preclude national legislation under which the need for continued storage of biometric and genetic data is assessed by the police on the basis of internal rules, without that legislation laying down a maximum period for storage.

In that regard, first, so far as concerns the fact that the national legislation concerned does not provide for a maximum period of storage of those data, the Court points out that, where a Member State determines appropriate time limits for a periodic review of the need to store personal data and, at the time of that review, it is necessary to assess whether extending that storage is strictly necessary, the Member State law concerned must be regarded as meeting the requirements laid

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27 Specifically, Article 6 and Article 4(1)(c) of Directive 2016/680, read in conjunction with Article 10 thereof.

28 See, to that effect, judgment of 26 January 2023, *Ministerstvo na vatreshnite raboti (Recording of biometric and genetic data by the police)* (C-205/21, EU:C:2023:49, paragraphs 125, 127 and 132).

down by Directive 2016/680. Thus, even where the data stored are sensitive personal data, such a Member State is not required to define the absolute time limits for the storage of those data, beyond which those data must be automatically erased. [29]

The Court states, however, that the appropriate nature of time limits for review requires that the personal data that have been stored until then must be erased where, at the time that one of the reviews is carried out, the storage of those data no longer appears to be strictly necessary. Furthermore, those time limits for review cannot be regarded as being appropriate where the changes to the criminal status of the data subject, considered to be relevant in respect of the purpose pursued by that storage, does not result in an obligation, on the controller, to re-examine within a reasonable period of time the need to store the data of that person.

Second, as regards the fact that the need to continue storage of the biometric and genetic data is assessed by the police on the basis of internal rules, the Court states that that fact is not in itself contrary to Article 8(2) of Directive 2016/680, in so far as those rules require the police to ensure that the condition that the storage of those data is strictly necessary is satisfied and that the discretion of the police is governed by a sufficient framework under national law, including national case-law.

Consequently, the Court holds that Article 4(1)(e) of Directive 2016/680 does not preclude national legislation under which the need for the continued storage of biometric and genetic data is assessed by the police on the basis of internal rules, without that legislation laying down a maximum period of storage, in so far as that legislation sets appropriate time limits for a periodic review of the need to store those data and, at the time of that review, the strict necessity of extending their storage is assessed.

IV. COMPETITION: STATE AID

Judgment of the Court of Justice (First Chamber) of 20 November 2025, Stockholms Hamn, C-401/24

Link to the full text of the judgment

Reference for a preliminary ruling – State aid – Agreement concluded before the accession of the Kingdom of Sweden to the European Union – Compensation for the loss of revenue arising from the abolition of passage fees for a lock – Concept of aid – Concept of undertaking – Economic activity – Existing or new aid

Ruling on a request for a preliminary ruling from the Stockholms tingsrätt (District Court, Stockholm, Sweden), the Court of Justice specifies the conditions under which compensation paid to a municipal joint stock company providing free of charge a lock service, in order to compensate for the losses arising from the abolition of passage fees for the lock, may be classified as 'State aid' within the meaning of Article 107(1) TFEU.

The Södertälje Canal and the waterway passing through Hammarby lock are the two waterways linking the Baltic Sea to Lake Mälar, Sweden's third largest lake.

The Swedish Maritime Administration is the public authority responsible for the passage of vessels through the Södertälje Canal and manages, inter alia, the lock. Stockholms Hamn, a municipal joint stock company wholly owned by Stockholm Municipality, operates Hammarby Lock. The level of lock

29 See, to that effect, judgment of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR – Sofia* (C-118/22, EU:C:2024:97, paragraph 52).

fees collected for passage through the locks of Södertälje and Hammarby was coordinated in order to ensure a balanced distribution of traffic between the two connections.

By legislation adopted on 26 October 1978, the Swedish authorities decided to abolish, with effect from the following year, certain fees payable for passage through the Södertälje Canal and the corresponding fees for passage through Hammarby Lock in order to continue coordinating tariffs. Compensation was provided for the loss of revenue of Stockholm Municipality. Accordingly, the Swedish Maritime Administration and Stockholm Municipality concluded an agreement for that purpose under which the latter undertook not to collect from vessels other than recreational vessels the fee for passage through Hammarby Lock, in exchange for annual compensation paid by the former ('the agreement').

Under the terms of the agreement, the amount of that compensation was to be adjusted annually on the basis of the consumer price index. The agreement was to be renewed every five years, unless notice of termination was given at least six months before the expiry of the contract. For each new five-year period, a new annual sum was fixed based on the changes in the volume of traffic passing through Hammarby Lock during the preceding contractual period. The compensation provided for in the agreement was initially paid to Stockholm Municipality and then, from the beginning of the 1990s, to Stockholms Hamn.

The Swedish Maritime Administration terminated the agreement early in 2021 and, on 4 May 2023, brought an action against Stockholms Hamn before the referring court, seeking reimbursement, together with interest, of the sum of 38 086 436 Swedish krona (SEK) (approximately EUR 3 378 242), corresponding to the payments made under the compensation agreement within the national limitation period of ten years.

In its view, the compensation had conferred on Stockholms Hamn an advantage through State resources which can be classified as State aid. Stockholms Hamn submits that the activity of operating Hammarby Lock does not constitute an economic activity to which the EU rules on State aid apply. In any event, it is a service of general and economic interest which did not give rise to overcompensation. Furthermore, even if the classification as State aid were to be upheld, it would be authorised as existing aid under Regulation 2015/1589. [30]

In those circumstances, the referring court decided to stay the proceedings and to ask the Court of Justice whether the compensation at issue constitutes State aid within the meaning of Article 107(1) TFEU and, if so, whether that aid must be classified as existing aid or new aid.

Findings of the Court

In the first place, the Court examines whether the compensation at issue in the main proceedings may be classified as State aid within the meaning of Article 107(1) TFEU. In order to do so, it analyses, first, whether the joint stock company which benefitted from that compensation constitutes an 'undertaking', second, whether that compensation confers an advantage and, third, whether it affects trade between Member States and distorts competition.

First of all, the Court recalls that, for the purposes of classification as State aid, Article 107(1) TFEU presupposes, inter alia, the existence of an advantage conferred on an undertaking. The concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed, it being understood that any activity consisting of offering goods and services on a given market is an economic activity.

Thus, in order to determine whether the municipal joint stock company Stockholms Hamn may be classified as an 'undertaking' within the meaning of Article 107(1) TFEU, it is necessary to assess whether the lock service that it provides consists of offering goods or services on a given market and must, therefore, be classified as an economic activity.

On that point, the Court states that the fact that the offer of goods or services is made on a not-for-profit basis does not prevent the entity which carries on those operations on the market from being

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30 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

considered as an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit. Furthermore, services normally provided for remuneration are services which may be classified as 'economic activities'. The essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question.

In the present case, it is apparent from the order for reference that, under the Swedish legislation, the lock service at issue in the main proceedings is provided free of charge to its recipients, which could be an indication that there is no economic activity, given that there is no revenue capable of turning a profit or at least covering costs. Moreover, that service does not appear to be operated in competition with other economic operators seeking to make a profit, since the only other waterway enabling the connection between the Baltic Sea and Lake Mälar is the Södertälje Canal, navigation of which is managed by the Swedish State and was also provided free of charge during the term of the agreement.

Consequently, it will be for the referring court to verify whether, despite the free-of-charge nature of the lock service provided by Stockholms Hamn, that service is provided on a market in competition with other economic operators and whether, in the light of the context in which that service is provided, Stockholms Hamn can be classified as an 'undertaking' within the meaning of Article 107(1) TFEU.

Next, as regards the condition relating to the existence of an advantage, the Court recalls that it is to be assessed, in principle, by applying the private operator principle.

In the present case, it is apparent from the order for reference that the agreement was concluded following the decision of the Swedish authorities to abolish certain fees imposed on passage through certain inland waterways, with the aim of maintaining a balanced distribution of traffic between the waterways concerned. It follows that the reasons for the payment of the compensation at issue in the main proceedings to Stockholms Hamn instead has to be interpreted as meaning that the Swedish State intervened in its capacity as a public authority and not as a private operator.

Furthermore, the free-of-charge nature of the lock operations provided by Stockholms Hamn during the relevant period for commercial vessels appeared to constitute an obligation imposed by law and subsequently formalised in an agreement concluded with the administrative authority delegated for that purpose, by which the Swedish authorities pursued the objective of ensuring an optimal distribution of commercial maritime traffic in the general interest. Thus, it cannot be ruled out that, during that period, Stockholms Hamn was entrusted with a public service obligation within the meaning of the *Altmark* criteria. [31]

It will therefore be for the referring court to assess, in the light of all the relevant factors, whether the market economy operator test or the *Altmark* criteria support the conclusion that Stockholms Hamn was granted an advantage as a result of the payment of the compensation at issue in the main proceedings.

Finally, the effect of that compensation on trade between Member States and on competition depends on the existence of a market on which the lock service at issue in the main proceedings is offered. In that regard, it will be necessary to take account, in particular, of the requirement imposed by the Swedish authorities that the service be provided free of charge, which may constitute an obstacle to undertakings established in other Member States considering providing that service.

That said, assuming that the aforementioned compensation constitutes aid, the Court states, in the second place, that it should be classified as existing aid, since that compensation began to be paid – and thus existed – before the entry into force of the FEU Treaty in Sweden, within the meaning of Article 1(b)(i) of Regulation 2015/1589.

That classification cannot be called into question by the alterations relating to the duration and amount of the compensation occurring after the accession of the Kingdom of Sweden to the European Union. First, since the automatic five-year extension of the agreement was provided for

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31 These are four criteria for the application of that case-law, which were set out in the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415, paragraphs 88 to 93).

from the outset, it does not constitute an alteration to existing aid. Second, the annual adjustment of the amount of compensation on the basis of the consumer price index falls under automatic variations in the amounts of pecuniary aid in a situation of inflation and not under a substantial alteration in the amount of that compensation.

As regards the adjustment every five years of the amounts of the compensation at issue on the basis of the evolution of traffic, it will be for the referring court to assess whether that redefinition, although occurring on the basis of a formula which remained unchanged over time, in fact led to a series of renegotiations which could be classified as alterations and, if so, whether those alterations may be classified as substantial.

Judgment of the General Court (Sixth Chamber, Extended Composition) of 12 November 2025, DEI v Commission, T-639/14 RENV II, T-352/15 RENV and T-740/17 RENV

Link to the full text of the judgment

State aid – Electricity supply tariff – Conclusion of an arbitration agreement in order to fix the tariff – Decision to close the complaint – Decision finding no aid – Right to be heard – Advantage – Private investor test – Complex economic assessment

The General Court, sitting in extended composition, declares to be lawful the decision of the European Commission finding that the decision by a Greek State undertaking to refer the resolution of a commercial dispute between it and another undertaking to arbitration did not involve the grant of State aid within the meaning of Article 107(1) TFEU. In so doing, the General Court provides clarification on the application of the market economy operator principle in order to determine whether, by its decision to entrust the resolution of their dispute to an arbitration tribunal, the Greek State undertaking conferred an economic advantage on the other undertaking concerned.

Dimosia Epicheirisi Ilektrismou AE (DEI), an electricity producer and supplier controlled by the Greek State, and its principal client, Metlen Energy & Metals AE ('Metlen'), were involved in a dispute concerning the electricity supply tariff charged by DEI to Metlen.

In 2011, DEI and Metlen signed an arbitration agreement by which they voluntarily agreed to entrust the resolution of their dispute to the permanent arbitration body of the Rythmistiki Archi Energeias (Greek Energy Regulator, Greece; 'the RAE'). Thus, the resolution of the dispute was entrusted to an arbitration tribunal in accordance with the arbitration agreement and the rules governing the permanent arbitration body of the RAE.

According to the arbitration agreement, the task with which the arbitration tribunal was entrusted consisted in determining, on the basis of negotiations which took place between DEI and Metlen, an electricity supply tariff corresponding to the specific characteristics of Metlen and covering at least the costs borne by DEI. In addition, the arbitration tribunal had to take account of the legislative framework specified by the parties to the arbitration agreement, comprising inter alia a decision of the RAE establishing the basic principles for pricing of electricity to high-voltage customers.

In the meantime, Metlen continued not to pay any of DEI's monthly bills, since the parties remained in disagreement as to the tariff to be applied. DEI then threatened to stop supplying Metlen with electricity if it did not settle the disputed bills, which led Metlen to lodge a complaint with the RAE by which it sought the adoption of interim measures.

Following Metlen's complaint, by decision of 9 May 2012, the RAE set, on a provisional basis, an electricity supply tariff applicable to Metlen.

On 15 June 2012, DEI lodged a complaint with the European Commission against that decision ('the 2012 complaint'), arguing that the provisional tariff set by the RAE in that decision obliged it to supply Metlen with electricity at a price below its costs and constituted unlawful State aid.

By decision of 31 October 2013, the arbitration tribunal set an electricity supply tariff applicable to Metlen for the period from 1 July 2010 to 31 December 2013 ('the arbitration award').

On 23 December 2013, DEI lodged a second complaint with the Commission against the arbitration award, alleging infringement of the rules on State aid, and arguing that the tariff fixed in the arbitration award was lower than that which had been fixed provisionally by the RAE.

By letter of 12 June 2014, the Commission informed DEI that no further action would be taken on that complaint ('the contested letter'). Consequently, DEI brought an action before the General Court for the annulment of the contested letter, registered as Case T-639/14.

In the course of those proceedings, the Commission dismissed DEI's complaints by decision of 25 March 2015 ('the first contested decision'), [32] finding, first, that the 2012 complaint had become devoid of purpose and, second, that no advantage within the meaning of Article 107(1) TFEU had been conferred on Metlen, since DEI's decision to refer their dispute to arbitration adhered to the private investor test.

DEI also brought an action before the General Court for the annulment of the second contested decision, registered as Case T-352/15.

By order of 9 February 2016, [33] the General Court held that there was no longer any need to adjudicate on the action in Case T-639/14. Hearing the appeal, the Court of Justice however set aside that order by judgment of 31 May 2017 [34] and referred the case back to the General Court, where it was registered as Case T-639/14 RENV.

On 14 August 2017, the Commission adopted a second decision, repealing and replacing both the contested letter and the first contested decision ('the second contested decision'). [35] Relying on reasons identical to those set out in the first contested decision, that second decision confirms, first, that the 2012 complaint had become devoid of purpose, since the tariff fixed by the arbitration award had retroactively replaced the provisional tariff fixed by the RAE decision of 9 May 2012 and, second, that the arbitration award did not involve the grant of State aid within the meaning of Article 107(1) TFEU.

DEI also brought an action before the General Court for the annulment of the second contested decision, registered as Case T-740/17.

By judgment of 22 September 2021, [36] the General Court annulled the contested letter and the first and second contested decisions, considering that the arbitration award was capable of conferring an unlawful advantage on Metlen imputable to the Greek State and, in so doing, making possible or perpetuating the granting of unlawful aid.

Hearing the appeal against that judgment, the Court of Justice held, inter alia, that the General Court had erred in law in holding that the arbitration award was a State measure capable of constituting State aid. [37]

According to the Court of Justice, the Commission had been fully entitled to consider, first, that, in the circumstances of the case before it, the only State measure capable of constituting State aid was DEI's decision to conclude the arbitration agreement with Metlen and, second, that, in order to know whether that decision had conferred an advantage on Metlen, it was necessary to ascertain whether a private operator, under normal market conditions, would have taken that decision under the same conditions.

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32 Commission Decision C(2015) 1942 final of 25 March 2015 (Case SA.38101 (2015/NN) (ex 2013/CP) – Greece – Alleged State aid granted to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision) (OJ 2015 C 219, p. 2).

33 Order of 9 February 2016, *DEI* v *Commission* (T-639/14, EU:T:2016:77).

34 Judgment of 31 May 2017, *DEI* v *Commission* (C-228/16 P, EU:C:2017:409).

35 Commission Decision C(2017) 5622 final of 14 August 2017 (Case SA.38101 (2015/NN) (ex 2013/CP) – Greece – Alleged State aid to Alouminion SA in the form of electricity tariffs below cost following an arbitration decision) (OJ 2017 C 291, p. 2).

