COURT OF JUSTICE
OF THE EUROPEAN UNION

EN

MONTHLY CASE-LAW DIGEST
December 2025

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

Judgment of the Court of Justice (Grand Chamber) of 18 December 2025, Commission v Poland (*Ultra vires* review of the Court's case-law – Primacy of EU law), C-448/23

Link to the full text of the judgment

Failure of a Member State to fulfil obligations – Article 2 TEU – Article 4(3) TEU – Second subparagraph of Article 19(1) TEU – Rule of law – Effective judicial protection in the fields covered by EU law – Principles of autonomy, primacy, effectiveness and the uniform application of EU law – Principle of the binding effect of the case-law of the Court – Judgments of the Trybunał Konstytucyjny (Constitutional Court, Poland) – Judgments of the Court and interim measures under Article 279 TFEU relating to the second subparagraph of Article 19(1) TEU – Rejection by the Trybunał Konstytucyjny (Constitutional Court) of those judgments and of those measures as *ultra vires* – National constitutional identity – Prohibition issued by the Trybunał Konstytucyjny (Constitutional Court) preventing all public authorities from applying Article 2 TEU and the second subparagraph of Article 19(1) TEU – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Requirement of an independent and impartial tribunal previously established by law – Improper composition of the Trybunał Konstytucyjny (Constitutional Court)

Hearing for the first time an action for failure to fulfil obligations concerning two decisions of a national constitutional court finding several provisions and principles falling within the constitutional framework of the European Union to be incompatible with the national Constitution, the Court, sitting as the Grand Chamber, upholds the action brought by the Commission against Poland. First, it reaffirms, in particular, the scope of the principles of primacy, autonomy and effectiveness of EU law and that of the binding effect of the case-law of the Court. Secondly, it rules on the consequences of the irregular appointment of members of a constitutional court on its status as an 'independent and impartial tribunal previously established by law', within the meaning of the second subparagraph of Article 19(1) TEU.

In October 2015, during the seventh parliamentary term, the Sejm (Lower Chamber of the Polish Parliament, Poland) elected five persons to judicial posts at the Trybunał Konstytucyjny (Constitutional Court, Poland). Three of those persons were to replace judges whose term of office expired on 6 November 2015, and two to replace judges whose term of office expired in December 2015. One month later, after the parliamentary elections of 25 October 2015, during the eighth parliamentary term, the Lower Chamber of the Polish Parliament adopted five resolutions declaring that that election had no legal effect, before electing five new persons to those posts in December 2015. Three of them, namely H.C., L.M. and M.M., were to replace judges whose term of office expired on 6 November 2015, and two to replace judges whose term of office expired in December 2015. Those five persons then swore an oath before the President of the Republic of Poland. However, the then President of the Constitutional Court refused to allow four of those judges who had been sworn in to sit until the question of the validity of their election by the Lower Chamber of the Polish Parliament was clarified.

In that context, the Constitutional Court delivered two judgments [1] in which it declared, in essence, that the election, during the seventh parliamentary term of the Lower Chamber of the Polish Parliament, of three judges to replace those whose term of office was to end on 6 November 2015 was valid, but that that chamber did not have the right to proceed, during the same parliamentary term, to elect two judges to replace those whose term of office was due to expire in December 2015, that is to say during the new parliamentary term. That court also observed that the President of the

[1] Judgments of 3 December 2015 (Case K 34/15) and of 9 December 2015 (Case K 35/15).

Republic of Poland was required to hear the oath of the three judges elected in October 2015 and had no discretion in that regard.

However, despite those decisions, none of the three persons elected in October 2015 took an oath before the President of the Republic of Poland or took up their duties in that court.

Next, on 20 December 2016, the judge J.P., who was then President of the Constitutional Court, authorised H.C., L.M. and M.M. to sit in that court.

On the same day, she convened a meeting of the General Assembly of Judges of that court, scheduled for the same day, in order to elect candidates for the position of President of the Constitutional Court and to present them to the President of the Republic.

Of the 14 judges of that court present at the General Assembly, only six, including H.C., L.M. and M.M., took part in the election of candidates for the position of President. Two candidates were then presented to the President of the Republic: the judges J.P., who received five votes, and M.M., who received one vote. The following day, the President of the Republic appointed J.P. to the position of President of the Constitutional Court.

On 14 July [2] and 7 October [3] 2021, the Constitutional Court handed down two judgments concerning the incompatibility with the Polish Constitution [4] of the Court's case-law relating, in particular, to the obligation under the second subparagraph of Article 19(1) TEU to ensure effective judicial protection ('the judgments at issue').

Taking the view that, in the light of the judgments of the Constitutional Court, Poland had failed to fulfil its obligations under EU law, [5] the Commission brought an action for failure to fulfil obligations before the Court under Article 258 TFEU. [6]

Findings of the Court

As a preliminary point, the Court recalls that, under Article 258 TFEU, a Member State's failure to fulfil obligations may, in principle, be established whatever the agency of that State whose action or inaction is the cause of the failure to fulfil its obligations, including where the case-law of the constitutional court of a Member State is capable of constituting a failure by that Member State to fulfil its obligations under EU law.

---

2 In the judgment of 14 July 2021 (Case P 7/20), the Constitutional Court examined the compatibility with the Polish Constitution of the interim measures imposed on the Republic of Poland by the Court of Justice, in particular the measure requiring it to suspend the application of the legislative provisions conferring on the Izba Dyscyplinarna (Disciplinary Chamber) of the Sąd Najwyższy (Supreme Court, Poland) jurisdiction in disciplinary cases relating to judges. The Constitutional Court concluded that, in so far as the Court imposed *ultra vires* obligations on Poland, pursuant to the second subparagraph of Article 4(3) TEU, read in conjunction with Article 279 TFEU, by adopting interim measures relating to the organisation and jurisdiction of the Polish courts and to the procedure before those courts, the case-law interpreting those provisions was contrary to the Polish Constitution. Furthermore, according to the Constitutional Court, 'the norms created by the Court' should not benefit from the principles of primacy and direct effect of EU law. That judgment had *ex tunc* effects and was addressed to all those applying EU law in the territory of the Republic of Poland.

3 By its judgment of 7 October 2021 (Case K 3/21), the Constitutional Court held that, in so far as EU bodies exceed the powers transferred by the Republic of Poland and in so far as the Polish Constitution ceases to constitute the supreme norm of the national legal order, thereby jeopardising the exercise of Polish sovereignty, the first and second paragraphs of Article 1 TEU, read in conjunction with Article 4(3) TEU, are contrary to the Polish Constitution. The interpretation of the second subparagraph of Article 19(1) TEU, conferring on national courts the power to disregard provisions of the Polish Constitution or to base their decisions on provisions repealed by the legislature or declared unconstitutional by the Constitutional Court, would also infringe the Polish Constitution. Furthermore, Article 2 and Article 19(1) TEU are contrary to the Polish Constitution, in so far as they confer on national courts powers to review the legality of the procedure for appointing judges, to review the lawfulness of resolutions of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') submitting proposals for appointment to the President of the Republic, or to call into question the status of a judge.

4 Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland; 'the Polish Constitution').

5 The Commission maintains, first, that, in the light of the interpretation of the Polish Constitution made by the Constitutional Court in its judgments of 14 July 2021 and 7 October 2021, Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU. Secondly, in the light of those judgments, Poland has failed to fulfil its obligations under the general principles of autonomy, primacy, effectiveness and uniform application of EU law and under the principle of the binding effect of judgments of the Court. Thirdly, the Commission also asserts that, since the Constitutional Court does not satisfy the requirements of an independent and impartial tribunal previously established by law on account of irregularities in the appointment procedures of three of its members in December 2015 and of its President in December 2016, Poland has also failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

6 In its rejoinder, Poland fully accepted the complaints raised by the Commission. In such a situation, it is nevertheless for the Court to determine whether or not the alleged breach of obligations exists, even if the State concerned does not deny or no longer denies that breach.

The first complaint

As regards, in the first place, the alleged incompatibility between the second subparagraph of Article 19(1) TEU and the judgment of 7 October 2021, the Court recalls that that provision requires Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law. The requirements which national courts must satisfy include the independence and impartiality of those bodies, thus giving concrete expression to the fundamental value of the rule of law enshrined in Article 2 TEU, compliance with which is binding both on the European Union and on the Member States.

It is for the Court to clarify those requirements in the context of the task entrusted to it by the first subparagraph of Article 19(1) TEU, which consists in ensuring that in the interpretation and application of the Treaties the law is observed.

In that regard, the Court observes that the second subparagraph of Article 19(1) TEU imposes on the Member States a clear, precise and unconditional obligation as to the result to be achieved, the direct effect of which entails, in accordance with the principle of the primacy of EU law, the disapplication of any provision, case-law or national practice contrary to that article.