36 Judgment of 22 September 2021, *DEI* v *Commission* (T-639/14 RENV, T-352/15 and T-740/17, EU:T:2021:604).

37 Judgment of 22 February 2024, *Mytilinaios* v *DEI and Commission and Commission* v *DEI* (C-701/21 P and C-739/21 P, EU:C:2024:146; 'the judgment on appeal').

The Court of Justice accordingly set aside the initial judgment and referred the cases back to the General Court for it to adjudicate on the pleas and arguments raised before it on which the Court of Justice had not given a ruling.

Findings of the Court

In support of its action for annulment of the second contested decision, DEI disputes the applicability and, in the alternative, the application of the private investor test in that decision in order to determine whether an advantage was conferred on Metlen.

As a preliminary point, the General Court observes that the concept of 'aid' within the meaning of Article 107(1) TFEU cannot cover a measure granted to an undertaking through State resources where it could have obtained the same advantage in circumstances which correspond to normal market conditions. Although the assessment of the conditions under which such an advantage was granted is made, in principle, by applying the market economy operator principle, the test to be employed in practice in a given case must be determined on the basis, inter alia, of the nature of the transaction envisaged by the public entity concerned. The tests that may be applied include the private investor test.

That observation having been made, the General Court rejects, first of all, DEI's arguments disputing the applicability of the private investor test to the present case.

As regards, more specifically, DEI's argument to the effect that its consent to settlement of the dispute through arbitration cannot be examined in the light of the private investor test because that decision is not an economic activity, the General Court notes that, according to the case-law, the actions of a market economy private operator are, in principle, guided by prospects of profitability. In referring the dispute for arbitration with the RAE, DEI sought a certain level of profitability within the meaning of that case-law since, according to its own explanations, that procedural choice would have enabled it to recover at least part of the amounts owing by Metlen as quickly as possible.

Since it is DEI's decision to have recourse to arbitration that must be examined in the light of the private investor test, the General Court, relying on the judgment on appeal, also dismisses DEI's argument to the effect that the comparison of its behaviour with that of a hypothetical private operator should be made in relation to the tariff fixed in the arbitration award. Moreover, the fact that DEI could not have foreseen the price that would be fixed in the arbitration award does not negate the applicability of the private investor test in the present case.

As regards application of the private investor test to the facts of the present case, the General Court then examines DEI's arguments aimed at demonstrating that, at the time of application of that test in the second contested decision, the Commission based itself on a manifestly incorrect assessment of both the facts and the appropriate framework and evidence falling to be assessed in the light of that test.

In its examination of those arguments, the General Court begins by observing that the Commission adopted the second contested decision at the end of the preliminary examination procedure under Article 108(3) TFEU. In accordance with the objective of that provision and its duty of sound administration, the Commission, in an endeavour to overcome any difficulties encountered, had to employ the measures and verifications necessary to remove any doubts as to the compatibility of the measure in question with the internal market. Where the preliminary examination procedure did not enable it to overcome all the difficulties involved in determining whether the measure in question was compatible with the internal market, the Commission was under a duty to initiate the procedure under Article 108(2) TFEU, without having any discretion in that regard.

Having regard to that clarification, the General Court examines whether the arguments put forward by DEI enabled doubts to be identified as to the compatibility of its decision to sign the arbitration agreement with State aid law, which would have obliged the Commission to initiate the formal investigation procedure.

In that regard, the General Court finds, first, that DEI has not provided indicia which might be able to call into question the Commission's assessment of the facts giving rise to the dispute and of the circumstances in which the dispute was brought before the arbitration tribunal, as described in the second contested decision.

Second, the General Court rejects DEI's argument to the effect that the Commission ought to have had serious difficulties when it examined the context in which DEI took the decision to resort to arbitration, including in particular the situation of Metlen and of the relevant market.

First, it considers that DEI's choice to refer its dispute to arbitration meets the 'profitability' test that a hypothetical prudent private investor would have sought in DEI's situation acting in normal market conditions since, according to DEI's own explanations, that choice made it possible to obtain sums owing to it by Metlen as quickly as possible.

Secondly, the General Court notes that, in accordance with the requirements laid down by the Court of Justice in the judgment on appeal, the Commission examined, first, the circumstances in which DEI had taken the decision to make use of arbitration and, second, ascertained whether a private operator would have taken that decision under the same conditions. On that latter point, DEI has not adduced any evidence showing that the Commission ought to have had doubts as to the use of arbitration by a normally prudent and diligent private operator in the same situation as DEI.

Thirdly, the General Court emphasises that the private investor test does not mean that the Commission was required to prove that a private operator would have taken exactly the same decision as DEI in the present case, but rather that the latter's decision was reasonable in a market economy in the light of the circumstances in which it was taken.

In the light of the foregoing, the General Court concludes that DEI has failed to demonstrate that the Commission ought to have had doubts in its application of the private investor test to the facts of the present case, which ought to have led it to initiate the formal investigation procedure. It accordingly rejects DEI's arguments calling into question the application of that test by the Commission in the second contested decision.

The General Court also dismisses the complaints directed at the Commission's decision not to take further action on the 2012 complaint, holding that, at the time of adoption of the second contested decision, the Commission could validly find that the 2012 complaint had become devoid of purpose following the delivery of the arbitration award.

Lastly, the General Court dismisses DEI's plea disputing the lawfulness of the replacement of the contested letter and the first contested decision by the second contested decision since, by the latter decision, the Commission not only withdrew the contested letter and the first contested decision, but also specified the illegality it wished to remedy, in accordance with the requirements laid down by the Court of Justice in *DEI* v *Commission* (C-228/16 P).

In the light of those considerations, the General Court dismisses the action in Case T-740/17 RENV and declares that there is no longer any need to adjudicate in Cases T-639/14 RENV II and T-352/15 RENV.

V. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (Third Chamber) of 19 November 2025, Gürok v EUIPO – Olav (Làv), T-563/24

Link to the full text of the judgment

EU trade mark – Revocation proceedings – EU figurative mark Làv – Article 18(1) and Article 58(1)(a) of Regulation (EU) 2017/1001 – Proof of genuine use – Assessment of the evidence – Unreasonable or excessive burden of proof – Principle of good administration – Article 41 of the Charter of Fundamental Rights

Judgment of the General Court (Third Chamber) of 19 November 2025, Gürok v EUIPO – Olav (Lav), T-564/24

Link to the full text of the judgment

EU trade mark – Revocation proceedings – EU figurative mark Lav – Article 18(1) and Article 58(1)(a) of Regulation (EU) 2017/1001 – Proof of genuine use – Assessment of the evidence – Unreasonable or excessive burden of proof – Principle of good administration – Article 41 of the Charter of Fundamental Rights

In these two judgments, the General Court annuls the decisions of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) [38] and states that the application of legal requirements relating to a trade mark proprietor's burden of proof in revocation proceedings for demonstrating genuine use of that mark must not lead to imposing upon it an unreasonable or excessive burden of proof, failing which the principle of good administration will be infringed.

Gürok Turizm ve Madencilik AŞ, the applicant, is the proprietor of EU figurative marks Làv and Lav. [39] Olav GmbH brought two applications for a declaration of revocation [40] of those marks on the ground that they had not been put to genuine use within a continuous period of five years. EUIPO's Cancellation Division upheld those applications in part and revoked the marks in respect of all the goods and services for which they had been registered, with the exception of certain goods in Class 21.

Hearing an appeal brought by Olav GmbH, EUIPO's Board of Appeal annulled the decisions of the Cancellation Division in so far as they had not upheld the application for a declaration of revocation in its entirety. The Board of Appeal found, in essence, that the evidence provided by the applicant did not demonstrate the extent of use of the contested marks and that the absence of additional explanations and cross-references hindered that evidence from being considered to be solid, objective and sufficient.

The applicant therefore lodged two applications for a declaration of annulment, claiming inter alia that it was not reasonable for an obligation to be imposed on it to establish a link between every line

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38 Decisions of the Fourth Board of Appeal of EUIPO of 22 August 2024 (Cases R 214/2024-4 and R 215/2024-4).

39 The goods and services covered by those marks are in Classes 8, 11, 19, 21, 35, 37 and 39 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. The figurative mark Lav was also registered in respect of goods and services in Classes 41 and 43.

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

referring to the goods covered by the contested marks in the invoices through the references and the photos in the catalogues. EUIPO also submits that the Board of Appeal had imposed on the applicant an unreasonable burden of proof.

Findings of the Court

In the first place, the General Court holds that the Board of Appeal erred in law in requiring the applicant to adduce, as proof of genuine use of the contested marks, proof of the sale of the goods concerned only to end consumers, when the relevant public also comprises specialists, industrial customers and other professional users.

In the second place, the General Court finds that it is true that the two product catalogues of 2014 and of 2023 provided by the applicant do not allow the use of the contested marks within the relevant territory during the relevant period to be shown in an explicit and unequivocal manner. However, they show apparent and external use of those marks over a period longer than the relevant period, which constitutes relevant evidence in the assessment of the extent of use. It follows that the Board of Appeal made an error of assessment in refraining from examining the product catalogues together with the entirety of the references and relevant evidence in a reasonable and comprehensive manner.

In the third place, the General Court rules on the Board of Appeal's finding that the applicant did not provide explanations or evidence as to the clear link between the exact goods indicated in the various invoices and the remaining documentation, including various product codes.

In that regard, the General Court holds that it would be unreasonable to consider that the goods marketed by an undertaking cannot be explicitly recognised by their product code in their producer's catalogues, since it was allegedly impossible to determine the place of printing of those catalogues and their actual distribution within the relevant territory during the relevant period.

Next, the General Court recalls that the diligent comparison of product codes, first, on the reproductions of goods in photos and in catalogues, and, secondly, on invoices, is not equivalent to a mere estimation of a probability or to a mere supposition, but involves a rational and logical process in the assessment of genuine use. Accordingly, in the present case, the link between the reproductions of the goods in the photos and in the catalogues, first, and the invoices for those products, second, could be established by relying on their respective indications of the product codes, which proved to be identical.

Furthermore, the General Court observes that the Board of Appeal intended to require the applicant to carry out cross-referencing work of all 2 919 lines of invoices with each of the corresponding goods in the catalogues, although the Board of Appeal was able to assess the extent of genuine use of the contested marks on the basis of all the evidence, taken together. Therefore, the Board of Appeal, on the one hand, erred in its assessment regarding the scope of the examination of evidence submitted by the applicant and, on the other hand, intended to impose on the applicant an excessive requirement for quality of evidence and an unreasonable burden of proof in the context of the assessment of genuine use.

Lastly, the General Court states that the requirement that proof of genuine use must be demonstrated by solid and objective evidence must not give rise to an unreasonable or excessive burden of proof. In the present case, the Board of Appeal adopted a very strict approach in requiring the applicant to establish a clear link between the various invoice codes and the goods covered that is 'explained, expressed, and shown'. The Board of Appeal cannot, without erring in law, impose, in the context of revocation proceedings for lack of genuine use, a requirement for quality of proof that exceeds the admissible threshold for evidence of effective and sufficient use that would be corroborated by sufficient items of evidence or a set of indicia resulting from the interdependence of the relevant factors. The application of legal requirements relating to a trade mark proprietor's burden of proof in revocation proceedings for demonstrating genuine use of the contested mark must not lead to imposing upon it an unreasonable burden of proof, which is liable to result in an infringement of the right to good administration.

In the light of all of the foregoing, the General Court concludes that the Board of Appeal made several errors of assessment and of law regarding the examination of evidence relating to the extent of use of the contested marks, and that the Board of Appeal, as a consequence, imposed an excessive requirement for quality of evidence and an unreasonable burden of proof on the applicant.

2. TELECOMMUNICATIONS

Judgment of the Court of Justice (First Chamber) of 20 November 2025, Lolach, C-327/24

Link to the full text of the judgment

Reference for a preliminary ruling – European Electronic Communications Code – Directive (EU) 2018/1972 – Access remedies imposed on undertakings with significant market power – Article 72 – Obligations of access to civil engineering assets – Conditions

Hearing a reference for a preliminary ruling from the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), the Court clarifies the scope of the examination to be carried out by a national regulatory authority when it considers imposing, on an undertaking designated as having significant market power, an obligation of access to civil engineering assets under Article 72 of Directive 2018/1972. [41]

The telecommunications undertaking Telekom Deutschland was designated, in the context of a market analysis of 2019, as an undertaking with significant market power in the market for the wholesale provision of local access at a fixed location.

By decision dated 21 July 2022, the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Agency for Electricity, Gas, Telecommunications, Post and Rail Networks, Germany) imposed several access obligations on Telekom Deutschland in favour of other undertakings on the basis of Paragraph 26 of the TKG. [42] In its decision, the agency stated that the measures imposed had to meet an extensive bundle of objectives and satisfy certain preconditions. Telekom Deutschland then brought an action before the referring court for annulment of that decision in part.

Faced with different possible interpretations of Paragraph 26 of the TKG, which transposes Articles 72 and 73 of Directive 2018/1972 into German law, the referring court decided to refer a question to the Court of Justice for a preliminary ruling. The referring court asks in particular whether a national regulatory authority, when it considers imposing a measure to ensure access to civil engineering assets on the basis of Article 72 of Directive 2018/1972, must limit its review to the objectives set out in paragraph 1 of that article or whether it may refer to a larger 'bundle of objectives' including, inter alia, the objectives set out in Article 3 of that directive.

Findings of the Court

As a preliminary point, the Court recalls that, when interpreting a provision of EU law, account must be taken not only its wording but also of its context and the objectives pursued by the rules of which it forms part.

First of all, as regards the wording of Article 72 of Directive 2018/1972, the Court notes that, under paragraph 1 of that article, the imposition of a self-standing remedy for access to civil engineering is subject to the condition that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the end user's interest. Furthermore, paragraph 2 of that article provides, that national regulatory authorities may impose on an undertaking obligations to provide access, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that those obligations are necessary and

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41 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36).

42 Paragraph 26 of the Telekommunikationsgesetz (Law on Telecommunications) of 23 June 2021 (BGBl. 2021 I, p. 1858), in the version applicable to the case in the main proceedings ('the TKG').

proportionate to meet the objectives of Article 3 of that directive. Those objectives include the objectives to which Article 72(1) of that directive refers when it sets out the two criteria for imposing an obligation of access, but they also include other objectives, such as the promotion of connectivity and of access to, and take-up of, very high capacity networks.

Next, as regards the context of Article 72 of Directive 2018/1972, the Court states, first, that that article – which constitutes a new provision as compared with the previous regulatory framework – is among the access remedies imposed on undertakings with significant market power and referred to in Article 68 of the directive.

Second, the Court notes that, according to Article 68(2) and (4) of Directive 2018/1972, a national regulatory authority, when considering adopting a self-standing remedy in accordance with Article 72 of that directive, must ensure that that measure is proportionate and justified in the light of all the objectives laid down in Article 3 of the directive.

Third, the Court observes that it follows from Articles 67 and 73 of Directive 2018/1972, that the criteria for imposing an obligation of access, laid down in Article 72(1) of that directive and relating to 'the emergence of a sustainable competitive market' and to 'the end user's interest' are cumulative. Moreover, it is also apparent from those provisions that the condition for imposing an obligation of access laid down in that provision essentially coincides with the requirement that such an obligation must be necessary and proportionate in relation to the objectives of promoting competition and the end user's interest. Given that those two objectives are among the general objectives of Article 3 of that directive, that condition must be considered to be satisfied where an obligation of access to civil engineering assets, imposed on an undertaking designated as having significant power on a specific market and based on the nature of the problem identified in the market analysis, is necessary and proportionate with regard to those general objectives.

Last, concerning the objectives pursued by the legislation at issue, the Court points out that the access remedies imposed on undertakings with significant market power pursue the objectives set out in Article 3 of Directive 2018/1972. [43] Furthermore, *ex ante* intervention is intended, inter alia, to produce benefits for end users by making retail markets effectively competitive on a sustainable basis. In addition, the EU legislature aims, inter alia, at progressively reducing such intervention as competition develops and, ultimately, ensuring that electronic communications are governed only by competition law. [44] In that regard, the Court notes that Article 72 of the directive is intended to achieve those same objectives.

Thus, a national regulatory authority must not merely establish that a measure based on Article 72 of Directive 2018/1972 is proportionate and necessary to promote competition and end user interest, but must also assess whether that is so with regard to all the objectives set out, in no order of priority, in Article 3 of that directive.

Consequently, the Court rules that Article 72 of Directive 2018/1972 must be interpreted as meaning that, where a national regulatory authority examines whether an obligation of access to civil engineering assets is to be imposed – irrespective of whether those assets are part of the relevant market in accordance with the market analysis – on an undertaking designated as having significant market power on a specific market, that authority must examine whether the non-imposition of that obligation would hinder the emergence of a sustainable competitive market and would not be in the end user's interest. Furthermore, that authority must also ensure that that obligation is based on the nature of the problem identified in the market analysis and that it is necessary and proportionate, with regard to all the objectives set out, in no order of priority, in Article 3 of that directive.

It is then for the referring court to assess whether the obligation of access imposed in the main proceedings satisfies those conditions.

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43 In accordance with Article 68(4) of Directive 2018/1972.

44 According to recital 29 in the preamble to Directive 2018/1972.

3. CHEMICALS

Judgment of the General Court (Sixth Chamber, Extended Composition) of 19 November 2025, Nouryon Functional Chemicals and Others v ECHA, T-1122/23

Link to the full text of the judgment

REACH – Substance di-tert-butyl 1,1,4,4-tetramethyltetramethylene diperoxide – Compliance check of registrations – Request for additional toxicity studies – Article 41 of Regulation (EC) No 1907/2006 – Manifest error of assessment – Error of fact – Proportionality – Decision of the Board of Appeal of ECHA – Admissibility of the arguments directed against the decision of ECHA

The General Court upholds in part the action for annulment brought against a decision of the Board of Appeal of the European Chemicals Agency (ECHA) [45] and rules, for the first time, on the arguments put forward to challenge an initial decision of ECHA when an action is brought against a decision of the Board of Appeal of that agency and the latter decision is based on the grounds of the initial decision.

The applicants, Nouryon Functional Chemicals BV, Arkema GmbH, Pergan Hilfsstoffe für industrielle Prozesse GmbH and United Initiators GmbH ('Nouryon Functional Chemicals and Others'), are registrants of the substance di-tert-butyl 1,1,4,4-tetramethyltetramethylene diperoxide ('the substance concerned') under the REACH Regulation. [46] In accordance with that regulation, they registered the substance concerned between 2011 and 2013 for a quantity of between 100 and 1 000 tonnes per annum.

After carrying out a compliance check, ECHA adopted an initial decision requiring Nouryon Functional Chemicals and Others to submit, by a set deadline, information on an extended one-generation reproductive toxicity study ('EOGRTS'). [47]

On 8 September 2022, the applicants brought an action against the initial decision.

By the contested decision, the Board of Appeal dismissed the appeal in part as regards the requirement for Nouryon Functional Chemicals and Others to submit information on EOGRTS with a basic design, [48] and set a new deadline for the applicants to submit that information.

Nouryon Functional Chemicals and Others then brought an action before the General Court for annulment of that decision.

Findings of the Court

In the first place, as regards the arguments of Nouryon Functional Chemicals and Others against the initial decision, the Court recalls that the relevant provisions of the REACH Regulation must be interpreted as meaning that the decisions taken by the Boards of Appeal replace the decisions initially taken by ECHA and that, consequently, the subject matter of the action for annulment must be regarded as being the decision of the Board of Appeal which dismissed the internal appeal brought against the initial decision. However, in the present case, in so far as the contested decision is based on the grounds stated in the initial decision, and indeed confirms those grounds, whether implicitly or

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45 Decision A-009-2022 of the Board of Appeal of the European Chemicals Agency (ECHA) of 19 September 2023 ('the contested decision').

46 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, and corrigendum OJ 2007 L 136, p. 3; 'the REACH Regulation').

47 Decision of ECHA of 8 June 2022 on the compliance check of the registration dossier for the substance di-tert-butyl 1,1,4,4-tetramethyltetramethylene diperoxide ('the initial decision').

48 EOGRTS by oral route in rats, including cohorts 1A and 1B (without extension to include the F2 generation) under column 1 of Section 8.7.3. of Annex IX to the REACH Regulation.

explicitly, all the pleas and arguments in the action that are directed against those grounds must be found to be fully effective for the purpose of reviewing the legality of the contested decision.

In the second place, the Court rejects the line of argument of Nouryon Functional Chemicals and Others that ECHA is required to prove the existence of adverse effects, on the basis of column 1 of Section 8.7.3. of Annex IX to the REACH Regulation, when it requests information on an EOGRTS due to other concerns regarding reproductive toxicity. It is apparent from that annex that an EOGRTS with a basic design must be carried out if the available repeated dose toxicity studies indicate adverse effects on reproductive organs or tissues or reveal other concerns regarding reproductive toxicity. Therefore, the condition relating to the indication of adverse effects on reproductive organs or tissues and the condition relating to the emergence of other concerns regarding reproductive toxicity are alternatives. In that regard, the Court points out that it is clear from the wording of that provision that the condition relating to the emergence of other concerns regarding reproductive toxicity does not depend on the demonstration of the indication of adverse effects. Furthermore, the interpretation of that provision in the light of its origin or context, from which the applicants derive their arguments, would result in the clear and precise wording of that provision being deprived of all effectiveness.

In the third place, the Court notes that, where the available repeated dose toxicity studies indicate adverse effects on reproductive organs or tissues or reveal other concerns regarding reproductive toxicity, ECHA is under an obligation to require registrants, for substances manufactured or imported in quantities of 100 tonnes or more, to provide information on an EOGRTS with a basic design, unless an adaptation (specific or general) can be applied. In that regard, the Court observes that it is common ground between the parties that no general or specific adaptation was applicable in the present case. Therefore, ECHA, after finding that the available repeated dose toxicity studies revealed other concerns regarding reproductive toxicity, was required to impose such requirements on the applicants, which did not infringe the principle of proportionality. Furthermore, ECHA does not have any discretion as to the consequences attached by the EU legislature to the fulfilment of the conditions laid down in Section 8.7.3. of Annex IX to the REACH Regulation.

In the fourth place, the Court rejects the argument of Nouryon Functional Chemicals and Others alleging infringement of Article 25 of the REACH Regulation, according to which testing on vertebrate animals for the purposes of that regulation is to be undertaken only as a last resort. The Court recalls, first, that the EU legislature set, as the main purpose of the registration obligation, the objective of ensuring a high level of protection of human health and the environment and, second, that the objective of ensuring animal protection is also pursued by the REACH Regulation. However, the information requirements under that regulation confirm that animal testing cannot be avoided in every case. Thus, since ECHA could not exercise any discretion as to the consequences attached to the fulfilment of the conditions laid down in Section 8.7.3. of Annex IX to the REACH Regulation, it cannot be criticised for having infringed Article 25 of that regulation by imposing an approach requiring the sacrifice of a higher number of vertebrate animals.

In the fifth and last place, the Court upholds the argument of Nouryon Functional Chemicals and Others that the contested decision reveals a lack of precision in ECHA's decision-making process. More specifically, first, the contested decision is vitiated by an error relating to the number of control group animals in which effects were observed. By referring to effects in a single animal in the control group, whereas a diffuse hypertrophy of follicular epithelium had been observed in five out of ten males and in three out of ten females in that group, the Board of Appeal vitiated the contested decision by an error as to the accuracy of the facts. Second, that error, which led the Board of Appeal to find that effects had been observed in 5% of the animals in the control group (1 out of 20) instead of 40% of the animals in that group (8 out of 20), cannot, on account of its seriousness, be regarded as a mere clerical error which could have been remedied by replacing the reference to 'one animal' with the reference to 'some animals'. That error as to the accuracy of the facts vitiates, in itself, the Board of Appeal's finding that the OECD TG 408 study showed a greater incidence of minimal or diffuse hypertrophy of the follicular epithelium at all dose levels in the groups of treated animals compared to the control group.

Consequently, the conclusion reached in the contested decision, namely that the OECD TG 408 study showed histopathological changes in the thyroid, consisting of diffuse follicular thyroid hypertrophy at all dose levels (15, 50 and 150 mg/kg bw/day) in both male and female rats, is based on materially incorrect facts.

4. PLANT PROTECTION PRODUCTS

Judgment of the General Court (Fourth Chamber, Extended Composition) of 19 November 2025, PAN Europe v Commission, T-412/22

Link to the full text of the judgment

Plant protection products – Active substance dimoxystrobin – Application for renewal of an active substance – Extension of approval period – Length of the extension – Request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Decision to reject the request – Article 17 of Regulation (EC) No 1107/2009

Judgment of the General Court (Fourth Chamber, Extended Composition) of 19 November 2025, Pollinis France v Commission, T-94/23

Link to the full text of the judgment

Plant protection products – Active substance boscalid – Application for renewal of an active substance – Extension of approval period – Delay in the renewal procedure – Reasons beyond the control of the applicant – Request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Decision to reject the request – Article 17 of Regulation (EC) No 1107/2009

Judgment of the General Court (Fourth Chamber, Extended Composition) of 19 November 2025, Aurelia Stiftung v Commission, T-565/23

Link to the full text of the judgment

Plant protection products – Active substance glyphosate – Application for renewal of an active substance – Extension of approval period – Delay in the renewal procedure – Reasons beyond the control of the applicant – Request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Decision to reject the request – Article 17 of Regulation (EC) No 1107/2009

Hearing three actions for annulment, brought respectively by Pesticide Action Network Europe (PAN Europe), Pollinis France and Aurelia Stiftung, the General Court, ruling in extended composition, annuls three Commission decisions to reject requests for internal review as regards the extension of the approval of three plant protection products, namely boscalid, glyphosate and dimoxystrobin. [49]

By those judgments the Court for the first time provides an interpretation of Article 17 of Regulation No 1107/2009, [50] which concerns the extension of the approval period of an active substance where a decision on a renewal of the approval cannot be taken before the approval period expires. That assessment is made with regard to two different aspects: the length of the extension and the reasons for the delay in the renewal procedure, which must be beyond the control of the applicant for renewal.

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49 Commission Decision Ares(2022) 3275139 of 27 April 2022, Commission Decision Ares(2022) 8437051 of 6 December 2022 and Commission Decision Ares(2023) 4611321 of 3 July 2023.

50 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p.1).

The applicants are non-profit associations which aim inter alia, as far as PAN Europe is concerned, to promote activities intended to reduce or eliminate pesticides and, as regards Pollinis France and Aurelia Stiftung, at protection of the environment.

Dimoxystrobin, an active substance used as an agricultural fungicide, was approved for the first time in the European Union by Directive 2006/75 [51] and its approval period was extended in 2013. In 2015, it was placed on the list of substances designated for substitution. [52] That said, its approval was further extended on several occasions on the ground that its assessment had been delayed for reasons beyond the control of the applicants for renewal and the approval was likely to expire before a decision had been taken on renewal. The penultimate extension [53] was the subject of a request for internal review, which was rejected by the Commission by a decision of 27 April 2022, the annulment of which is sought in Case T-412/22.

Boscalid is an active substance approved for the first time in the European Union in 2008 [54] and is used in plant protection products belonging to the family of succinate dehydrogenase inhibitors. The approval period of that substance has also been the subject of successive extensions on the ground that the assessment of that substance had been delayed for reasons beyond the control of the applicants and that the approval of that active substance was likely to expire before a decision had been taken on its renewal. The implementing regulation adopting such an extension in 2022 was the subject of a request for internal review, which was rejected by the Commission by decision of 6 December 2022, the annulment of which is sought in Case T-94/23.

Glyphosate, an active substance widely used in herbicides, was approved for the first time in the European Union in 2001. [55] Its approval was extended on several occasions, in particular on the ground that the assessment of the substance had been delayed for reasons beyond the control of the applicant. The implementing regulation on extension which was adopted in 2022 [56] was also the subject of a request for internal review, which was rejected by the Commission on 3 July 2023.

The applicants contested those three rejection decisions that had been adopted by the Commission, pleading, inter alia, misinterpretation and misapplication of Article 17 [57] of Regulation No 1107/2009.

Findings of the Court

As regards, in the first place, the length of the extension of the approval in Cases T-412/22 and T-94/23, the Court observes that the Commission must take account of the precautionary principle when exercising its powers under Regulation No 1107/2009. Accordingly, where an active substance is concerned, the Commission may take measures which restrict the use of that substance, prioritising consumer safety, without waiting for the outcome of the procedure for the renewal of the approval of that substance.

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51 Commission Directive 2006/75/EC of 11 September 2006 amending Council Directive 91/414/EEC to include dimoxystrobin as active substance (OJ 2006 L 248, p. 3).

52 By Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ 2015 L 67, p.18).

53 By Commission Implementing Regulation (EU) 2021/2068 of 25 November 2021 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances benfluralin, dimoxystrobin, fluazinam, flutolanil, mecoprop-P, mepiquat, metiram, oxamyl and pyraclostrobin (OJ 2021 L 421, p. 25).

54 By Commission Directive 2008/44/EC of 4 April 2008 amending Council Directive 91/414/EEC to include benthiavalicarb, boscalid, carvone, fluoxastrobin, Paecilomyces lilacinus and prothioconazole as active substances (OJ 2008 L 94, p. 13).

55 By Commission Directive 2001/99/EC of 20 November 2001 amending Annex I to Council Directive 91/414/EEC concerning the placing of plant protection products on the market to include glyphosate and thifensulfuron-methyl as active substances (OJ 2001 L 304, p. 14).

56 Commission Implementing Regulation (EU) 2022/2364 of 2 December 2022 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance glyphosate (OJ 2022 L 312, p. 99).

57 The first paragraph of Article 17 of Regulation No 1107/2009 states: 'Where for reasons beyond the control of the applicant it appears that the approval is likely to expire before a decision has been taken on renewal, a decision shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), postponing the expiry of the approval period for that applicant for a period sufficient to examine the application'. The third paragraph of Article 17 of that regulation sets out the factors to be taken into consideration when establishing the length of the extension period, namely: '(a) the time needed to provide the information requested; (b) the time needed to complete the procedure; (c) where appropriate, the need to ensure the establishment of a coherent work programme, as provided for in Article 18.'

The Court thus proceeds to interpret Article 17 of Regulation No 1107/2009 in the light of that principle as well as its wording, the context in which it occurs and the objectives pursued by the rules of which it is part.

It is apparent from that provision that where for reasons beyond the control of the applicant it appears that the approval is likely to expire before a decision has been taken on renewal, a decision is to be adopted postponing the expiry of the approval period for a period sufficient to examine the application. It follows that the length of the extension period must be adapted to the specific circumstances of the case, which have arisen in the course of the procedure, and may not be applied automatically, still less systematically.

Furthermore, the application for renewal must be submitted no later than three years before the expiry of the approval period, with the renewal procedure being based on a precise timetable and the requirement of expeditious proceedings. Those requirements are all the more important since the extension of the approval of an active substance on the basis of the first paragraph of Article 17 of Regulation No 1107/2009 has the same consequences as an initial approval or a renewal of approval.

Consequently, the Court finds that Article 17 of Regulation No 1107/2009 provides for a mechanism which should be applied on an exceptional basis. The Commission must make an assessment of the individual case whenever it extends the approval of an active substance. To that effect, it must take into account the relevant factors in order to define the necessary 'period sufficient' to carry out the ongoing assessment of the substance until completion.

While that article gives the Commission discretion to determine what constitutes a 'sufficient period', that power, however, is not absolute. The words 'period sufficient' must be understood as requiring that a period be set which neither falls short of nor goes beyond that which is necessary to complete the renewal procedure for each individual case.

In addition, the Commission, when it intends to apply Article 17 of Regulation No 1107/2009, must take account of the overall length of the renewal procedure in order to ensure that it remains within reasonable limits in the light of the requirement of expeditious proceedings. It cannot be accepted that an extension of the approval, which is temporary and exceptional in nature, allows an active substance to remain on the market for a period which greatly exceeds that of the initial approval, otherwise the renewal system established by that regulation will be deprived of any practical effect.

Interpreted in that way, Article 17 of Regulation No 1107/2009 is the expression of a balancing of the various interests at stake that is compatible with the objectives of that regulation and with the precautionary principle. On the one hand, account is taken of interests that support the view that a substance which has been approved in accordance with EU rules should not be prohibited unexpectedly owing to delays in the timetable for the renewal procedure which are beyond the control of the applicant. On the other hand, the extension granted is only temporary, it may be brought to an end by a non-renewal decision or be made subject to restrictions on the use of the substances and, above all, it must not be longer than necessary, having regard to the circumstances of each individual case.