Consequently, any national provision or practice which impairs the effectiveness of EU law by withholding from the national court having jurisdiction the power to do everything necessary at the moment of the application of that law to disregard national legislative provisions which could prevent directly applicable EU rules from having full force and effect is incompatible with the requirements which are the very essence of EU law.

According to the Court, the interpretation of the Polish Constitution given by the Constitutional Court in the judgment of 7 October 2021 precludes the requirements arising from the second subparagraph of Article 19(1) TEU, as interpreted by the Court in its case-law, [7] from being able to produce their effects in Poland and ensure the full effectiveness of that provision.

In the first place, by that judgment, the Constitutional Court rejected the effects, for the national courts, of the application of the second subparagraph of Article 19(1) TEU, as interpreted by the Court, by ruling out, in general, the jurisdiction of those courts to review the lawfulness of resolutions of the KRS proposing the appointment of candidates to judicial office. In the second place, that court ruled out the jurisdiction of the national courts to review the legality of procedures for the appointment of judges, including appointment decisions, in order to rule on the defective nature of the process for appointing a judge and, consequently, to find a decision delivered by a judge appointed by such a procedure null and void, where such a consequence is essential in the light of the procedural situation at issue. However, the Court states that the exercise by a national court of the tasks entrusted to it by the Treaties and compliance with its obligations under the Treaties, by giving effect to a provision such as the second subparagraph of Article 19(1) TEU, cannot, by definition, be prohibited.

In the last place, the Court concludes that, in so far as the judgment of 7 October 2021 precludes the Polish courts from being able to apply the second subparagraph of Article 19(1) TEU, as interpreted by the Court, and to implement any measure necessary to ensure the observance of the right of the individuals concerned to effective judicial protection in the fields covered by EU law, that judgment is manifestly incompatible with the requirements inherent in that provision, as interpreted by the Court in the exercise of its exclusive jurisdiction to provide the definitive and binding interpretation of EU law.

As regards, secondly, the alleged incompatibility between the second subparagraph of Article 19(1) TEU and the judgment of 14 July 2021, the Court observes that Article 279 TFEU confers on it jurisdiction to prescribe any interim measures that it considers necessary, in order to ensure the full effectiveness of a final decision to be taken and to ensure that there is no lacuna in the legal protection provided by the Court and to ensure the effective application of EU law. Accordingly,

---

7 In particular, the judgments of 2 March 2021, A.B. and Others (Appointment of Judges to the Supreme Court) (C-824/18, EU:C:2021:153) and of 6 October 2021, W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment) (C-487/19, EU:C:2021:798).

national provisions governing the organisation of justice may be subject to interim measures, ordered by the Court and aimed at, inter alia, the suspension of those provisions. That mechanism would be called into question if a provision of national law could preclude recognition of the binding effect of interim measures ordered by the Court and, consequently, prevent a national court hearing a dispute governed by EU law from giving effect to those interim measures.

In the present case, the interim measures ordered by the Court in the order in *Commission* v *Poland* [8] were intended to ensure the full effectiveness of the judgment to be delivered in the infringement proceedings brought by the Commission against Poland, thus making it possible to ensure there is no lacuna in the legal protection afforded by the Court under the second subparagraph of Article 19(1) TEU.

However, in its judgment of 14 July 2021, the Constitutional Court held that those interim measures had been adopted *ultra vires*, since the European Union was not empowered to rule on the organisation and jurisdiction of the Polish courts or on procedure before those courts. According to that judgment, those measures are therefore incompatible with the binding *erga omnes* and definitive nature of the judgments of that court resulting from Article 190(1) of the Polish Constitution. Thus, by adopting that decision, the Constitutional Court, first, called into question the very principle of Poland's obligation to comply with the obligations arising from the second subparagraph of Article 19(1) TEU relating to the organisation of justice and, second, refused to recognise, in a general manner and in clear breach of the Court's jurisdiction, interim measures ordered by the latter and intended to preserve the right to effective judicial protection before an independent tribunal in Poland, provided for in the second subparagraph of Article 19(1) TEU.

In those circumstances, the Court finds that, in the light of the interpretation of the Polish Constitution by the Constitutional Court in its judgments of 14 July 2021 and 7 October 2021, Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

The second complaint

As regards, in the first place, the infringement of the principles of autonomy, primacy, effectiveness and the uniform application of EU law, the Court recalls that the EU legal order has its own constitutional framework and founding principles, essential characteristics of EU law which have given rise to a structured network of principles, rules and mutually interdependent legal relations binding the European Union and its Member States reciprocally.

The Court observes that the principle of the primacy of EU law requires all Member State bodies to give full effect to the various EU provisions. Thus, a Member State's reliance on rules of national law, even of a constitutional order, cannot be allowed to undermine the unity and effectiveness of EU law.

The Court points out that respect for the equality of the Member States before the Treaties, under Article 4(2) TEU, is possible only if the Member States are unable, under the principle of the primacy of EU law, to rely on, as against the EU legal order, a unilateral measure, whatever its nature. In the same context, the Court notes that the uniform application of EU law is a fundamental requirement of the EU legal order. Such a requirement is inherent in the very existence of a community based on the rule of law and is necessary in order to ensure respect for the equality of Member States before the Treaties.

The Court also recalls that the European Union is composed of States which have freely and voluntarily committed themselves to a set of common values, respect for and promotion of which being the fundamental premiss of mutual trust between the Member States. Compliance with those values, which are given concrete expression in principles containing legally binding obligations for the Member States, cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession.

Even though, as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law, it in

---

8 Order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277).

no way follows that that obligation as to the result to be achieved may vary from one Member State to another. Whilst they have separate national identities which the European Union respects, the Member States adhere to a concept of 'the rule of law' which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times. Accordingly, the Member States are required to comply, first, with the requirement that the courts be independent stemming from Article 2 and the second subparagraph of Article 19(1) TEU and, secondly, with the principle of the primacy of EU law and the obligation to refrain from taking measures which disregard the autonomy of the EU legal order.

In addition, by ratifying its Act of Accession, Poland accepted the very concept of the European Union as a legal order common to the Member States and acceded to that legal order based, inter alia, on the principle of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU.

As regards the statements of the Constitutional Court in its decisions that, first, Article 2 and the second subparagraph of Article 19(1) TEU and, second, Article 4(3) TEU and Article 279 TFEU, as interpreted by the Court, are contrary to various principles enshrined in the Polish Constitution and undermine Polish constitutional identity, the Court holds that the requirements flowing from respect for values and principles such as the rule of law, effective judicial protection and judicial independence are not capable of affecting the national identity of a Member State, within the meaning of Article 4(2) TEU. Therefore, the latter provision, like Article 4(3) TEU and Article 279 TFEU, cannot exempt the Member States from the obligation to comply with those requirements.

In the second place, as regards the infringement of the principle of the binding effect of the case-law of the Court, the Court notes that Poland's obligations [9] also apply to the rules governing the EU judicial system and, therefore, the allocation of jurisdiction between the Court of Justice and the national courts, as laid down in the Treaties.

In that regard, the Court observes that, under the first paragraph of Article 267 TFEU, it is for the Court alone to rule on the validity of EU acts and to provide the definitive and binding interpretation of EU law. The obligation on national courts against whose decisions there is no judicial remedy under national law to refer questions to the Court of Justice for a preliminary ruling, as set out in the third subparagraph of that provision, is intended, inter alia, to prevent a body of national case-law which is not in accordance with the rules of EU law from being established in any of the Member States and is thus the corollary of the exclusive jurisdiction of the Court in that regard. That exclusive jurisdiction is, moreover, confirmed by Article 344 TFEU, according to which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.

In addition, the Court points out that the rules and principles set out in Article 4(1), Article 5(2) and the first sentence of Article 13(2) TEU do not authorise national courts to rule unilaterally and definitively on the extent of the competences conferred on the European Union or on compliance with the limits of those competences. The determination of the extent of the European Union's competences, as well as the review of compliance with the limits of those competences, necessarily involves interpreting the provisions of the Treaties, the final and binding interpretation of which is a matter for the Court in the same way as for all the other provisions of EU law.

Moreover, nor can the possibility for national courts to rule on the extent of the jurisdiction conferred on the European Union be reconciled with the necessary coherence of the system of judicial protection established by the Treaties. It is indeed for the national courts having jurisdiction to interpret the constitution of the Member State to which they belong and to determine any limits which that constitution imposes on the accession of that Member State to the European Union. However, from the date of its accession to the European Union, a Member State is bound without any reservation, with the exception of those which may be provided for by the Act of Accession, by all the provisions of primary law and by the acts adopted by the EU institutions before accession, as interpreted by the Court.

---

9 In accordance with the principle of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU, and, pursuant to the second subparagraph of Article 4(3) TEU.