As regards, in the second place, the reasons for a delay in the renewal procedures concerned, the Court, in Cases T-94/23 and T-565/23, interprets the expression 'reasons beyond the control of the applicant' in the first paragraph of Article 17 of Regulation No 1107/2009, observing that where there is 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 the purpose of the rules of which it forms part.

As regards the context of that rule, the Court examines the role of the applicant in the renewal procedure under Article 17 of that regulation.

In that regard, both the approval and the renewal procedure are launched on the initiative of the producer of the active substance, which is a central actor. It is responsible for the contents of the application, the submission of supplementary dossiers and for providing additional information to the rapporteur Member State or the European Food Safety Authority (EFSA), to which it may also submit comments on the renewal report. The applicant for renewal is thus an actor that participates in all the stages of the procedure, which enables it to influence the conduct thereof.

By contrast, as regards an extension of the approval period, the applicant for renewal is not required to submit an application and there is no provision for a procedure of consultation with it. The procedure is initiated automatically and the Commission must ascertain whether or not the delay in the conduct of the renewal procedure is due to reasons 'beyond the control of the applicant'. Given those factors, the applicant's conduct must be assessed in the light of the various stages of the renewal procedure that precede a possible extension of the approval period and in which the applicant had a role as a participant.

Among the objectives covered by the first paragraph of Article 17 of Regulation No 1107/2009, the Commission must attach particular importance to the objective of ensuring a high level of protection of human and animal health and the environment and must also satisfy itself not only that the applicant acted within the time limits, but also that the delay in the conduct of the renewal procedure is unconnected with its actions. In that context, an approach which would require an element of intent on the part of the applicant for renewal concerning delays in the conduct of the procedure is too restrictive and risks upsetting the balance struck by the legislature in a manner that would favour the interests of the applicant for renewal. In order to respect that balance, it is necessary to carry out an objective and *in concreto* analysis of the reasons for the delay in order to establish that that delay is beyond the control of the applicant, which must have diligently complied with all the rules applicable to the application and the renewal procedure.

However, by failing to carry out an *in concreto* analysis of the role of the applicant for renewal, by applying a restrictive approach to the role of the applicant for renewal in possible delays in the renewal procedure, and by disregarding any possible role played by the latter where another actor contributed, even in part, to the delay, the Commission erred in law in interpreting Article 17 of Regulation No 1107/2009.

5. REGULATION OF DIGITAL MARKETS (DMA)

Judgment of the General Court (Seventh Chamber, Extended Composition) of 19 November 2025, Amazon EU v Commission, T-367/23

Link to the full text of the judgment

Digital services – Regulation (EU) 2022/2065 – Designation as a very large online platform – Plea of illegality – Admissibility – Article 33(1) and (4) of Regulation 2022/2065 – Right to respect for private and family life – Freedom to conduct a business – Right to property – Equal treatment – Freedom of expression – Data protection

Dismissing the action for annulment brought by Amazon EU Sàrl, successor in law to Amazon Services Europe Sàrl, against the decision of the European Commission designating its platform Amazon Store platform as a very large online platform, [58] the General Court, sitting in extended composition, rules on the lawfulness of Article 33(1) of Regulation 2022/2065 [59] in the light of Articles 7, 16, 17 and 20 of the Charter of Fundamental Rights of the European Union ('the Charter').

The applicant is a company incorporated under Luxembourg law operating an online shop, namely the platform Amazon Store, accessible via various websites, including 'www.amazon.fr', 'www.amazon.de', 'www.amazon.es', 'www.amazon.it', 'www.amazon.nl', 'www.amazon.pl', 'www.amazon.se' and 'www.amazon.com.be'. The customers of that store can purchase consumer goods marketed by the applicant or by third-party sellers.

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58 Commission Decision C(2023) 2746 final of 25 April 2023 ('the contested decision').

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

On 17 February 2023, Amazon EU published on its websites information stating that the number of average monthly active recipients of its platform Amazon Store in the European Union (the 'AMAR') exceeded 45 million users.

Accordingly, by the contested decision, the Commission designated that platform as a very large online platform under Article 33(4) of Regulation 2022/2065, since its AMAR exceeded the threshold of 45 million provided for in Article 33(1) of that regulation. Amazon EU brought an action for annulment of that decision before the General Court.

Findings of the Court

In the first place, the Court rejects, inter alia, the plea of inadmissibility raised by the Commission and the Bureau européen des unions de consommateurs. In that regard, it points out that the contested decision, although adopted on the basis of Article 33(4) of Regulation 2022/2065, which empowers the Commission to designate an online platform as a very large online platform, applies the criterion for that designation, set out in Article 33(1) of that regulation, the possible unlawfulness of which would necessarily lead to the annulment of that decision. Consequently, the Court considers that the contested decision has a direct legal connection with the latter provision.

In the second place, the Court considers that Article 33(1) of Regulation 2022/2065 constitutes an interference with the freedom to conduct a business enshrined in Article 16 of the Charter since it requires providers of very large online platforms to comply with the obligations laid down in Articles 34 to 43 of that regulation which may represent a significant cost for them, have a considerable impact on the organisation of their activities or require difficult and complex technical solutions.

However, in the context of the justification for that interference, first, the Court rejects the applicant's argument that marketplaces whose AMAR reaches 45 million are not liable to give rise to various systemic risks within the meaning of Regulation 2022/2065. [60]

In that regard, it observes, inter alia, that the applicant does not dispute that recipients of the service may use advertisements or comments to convey illegal content or content of a political or religious nature. It considers that, since the applicant acknowledges that illegal products could be marketed on marketplaces, those marketplaces may be used to disseminate illegal content, in particular in connection with the sale of dangerous or non-compliant products, and that they may therefore have a negative effect on consumer protection.

Second, the Court rejects the applicant's argument that the legislature could have adopted less restrictive alternative measures to achieve the objectives of Regulation 2022/2065.

In that context, it rejects, inter alia, the applicant's criticism concerning Article 39 of Regulation 2022/2065, which provides that providers of very large online platforms are to compile and make publicly available in a specific section of their online interface, through a searchable and reliable tool that allows multicriteria queries and through application programming interfaces, a repository containing information concerning advertisements. After recalling the risks associated with the advertising systems used by very large online platforms, [61] the Court finds that that article makes it possible to limit the dissemination of illegal content, to contribute to a high level of consumer protection and to prevent negative effects linked to the protection of minors. It concludes therefrom that that provision may prevent various systemic risks under Article 34(1) of that regulation and that such an objective would be more difficult to achieve if only researchers and authorities, and not the public as a whole, had access to the information concerned.

Third, the Court rejects the applicant's argument that the obligation referred to in Article 38 of Regulation 2022/2065 – pursuant to which providers of very large online platforms using recommender systems offer at least one option for each of those systems which is not based on profiling – limits its ability to inform its customers of offers made on its platform.

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60 Systemic risks referred to in Article 34(1)(a) to (d) of Regulation 2022/2065.

61 See recital 70 of Regulation 2022/2065.

In that regard, the Court notes that that provision seeks to make it possible for recipients of very large online platforms to choose, to a certain extent, the information to which they are exposed. [62] Thus, it does not prevent them from using a recommender system based on profiling. It also strengthens the rights of consumers by offering them the option to express a choice as to the products offered to them. That provision may therefore at the very least contribute to a high level of consumer protection and, consequently, prevent a systemic risk under Article 34(1)(b) of that regulation.

In those circumstances, the Court considers that, by imposing on providers of very large online platforms the obligations laid down in Articles 34 to 43 of Regulation 2022/2065, Article 33(1) of that regulation is not manifestly inappropriate for attaining the objectives of that regulation and that, consequently, it does not infringe the freedom to conduct a business enshrined in Article 16 of the Charter.

In the third place, the Court rejects the applicant's argument that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Articles 34 to 43 of that regulation, infringes the principle of equal treatment enshrined in Article 20 of the Charter.

In that context, first, as regards the applicant's claim that those obligations should apply only to online platforms which give rise to systemic risks, such as social networks, content-sharing services and online search engines, and not to marketplaces, the Court reiterates that marketplaces whose AMAR reaches 45 million may give rise to various systemic risks within the meaning of Regulation 2022/2065.

In addition, the Court rejects the applicant's argument that, as regards 'the dissemination of speech, content or information', marketplaces should be treated in the same way as cloud computing services and web-hosting services, which do not constitute online platforms within the meaning of Regulation 2022/2065 In that regard, it observes that Article 33(1) of that regulation, in so far as it covers marketplaces and not certain cloud computing services and certain web-hosting services, which are different from marketplaces in that the dissemination of specific information to the public constitutes a minor and ancillary feature or minor functionality of those services, does not make an arbitrary or manifestly inappropriate differentiation for the purposes of preventing the systemic risks referred to in Article 34(1) of that regulation.

Thus, the Court finds that Article 33(1) of Regulation 2022/2065, in so far as it applies to marketplaces, social networks, content-sharing services and online search engines, does not appear to be manifestly inappropriate to prevent the systemic risks referred to in Article 34(1) of that regulation.

Second, so far as concerns the applicant's claim that all marketplace providers, irrespective of their AMAR, should be treated in the same way for the purposes of applying the obligations laid down in Articles 34 to 43 of Regulation 2022/2065, the Court holds that a marketplace whose AMAR reaches 45 million may expose a significant part of the European Union to illegal content and, consequently, may create a systemic risk relating to the dissemination of such content. [63] Accordingly, it holds that such marketplaces may give rise to risks for society which differ, in terms of their scale and impact, from those attributable to smaller platforms.

In addition, the Court rejects the applicant's argument that, in order to reach an AMAR of 45 million, very large online platforms must, in practice, necessarily operate in several Member States and that, consequently, their obligations under Articles 34 to 43 of Regulation 2022/2065 do not apply to online providers operating in a single Member State.

In that regard, the Court notes that the applicant does not explain why certain risks, including those relating to the democratic process, are merely national in character, even though there is, at EU level, a democratic process. [64] In addition, it observes that the legislature took the view that an online platform may give rise to systemic risks at EU level where its AMAR reached or exceeded 10% of the

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62 See recital 70 of Regulation 2022/2065.

63 Within the meaning of Article 34(1)(a) of Regulation 2022/2065.

64 As follows from Article 10 TEU and Article 22(2) TFEU.

population of the European Union. [65] Online platforms which are present in only one Member State and whose AMAR is less than 45 million – even if a significant part of the population of that Member State is exposed to their content – are less likely to give rise to systemic risks at EU level than online platforms whose AMAR exceeds 45 million.

Consequently, the Court considers that Article 33(1) of Regulation 2022/2065, in so far as it applies only to providers of marketplaces whose AMAR reaches 45 million, does not make an arbitrary or manifestly inappropriate differentiation for the purposes of preventing the systemic risks referred to in Article 34(1) of that regulation.

Third, the Court rejects the applicant's argument that marketplace providers should be treated, for the purposes of applying the obligations laid down in Articles 34 to 43 of Regulation 2022/2065, in the same way as retailers, namely undertakings which market online only their own products and which are not covered by Article 33(1) of that regulation.

The Court points out that, unlike retailers' websites, online platforms disseminate information provided by a recipient of the service. Therefore, while retailers' websites disseminate, in principle, only their own information, online platforms may disseminate information emanating from a large number of persons.

In those circumstances, the Court notes that, unlike retailers, providers of online platforms do not necessarily know all the information disseminated on their platforms. Moreover, it notes that, for that reason, they are granted the benefit of exemptions which are not available to retailers.

Consequently, the Court notes that, unlike retailers, providers of large online platforms may facilitate the dissemination of illegal content without their knowledge and without them incurring liability.

Moreover, the Court observes that, in its impact assessment, the Commission noted that very large online platforms played a significant role for both consumers and sellers marketing their products on those platforms. However, it is not disputed that retailers do not play such a role, at least as regards those sellers.

The Court therefore considers that Article 33(1) of Regulation 2022/2065, in so far as it applies to marketplace providers and not to retailers, does not make an arbitrary or manifestly inappropriate differentiation for the purposes of preventing systemic risks. [66]

In the fourth place, the Court rejects the applicant's line of argument seeking to demonstrate that Article 33(1) of Regulation 2022/2065 infringes the freedom of expression and information enshrined in Article 11 of the Charter.

In that regard, it notes, inter alia, that the obligation to offer at least one option for each recommender system which is not based on profiling [67] results from weighing up the freedom of commercial expression of providers of very large online platforms and consumer protection. Thus, the legislature was entitled to take the view, without exceeding its broad discretion, that consumer protection required consumers to be able to have access, if they so wished, to an option which was not based on profiling for each of the recommender systems used on very large online platforms.

Last, in the fifth place, the Court rejects the applicant's argument that Article 33(1) of Regulation 2022/2065 infringes the right to respect for private life guaranteed in Article 7 of the Charter. It considers that Article 33(1) of Regulation 2022/2065, in so far as it imposes on certain marketplaces the obligations laid down in Article 39 and Article 40(4) and (12) of that regulation, does not constitute a disproportionate interference with that right and does not impose a burden that outweighs the objectives pursued.

In that regard, the Court notes, inter alia, that the applicant has not put forward any argument capable of establishing that Article 39 of Regulation 2022/2065 goes beyond what is strictly necessary

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65 Article 33(2) and recital 76 of Regulation 2022/2065.

66 Laid down in Article 34(1) of Regulation 2022/2065.

67 Obligation referred to/laid down in Article 38 of Regulation 2022/2065.

to make information available to consumers regarding the advertisements displayed on very large online platforms, including those to which they are not exposed in view of the targeting parameters used, and to understand the reasons why, in the light of those parameters, they are exposed to certain advertisements rather than others. Nor has it adduced any argument capable of establishing that that provision goes beyond what is strictly necessary to enable the media and consumer protection associations to monitor advertisements posted on very large online platforms, in particular with a view to preventing the promotion of illegal or inappropriate products to certain audiences, such as minors.

Similarly, the Court observes that the applicant has not submitted any argument to support the view that Article 40(4) and (12) of Regulation 2022/2065 – which provides, in specific cases, for the communication of information to vetted researchers – goes beyond what is strictly necessary in order to be able to detect, identify and understand systemic risks in the European Union. Moreover, it does not rely on the existence of measures alternative to that provision which would make it possible to achieve that objective.

In addition, the Court notes, first, that the information disseminated pursuant to Article 39 of Regulation 2022/2065 concerns only a limited part of the economic activity of marketplaces. In addition, as regards the disclosure of the identity of advertisers, it states that that disclosure concerns only advertisers who have chosen to display advertisements on a very large online platform, and that those advertisers may establish a legal person in order not to disclose their identity. Second, as regards Article 40(4) and (12) of that regulation, the Court points out that that article merely provides for the communication of information to vetted researchers so as to preserve the confidential nature of that information.

VI. INTERNATIONAL AGREEMENTS: AGREEMENT ON THE EUROPEAN ECONOMIC AREA (EEA)

Judgment of the Court of Justice (First Chamber) of 13 November 2025, Familienstiftung, C-142/24

Link to the full text of the judgment

Reference for a preliminary ruling – Free movement of capital – Inheritance and gift tax – Taxation of the *inter vivos* transfer of assets in order to set up a foundation – Family foundation with its seat in Liechtenstein – Coherence of the tax system

Hearing a reference for a preliminary ruling from the Finanzgericht Köln (Finance Court, Cologne, Germany), the Court of Justice rules on the compatibility with the free movement of capital of national legislation which, for the purposes of the taxation of a transfer of assets, allows the application of a more favourable tax-class treatment to resident family foundations than that applied to foundations established abroad, as resident family foundations are also subject to substitute inheritance tax.

In 2014, Ms Y, a German resident, set up a family foundation in Liechtenstein whose beneficiaries are herself, her children and her grandchildren. At the time when the foundation was set up, Ms Y transferred assets to the foundation, an operation equated to a gift *inter vivos*.

In 2015, the foundation submitted a tax declaration in relation to gift tax, requesting the application of the preferential tax-class treatment for family foundations under the German legislation. Under that legislation, the tax class applicable to family foundations established on national territory and essentially in the interests of a family depends on the relationship between the most distantly related beneficiary and the donor, which enables those foundations to benefit from tax class I, a lower tax rate, in this case 19%, and a more favourable tax allowance. According to the foundation, the

condition concerning the establishment 'on national territory' should not be taken into account since it undermines the free movement of capital within the meaning of Article 40 of the EEA Agreement. [68]

In 2018, the tax office decided not to apply that preferential treatment to the foundation. It calculated the tax without taking into account the family relationship between the beneficiaries and the founder and applied the tax rate of 30% of tax class III.

Following an action brought by the foundation before the referring court, that court has doubts as to the compatibility of the condition relating to the establishment of a foundation on national territory with Article 40 of the EEA Agreement.

It is against this background that the referring court asks the Court whether Article 40 of the EEA Agreement precludes such national legislation.

Findings of the Court

As a first step, the Court finds that the national legislation constitutes a restriction on the movement of capital within the meaning of Article 40 of the EEA Agreement. The preferential tax-class treatment applicable only to resident family foundations results in a higher tax liability for the transfer of assets to a non-resident family foundation than for the transfer to a resident family foundation. First, this reduces the value of the property transferred to a non-resident family foundation and, second, it enables a resident family foundation to have greater financial means at its disposal than those available to non-resident family foundations. In that regard, the Court finds that the difference in treatment introduced by the national legislation is permissible only if it relates to situations which are not objectively comparable, or, otherwise, if it is justified by an overriding reason in the public interest and proportionate to that objective. [69]

As a second step, the Court examines the comparability of the situations at issue. First of all, it notes that the Federal Republic of Germany exercises its power to impose taxes with regard to the transfer of assets from a person residing within its territory to a family foundation irrespective of the place where the foundation is situated. Thus, as regards the incurrence of tax liability with respect to transfers of assets to a family foundation, the national legislation places the situations where such a foundation is situated on national territory on the same footing as the situations where the foundation is situated in another State.

Next, the Court points out that the tax class and the allowances depend on the family relationship between the donor and the most distantly related beneficiary, which is a factor without any connection to the place where the family foundation was set up and which may be relevant for both resident foundations and non-resident foundations. Their situation is therefore objectively comparable.

Lastly, the Court observes that the objective of granting an advantage only to resident family foundations, on the ground that only their assets, unlike those of non-resident foundations, are subject to recurring taxation by way of substitute inheritance tax, is necessarily and closely linked to the setting up of domestic family foundations. To accept that these situations are not comparable solely because a foundation is established in another State would deprive Article 63(1) TFEU, which specifically prohibits restrictions on cross-border movements of capital, of all meaning.

As a third step, the Court examines whether that restriction on the free movement of capital is justified by an overriding reason in the public interest, such as the coherence of the tax system. The Court finds that there is a direct link between the advantage in the form of preferential tax-class treatment, granted to resident family foundations, and the substitute inheritance tax, which is later recurrently applied to the assets of those foundations only. The configuration of that tax advantage reflects a logical symmetry, as that advantage is offset by a specific tax charge, relating to the same tax and the same taxpayer. That logic would be disturbed if that tax advantage were also to benefit non-resident family foundations which are not subject to substitute inheritance tax in Germany. Since

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68 Article 40 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), as amended by the Agreement on the participation of the Republic of Bulgaria and Romania in the European Economic Area (OJ 2007 L 221, p. 15) ('the EEA Agreement').

69 In the light of Article 65(1)(a) and (3) and Article 63 TFEU.

substitute inheritance tax is levied every 30 years from the date of the first transfer of assets to the resident family foundation, it is not uncertain in nature. That mechanism reflects, first, the objective pursued by the national legislation of placing the transfer of assets through family foundations on an equal footing with ordinary inheritances, and, second, the fact that such foundations generally tend to last for several generations.

As regards the principle of proportionality, the Court notes that the introduction of substitute inheritance tax, levied every 30 years, reflects the principle that assets are subject to tax once every generation. The appropriateness of the national legislation for ensuring the attainment of the objective pursued is not called into question by the fact that the assets of a family foundation may increase or decrease in individual cases, nor by the fact that there is some uncertainty as to the amount which will be levied by way of substitute inheritance tax. Since the tax rate applied to resident family foundations, at the time when they are established, corresponds to the normal tax rate for gifts made between persons with a family relationship, in accordance with the objective of placing those foundations on an equal footing with ordinary inheritances, and since substitute inheritance tax follows the same logic, the advantage obtained when setting up a resident family foundation corresponds to the future disadvantage of having to bear the substitute inheritance tax. The Court finds that the national legislation does not go beyond what is necessary to attain the objective pursued, as it limits the advantage of the preferential tax-class treatment to situations where the Federal Republic of Germany subsequently has the power to tax the assets of the family foundation.

However, it is ultimately for the referring court to determine whether the national legislation complies with the principle of proportionality *stricto sensu*. First, since the Federal Republic of Germany does not have powers of taxation over non-resident family foundations, it appears proportionate, in the light of the objective pursued, to limit the grant of a more favourable tax-class treatment to situations where the transfer of assets to a family foundation can give rise to later taxation by way of substitute inheritance tax. Second, it does not appear that, assessed over time, the application of that legislation would systematically give rise to a significantly higher tax burden for transfers of assets to a non-resident family foundation, which would, if it were the case, call into question the proportionality of that legislation.

Therefore, the Court concludes that the principle of the free movement of capital, within the meaning of Article 40 of the EEA Agreement, does not preclude national legislation which provides that, for the purposes of the taxation of a transfer of assets to a family foundation, the relationship between the most distantly related beneficiary under the foundation charter and the founder is taken into account only for resident foundations, which are subject to substitute inheritance tax, with the result that a more favourable tax class is applied to these foundations than that applied to foreign family foundations, which are not subject to that tax, provided that the legislation complies with the principle of proportionality.

VII. ECONOMIC AND MONETARY POLICY

1. PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS

Judgment of the General Court (Fourth Chamber, Extended Composition) of 19 November 2025, YH v ECB, T-366/23

Link to the full text of the judgment

Economic and monetary policy – Prudential supervision of credit institutions – Directive 2013/36/EU – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the ECB – Assessment of acquisitions of qualifying holdings – Opposition to the acquisition of a qualifying holding – Right to be heard – Concept of 'qualifying holding' – Reputation and professional competence of the proposed acquirer – Rights protected by the Charter – Proportionality

In this judgment, the General Court dismisses YH's action against a decision of the European Central Bank (ECB) opposing the acquisition of a qualifying holding in a credit institution ('the contested decision'). On this occasion, the Court provides clarifications as regards the ECB's monitoring of the acquisition of qualifying holdings, the possibility for the ECB to supplement the statement of reasons for a decision after it has been notified, and the assessment of the reputation of a proposed acquirer in the light of the integrity and reputation of a member of his or her family.

M.M. Warburg & Co (AG & Co.) KGaA ('the Target') is a 'less significant' credit institution, supervised directly by the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, Germany; 'BaFin') and owned by the family of the applicant's husband.

The company 1. Max Warburg Beteiligungsgesellschaft mbH ('MWB 1') holds 40.24% of the capital in the financial holding company of the MMWarburg & CO prudential group, MMWarburg & CO Gruppe GmbH ('Warburg Gruppe'). Warburg Gruppe in turn holds 100% of the capital in the Target, which itself held, at the time of the contested decision, 100% and 60% of the capital, respectively, of two other target companies, which are also credit institutions.

The applicant's husband wished to organise the transfer of his holding in the capital of the Target to his children. As a first step, he transferred 87.5% of the capital of MWB 1 to the company Familie Max Warburg Vermögensverwaltung KG ('FMWV'), for the benefit of his children, thus retaining 12.5% of the capital of MWB 1, with a golden share conferring on him 51% of the voting rights in that company. In addition, FMWV and the applicant's husband undertook to exercise their voting rights in a uniform manner ('the pooling agreement'). As a second step, the applicant was to receive her husband's golden share, thereby acquiring 0.01% of the capital of MWB 1 and 51% of the voting rights therein ('the proposed acquisition'), and become a party to the pooling agreement in respect of MWB 1.

On 3 April 2023, the applicant and her counsel met representatives of the ECB to discuss the issues raised by the proposed acquisition. On 4 April 2023, BaFin proposed to the ECB that the proposed acquisition not be opposed. On 12 April 2023, the ECB sent the applicant a draft decision opposing the proposed acquisition on the ground that she did not fulfil the legal requirements for acquiring a qualifying holding in a credit institution. On 21 April 2023, the applicant submitted her comments on the draft decision.

By email of 5 May 2023, the ECB sent the applicant the contested decision, which confirmed the substance of its draft decision, stating its reasons for considering that the applicant did not fulfil the legal criteria for acquiring, through MWB 1, a qualifying holding in the Target of 100% of the voting rights and 100% of the capital. It took the view, first, that the applicant did not meet the requirement of good repute, finding (i) that she was under the influence of her husband, whom the ECB regarded as of bad repute, and (ii) that she did not have adequate professional competence. Second, the ECB found that the applicant was not sufficiently financially sound to provide the Target with the necessary own funds. Third, the ECB found, in particular, that the proposed acquisition did not permit effective prudential supervision of the Target.

On 8 May 2023, after several reminders sent by the ECB seeking confirmation from the applicant's counsel that the contested decision had been received, her counsel replied, disputing the validity of the notification of that decision. By email of 12 May 2023, the applicant again challenged the validity of the notification of the contested decision and requested that she be sent the separate assessment note addressing her comments on the draft decision ('the separate assessment note'), referred to in the contested decision. She received that note on 15 May 2023.

Findings of the Court

As a preliminary point, as regards the applicant's claim, in her plea in law alleging infringement of the rules of the procedure for assessing qualifying holdings, that the period prescribed for carrying out that assessment had expired, with the result that the proposed acquisition is deemed to be approved, the Court points out that, in any event, each party to the procedure must comply with the rules applicable to it. Thus, while the notification of the proposed acquisition was subject to the conditions laid down in German law, in accordance with the Kreditwesengesetz, [70] the notification of a prudential supervisory decision by the ECB, for its part, had to comply with the legal framework of Framework Regulation No 468/2014. [71] Having regard to the legal and factual context of the present case, in so far as the applicant sent the information requested by email to an address which was not intended for that purpose, while announcing that she was sending it in physical format and carrying out that action, BaFin did not err in law when it took the view that the notification in writing was complete on the day on which the information sent in physical form by the applicant was received, namely 3 February 2023. Accordingly, the Court rejects that complaint and proceeds to examine the contested decision.

In the first place, as regards the alleged insufficiency of the statement of reasons for the contested decision, the Court states, first, that the facts relating to the proposed acquisition by the applicant of a qualifying holding in the Target, in view of the Warburg Gruppe's shareholders acting in concert, are set out in the contested decision. It also notes that the criteria justifying the ECB's opposition to the proposed acquisition are clearly examined in that decision, both as regards the applicant's reputation and solvency, and as regards the Target's compliance with prudential requirements. In addition, the contested decision was adopted in a context which was known to the applicant, in that she herself notified the data relating to the proposed acquisition and was consulted prior to the adoption of that decision. Therefore, the Court takes the view that the contested decision specifies the relevant facts and points of law on which it is based, without it being necessary to have recourse to the separate assessment note or to the ECB's subsequent explanations, and that an adequate statement of reasons was thus provided.

Second, as regards the claim that the separate assessment note could not be taken into account in the review of the legality of the contested decision, the Court observes that that note was communicated to the applicant 10 days after notification of the contested decision and that it was expressly referred to in that decision. It takes the view that, in the light of the case-law, that note may be regarded as forming part of the context of the contested decision and be taken into account in assessing the statement of reasons for that decision. Moreover, although the late sending of the separate assessment note, 10 days after notification of the contested decision, is the result of an internal clerical error within the ECB, the fact remains that the contested decision expressly refers to that note, which set out the reasons available at the time of the adoption of the contested decision. Thus, the applicant was informed of its existence as soon as the contested decision was notified and could therefore request that it be sent to her as soon as she received that decision. Five working days after receiving the contested decision, the applicant requested the note. The ECB sent it to her the next working day.

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70 Kreditwesengesetz (Law on credit institutions – KWG) of 9 September 1998 (BGBl. 1998 I, p. 2776), as amended by the Law of 22 February 2023 (BGBl. 2023 I Nr. 51).

71 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1).

The Court therefore finds that the separate assessment note being sent by the ECB to the applicant at a later date did not deprive the latter of the opportunity to acquaint herself with it, and that the applicant has not demonstrated, or even alleged, that the late communication of the separate assessment note adversely affected her rights.

In the second place, as regards the interpretation of the concept of a 'qualifying holding', the Court recalls that Regulation No 575/2013, to which the CRD IV Directive [72] refers, defines a qualifying holding as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking. It states that the concept of 'acquisition of a qualifying holding' in a credit institution is an autonomous concept of EU law.

In this respect, the Court states that it is apparent from Regulation No 1024/2013 [73] that an assessment of the suitability of any new owner prior to the purchase of a qualified holding in a credit institution is an indispensable tool for ensuring the continuous suitability and financial soundness of owners of those institutions. Furthermore, on account of the ECB's broad discretion in the exercise of its prudential supervisory tasks, which include monitoring the acquisition of qualifying holdings, the Court is to verify that the contested decision is not based on materially incorrect facts and is not vitiated by a manifest error of assessment.

In the present case, the ECB states, in the contested decision, that Warburg Gruppe's shareholders are acting in concert and that together they indirectly hold 100% of the shares in the capital of the Target and of the voting rights in it. It adds that, as a result of the pooling agreement, it is also presumed that there is acting in concert at the level of MWB 1. The ECB deduces from this that the applicant will acquire 100% of the shares and voting rights in the Target, which she will be able to control indirectly. More specifically, in the separate assessment note examining the criteria set out in the Joint Guidelines, [74] the ECB concludes that, in view of that acting in concert, the voting rights must be attributed to the proposed acquirer in full. In that regard, account is taken of the agreement concluded between the shareholders of Warburg Gruppe, the relationships within the Target group, the sources of financing of Warburg Gruppe's shareholders and the past voting patterns of those shareholders.

As regards the shareholders' agreement concluded at Warburg Gruppe level, the Court finds, first of all, that the analysis in the separate assessment note is not obsolete, since Warburg Gruppe's new articles of association provide, like the shareholders' agreement referred to, that the transfer of shares to persons outside the shareholder families requires the prior consent of the 'company' by means of a decision of the general meeting. Similarly, the Joint Guidelines do not exclude this type of agreement from its scope. Next, as regards two other members of the applicant's husband's family holding shares in Warburg Gruppe, the Court notes that the applicant does not deny the facts relied on by the ECB, nor does she submit any evidence that would call into question the ECB's assessment of those family relationships. In addition, as regards the relationships between the companies of the same group, it finds that the applicant does not call into question the facts set out by the ECB, since that foundation's shareholding in Warburg Gruppe is not among the factors taken into account by the ECB. As regards the consideration of a single source of financing, although the applicant claims that, where the Joint Guidelines provide that the use of the same source of financing may constitute an indication of acting in concert, what is meant is external sources of financing, and not internal sources such as the dividends distributed by the Target, the Court notes that the Joint Guidelines [75] state that 'the use by different persons of the same source of finance for the acquisition or increase of holdings

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72 Point 33 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338, 'the CRD IV Directive').

73 Recital 22 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

74 Paragraph 4.6 of the Joint Guidelines of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, published on 20 December 2016 (JC/GL/2016/01; 'the Joint Guidelines').

75 Paragraph 4.6(b)(4) of the Joint Guidelines.

in the target undertaking' is an indicator of acting in concert, and make no distinction between 'external' and 'internal' sources. Lastly, as regards past voting patterns, the Court observes that the applicant has neither produced evidence contradicting the ECB's position nor justified why she was unable to produce such evidence.

Consequently, the Court holds that the ECB did not commit a manifest error of assessment but found, on the basis of relevant evidence, that there was acting in concert between MWB 1 and the other shareholders of Warburg Gruppe. Accordingly, the Court rejects the applicant's challenge to the acquisition of a qualifying holding in terms of voting rights, adding that voting rights and capital rights are referred to in the alternative by the CRD IV Directive [76] and Regulation No 575/2013 [77] in order to establish the acquisition of a qualifying holding.