Accordingly, if a national court is uncertain as to the extent of the competences of the European Union in a given area or has doubts as to the validity of an act of EU law, on the ground that it goes beyond the sphere of the competences of the European Union or that it disregards the requirement that the European Union respect the national identities of the Member States, inherent in their fundamental political and constitutional structures, it is for the Court alone, in the context of a reference for a preliminary ruling, to provide the definitive and binding interpretation of the provisions of EU law at issue and, where appropriate, to declare that act invalid.

Thus, a court of a Member State cannot, on the basis of its own interpretation of the provisions of EU law, validly hold that the Court has given a decision disregarding the limits of the jurisdiction conferred on the European Union and refuse to give effect to that decision or prohibit the public authorities of the Member State of that court from complying with the case-law of the Court of Justice or applying provisions of EU law, as interpreted by the Court. The same applies to a decision of a constitutional court or supreme court of a Member State refusing to comply with a decision of the Court of Justice, in particular on the ground that the Court exceeded its jurisdiction or that that decision disregarded the constitutional identity of the Member State concerned, in the light of Article 4(2) TEU.

The Court observes that the latter provision has neither the object nor the effect of authorising a constitutional or supreme court of a Member State to disapply a rule of EU law, on the ground that that rule disregards the national identity of that Member State as defined by that constitutional or supreme court. Article 4(2) TEU, which must be interpreted having regard to the structure and objectives of the European Union, does not confer on the Member States the power to derogate unilaterally from the provisions of EU law by relying on that national identity.

The Court consequently holds that, where a question relating to the scope of the European Union's competence or the legality of an act of secondary law is raised before a national court, that court is bound, where that question relates to the interpretation of EU law and irrespective of the ground of invalidity relied on, to respect the exclusive jurisdiction of the Court, which is a fundamental characteristic of the judicial system of the European Union.

More specifically, if a constitutional or supreme court of a Member State considers, first, that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, that court must stay the proceedings and make a reference to the Court for a preliminary ruling, under Article 267 TFEU, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid.

As regards, secondly, primary law, where a court of a Member State considers that the Court's interpretation of a provision falling within that law fails to comply with requirements arising from Article 4(2) TEU, it cannot, on the basis of its own interpretation of EU law, validly hold that the Court has given a decision exceeding its jurisdiction and, therefore, refuse to give effect to that decision. In such a case, it must, if necessary, make a request for a preliminary ruling to the Court in order to enable it to assess any effect on that interpretation of the need to take into account the national identity of the Member State concerned.

The Court concludes that, in the light of the interpretation of the Polish Constitution by the Constitutional Court in the judgments at issue, Poland has failed to fulfil its obligations under the principles of autonomy, primacy, effectiveness and uniform application of EU law and under the principle of the binding effect of the case-law of the Court.

The third complaint

First, the Court examines the circumstances surrounding the procedure for the appointment of H.C., L.M. and M.M. to the Constitutional Court in December 2015. In that regard, in the light of the obligation on the part of the Member States to establish a system of legal remedies and procedures ensuring for individuals compliance with their right to effective judicial protection in the fields covered by EU law, the Court notes that the Constitutional Court, as a court or tribunal, within the meaning of EU law, may rule on questions concerning the application or interpretation of EU law. Accordingly, it must meet the requirements of effective judicial protection, in particular the requirement relating to a tribunal previously established by law. That requirement and the requirement of independence

include the process of appointing judges and require compliance with the fundamental rules relating to the procedure governing their appointment.

The Court points out that the independence and impartiality of a judge are not called into question by every error that might take place during the procedure for the appointment of that judge. However, the requirement for a tribunal previously established by law is infringed where, on the basis of an overall assessment, in particular the nature and gravity of that irregularity create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment process and thus give rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge or judges concerned. That is the case where what is at issue are fundamental rules forming an integral part of the establishment and functioning of that judicial system.

In that context, referring to the case-law of the European Court of Human Rights, [10] the Court concludes that the appointment of three of the members of the Constitutional Court and the taking up of their duties took place in manifest disregard of the fundamental rules relating to the procedure for the appointment of judges of that court as an integral part of the establishment and functioning of the Polish judicial system. Those circumstances are such as to give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of those judges to external factors, their neutrality with respect to the interests before them, and their independence and impartiality, those doubts being such as to undermine the trust which justice in a democratic society governed by the rule of law must inspire in individuals.

Turning, secondly, to the alleged irregularities surrounding the appointment of the President of the Constitutional Court in December 2016, the Court observes that the person occupying that position plays a fundamental role in the functioning of that court in that he or she directs its work, represents it and performs other functions provided for by law. Accordingly, it is particularly important that, when performing his or her duties, he or she acts objectively and impartially and that the fundamental rules governing the procedure for appointment to that post are designed and observed in such a way that they cannot give rise to any legitimate doubt as to the use of the President's prerogatives and duties as an instrument to influence the judicial activity of that court or even to exercise political control over that activity and, more generally, as to the imperviousness of that court to external factors and its neutrality with respect to the interests before it.

In the first place, according to the Court, both J.P. and M.M.'s presentation to the President of the Republic of Poland as candidates for the position of President of the Constitutional Court and J.P.'s appointment to that position were made in breach of the fundamental rule relating to the procedure for the appointment of that President. [11]

In that regard, even though the presentation of J.P. and M.M. as candidates for the post of President of the Constitutional Court might appear to have been made in accordance with that fundamental rule, the Court notes that the three judges whose appointment was vitiated by a manifest infringement of Article 194(1) of the Polish Constitution and by a failure to comply with the requirements arising from the second subparagraph of Article 19(1) TEU, namely H.C., L.M. and M.M.,

---

10 By judgment of 7 May 2021, *Xero Flor w Polsce sp. z o.o. v. Poland* (CE:ECHR:2021:0507JUD000490718, § 290 and 291), the European Court of Human Rights, hearing a case brought by a company whose constitutional complaint had been dismissed by the Constitutional Court, held that the appointment within that court of the judge M.M., one of the judges who had sat on the panel which had examined its constitutional complaint, had been vitiated by grave irregularities that impaired the very essence of the right to a 'tribunal established by law' enshrined in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. That court concluded that the applicant had been deprived of that right on account of M.M.'s participation in the proceedings before the Constitutional Court. See also judgment of 15 March 2022, *Grzęda v. Poland* (CE:ECHR:2022:0315JUD00435721, § 277).

11 Article 21(7) and (8) of the ustawa przepisy wprowadzające ustawę o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym oraz o statusie sędziów Trybunału Konstytucyjnego (Law laying down introductory provisions in the Law on the organisation of the Constitutional Court and procedures before it and the Law on the status of judges of the Constitutional Court) ('the Law laying down introductory provisions') provides: '7. The General Assembly shall propose as candidates for the position of President of the [Constitutional Court], in the form of a resolution, all judges of the [Constitutional Court] who have obtained at least five votes in the vote referred to in paragraph 5. 8. If the number of votes required under paragraph 7 has been obtained by one judge of the [Constitutional Court] only, the General Assembly shall propose as candidates for the position of President of the [Constitutional Court], in the form of a resolution, the judge of the [Constitutional Court] who obtained the required minimum number of five votes and the judge of the [Constitutional Court] who received the most support from among the judges of the [Constitutional Court] who did not reach the required number of at least five votes.'

were among the six judges who participated, during the General Assembly, in the election of candidates to the position of President of the Constitutional Court. Accordingly, both their participation in the General Assembly and their votes cast with a view to the selection the candidates for that position of President were irregular, with the result that J.P. did not lawfully obtain the five votes required by the Law laying down introductory provisions.

In the second place, the Court finds that J.P.'s appointment was also made in manifest breach of Article 194(2) of the Polish Constitution, [12] which is a fundamental rule of the procedure for appointment to that position, since that provision precludes the presentation to the President of the Republic of Poland of candidates proposed by minority groups or by certain judges only.

The Court thus concludes that those irregularities are capable of giving rise to reasonable doubt, in the minds of individuals, as to J.P.'s use of the powers and functions associated with the position of President of the Constitutional Court as an instrument for influencing the judicial activity of that court or for the political control of that activity and, therefore, as to the independence and impartiality of that court.

Furthermore, the Court observes that the decisions in the adoption of which H.C., L.M., M.M. and J.P. took part continued to exist in the Polish legal order on the date of expiry of the period laid down in the reasoned opinion.

In the light of those findings, the Court holds that, since the Constitutional Court does not satisfy the requirements of an independent and impartial tribunal previously established by law on account of irregularities in the procedure for the appointment of three of its members in December 2015 and of its President in December 2016, Poland has failed to fulfil its obligations under the second subparagraph of Article 19(1) TEU.

II. FUNDAMENTAL RIGHTS: NON-DISCRIMINATION ON GROUNDS OF RACE OR ETHNIC ORIGIN

Judgment of the Court of Justice (Grand Chamber) of 18 December 2025, Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge, C-417/23

Link to the full text of the judgment

Reference for a preliminary ruling – Equal treatment between persons irrespective of racial or ethnic origin – Directive 2000/43/EC – Concepts of 'ethnic origin', 'direct discrimination' and 'indirect discrimination' – National legislation requiring the adoption of development plans designed to reduce the percentage of public family housing units in certain residential areas – Identification of those areas according to the proportion of 'immigrants from non-Western countries and their descendants' – Whether justified – Social cohesion and integration – Housing policy – Article 7 of the Charter of Fundamental Rights of the European Union – Right to respect for the home – Proportionality

Hearing a reference for a preliminary ruling from the Østre Landsret (High Court of Eastern Denmark), the Court of Justice, sitting as the Grand Chamber, provides clarification on the concept of 'ethnic

12 Under that provision, the President and Vice-President of the Constitutional Court are to be appointed by the President of the Republic of Poland from among the candidates presented by the General Assembly of Judges of the Constitutional Court.

origin' in Directive 2000/43, [13] and clarifies the concepts of 'direct discrimination' and 'indirect discrimination' on the ground of ethnic origin. [14]

The disputes in the main proceedings are between Danish public housing associations or the Ministry responsible for housing [15] and tenants of public family housing units, and concern national legislation laying down an obligation to adopt development plans designed to reduce the percentage of public family housing units in so-called 'transformation areas'.

The residential areas in which those tenants reside, namely Ringparken, located in the municipality of Slagelse (Denmark), and Mjølnerparken, located in the municipality of Copenhagen (Denmark), were classified as 'transformation areas' within the meaning of the Danish law on public housing, [16] on the basis of socioeconomic criteria and the fact that more than 50% of the residents of those residential areas were 'immigrants from non-Western countries [17] and their descendants' within the meaning of that law.

In accordance with the provisions of that law, development plans for those residential areas were drawn up between the public lessors and the municipalities concerned, in order to reduce the proportion of public family housing units to 40% of all housing in those residential areas. Those development plans were approved by the competent authorities.

As regards Ringparken, the public housing association Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge ('SAB'), responsible for the management of Schackenborgvænge, a housing estate in that area, decided to transfer 136 public family housing units to a private buyer. SAB subsequently terminated 17 leases for housing units in that housing estate because the tenants did not satisfy the conditions for continued occupancy approved by the municipality. Since the tenants, some of whom were born in a 'non-Western country' or are nationals of such a country within the meaning of the Law on Public Housing, opposed the termination of their lease, SAB brought an action seeking a declaration that the termination of those leases was lawful.

As regards Mjølnerparken, the public lessor managing a housing estate in that residential area entered into an agreement for the sale of certain blocks of that housing estate. Several tenants residing in those blocks, some of whom were born in, or are descendants of persons born in, 'non-Western countries' within the meaning of the Law on Public Housing, brought an action seeking a declaration that the approval of the development plan for that residential area by the Ministry responsible for housing was invalid.

The High Court of Eastern Denmark, which is the referring court, is uncertain whether national legislation laying down an obligation to adopt development plans designed to reduce the percentage of public family housing units in residential areas that are characterised, inter alia, by the fact that, during the last five years, the proportion of 'immigrants from non-Western countries and their descendants' residing there has exceeded 50%, amounts to direct or indirect discrimination based on ethnic origin, within the meaning of Article 2(2)(a) and (b) of Directive 2000/43.

Findings of the Court

After clarifying that the disputes in the main proceedings, in so far as they concern the Danish public family housing system, come within the material scope of Directive 2000/43, the Court examines, in the first place, whether the use of the criterion relating to 'immigrants from non-Western countries

---

13 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

14 Article 2(1) of that directive gives specific expression to the principle of equal treatment in the sense that there is to be no direct or indirect discrimination based on racial or ethnic origin.

15 The Social-, Bolig- og Ældreministeriet (Ministry of Social Affairs, Housing and Senior Citizens, Denmark).

16 Lovbekendtgørelse nr. 1877 om almene boliger m.v. (almenboligloven) (Consolidated Law No 1877 on public housing, inter alia (Law on Public Housing)) of 27 September 2021 ('the Law on Public Housing').

17 The concept of 'non-Western country', developed by Danmarks Statistik (Statistics Denmark, the Danish office for national statistics), includes all countries other than the Member States of the European Union, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, the United Kingdom, the Vatican City State, Canada, the United States, Australia and New Zealand.

and their descendants' is liable to constitute direct discrimination on grounds of ethnic origin, within the meaning of Article 2(2)(a) of Directive 2000/43.

To do this, it first interprets the concept of 'ethnic origin', which, in the absence of a definition in Directive 2000/43, must be defined on the basis of a combination of criteria, such as common nationality, religious faith, language, cultural and traditional origins and backgrounds.

To that end, the context in which the concept of 'ethnic origin' within the meaning of Article 2 of Directive 2000/43 [18] occurs makes it possible to obtain clarification on the interpretation of that concept. Accordingly, it is apparent both from the case-law of the European Court of Human Rights [19] and from the wording of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, [20] that discrimination based on a person's ethnic origin constitutes a form of racial discrimination.

Moreover, even though neither the criterion of a person's nationality nor that of his or her country of birth is sufficient, in itself, to justify a presumption of belonging to a particular ethnic group, both may be taken into account, together with other factors, to conclude that a person belongs to an ethnic group.

The Court then interprets the concept of 'direct discrimination' based on ethnic origin within the meaning of Directive 2000/43. [21]

In that regard, the Court notes that the difference in treatment established between transformation areas, which are subject to a development plan designed to reduce the percentage of public family housing units, and 'vulnerable' areas within the meaning of the Law on Public Housing, which are not subject to such a requirement, even though they are also characterised by a problematic socioeconomic situation, but in which the proportion of 'immigrants from non-western countries and their descendants' residing there does not exceed 50%, appears to be based primarily on that latter criterion.

Since that criterion is provided for by Danish law, it is for the referring court to determine, as a first step, whether it establishes a difference in treatment based on ethnic origin.

To that end, the Court states that, according to the legislation at issue, the concepts of 'immigrant' and 'descendant' are based on a complex combination of criteria relating to the country of birth of the person concerned or the country of birth and nationality of his or her parents, [22] which, taken in isolation, are not sufficient to establish a person's ethnicity. It states that a general criterion such as the one at issue may be regarded as being based on the ethnic origin of the persons concerned even if it may cover several ethnic origins. A contrary interpretation would render Directive 2000/43 ineffective. In addition, the preparatory documents for the legislation of which that criterion forms part may contain relevant information for determining whether that legislation establishes a difference in treatment on the ground of ethnic origin. According to the case-law of the Court, in order for there to be direct discrimination, [23] it is sufficient that a consideration relating to ethnic origin

---

18 That directive gives specific expression, in its field of application, to the principle of non-discrimination on grounds of race and ethnic origin enshrined in Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter'). Article 21(1) of the Charter is based, inter alia, on Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') and, in so far as it coincides with the ECHR, applies in compliance with that article.

19 The case-law relating to Article 14 ECHR.

20 Recital 3 of Directive 2000/43 states that the right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised, inter alia, by the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965.

21 Article 2(2)(a) of Directive 2000/43 states that, for the purposes of applying paragraph 1 of that article, direct discrimination is to be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.

22 According to the referring court, Statistics Denmark defines an 'immigrant' as a person born abroad and neither of whose parents was both (i) born in Denmark and (ii) a Danish national. The concept of 'descendant' refers to a person who was born in Denmark but neither of whose parents was both (i) born in Denmark and (ii) a Danish national, or whose parents, even if they were born in Denmark and acquired Danish nationality, both also retain a foreign nationality.

23 Within the meaning of Article 2(2)(a) of Directive 2000/43.

determined the decision to introduce a difference in treatment. Lastly, the mere fact that residents of the transformation areas also include persons who are not 'immigrants from non-Western countries and their descendants' is not such as to preclude national legislation such as that at issue from being held to have been adopted on the basis of ethnic origin.

As a second step, the referring court must ascertain whether the Law on Public Housing has the effect of certain persons being treated less favourably than others in a comparable situation.

In that regard, residents of transformation areas appear to face an increased risk of early termination of their lease, as a result of the adoption of a development plan for those areas, which is liable to infringe their fundamental right to respect for the home, [24] whereas the residents of vulnerable areas are not exposed to such a risk, even though they appear, so far as their lease is concerned, to be in a comparable situation.