In the third and last place, as regards the reputation of a proposed acquirer and the integrity and reputation of a person who has a close family relationship with that proposed acquirer, the Court recalls that the Joint Guidelines emphasise that the competent authority may take into consideration the integrity and reputation of any person linked to the proposed acquirer, meaning any person who has, or appears to have, a close family or business relationship with the proposed acquirer. Moreover, it is apparent from the case-law that the CRD IV Directive does not preclude the proposed acquirer's lack of good repute from resulting from the latter's relations with a third party. [78]

In the present case, the Court points out, first of all, that the ECB stated in the contested decision that qualifying holding procedures served to ensure the sound management of institutions and overall financial stability, and that the assessment of the reputation of the proposed acquirer is an *ex ante* assessment and necessarily requires a prediction of the future conduct of the proposed acquirer. Facts must indicate an abstract risk, that is to say, the likelihood of an intended breach.

Next, it finds that the ECB stated, in the contested decision, first, that it had very serious doubts about the reputation of the applicant's husband, in the light of the reassessment to which he had been subject by BaFin in 2019, second, that the applicant appeared to be financially dependent on her husband, third, that the applicant had no banking experience and, fourth, that the applicant had openly admitted also to seeking the advice of her husband, with whom she would be part of a pooling agreement. Therefore, the ECB infers from this that there are serious concerns that the applicant's husband will exert material influence over the Target, through the applicant, following the proposed acquisition.

Lastly, the Court notes that, on the basis of the Joint Guidelines and the case-law, the ECB may take into consideration, when assessing the reputation of a proposed acquirer, the integrity and reputation of a person who has a close family relationship with that proposed acquirer, such as, here, the applicant's husband.

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76 Article 22(1) of the CRD IV Directive.

77 Point 36 of Article 4(1) of Regulation No 575/2013.

78 Judgment of 10 July 2024, *PH and Others* v *ECB* (T-323/22, EU:T:2024:460, paragraphs 325 and 326).

2. SINGLE RESOLUTION MECHANISM

Judgment of the Court of Justice (Fifth Chamber) of 13 November 2025, BNP Paribas Public Sector v SRB, C-4/24 P

Link to the full text of the judgment

Appeal – Economic and monetary policy – Economic and monetary union – Banking union – Single resolution mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Regulation (EU) No 806/2014 – Article 69(1) – Article 70(1) – Implementing Regulation (EU) 2015/81 – Article 7(1) to (3) – Sums paid as collateral backing irrevocable payment commitments – Decision of the Single Resolution Board (SRB) refusing to return the sums paid

Hearing an appeal brought against the judgment in *BNP Paribas Public Sector* v *SRB* (T-688/21), [79] which it dismisses, the Court provides clarification on the scope, inter alia, of Articles 69 and 70 of Regulation No 806/2014 [80] and Article 7 of Implementing Regulation 2015/81. [81] Those provisions form part of the context of the conditions for the return of collateral linked to irrevocable payment commitments ('IPCs') entered into by a credit institution in order to fulfil its obligation to contribute to the Single Resolution Fund (SRF), either by way of a cash payment or by way of an irrevocable payment commitment.

The appellant was an authorised French credit institution until 24 March 2021, the date on which, at its request, the European Central Bank (ECB) withdrew its authorisation. Before the Single Resolution Mechanism (SRM) created by Regulation No 806/2014 was implemented, the appellant had provided, for 2015, a part of its contribution to national resolution financing arrangements in the form of an IPC which was entered into with the Single Resolution Board (SRB) and the French national authorities concerned ('the 2015 IPC'). For the contribution periods from 2016 to 2021, it had contributed to the SRF, for at least part of its *ex ante* contributions, by means of IPCs, entered into with the SRB, for each period ('the 2016-2021 IPCs').

On 1 April 2021, the appellant informed the SRB that the ECB had withdrawn its authorisation. In response to a request for information from the appellant on the reimbursement terms of the collateral linked to the IPCs which it had entered into, the SRB informed the appellant, by letter of 13 August 2021, that it would return to it the collateral backing the 2015 IPC and the 2016-2021 IPCs following receipt of an amount in cash corresponding to the amounts committed under those commitments. It stated that, in its view, [82] the cancellation of the 2016-2021 IPCs and the subsequent return of the collateral backing those commitments could take place only after the payment in cash of amounts equal to the amounts of the various IPCs concerned. The SRB then invited the appellant to transfer the cumulative sum of a certain amount to it and added that, after receipt of that sum, it would return the collateral, less the amount of negative interest accrued, after expiry of a period of 14 days after receipt of the notice of termination of the IPCs.

The appellant then informed the SRB that, since, according to its understanding of the applicable legal framework, it was not required to transfer to the SRB the cash corresponding to the cumulative sum of the amounts committed under the 2015 IPC and the 2016-2021 IPCs in order to be returned the collateral, it would not proceed with that transfer.

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79 Judgment of 25 October 2023, *BNP Paribas Public Sector* v *SRB* (T-688/21, EU:T:2023:675, 'the judgment under appeal').

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

81 Council Implementing Regulation of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

82 Having regard to Article 70(4) of Regulation No 806/2014 and Article 7(1) of Implementing Regulation 2015/81.

It is in those circumstances that the appellant brought an action before the General Court, based, primarily, in particular on Article 272 and the first paragraph of Article 340 TFEU, seeking from the Court a finding that the position set out by the SRB in the letter of 13 August 2021 was contrary to the terms of the 2016-2021 IPCs and, consequently, an order that the SRB return to it the sums corresponding to the cash collateral linked to those IPCs. Furthermore, on the sole basis of the second paragraph of Article 340 TFEU, the appellant requested from the Court a finding that the SRB's refusal to return to it the sums corresponding to the cash collateral linked to the 2015 IPC constituted unjust enrichment and an order that the SRB pay it those sums by way of damages.

In the judgment under appeal, in which it dismissed all of the appellant's claims and, therefore, the action in its entirety, the General Court held that, as regards the claim based on Article 272 and the first paragraph of Article 340 TFEU neither the provisions applicable in the present case nor the terms of the contract concluded between the appellant and the SRB precluded the position expressed by the SRB in the letter of 13 August 2021, according to which it would be able to return the cash collateral backing the IPCs only after the payment of the cumulative sum of the amount corresponding to that of the *ex ante* contribution for which those instruments were used. Moreover, concerning the claims based on the second paragraph of Article 340 TFEU, the General Court held that the SRB's decision to retain the sums corresponding to the cash collateral linked to the IPCs entered into by the appellant was founded on a valid legal basis [83] and, consequently, could not constitute unjust enrichment of the SRB justifying compensation by way of damages.

Findings of the Court

In the first place, the Court of Justice rules on the General Court's finding that the SRB, in accordance with the letter of 13 August 2021, would be able to return the cash collateral backing the IPCs to the appellant only after the payment of the cumulative sum of the amount corresponding to that of the *ex ante* contributions for which those instruments were used.

In that regard, first, the Court of Justice rejects the argument that the General Court infringed the principles of interpretation of EU law by giving precedence to a contextual and teleological analysis, even though the wording of Article 7(3) of Implementing Regulation 2015/81 is clear and precise. In that regard, according to the Court of Justice, in so far as the General Court examined the wording of that provision and related its observations to the relevant provisions of Regulation No 806/2014, in order to whether the apparent clarity and precision of Article 7(3) could be upheld, the General Court cannot be criticised for having disregarded the principles of interpretation of EU law.

Second, as regards the argument alleging infringement of Article 70(1) of Regulation No 806/2014 and of Article 7(2) and (3) of Implementing Regulation 2015/81, the Court finds that the term 'raise' in the wording of Article 70(1) of Regulation No 806/2014 and the term 'pay' in the judgment under appeal relate to two sides of the same obligation. Therefore, it holds, first, that the terminological distinction drawn by the appellant between those two terms has no basis in the respective texts of those regulations and, second, that the use of the term 'raise' in the wording of that article cannot in itself exclude the interpretation upheld by the General Court, according to which credit institutions which have had recourse to IPCs are required to pay the amount of their contributions in cash where they decide to exit from the scope of that regulation.

Furthermore, as regards the argument relating to Article 7(2) of Implementing Regulation 2015/81, according to which IPCs may be called only in the event of a resolution action, the Court notes that, since the annual contributions of credit institutions may be made in the form of IPCs, [84] the fact that those commitments are cancelled when a credit institution no longer comes within the scope of that regulation [85] does not call into question the fact that the amounts corresponding to those same contributions have become the property of the SRF.

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83 Namely the 2015 IPC, the 2016-2021 IPCs and Article 70(1) of Regulation No 806/2014.

84 In accordance with Article 70(3) of Regulation No 806/2014.

85 Pursuant to Article 7(3) of Implementing Regulation 2015/81.

Therefore, the Court considers that, in view of the nature of the annual contributions to the SRF, the cancellation of IPCs [86] obliges the credit institution exiting from the scope of Regulation No 806/2014 to pay into the SRF, prior to that cancellation, an amount equivalent to those commitments.

Third, as regards the argument alleging that a lack of legal basis for the obligation to pay the amount of the IPC in the event of exit from the scope of Regulation No 806/2014, the Court of Justice notes that the General Court based itself on Article 69(1) of that regulation in order to set out the principal objective pursued by the annual collection of *ex ante* contributions, consisting in ensuring that, at the end of the initial period provided for by that provision, the available financial means of the SRF reach the target level fixed therein. By contrast, had the General Court interpreted Article 7(3) of Implementing Regulation 2015/81 in such a way as to permit a credit institution exiting from the scope of Regulation No 806/2014, such as the appellant, not to pay the cash amount corresponding to an IPC entered into by it, that provision would, according to the Court of Justice, have run counter to the objective of reaching the target level. [87]

Fourth, the Court of Justice rejects the argument that the General Court's interpretation of Article 7(1) of Implementing Regulation 2015/81 is incorrect. In that regard, it rules that the General Court made no error in holding that that provision applies to the treatment of IPCs of a credit institution which exits from the scope of Regulation No 806/2014 and that, therefore, Article 7(3) of that implementing regulation must be interpreted in the light of that provision.

Fifth, the Court also rejects the argument alleging infringement of the principle *lex specialis generalibus derogat*. It finds that Regulation No 806/2014, as the basic regulation, ranks higher in the hierarchy of norms than Implementing Regulation 2015/81, such that, in the absence of a derogation or express stipulation, the provisions of Implementing Regulation 2015/81 cannot prevail over those of Regulation No 806/2014.

In the second place, the Court rejects the argument that the judgment under appeal is vitiated by a failure to state reasons and by contradictory reasoning. In that regard, it notes that there is no contradiction in the observation made by the General Court to the effect that IPCs are not contributions paid 'immediately', but contributions the payment of which is 'deferred', and the General Court's statement to the effect that an IPC given by an institution constitutes a 'duly received' contribution. The prohibition on reimbursement of *ex ante* contributions [88] covers all available financial means, including IPCs.

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86 Pursuant to Article 7(3) of Implementing Regulation 2015/81.

87 That objective is pursued in particular by Article 69 of Regulation No 806/2014.

88 Provided for in Article 70(4) of Regulation No 806/2014.

VIII. SOCIAL POLICY: WORKING CONDITIONS

Judgment of the Court of Justice (Grand Chamber) of 11 November 2025, Denmark v Parliament and Council (Adequate minimum wages), C-19/23

Link to the full text of the judgment

Action for annulment – Directive (EU) 2022/2041 – Adequate minimum wages in the European Union – Article 153(1)(b) TFEU – Article 153(2)(b) TFEU – Respect for the competences conferred on the Union by the Treaties – Article 153(5) TFEU – Exclusions of competence – 'Pay' and 'right of association' – Direct interference by EU law in the determination of pay within the European Union and in the right of association – Partial annulment – Article 5(1), in part, (2) and (3) *in fine*

Hearing an action brought by the Kingdom of Denmark, seeking, principally, annulment of Directive 2022/2041 on adequate minimum wages in the European Union, [89] the Grand Chamber of the Court annuls two parts of sentences and one paragraph of Article 5 of that directive.

Directive 2022/2041 establishes a framework for setting adequate minimum wages with a view to improving living and working conditions in the Union. Among its important provisions, in particular, Article 4 concerns the promotion of collective bargaining, while Article 5 relates to the 'adequacy of statutory minimum wages'.

The Kingdom of Denmark, supported by the Kingdom of Sweden, submits that, by adopting that directive, the European Parliament and the Council failed to have regard to Article 153(5) TFEU and the division of powers between the European Union and the Member States provided for in that article in the field of social policy. Those two Member States further submit that the two institutions concerned lacked the competence to adopt that directive on the basis of Article 153(1)(b) TFEU, since that directive pursues several different objectives.

Findings of the Court

As a preliminary point, the Court recalls that, in accordance with the principle of conferral, [90] the Union is to act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. In order to adopt the contested directive, the EU legislature relied on the combined provisions of Article 153(2)(b) and Article 153(1)(b) TFEU, which empower the Parliament and the Council to adopt, by means of directives, minimum requirements in the field of 'working conditions'. However, Article 153(5) TFEU contains an express exclusion of competence with regard, inter alia, to matters relating to pay and the right of association. Therefore, the Court states that it is for the Court to ascertain whether, by adopting the contested directive on the basis of the abovementioned provisions, the EU legislature infringed the exclusions of competence set out in the latter provision. For the purposes of that examination, the Court relies on the same objective factors, which include the aim and content of that measure, as those in the light of which it reviews the choice of the legal basis for an EU measure.

In the first place, in the context of the examination of the first plea, alleging disregard of Article 153(5) TFEU, the Court specifies, as regards the first part of that plea relating to infringement of the exclusion of competence in relation to pay, that that exclusion must be construed as covering measures – such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage at EU level – that amount to direct interference by EU law in the determination of pay within the European Union. That criterion must guide the examination of whether the exclusion of competence relating to pay laid down in

89 Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union (OJ 2022 L 275, p. 33; 'the contested directive').

90 That principle is set out in Article 4(1) and Article 5(1) and (2) TEU. Thus, in accordance with that principle, competences not conferred upon the Union in the Treaties remain with the Member States.

Article 153(5) TFEU has been complied with, irrespective of the more or less close link between the act at issue and the matter of pay and the effects of that act on the level of pay. This means that the competence of the European Union cannot be considered to be automatically excluded on the ground that the contested directive relates to that matter and is capable of having an impact on the level of pay. The Court therefore ascertains whether Articles 4 to 6 of the contested directive, to which the criticisms of the Kingdom of Denmark and the Kingdom of Sweden essentially relate, amount to direct interference by EU law in the determination of pay within the European Union.

As regards, in particular, Articles 4 and 5 of the contested directive, first, the Court notes that although Article 4 of that directive [91] introduces a certain form of State intervention in the arrangements for collective bargaining on wage-setting, it does not follow that its provisions would amount to direct interference by EU law in the determination of pay within the European Union. In particular, Article 4 of the contested directive neither governs the content nor prescribes the result of collective bargaining. The various measures laid down in Article 4 impose on the Member States not obligations as to the result to be achieved but, at most, obligations as to means. Thus, Article 4(2) of the contested directive provides that the Member States must establish a 'framework' of enabling conditions for collective bargaining and draw up an 'action plan' to promote such bargaining, without, however, being required to reach the threshold of 80% of collective bargaining coverage referred to in that provision.

Second, as regards Article 5 of the contested directive, the Court notes at the outset that that provision applies only to Member States with statutory minimum wages, thus respecting the competence of the Member States to choose the wage-setting model. As regards, in particular, paragraphs 1 to 3 of that article, the Court notes, first of all, that the broad wording of Article 5(1) of the contested directive [92] leaves a significant margin of discretion to the Member States to define the concept of 'adequacy' of statutory minimum wages. In view of the express reference made by that provision to national practices defined in national laws, the concept of 'adequacy' of statutory minimum wages cannot be regarded as an autonomous concept of EU law. Moreover, Article 5(1) of the contested directive, which is formulated in general terms and based on a procedural approach, does not confer a right to an adequate statutory minimum wage on workers or a right to the updating of such wages which are inherent in EU law. In those circumstances, Article 5(1) of the contested

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91 Under Article 4, entitled 'Promotion of collective bargaining on wage-setting':

'1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;

(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;

(c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;

(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80% shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.'