In the second place, if the referring court concludes that the legislation at issue in the main proceedings does not constitute direct discrimination, it will still have to examine whether there is indirect discrimination within the meaning of Directive 2000/43. [25]

To that end, the referring court will first of all have to examine whether that legislation [26] places persons belonging to certain ethnic groups at a particular disadvantage.

The Court states that the provisions in question need not necessarily result in people of a single particular ethnic origin being placed at a disadvantage. A contrary interpretation would be difficult to reconcile with the objectives of Directive 2000/43, the scope of which cannot be limited to combating discrimination against a single ethnic group.

Next, the referring court will have to determine whether the legislation is objectively justified by a legitimate aim and whether the means of achieving that aim are appropriate and necessary.

As regards the objectives pursued, the Law on Public Housing intends, according to the Danish Government, to resolve problems associated with the formation of 'parallel societies' which have arisen in the Danish public housing system and to ensure successful integration.

According to the case-law of the Court, the objective of ensuring the successful integration of third-country nationals may constitute an overriding reason in the public interest, since the integration of those nationals is a key factor in promoting economic and social cohesion, a fundamental objective of the European Union stated in the FEU Treaty. Member States enjoy, in principle, broad discretion as regards the adoption of measures to ensure social cohesion and integration, including urban development measures. However, they must comply with the prohibition of all discrimination based on racial or ethnic origin, enshrined in Article 21 of the Charter and given specific expression by Directive 2000/43.

As regards compliance with the principle of proportionality, first, it must be examined whether the measures laid down by the legislation at issue are appropriate for attaining the objective of promoting social cohesion and integration.

In that regard, the referring court will have to assess whether the adoption of development plans intended to resolve socioeconomic problems particularly affecting certain residential areas pursues that objective in a consistent and systematic manner, even though that measure applies only to transformation areas to the exclusion of vulnerable areas, in which similar socioeconomic problems are addressed by other means designed to ensure social cohesion.

Second, in order to determine whether such a measure is necessary, the referring court will have to ascertain whether the objective pursued can be achieved just as effectively by other means that are

---

24 This is a fundamental right guaranteed by Article 7 of the Charter, which contains rights corresponding to those guaranteed by Article 8(1) ECHR. It is apparent from the case-law of the European Court of Human Rights that the loss of one's home is a most extreme form of interference with the right to respect for the home.

25 Under Article 2(2)(b) of Directive 2000/43, indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

26 Despite being ostensibly formulated or applied in a neutral manner, having regard to factors other than that of ethnic origin.

less restrictive of the rights and freedoms guaranteed to the persons concerned. If not, it will still have to examine whether the disadvantages caused by that measure are disproportionate and whether it unduly prejudices the legitimate interests of residents of transformation areas, in particular with regard to their fundamental right to respect for the home.

III. INSTITUTIONAL PROVISIONS: EXPENSES AND ALLOWANCES OF THE MEMBERS OF THE EUROPEAN PARLIAMENT

Judgment of the General Court (Second Chamber, Extended Composition) of 17 December 2025, Barón Crespo and Others v Parliament, T-620/23 to T-1023/23

Link to the full text of the judgment

Law governing the institutions – Implementing measures of the Statute for Members of the European Parliament – Rules governing the payment of expenses and allowances to Members of the European Parliament – Amendment of the additional voluntary pension scheme – Notice fixing additional voluntary pension rights – Plea of illegality – Acquired rights – Legal certainty – Legitimate expectations – Right to property – Proportionality – Parliamentary independence – Equal treatment – Request that documents be removed from the case file

An action for annulment was brought before the General Court by a number of former Members of the European Parliament or their legal successors against the payment notices of the pensions owing to them under the Additional (Voluntary) Pension Scheme for Members (AVPS). In dismissing their action, the Court provides clarification as to the scope of Article 27(2) of the Statute for Members of the European Parliament, [27] relating to acquired rights and future entitlements and allows for the possibility of reducing the amount of the additional old-age pension for former Members, subject to observance of the right to property and the principle of proportionality.

On 12 June 2023, the Bureau of the European Parliament ('the Bureau') adopted a decision [28] providing for a reduction of 50% of the pension amounts paid under the AVPS, the abolishment of the annual updating thereof and the raising of the retirement age from 65 to 67. That decision was adopted in a context of high actuarial deficit and extremely serious liquidity issues in the fund entrusted with the task of paying the additional pensions ('the Fund'). According to the recitals of that decision, those measures pursued a two-fold objective: safeguard the Fund in the interest of the current and future beneficiaries of the AVPS, and reduce the financial burden borne by the Parliamentary budget and, therefore, by the European taxpayer. Pursuant to that decision, the Parliament sent the applicants a first payment notice of the pension owing to them under the AVPS.

In their action brought against that payment notice and the subsequent payment notices, the applicants claim that Article 27(2) of the Statute precludes any reduction in the amount of acquired pension rights. They also claim, in essence, that the decision of 12 June 2023, in providing for a reduction by half of the pension amounts owing under the AVPS and by abolishing the updating of that amount, infringes a number of principles of EU law, including the principle of the protection of acquired rights, the safeguarding of Parliamentary independence, the principle of proportionality in

---

27 Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom) (OJ 2005 L 262, p. 1; 'the Statute').

28 Decision of the Bureau of the European Parliament of 12 June 2023 amending the Implementing Measures for the Statute for Members of the European Parliament (OJ 2023 C 227, p. 5; 'the 2023 decision').

the light of the restrictions effected to the right to property and the principle of the protection of legitimate expectations.

Findings of the Court

In the first place, the Court interprets the first sentence of Article 27(2) of the Statute governing acquired rights or future entitlements under the AVPS.

In that regard, the Court recalls, first of all, that a right is deemed acquired at the time when the event giving rise to that right occurs before the legislative amendment. In particular, the right to receive a retirement pension is acquired, in principle, at the time when the event giving rise to that right occurs. In the present case, since the applicants' pension was payable before the 2023 decision, they had acquired pension rights.

Next, the Court notes that there is no principle in EU law under which acquired rights, still less future entitlements, may not be altered or reduced under any circumstances. Thus, it is possible, subject to certain conditions, to alter such rights, following a weighing-up of the interests at issue. Lastly, the Court holds that the interpretation of the first sentence of Article 27(2) of the Statute given previously by the Court of Justice in the judgment in *Grossetête* v *Parliament*, [29] to the effect that it does not suggest that the EU legislature intended to prohibit any amendment to the substantive terms of the AVPS for the future, including those affecting the pension amount a former Member could claim, holds true in respect of Members having acquired rights and those having only future entitlements.

The Court infers therefrom that the first sentence of Article 27(2) of the Statute does not preclude a reduction in the pension amount owing to the applicants under the AVPS and that, consequently, the Bureau did not exceed its powers in adopting the 2023 decision.

In the second place, the Court finds that no precise assurances were given capable of having given rise to a legitimate expectation that the earlier scheme would be maintained.

The administration has a broad discretion in the reform of the AVPS. Moreover, in an area where the administration has such discretion, a mere practice, however common it may be, does not equate to precise, unconditional and consistent information which could actually give rise to a legitimate expectation. Consequently, the fact that, until the 2023 decision, amendments to the AVPS made by the Parliament had systematically affected only those beneficiaries of that scheme who were not yet in receipt of their additional pension cannot give rise to a legitimate expectation that future reforms of the scheme could likewise concern only those persons. Moreover, that practice was based on the interpretation prevailing in the Parliament's services as to the scope of acquired pension rights. Those services considered, inter alia, that it was not possible to amend pension amounts owing to former Members who were already in receipt of their pension, without adversely affecting their acquired rights. However, that fact cannot be equated with an assurance, within the meaning of the case-law relating to legitimate expectations, that that interpretation would be maintained for as long as the AVPS remained in force.

In the third place, the Court finds that, in view of the facts of the present case and in the light of the case-law, the applicants have failed to demonstrate that the reduction effected by the 2023 decision negates the essence of the pension right or adversely affects the essence of the right to property.

In that regard, the Court observes that, although Article 17 of the Charter protects property rights acquired by the applicants by virtue of their contributions to the Fund, that provision cannot be interpreted as conferring entitlement to a pension of a particular amount. Thus, in the present case, the applicants' property rights consist of a right to receive a pension under the AVPS and not a right to a claim for a given amount. It is clear that, although the 2023 decision reduces the pension amounts owing under that scheme, it does not call into question the very principle of the right to a pension.

In its analysis of the complaint, the Court examines, first, the applicants' line of argument based on Directive 2008/94, [30] which is aimed at protecting employees in the event of insolvency of their

---

29 Judgment of 9 March 2023, *Grossetête* v *Parliament* (C-714/21 P, not published, EU:C:2023:187).

30 Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36).

employer. After having found that that directive is clearly not applicable in the present case, given its addressees, namely the Member States, and its scope *ratione materiae*, it finds that the essence of the fundamental right to property cannot be determined in the light of rules adopted by the EU legislature and interpreted by the EU Courts in order to define a harmonised level of protection in the field of labour law. The EU legislature may decide to adopt rules conferring on the persons intended a level of protection higher than the minimum protection threshold arising from observance of fundamental rights. Therefore, even if the 50% rate of reduction in the pension amounts owing under the AVPS used as a basis in the 2023 decision was inspired by the case-law relating to Article 8 of Directive 2008/94, that case-law is not such as to establish that a reduction of over 50% would amount to negating the essence of the fundamental right to property in the area of additional pensions.

Secondly, the essence of the right to property, which consists of the right to receive a pension, cannot be determined in the light of the distribution, between the Members and the Parliament, of the payment of the contributions to the AVPS, or in the light of the alleged commitment of the Parliament to cover the Fund deficit. Those questions relate to the financing of the AVPS and not to the protection of the right to receive a pension under that scheme. Thirdly, the Court finds that, after the entry into force of the 2023 decision, the monthly pension amount resulting from the application of the 50% reduction is not negligible.

Lastly, the Court finds that the measures resulting from the 2023 decision are not the result of a manifestly inappropriate arbitrage between the interests of those beneficiaries and the budgetary interests involved.

In order to reach that conclusion, the Court begins by examining whether there are legitimate objectives. It observes that the measures taken were intended, given the 'extremely difficult' financial situation of the Fund, to safeguard the Fund in the short term, in the interest of all current and future beneficiaries of the AVPS, and avoiding or, at least, reducing the negative consequences thereof for the European taxpayer. As the Fund is responsible for paying the supplementary pension to former Members, safeguarding it, even in the short term, constitutes a legitimate objective. Moreover, the AVPS was initially based on an actuarial calculation, under which all of the members' and the Parliament's annual contributions were, in principle, to cover all pension rights acquired in the same year, with the member paying one-third and the Parliament paying two-thirds. It is true that the principle of financial equilibrium of the Fund was adversely affected by the entry into force of the Statute and the implementing measures thereof, since the financing of the Fund through contributions had stopped, save for exceptions. The fact remains that, whereas the Parliament had already contributed two-thirds of the financing of the AVPS, even partial coverage by the Parliament of an actuarial deficit is liable to increase the financial burden for the European taxpayer occasioned by that scheme. The reduction of the negative consequences arising from the Fund deficit for the European taxpayer constitutes a legitimate objective.

Hence, the objectives pursued by the 2023 decision were legitimate and reflected the Parliament's concerns about the liquidity issues affecting the Fund and the size of its actuarial deficit.

Next, the Court rules on the suitability of the measures for attaining the objectives pursued by the 2023 decision, namely, safeguarding of the Fund in the short term and limiting the impact of its deficit for European taxpayers. According to that decision, the Fund could be exhausted in 2024 and would inevitably be so at the latest in 2025. When combined with the savings resulting from raising the retirement age, the 50% reduction in pension amounts and the end of their updating, applied without a transitional scheme, would lead to the extension of the lifespan of the Fund by two or three years and reduce its actuarial deficit from EUR 310 million to EUR 86 million. The Court finds in that regard that the 2023 decision actually extended the lifespan of the Fund, the assets of which would be exhausted by December 2026. It follows that the measures adopted are clearly suitable for attaining the objectives pursued.

Lastly, the Court examines whether the measures were necessary and proportionate. It examines inter alia whether the Parliament limited the interference with that right to what was strictly necessary and struck a fair balance between the requirements of the general interest pursued and those beneficiaries' rights.

The Court finds, first, that it is apparent from recitals 2 and 6 of the 2023 decision that the Bureau contemplated various possible solutions, but found them to be inadequate in the light of the magnitude of the Fund's financial difficulties. The Bureau weighed in favour of 'the most ambitious' option. The 2023 decision did not eliminate the deficit entirely, but it did lead to a reduction that it considered to be acceptable in view of the case-law. Secondly, recital 6 of the 2023 decision states that the Bureau also took into account the ratio of the total amount of the pension payments received compared to the total individual contributions of beneficiaries. Thirdly, the measures at issue were envisaged together with the possibility offered to members to lodge an application to withdraw from the AVPS and to receive the additional pension in the form of a one-off lump sum final payment equating, in essence, to the difference between the total individual contributions paid by the Member or former Member, plus 20%, and the pension amounts already received. Fourthly, the 2023 decision contains an unforeseeability clause, under which the beneficiary may submit an application for an increase of pension if he or she demonstrates that, following the reduction of the pension amount owing under the AVPS, he or she would have to live below the at-risk-of-poverty threshold.

In the light of all the foregoing considerations, the Court notes, first, that the 2023 decision necessarily results from a weighing-up of the different interests involved, namely, on the one hand, the interests of the beneficiaries of the AVPS and, on the other hand, those of the European taxpayer. In the second place, the Court finds that the measures at issue entail substantial financial consequences for the applicants. In fact, they reduce substantially the pension amounts they received under the AVPS until 30 June 2023. That reduction is also sudden in the absence of a transitional scheme. In that regard, the fact that the AVPS is an optional supplementary pension scheme is an important factor in its assessment of the proportionality of the measures at issue. The pension owing under the AVPS is not the only pension received for the years during which the applicants contributed to that scheme. In that context, even a substantial reduction of an additional pension does not have the same scope, in terms of adverse effect on the right to property, as a reduction in basic pension, which is the replacement income that is supposed to provide the beneficiary thereof with a livelihood and may turn out to be the only pension received by that person. A further point is that the rate of reduction of the pension amounts may be held up against the profitability of the investment resulting from the payment of contributions by the members. Moreover, the possibility of receiving the pension owing under the AVPS in the form of a one-off final lump sum guarantees that members recover at least an amount equivalent to the contributions they have paid in, plus 20%. It should also be borne in mind that the 2023 decision does not have the effect of reducing the nominal pension amounts to a manifestly unreasonable level, in view of the duration of the term of office and the contribution amounts paid.

Lastly, the Court finds that the consequences of the measures at issue on the applicants' right to property were weighed up against the budgetary constraints and the need to adopt a responsible decision in the light of the EU finances. Furthermore, the Parliament, which had broad discretion for determining the share of the deficit to be borne by its budget, was free to determine, subject to observance of the principle of proportionality, that a different scale would be used to cover the Fund's actuarial deficit.

IV. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (Grand Chamber) of 2 December 2025, Russmedia Digital and Inform Media Press, C-492/23

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of personal data – Regulation (EU) 2016/679 – Article 4(7) – Concept of 'controller' – Responsibility of the operator of an online marketplace for the publication of personal data contained in advertisements placed on its online marketplace by user advertisers – Article 5(2) – Principle of accountability – Article 26 – Joint control with user advertisers – Article 9(1) and (2)(a) – Advertisements containing sensitive data – Lawfulness of processing – Consent – Articles 24, 25 and 32 – Obligations of the controller – Prior identification of the advertisements containing such data – Prior identification of the identity of the user advertiser – Refusal of publication of unlawful advertisements – Security measures such as to prevent the copying of advertisements and their publication on other websites – Electronic commerce – Directive 2000/31/EC – Articles 12 to 15 – Possibility for such an operator, with regard to an infringement of those obligations, to rely on the exemption from liability of an intermediary information society service provider

Ruling on a request for a preliminary ruling from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), the Court of Justice, sitting as the Grand Chamber, clarifies the responsibilities of an operator of an online marketplace as a controller of personal data contained in advertisements published by advertiser users on its online marketplace, in the light of the GDPR. [31] In the same context, the Court also rules on the relationship between the liability regime foreseen by the GDPR for controllers and the liability regime for information society intermediary service providers under the Directive on electronic commerce. [32]

Russmedia Digital, a company incorporated under Romanian law, is the owner of the website www.publi24.ro, an online marketplace on which advertisements can be published either free of charge or for a fee.

X, a natural person, claims that an unidentified third party published on that website, on 1 August 2018, an untrue and harmful advertisement presenting her as offering sexual services. The advertisement contained, inter alia, photographs of X, which had been used without her consent, along with her telephone number. The advertisement was subsequently reproduced identically on other websites containing advertising content, with the indication of the original source. Russmedia Digital removed the advertisement from its website less than an hour after receiving a request to do so from X. However, the advertisement remained available on other websites which had reproduced it.

X brought an action before the Judecătoria Cluj-Napoca (Court of First Instance, Cluj-Napoca, Romania), which ordered Russmedia Digital and Inform Media Press SRL (together, 'Russmedia') to pay her damages in respect of the non-material damage caused by the infringement of the right of personal portrayal and the rights to honour and reputation, as well as by the infringement of the right to respect for her private life and the unlawful processing of her personal data. The appeal brought by Russmedia against that judgment was upheld by the Tribunalul Specializat Cluj (Specialised Court, Cluj, Romania), which held that Russmedia merely provided a hosting service for the advertisement at issue, without being actively involved in its content and that it could, therefore, benefit from one of

---

31 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').