92 Under that provision:

'Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages. Such setting and updating shall be guided by criteria set to contribute to their adequacy, with the aim of achieving a decent standard of living, reducing in-work poverty, as well as promoting social cohesion and upward social convergence, and reducing the gender pay gap. Member States shall define those criteria in accordance with their national practices in relevant national law, in decisions of their competent bodies or in tripartite agreements. The criteria shall be defined in a clear way. Member States may decide on the relative weight of those criteria, including the elements referred to in paragraph 2, taking into account their national socioeconomic conditions.'

directive does not amount to direct interference by EU law in the determination of pay within the European Union.

As regards, next, Article 5(2) of the contested directive, [93] which lists four elements which the national criteria referred to in paragraph 1 of that provision must at least include in order to contribute to the adequacy of statutory minimum wages, the Court states that the phrase 'at least' shows that that list is not exhaustive. In addition, it is apparent from the third sentence of Article 5(1) of the contested directive that the Member States are to define those national criteria in accordance, inter alia, with their national practices, taking into account their socio-economic conditions. The fact remains that Article 5(2) of the contested directive requires Member States with statutory minimum wages to ensure that those criteria include, at the very least, the four elements listed therein. By requiring the use of those elements in the procedures for setting and updating statutory minimum wages, the EU legislature established a requirement relating to the constituent elements of those wages, which has a direct effect on the level of those wages, irrespective of the relevance of those elements at national level in view of the socioeconomic conditions prevailing in the Member States. Consequently, Article 5(2) of the contested directive amounts to harmonisation of some of the constituent elements of those wages and, therefore, direct interference by EU law in the determination of pay.

As regards, lastly, Article 5(3) of the contested directive, [94] although that provision merely allows Member States to use an automatic mechanism for indexation adjustments of statutory minimum wages and refers to national law and practice as regards the appropriate criteria on which that mechanism must be based, the final part of the sentence of that provision makes the use of such a mechanism subject to the '[condition] that the application of that mechanism does not lead to a decrease of the statutory minimum wage'. Thus, in so far as it provides for a non-regression clause in the level of statutory minimum wages for Member States which use an automatic mechanism for indexation adjustments of those wages, that provision amounts to direct interference by EU law in the determination of pay within the European Union.

It follows from the foregoing that Article 5 of the contested directive amounts, in paragraph 2 thereof and in the part of the sentence 'provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage' in paragraph 3 thereof, to direct interference by EU law in the determination of pay within the European Union, and therefore infringes the exclusion relating to pay provided for in Article 153(5) TFEU.

In the context of the examination of the second part of the first plea concerning the alleged infringement of the exclusion of competence relating to the right of association, the Court notes, as regards the relationship between the right to participate freely in collective bargaining and the right of association, which is referred to in Article 153(5) TFEU, that it is true that the former is not expressly referred to as one of the areas in which Article 153 TFEU confers on the European Union a power of harmonisation with a view to achieving the objectives of Article 151 TFEU. Furthermore, the right of association is a prerequisite for the exercise of the right to collective bargaining. It cannot however be inferred from this that the right to participate freely in collective bargaining, as an element inherent in the right of association, is excluded, on that basis, from the competences of the European Union in accordance with Article 153(5) TFEU. First of all, Article 153(1)(f) TFEU expressly confers on the EU legislature the power to adopt measures relating to 'representation and collective defence of the interests of workers and employers, including co-determination'. The wording of that provision gives it a sufficiently broad scope to cover measures governing the right to collective bargaining,

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93 That provision is worded as follows:

'The national criteria referred to in paragraph 1 shall include at least the following elements:

(a) the purchasing power of statutory minimum wages, taking into account the cost of living;

(b) the general level of wages and their distribution;

(c) the growth rate of wages;

(d) long-term national productivity levels and developments.'

94 That provision reads: 'Without prejudice to the obligations set out in this Article, Member States may additionally use an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices, provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage.'

notwithstanding the exclusion relating to the right of association set out in Article 153(5) TFEU. Next, it may be inferred from the juxtaposition of the concepts of 'right of association' and 'collective bargaining between employers and workers' in the seventh indent of the first paragraph of Article 156 TFEU that, for the purposes of that article, the authors of the Treaties intended to draw a distinction between the matters covered by each of those two concepts. Lastly, the Charter of Social Rights and the European Social Charter, as instruments expressly referred to in the first paragraph of Article 151 TFEU, as well as the Charter of Fundamental Rights of the European Union, deal separately with the right of association and the right to collective bargaining. Accordingly, the concept of 'right of association' referred to in Article 153(5) TFEU must be interpreted as referring to the freedom of workers and employers to form or dissolve organisations, including trade unions, or to join or not to join them, but does not cover measures governing the right to collective bargaining between employers and workers.

As regards the legal test applicable to the examination of whether the exclusion relating to the right of association laid down in Article 153(5) TFEU has been complied with, the Court holds that the exclusion of competence relating to that right covers not any measure having a link with that right, but only measures which amount to direct interference by EU law with the right of association or with its exercise. Ascertaining whether Article 4(1)(d) and Article 4(2) of the contested directive, which are more specifically referred to in the Kingdom of Denmark's arguments, amount to direct interference by EU law with the right of association, the Court notes that the first of those provisions is intended to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. The protection which that provision is intended to confer against acts of interference concerns the establishment, functioning and administration of trade unions and employers' organisations, matters falling within the scope of the right of association, both in its positive and negative aspects, namely the right to set up organisations, including trade unions, and to organise them. Compliance with the exclusion of competence relating to the 'right of association', provided for in Article 153(5) TFEU, presupposes that neither Article 4(1)(d) of the contested directive nor the measures taken by the Member States to ensure the transposition of that provision into their national law amount to direct interference in the establishment, functioning and administration of associations. In that regard, it is apparent from the very wording of Article 4(1)(d) of the contested directive that that provision, while having a link with the right of association, seeks to promote the right to participate freely in collective bargaining. Article 4(1)(d) does not interfere with the competence retained by the Member States to adopt measures directly governing the right of association, since Member States are not required to take 'measures' under that provision and must, in any event, do so only in so far as their national law and practice so permits. Nor does that provision harmonise the content of the measures prescribed. In addition, it must be read in the light of the first paragraph of Article 152 TFEU, which enshrines respect for the autonomy of the social partners. Consequently, Article 4(1)(d) of the contested directive does not amount to direct interference by EU law with the right of association.

The Court reaches a similar finding with regard to Article 4(2) of the contested directive. It points out in that context, inter alia, that that provision, interpreted in the light of the autonomy of the social partners referred to in the first paragraph of Article 152 TFEU, does not require the Member States to oblige a larger number of workers to join a trade union organisation or to declare a collective agreement universally applicable.

In the second place, in the context of the examination of the second plea, alleging that it is impossible to adopt the contested directive on the basis of Article 153(1)(b) TFEU, the Court points out (i) that that provision, which refers to working conditions, is capable of covering measures to improve the adequacy of minimum wages and, thereby, to improve living and working conditions in the Union. It points out (ii) that Article 153(1)(f) TFEU, which refers to representation and collective defence of the interests of workers and employers, including co-determination, is capable of covering measures to promote collective bargaining, provided that the measures thus adopted comply with Article 153(5) TFEU. In the light of its main provisions consisting of Articles 4 to 8 thereof, the contested directive does fall within the field of competence referred to in Article 153(1)(b) TFEU and not within that referred to in Article 153(1)(f) TFEU.

Consequently, the Court annuls the part of the sentence 'including the elements referred to in paragraph 2' in the fifth sentence of Article 5(1) of the contested directive, Article 5(2) of that directive and the part of the sentence 'provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage' in Article 5(3) thereof. The action is dismissed as to the remainder.

IX. CONSUMER PROTECTION: UNFAIR TERMS

Judgment of the Court of Justice (Fourth Chamber) of 13 November 2025, Šiľarský, C-197/24

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 2011/7/EU – Combating late payment in commercial transactions – Scope – Article 2(1) and (3) – Concept of 'undertaking' – Concept of 'commercial transaction' – Contract for the provision of legal services with a view to setting up a commercial company – Directive 93/13/EEC – Article 2(b) – Concept of consumer – Natural person who engaged the services of a lawyer with a view to setting up a commercial company

Hearing a reference for a preliminary ruling from the Mestský súd Bratislava IV (City Court, Bratislava IV, Slovak Republic), the Court of Justice clarifies, first, the concepts of 'undertaking' and 'commercial transaction' within the meaning of Directive 2011/7 [95] and, second, that of 'consumer' within the meaning of Directive 93/13, [96] in the context of the provision of legal services by a lawyer to a natural person with a view to the formation of a commercial company.

In 2022, RU, a natural person who wished to set up a limited liability company governed by Slovak law, of which he would become a co-founder, member and managing director, contacted a lawyer who became a partner at AK, a company providing legal services. A contract is said to have been concluded orally for the provision of such services in return for a fixed fee. Subsequently, draft company statutes and other documents were drawn up and then sent to RU, together with an invoice which was not settled by its due date. AK therefore brought an action before the referring court, seeking an order that RU pay the fees owing for legal services provided and a fixed sum as compensation for recovery costs, in accordance with the provision of Slovak law which implements Article 6 of Directive 2011/7.

RU, stating that those company statutes and other documentation were sent to him without a prior request to that effect, disputes that he entered into a contract for the provision of legal services and that there was an agreement on remuneration for those services. In addition, he contends that, on account of his status as a consumer, the dispute should be governed by the provisions of civil law, whereas AK submits that the dispute is a commercial dispute governed by the provisions of commercial law.

Harbouring doubts as to whether RU can be classified as an 'undertaking' and, therefore, whether the transaction concluded with the lawyer can be classified as 'commercial', within the meaning of Article 1(2) of Directive 2011/7, read in conjunction with Article 2(1) and (3) of that directive, the referring court decided to stay the proceedings and to make a reference to the Court of Justice for a preliminary ruling. Should that question be answered in the negative, it also asks whether RU comes within the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13.

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95 Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ 2011 L 48, p. 1).

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

Findings of the Court

In the first place, as regards the concepts of 'undertaking' and 'commercial transaction', within the meaning of Directive 2011/7, which determine the scope of that directive, the Court points out that the requirement that the transaction concerned must form part of the independent economic or professional activity of the person in question is to be assessed at the time that transaction is concluded. The possibility that the status of that person may change, in particular as a result of the past transaction, is therefore not such as to alter the status of that person as at the date on which the transaction is concluded.

Furthermore, while the link between the transaction in question and the aim pursued by the person concluding it may be one of the factors to be taken into consideration in order to determine whether Directive 2011/7 is applicable, the Court states that it cannot, on its own, suffice to support the finding that the natural person in question acted as an 'undertaking', when he or she concluded that transaction.

Consequently, the Court rules that the fact that a natural person has engaged the services of a lawyer with a view to the formation of a commercial company, of which he or she was to become a co-founder, member and managing director, is not, in itself, sufficient to classify that person as an 'undertaking' and, accordingly, the transaction concluded with that lawyer as 'commercial', within the meaning of Article 1(2) of Directive 2011/7, read in conjunction with Article 2(1) and (3) of that directive.

In the second place, as regards the concept of 'consumer', within the meaning of Directive 93/13, the Court recalls that that directive defines the contracts to which it applies by reference to the capacity of the contracting parties, according to whether or not they are acting for purposes relating to their trade, business or profession. First, the status of the person concerned as 'consumer' must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession. Second, that concept is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has.

Furthermore, the Court states that the status of a person as 'consumer', within the meaning of that directive, must be assessed at the time when the contract in question is concluded. Therefore, the fact that the situation of the defendant in the main proceedings was liable to change is not such as to alter the status he held on the date on which that contract was concluded.

In the light of the foregoing, the Court finds that a natural person who has concluded a contract for the provision of legal services with a view to the formation of a commercial company of which he or she was to become a co-founder, member and managing director, comes within the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, provided that, at the time the contract was concluded, that person was not engaged in an independent economic or professional activity of which that contract could have formed part.

X. ENVIRONMENT: AARHUS CONVENTION

Judgment of the General Court (Ninth Chamber, Extended Composition) of 12 November 2025, Föreningen Svenskt Landskapsskydd and Others v Council, T-534/23

Link to the full text of the judgment

Judgment of the General Court (Ninth Chamber, Extended Composition) of 12 November 2025, CEE Bankwatch Network and Ökobüro v Council, T-535/23

Link to the full text of the judgment

Environment – Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy – Request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Refusal of request – Act adopted on the basis of Article 122(1) TFEU – Act not capable of being the subject of a request for internal review – Article 2(1)(g) of Regulation No 1367/2006 – Concept of 'administrative act' – Article 9(3) of the Aarhus Convention – Article 2(2) of the Aarhus Convention – Act adopted in a 'legislative capacity'

The General Court upholds the decisions of the Council of the European Union rejecting the requests for internal review of Regulation 2022/2577 [97] that had been made by a number of non-profit associations promoting environmental protection. On this occasion, the Court clarifies, for the first time, the concept of 'administrative act' within the meaning of the Aarhus Regulation, [98] following the latter's amendment by Regulation 2021/1767, [99] which broadened the material scope of acts subject to the internal review procedure.

As a result of the war waged by Russia against Ukraine, a sudden and significant interruption of gas flows from Russia occurred in 2022. In that context, in December 2022, the Council adopted Regulation 2022/2577, which introduced, inter alia, the exemption from certain assessment obligations laid down in EU environmental legislation in order to accelerate the pace of deployment of renewable energy in the short term.

In February 2023, the applicants sent to the Council two requests for internal review of Regulation 2022/2577, on the basis of the Aarhus Regulation. By decisions of 13 June 2023, the Council rejected those requests as inadmissible and, in the alternative, as unfounded ('the contested decisions'). By their actions before the Court, the applicants seek the annulment of those decisions.

Findings of the Court

The Court examines whether the Council wrongly rejected the requests for internal review of Regulation 2022/2577 as inadmissible on the ground that they did not concern an act that could be the subject of such a review, namely an 'administrative act' within the meaning of Article 2(1)(g) of the Aarhus Regulation.

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97 Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy (OJ 2022 L 335, p. 36).

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

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

In that regard, the Court observes that the interpretation of a provision of EU law requires account to be taken not only of its wording, but also its context as well as the objectives and purpose pursued by the act of which it forms part.

As regards the literal interpretation, the Aarhus Regulation defines an 'administrative act' as 'any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law'. Thus, the EU legislature defined that concept as opposed to the concept of a 'legislative act', without, however, referring to the category of acts adopted under an ordinary or special legislative procedure within the meaning of Article 289 TFEU.

As regards the contextual interpretation, the Aarhus Regulation does not apply to EU institutions and bodies acting in a judicial or legislative capacity. Acts adopted in such a capacity cannot therefore constitute administrative acts within the meaning of the Aarhus Regulation.

Moreover, although, when adopting Regulation 2021/1767, the EU legislature wished to broaden the scope of the internal review procedure with the aim of bringing EU law in line with the provisions of the Aarhus Convention, the EU legislature did not intend to amend the exclusion of legislative acts from the scope of that review procedure.

Furthermore, the fact that the definition of the concept of 'environmental law' given in Article 2(1)(f) of the Aarhus Regulation refers, in certain language versions, to the concepts of 'legislation' or 'legislative provision' does not mean that the concept of 'environmental law' is, for the purposes of the application of that regulation, limited to legislative acts, within the meaning of Article 289(3) TFEU.

In those circumstances, while it is true that a legislative act within the meaning of Article 289 TFEU does not constitute an administrative act within the meaning and for the application of the Aarhus Regulation, it does not follow from the contextual interpretation that the concept of 'legislative capacity', referred to in the Aarhus Regulation, coincides exactly with the category of legislative acts defined in that provision.

As regards the teleological interpretation, the purpose of the Aarhus Regulation is to implement the provisions of Article 9(3) of the Aarhus Convention. According to that provision, each party must ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

It is apparent from the Aarhus Convention that Article 9(3) does not apply to acts of bodies or institutions acting in a judicial or legislative capacity, without further defining the term 'legislative capacity'. The interpretation of the term 'legislation' for the purposes of an instrument of public international law must remain independent from the domestic law of the contracting parties.