32 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).

the exemptions from liability provided for by the national legislation on electronic commerce for information society service providers.

Hearing an appeal brought by X, the referring court asks whether the operator of an online marketplace, such as Russmedia, which allows its users to place advertisements anonymously on its online marketplace free of charge or for a fee, has failed to fulfil its obligations under the GDPR, where an advertisement published on its online marketplace contains personal data, in particular sensitive personal data, in breach of that regulation. Furthermore, the referring court asks whether the provisions of the Directive on electronic commerce relating to the liability of information society intermediary service providers [33] are applicable to Russmedia.

Findings of the Court

As a preliminary point, the Court finds that the operator of an online marketplace, such as Russmedia, may be classified as a 'controller' of the personal data contained in an advertisement published on that online marketplace, within the meaning of the GDPR. [34]

Accordingly, the Court states that while a person may be classified as a 'controller' of personal data only if he or she exerts influence over the processing of such data, for his or her own purposes, that may be the case, inter alia, where the operator of an online marketplace publishes the personal data concerned for commercial or advertising purposes which go beyond the mere provision of a service which he or she provides to the user advertiser. In the present case, Russmedia reserves the right to use, distribute, transmit, reproduce, modify, translate, transfer to partners and to remove the published content at any time, without the need for any 'valid reason' for so doing. That company therefore publishes the personal data contained in the advertisements not on behalf of the user advertisers, or not solely on their behalf, but processes and can exploit it for its own advertising and commercial purposes. Russmedia therefore exerted influence, for its own purposes, over the publication on the internet of X's personal data. That finding is not called into question by the fact that Russmedia clearly did not participate in the determination of the untrue and harmful purpose pursued by the user advertiser through the publication of the advertisement at issue since, by allowing advertisements to be placed anonymously on its online marketplace, that company facilitated the publication of such data without the data subject's consent. By making its online marketplace, which was used to publish the advertisement at issue, available to the user advertiser, Russmedia participated in the determination of the means of that publication. By setting the parameters for the dissemination of advertisements likely to contain personal data, by determining the presentation and duration of that dissemination or the headings structuring the information published, or even by organising the classification which will determine the arrangements for such dissemination, the operator of an online marketplace such as Russmedia participates in the determination of the essential elements of the publication of those personal data, thereby exerting a decisive influence on their overall dissemination. In that regard, it is apparent from the general terms and conditions of use of Russmedia's online marketplace that that company reserves in particular the right to distribute, transmit, publish, remove or reproduce the information contained in the advertisements, including the personal data they contain.

In any event, the operator of an online marketplace cannot avoid its liability on the ground that it has not itself determined the content of the advertisement at issue published on that marketplace. Any other interpretation would be liable to undermine the objective of the GDPR, which is to ensure effective and complete protection of data subjects by means of a broad definition of the concept of 'controller'.

In view of those preliminary observations, the Court examines, in the first place, the obligations of the operator of an online marketplace, such as Russmedia, as a controller of personal data published on its online marketplace, in the light of the GDPR.

In that regard, the Court assesses, first, whether the operator of an online marketplace must identify advertisements containing sensitive data, in terms of the GDPR, [35] before publishing them.

---

33 Articles 12 to 15 of the Directive on electronic commerce.

34 Article 4(7) of the GDPR.

Accordingly, it observes that the operator and the user advertiser must be considered as joint controllers within the meaning of the GDPR. [36]

On that basis, under the general accountability and compliance requirements imposed on them in accordance with that regulation, [37] both the operator and the advertiser must be able to demonstrate, first, that the personal data contained in the advertisement are lawfully published, that is to say, with the explicit consent of the data subject when the data at issue are sensitive data, [38] and that those data are accurate. [39] Second, the operator of an online marketplace, as a joint controller, must implement appropriate technical and organisational measures [40] in order to be able to demonstrate that the processing of those data has been performed in accordance with the GDPR. The appropriateness of those measures must be assessed in a concrete manner, taking into account the nature, scope, context and purposes of the processing in question and the likelihood and severity of the risks for the rights and freedoms of the data subject.

In that regard, the Court points out that the publication of personal data on an online marketplace entails significant risks to the rights and freedoms of the data subject, since it makes those data accessible in principle to any internet user. In addition, since those data may be copied and reproduced on other websites, it may prove difficult, if not impossible, for the data subject to obtain their actual erasure from the internet. Those risks are all the more serious in the case of sensitive data. In addition, the likelihood of an infringement of those rights by the publication of an advertisement containing such data is very high where the user advertiser is not himself or herself the data subject and where the online marketplace allows such advertisements to be placed anonymously. Accordingly, inasmuch as the operator of an online marketplace, such as Russmedia, knows or ought to know that, generally, advertisements containing sensitive data are liable to be published there by user advertisers, it is obliged, as soon as its service is designed, to implement appropriate technical and organisational measures in order to identify such advertisements before their publication and to verify whether the sensitive data that they contain are published in compliance with the GDPR.

Second, the Court analyses whether the operator of an online marketplace, as controller of the sensitive data contained in advertisements published on its website, jointly with the user advertiser, must verify the identity of that advertiser before such publication. It thus states that, while the placing by a data subject of an advertisement containing his or her sensitive data on an online marketplace may constitute explicit consent, required by the GDPR, [41] such consent is lacking where that advertisement is placed by a third party, without the consent of the data subject. The operator of an online marketplace is therefore required to verify, prior to the publication of such an advertisement, whether the user advertiser is the person whose sensitive data appear in the advertisement, which presupposes that the identity of that person is collected. Such technical and organisational measures must in particular make it possible to limit the risk of unlawful processing of the personal data of data subjects and to combat unfair use of such an online marketplace, by limiting the feeling of impunity and thus encouraging user advertisers to comply with the requirements of the GDPR when they publish advertisements containing personal data.

In the light of the foregoing, the Court states, third, that the operator of an online marketplace must refuse to publish an advertisement containing sensitive data, by implementing appropriate technical and organisational measures, if it becomes apparent, after verification of the identity of the advertiser user, that the latter is not the person whose sensitive data appear in the advertisement, and that it

---

35 Article 9(1) of the GDPR.

36 Article 26 of the GDPR.

37 As provided for in Article 5(2) and Articles 24, 25 and 26 of the GDPR.

38 Article 9(1) and (2)(a) of the GDPR.

39 Article 5(1)(d) of the GDPR.

40 Pursuant to Articles 24 and 25 of the GDPR.

41 Article 9(1) and (2)(a) of the GDPR.

cannot demonstrate to the requisite legal standard that the data subject to which the advertisement relates has given his or her explicit consent to the publication of those data, or that one of the other exceptions to the prohibition on processing those data is satisfied. [42]

Fourth, the Court clarifies the scope of the security obligation to be satisfied by the controller, in accordance with Article 32 of the GDPR. [43] It observes that once an advertisement containing personal data is online and is thus already generally accessible, the dissemination of those data entails, inter alia, the risk of a loss of control over the personal data concerned which, where it happens, deprives of all practical effect the rights and safeguards provided for by the GDPR for the benefit of the data subject, foremost among which is the right to erasure. [44] Consequently, the Court rules that the operator of an online marketplace, as controller of the personal data published on its online marketplace, is required to implement appropriate technical and organisational security measures in order to prevent advertisements published there and containing sensitive data from being copied and unlawfully published on other websites.

In the second place, the Court rules on the relationship between the GDPR and the Directive on electronic commerce and, more specifically, on the question of whether Articles 12 to 15 of that directive, relating to the liability of intermediary providers, are liable to interfere with the liability regime laid down by that regulation. In that regard, it observes, first, that it is apparent from Article 1(5)(b) of the Directive on electronic commerce [45] that issues relating to the protection of personal data must be assessed in the light of the GDPR and that that directive cannot, in any event, undermine the requirements under that regulation. Accordingly, the possible benefit of the exemption from liability provided for in Article 14(1) of that directive, on which the operator of an online marketplace might be able to rely as regards the information hosted on its website, cannot interfere with the GDPR regime, which applies to such an operator in the same way as to any other operator falling within the scope of that regulation. The same is true of Article 15 of that directive, relating to the general obligation to monitor. [46] Moreover, the obligation on the operator of an online marketplace to comply with the requirements arising from the GDPR cannot, in any event, be classified as such a general monitoring obligation. Second, the Court observes that it follows from Article 2(4) of the GDPR [47] that the fact that an operator has obligations laid down by the GDPR does not automatically preclude that operator from being able to rely on Articles 12 to 15 of the Directive on electronic commerce for matters other than those relating to the protection of personal data. Consequently, the Court concludes that the operator of an online marketplace, as controller of the personal data contained in advertisements published on its online marketplace, cannot rely, in respect of an infringement of the obligations on it arising from the GDPR, on Articles 12 to 15 of the Directive on electronic commerce.