It is therefore appropriate to adopt a functional approach to the concept of 'legislative capacity', which relates not only to the nature of the body concerned but also to the functions actually performed by the institution or body in question. Thus, although the organic criterion constitutes evidence for characterising a legislative act within the meaning of the Aarhus Regulation, account must also be taken of the actual substance of the act adopted by that institution or body.

It follows that the concept of 'legislative capacity' within the meaning of the Aarhus Regulation cannot be interpreted as covering only acts which have been adopted under an ordinary or special legislative procedure in accordance with Article 289 TFEU. Accordingly, the concept of 'administrative act' set out in Article 2(1)(g) of that regulation refers to any act which has not been adopted by an EU institution acting in a legislative capacity, and does not refer only to legislative acts adopted under an ordinary or special legislative procedure in accordance with Article 289 TFEU.

In the light of those considerations, the Court determines whether Regulation 2022/2577 constitutes an 'administrative act' within the meaning of the Aarhus Regulation.

As regards the organic criterion, the Court states that that regulation was adopted by the Council, which is an institution on which the Treaties have conferred legislative functions, jointly with the Parliament.

As regards the substance of Regulation 2022/2577, the Court observes, in the first place, that it was adopted on the basis of Article 122(1) TFEU, which authorises the Council to take appropriate economic policy measures aimed at dealing with severe difficulties in the supply of energy products. That provision confers on the Council a broad discretion, which characterises the exercise of the legislative function, for the adoption of measures intended to deal with serious economic difficulties requiring political choices falling within the responsibilities of the EU legislature. It also grants the Council the power, which is reserved to the EU legislature, to confer implementing powers on the Commission.

The Court adds that the scope of acts adopted under Article 122(1) TFEU is distinct from that of delegated acts and implementing acts adopted under Articles 290 and 291 TFEU. The powers conferred on the Council in that regard do not depend on prior authorisation by way of a basic legislative act. Furthermore, acts adopted under Article 122(1) TFEU are not intrinsically linked to acts adopted in accordance with Article 289(1) and (2) TFEU, unlike delegated and implementing acts, the legality of which depends on what the legislature has provided for.

In the second place, the Court takes into consideration the content of Regulation 2022/577, which was adopted in the context of the reduction of supplies of natural gas from Russia to the Member States. To that end, that regulation contains simplification measures to encourage the production of renewable energy by introducing exemptions from certain assessment obligations laid down in EU environmental legislation.

Thus, some of those measures derogate temporarily and in specific respects from provisions of secondary law set out in several directives which require a balancing of legal interests prior to any consent for projects that may harm the environment. Regulation 2022/2577 requires, in that balancing exercise, recognition of the priority nature of the production of renewable energy. That regulation therefore constitutes an act of a special nature in that it establishes such a recognition by creating a presumption that those production activities are of overriding public interest.

The Court concludes that there are a number of factors demonstrating that the powers exercised by the Council when adopting Regulation 2022/2577, on the basis of Article 122(1) TFEU, fall within the scope of legislative activity. That regulation therefore does not constitute an administrative act within the meaning of the Aarhus Regulation, with the result that the Council was fully entitled to reject as inadmissible the applicants' requests for internal review.

XI. JUDGMENT PREVIOUSLY DELIVERED

AGRICULTURE AND FISHERIES

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

Link to the judgment as published in extract form

Agriculture – CAP Strategic Plan – Regulation (EU) 2021/2115 – Rules on support for strategic plans drawn up by Member States under the CAP – Commission approval – Rejection of the request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Article 13 of Regulation 2021/2115 – Error of law – Manifest error of assessment

By its judgment, the General Court annuls the decision of the European Commission of 5 May 2023 rejecting a request for internal review of the decision approving the draft common agricultural policy strategic plan ('the CAP Strategic Plan') drawn up by France for the 2023-2027 period. [100] In so doing, the Court specifies the extent of the Member States' discretion in choosing the measures that they consider most adapted to the specific needs of their agriculture on the basis of objectives and types of intervention fixed at EU level. [101]

In November 2022, ClientEarth and Collectif Nourrir, associations working in particular for the protection of the environment, submitted a request to the Commission for internal review of the approval decision, pursuant to Article 10 of the Aarhus Regulation. [102] They claimed that the Commission had exceeded its competence by approving the French CAP Strategic Plan ('the French Plan') even though it was incompatible with the essential requirements of Regulation 2021/2115. In the alternative, they submitted that the Commission had made several manifest errors of assessment, in particular due to the inability of the French Plan to contribute effectively to the achievement of the specific environmental and climate objectives set out in Article 6(1)(d) to (f) of Regulation 2021/2115 [103] ('specific objective D', 'specific objective E' and 'specific objective F').

Following the rejection of that request for internal review by the Commission, ClientEarth and Collectif Nourrir brought an action before the General Court seeking annulment of that decision.

Findings of the Court

With regard to the admissibility of the pleas, the Court observes that the fact that the Commission committed the same errors of assessment in the act whose review is requested and in its response to that request does not render inadmissible the pleas alleging such errors, provided that those pleas are based on grounds already raised in the context of that same request and that they specifically seek the annulment of the decision rejecting it.

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100 Commission Implementing Decision C(2022) 6012 final of 31 August 2022 approving the 2023-2027 CAP Strategic Plan of France for Union support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development ('the approval decision').

101 Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ 2021 L 435, p. 1).

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

103 Those specific objectives are aimed at climate change mitigation, protection of natural resources by reducing chemical dependency and halting and reversing biodiversity loss.

As regards the interpretation and application of Article 118 of Regulation 2021/2115, the Court begins by recalling that the new method of managing the CAP put in place by the EU legislature is based on a system of collaboration which gives Member States discretion to adapt interventions to the specific requirements and needs of their national agriculture while providing for review by the European Union to ensure they are compatible with the CAP.

In response to the applicants' arguments, the Court clarifies the nature and scope of the check carried out by the Commission in the context of the CAP Strategic Plan approval process. Thus, following a dialogue with the Member State, the Commission is to adopt an implementing decision on the approval of the proposal for a CAP Strategic Plan, possibly amended following its observations, provided that it is compatible with the requirements set out in the EU legislation referred to in Article 118(4) of Regulation 2021/2115. The Commission is to carry out a two-stage check of the proposal for a CAP Strategic Plan under Article 118(4) of Regulation 2021/2115, namely, first, its completeness in the terms of all the necessary information, and, second, its compatibility with exhaustively listed requirements derived from EU law. In that context, the observations made by the Commission under Article 118(3) of Regulation 2021/2115 are not binding in themselves, but their content must lead the Member State submitting the CAP Strategic Plan proposal to make amendments to it if they reveal incompatibilities with the requirements set out in Article 118(4) of that regulation which constitute obstacles to the approval of that plan.

As regards the scope of the Commission's check of the intervention strategy under Article 118(4) of Regulation 2021/2115, the Court considers it apparent from the contested decision that the Commission correctly carried out its check which must cover all the elements of the proposed CAP Strategic Plan since it is required to assess not only the individual effects of the measures, but also their combined effects. The Court notes that the Commission must assess, following an overall approach, in the context of its compatibility check, the effective contribution of the proposed CAP Strategic Plan to the achievement of the general and specific objectives by examining the intervention strategy in terms of both its level of ambition and its ability to produce the expected effects to satisfy the obligation as to the results to be achieved by the Member States, including the specific environment and climate objectives. In that regard, the Court recalls that the new delivery model on which Regulation 2021/2115 is based aims to promote more subsidiarity by conferring on the Member States an additional margin of discretion in the specific arrangement of the interventions contained in each CAP Strategic Plan. In terms of the contribution of the French Plan to the achievement of specific target D in relation to the reduction of greenhouse gas emissions ('GHG emissions') and the long-term national target values [104] relating to that objective, the Court notes, in the first place, that there is no contradiction between the needs identified in the French Plan, the intervention strategy and the implementation of the coupled bovine aid by the French authorities under intervention 32.04 of the French Plan ('intervention 32.04'). On the contrary, it establishes a relationship between the reduction of GHG emissions and cattle farming by means of interventions based on soil quality while ensuring complementarity between interventions aimed at specific socio-economic objectives and those contributing to specific environmental and climate objectives.

The Court finds, first, that intervention 32.04 could pursue primarily one or more specific socio-economic objectives. Secondly, in view of the flexibility enjoyed by Member States in the design of their interventions, it was possible, in the French Plan, to choose to base, as a matter of priority, the intervention strategy aimed at meeting the need to reduce GHG emissions from the agricultural sector on interventions linked to the issue of soil quality, including for the livestock sector. Third, even though intervention 32.04 contributes primarily to the achievement of specific socio-economic objectives through the maintenance of livestock farming, it also contributes, incidentally, to the specific objective of reducing GHG emissions by promoting extensive livestock farming.

In the second place, the Court considers that the Commission did not commit a manifest error of assessment in relation to the contribution of the French Plan to the attainment of the national long-

[104] Those values are mentioned in Article 109(2) of Regulation 2021/2115.

term target value relating to the objective of reducing GHG emissions in the agricultural sector set by the national low-carbon strategy (*stratégie nationale bas carbone*; 'the SNBC').

The Court finds, first, that the Commission correctly assessed the consistency between the French Plan's environmental and climate architecture with the SNBC in so far as the French Plan is not the only tool for achieving the objective of reducing GHG emissions in the agricultural sector.

Second, the Commission correctly identified all the relevant data to be taken into account in the procedure for the approval of the proposal for the French Plan. The fact that external information was not used cannot be taken to mean that the Commission erred in that regard, since it acknowledged in the contested decision that it had the option of doing so if necessary.

Third, the Court considers that the intervention strategy of the French Plan may contribute in a consistent manner to the SNBC's objective in the agricultural sector.

On the one hand, the Court emphasises that, according to the logic of the check entrusted to the Commission by the provisions of Regulation 2021/2115, it is for that institution to examine the consistency and effectiveness of a CAP Strategic Plan in the light of the interventions chosen by the Member State concerned on the basis of the needs and priorities which it itself has defined.

Thus, in so far as the only specific objective in relation to the reduction of GHG emissions contributing to the achievement of the SNBC, as conceived by the French Plan, is specific objective D, the Commission did not commit a manifest error of assessment in examining the interventions linked to it.

On the other hand, the applicants have not adduced any evidence in support of their claims that the detailed rules for maintaining permanent grassland provided for by the French Plan were insufficient to contribute to increasing France's carbon storage capacity.

As regards specific objective E for the protection of water resources and the long-term national values relating to that objective, the applicants claimed, in the first place, that there had been a manifest error of assessment as regards the effective contribution of the French Plan's intervention strategy to that protection. According to the applicants, that strategy does not allow for a reduction in the use of pesticides on account of non-compliance with the standards of good agricultural and environmental conditions ('GAEC') and with the eco-scheme as defined by Regulation 2021/2115.

First, the Court observes that the reduction in the use of pesticides was neither the sole nor the main need to be taken into account in order to meet specific objective E, such that that need was not presented in the French Plan as an essential priority in order to achieve that objective.

Second, the Court holds that the Commission vitiated the contested decision by a manifest error of assessment in rejecting as unfounded the ground for internal review alleging that the conditions for the implementation of GAEC standard 7 provided for by the French Plan and endorsed by the approval decision infringed the minimum requirements of Article 13(1) of Regulation 2021/2115 and Annex III thereto.

Third, the Court finds that the eco-scheme established by the French Plan complies with the minimum requirements of Article 31 of Regulation 2021/2115.

In that regard, the Court points out, first of all, that the French Plan specifies how the crop diversification practice path exceeds the minimum requirements laid down by that regulation, other EU provisions and national law. The mere finding that the French Plan provides that approximately 87% of the area of arable land is potentially eligible for the basic level of support, of which approximately 69% for the higher level, does not in itself demonstrate that that scoring system does not ensure its effectiveness in achieving the target values.

Next, the Court observes that, in the French Plan, it is explained how the requirements of the eco-scheme by the revised High Environmental Value certification (HVE) path are higher than the

requirements laid down by cross-compliance on four aspects, namely biodiversity, the use of plant protection products, fertilisation and water source management. Under the indicator entitled 'Plant protection strategy', only the item relating to untreated areas allows the ten-point threshold required to validate the indicator to be reached. The other nine items of that indicator must necessarily be combined in order to reach the minimum ten-point threshold, but they all pursue the objective of sustainable and reduced pesticide use.

In addition, the Court notes that the criteria laid down in order to obtain the environmental certification level 2 (CE2+) are based on the fulfilment of one of the four indicators of the revised HVE certification, which includes a level of requirement higher than that of cross-compliance.

Last, given that the eco-scheme by the certification path does not constitute, in the French Plan, the only intervention aimed at reducing and sustainably using pesticides or water quality, any shortcoming in that intervention could be offset by the cumulative effect of the other interventions provided for for the same objective.

In the second place, the Court considers that the Commission did not commit a manifest error of assessment as regards the French Plan's contribution to the attainment of the national long-term target values for the protection of water resources. [105]

The applicants have not adduced evidence capable of rendering the Commission's assessment of overall support for organic farming implausible. On the one hand, the report of the Cour des comptes (Court of Auditors, France) produced in support of the applicants' line of argument does not call into question the plausibility of the Commission's assessment that the conversion trend has not shown any significant decline and that de-conversions remain stable. On the other hand, the duration of the conversion aid has been extended, the amount of the tax credit for organic farming has increased and there are specific measures for peripheral regions.

Moreover, the Court finds that the specifications for intervention 70.06 reflect the code of good agricultural practice, thus going beyond the mere requirements of the regulatory requirement for management with regard to Directive 91/676. [106] Therefore, the fact that the code of good agricultural practice is not made mandatory by intervention 70.06 in all circumstances does not render implausible the Commission's assessment that that intervention satisfies the requirements of Article 118(4) of Regulation 2021/2115.

As regards the contribution of the French Plan to the achievement of specific objective F relating to the preservation and restoration of biodiversity, the Court emphasises, in the first place, that the applicants are not justified in establishing a direct link between a need and a quantified target value in order to assess its appropriateness.

The Court recalls in that regard that, first, the Member States retain a wide margin of discretion in setting quantitative target values on the basis of the assessment of needs; second, a need may be met by the combined effect of several interventions, which are themselves linked to several performance indicators; and, third, the determination of a quantitative target value linked to one or more specific environmental and climate objectives stems from the environmental and climate architecture as a whole.

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105 Those values are set by Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) and Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1).

106 Directive 91/676.

The applicants, however, merely considered that the target value associated with result indicator R.34 [107] is not adapted to the needs identified in the French Plan without demonstrating, to the requisite legal standard, how the Commission had committed a manifest error of assessment.

In the second place, the applicants claimed that the interventions most likely to contribute to objective F which are linked to needs F.2, F.3 and F.4 [108] were insufficient and inappropriate.

In that regard, the Court notes, first, that the eco-regime by the diversification practices path does not contribute directly to result indicator R.31 on the conservation of habitats and species. However, only those interventions which make a direct and meaningful contribution to a given result indicator can be linked to it. [109]

Second, the applicants have not demonstrated, to the requisite legal standard, how the Commission made a manifest error of assessment in finding that the conditions of eligibility for the eco-scheme by the biodiversity-friendly elements made it possible to contribute effectively to the achievement of specific objective F and to the target value of result indicator R.31. The grounds relating to the lack of complementarity between the various paths of access to the eco-scheme do not call into question the plausibility of the Commission's line of argument.

Third, the applicants have not demonstrated, to the requisite legal standard, how the Commission made a manifest error of assessment in finding that the compensation for the additional costs resulting from the commitment linked to the 'hedge bonus' of the French Plan had an incentive effect for farmers, namely to remunerate the presence of hedges.

In those circumstances, due to a manifest error of assessment vitiating the contested decision relating to the compliance of the conditions for implementation of GAEC standard 7 provided for by the French Plan with Regulation 2021/2115 and in the absence of severability of the contested provisions, the Court upholds the action and annuls the contested decision in its entirety.

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107 Result indicator R.34 is intended to measure the share of utilised agricultural area under supported commitments for managing landscape features, including hedgerows and trees.

108 Need F.2 is entitled 'Supporting global levers', need F.3 is intended to promote the conservation and sustainable use of biodiversity in agricultural and forestry practices and need F.4 relates to the reduction of pressure factors on biodiversity of agricultural origin in agricultural practices.

109 In accordance with point (e) of the first paragraph of Article 111 of Regulation 2021/2115.