---

42 Provided for in Article 9(b) to (j) of the GDPR.

43 Article 32(1) of the GDPR lays down the obligation of the controller of personal data to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

44 Article 17 of the GDPR.

45 According to that provision, the Directive on electronic commerce is not to apply to questions relating to information society services covered by Directive 95/46, which was replaced by the GDPR.

46 Under Article 15 of the Directive on electronic commerce, Member States may not impose on providers, in respect of the provision of the services referred to, inter alia, in Article 14 of that directive, a general monitoring obligation.

47 Under that provision, the GDPR is to apply without prejudice to the Directive on electronic commerce and, in particular, to Articles 12 to 15 thereof relating to the liability of intermediary service providers.

V. FREEDOM OF MOVEMENT: FREE MOVEMENT OF WORKERS

Judgment of the Court of Justice (First Chamber) of 11 December 2025, GKV-Spitzenverband, C-743/23

Link to the full text of the judgment

Reference for a preliminary ruling – Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons – Migrant workers – Social security – Applicable legislation – Regulation (EC) No 883/2004 – Article 11 – Article 13(1) – Regulation (EC) No 987/2009 – Article 14(8) – Worker pursuing an activity as an employed person in the territory of several States, including a Member State, the Swiss Confederation and third countries – Concept of 'substantial part of the activity' – Taking account of the activity pursued in third countries

Ruling on a request for a preliminary ruling from the Landessozialgericht für das Saarland (Higher Social Court, Saarland, Germany), the Court provides clarification on the determination of the applicable social security legislation where a person pursues an activity as an employed person in several Member States, including that person's Member State of residence, and in third countries.

A, at the time residing in Germany, was employed full-time by Moguntia Food Group AG, a company established in Basel (Switzerland), during the period from 1 December 2015 to 31 December 2020 ('the period at issue').

A was employed simultaneously in Switzerland, for 10.5 days per quarter, in Germany, working from home for 10.5 days per quarter, and in third countries.

A had taken out compulsory health insurance in Switzerland. However, GKV-Spitzenverband (National Association of Statutory Health Insurance Funds, Germany) found, by decision of 18 August 2016, that A was subject, during the period at issue, to the German social security scheme because he pursued a substantial part of his activity in Germany, where he resides.

A then lodged an objection against the decision of GKV-Spitzenverband, which the latter rejected by decision of 18 December 2020. GKV-Spitzenverband found that only activities pursued in the countries coming within the territorial scope of Regulations No 883/2004 [48] and No 987/2009 [49] – in the present case, Germany and Switzerland [50] – are relevant for the purpose of determining the Member State in which the substantial part of A's activities is pursued. Therefore, GKV-Spitzenverband took into consideration only the working time spent by A in those two countries and concluded that 50% of his working time was spent in Germany, his State of residence.

A brought an action against that rejection decision before the Sozialgericht (Social Court, Germany), which annulled the decisions of GKV-Spitzenverband.

---

48 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4) ('Regulation No 883/2004'). Under Article 13(1) of Regulation No 883/2004, where a person pursues an occupational activity in two or more Member States, that person is to be subject to the legislation of the Member State of residence if he or she pursues a substantial part of his or her activity as an employed person in that Member State.

49 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

50 In accordance with Article 8 of, and Annex II to, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 6), as amended by Decision No 1/2012 of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of 31 March 2012 replacing Annex II to that Agreement on the coordination of social security schemes (OJ 2012 L 103, p. 51), the European Union and the Swiss Confederation are to apply among themselves Regulations Nos 883/2004 and 987/2009. In that context, the term 'Member State' in those regulations is to be understood also to include the Swiss Confederation.

GKV-Spitzenverband brought an appeal against that judgment before the referring court, which decided to seek clarification from the Court of Justice as regards the determination of the applicable social security scheme.

Findings of the Court

As a preliminary point, the Court recalls that, in accordance with the rule of a single applicable legislation, persons pursuing an activity as an employed person in two or more Member States are subject to the social security legislation of a single Member State only.

Thus, where a person normally pursues an activity as an employed person in two or more Member States, the conflict-of-law rules laid down in Article 13(1)(a) and (b) of Regulation No 883/2004 provide that that person is to be subject either to the legislation of his or her Member State of residence, if he or she pursues 'a substantial part of his/her activity' there, or, if that is not the case, to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated, thereby guaranteeing that person social security protection.

After recalling those rules, the Court examines whether the concept of 'activity' in the phrase 'a substantial part of the activity' refers only to the activity pursued by that person as an employed person in the Member States or also to the activity pursued in third countries. To that end, the Court gives a literal, contextual and teleological interpretation of that concept.

Under Article 13(1) of Regulation No 883/2004, read in conjunction with Article 14(8) of Regulation No 987/2009, a substantial part of employed or self-employed activity, that is to say, a quantitatively substantial part of all the activities of the employed or self-employed person, is to be considered to be pursued in a Member State if, in the framework of an overall assessment, it is found that, in respect of his or her employed activity, that person spends at least 25% of his or her working time in the Member State in which he or she resides and/or receives at least 25% of his or her remuneration there.

On the basis of their wording alone, those provisions do not therefore expressly limit the taking into account of activities pursued by the person concerned as an employed or self-employed person solely to activities pursued in the Member States. That is confirmed, in particular, by the use, in the French-language version of Article 14(8) of Regulation No 987/2009, of the phrases 'ensemble des activités du travailleur salarié ou non salarié' and 'dans le cadre d'une évaluation globale'; those phrases are mirrored, in essence, in many of the other language versions of that provision.

It follows from that that, for the purpose of determining whether a Union citizen who resides in one Member State and who pursues an activity as an employed person in several States, including his or her Member State of residence, another Member State and third countries, is pursuing a substantial part of that activity in the Member State where he or she resides, it is important to take account of all the activities that he or she pursues as an employed person, including activity pursued in third countries.

That literal interpretation is borne out by the context in which those provisions occur and by the objective pursued by them.

In the context of the system established by Regulation No 883/2004, the concept of the 'location' of an activity must be understood as referring to the place where, in practical terms, the person concerned carries out the actions connected with that activity. In those circumstances, in order to determine the social security legislation to which a worker is subject, it is necessary to examine that worker's actual situation and to take into account all the activities which that worker pursues, including the activity pursued in third countries. To take into consideration only activities pursued in Member States would create a legal fiction far removed from the actual nature of the activity pursued in the Member State of residence, in disregard of the fact that the determination of the applicable legislation depends on the objective situation in which that worker finds himself or herself.

Consequently, in the framework of the overall assessment required by Article 14(8) of Regulation No 987/2009, the activity pursued by the person concerned as an employed person in third countries must be taken into account in the same way as the activity pursued in the Member States in order to determine that person's total working time and, consequently, to verify whether 25% of that working time was spent in that person's Member State of residence.

In the present case, if, as is apparent from the order for reference, the working time spent by A in his Member State of residence is below that threshold, which it is for the referring court to ascertain, A should be regarded as not having pursued a substantial part of his employed activity in that State and, consequently, should be regarded as being covered by the social security legislation of the Member State in which his employer's registered office is situated, namely the Swiss Confederation.

The Court adds that taking into account the activity pursued by the person concerned in third countries is in no way inconsistent with the rule of a single applicable legislation laid down in Article 11(1) of Regulation No 883/2004. Even if that person pursues a substantial part of his or her activity as an employed person in a third country, he or she will be subject to a single social security legislation, which will be that of the Member State in which his or her employer is established, or, if it transpires that that employer is established in a third country, that of his or her Member State of residence.

Furthermore, where the employer's registered office is in a State to which Regulation No 883/2004 applies, such as the Swiss Confederation, the information relating to the activity pursued in third countries by the employed person, which is necessary in order to assess whether that person pursues a substantial part of his or her activity in the Member State in which he or she resides, can easily be obtained, with the result that the taking into consideration of the activity pursued in third countries does not entail an increased risk of abuse. The proper functioning of the system established by Regulation No 883/2004 requires effective and close cooperation both between the competent institutions of the various Member States and between those institutions and persons falling within the scope of that regulation. Therefore, the competent institution of the Member State of residence may, in the framework of the overall assessment that it must carry out pursuant to Article 14(8) of Regulation No 987/2009, ask the institution of the Member State in which the employer's registered office is situated to verify with that employer whether the services provided by the worker in third countries are actually performed.

VI. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (First Chamber) of 18 December 2025, Tang, C-560/23

Link to the full text of the judgment

Reference for a preliminary ruling – Regulation (EU) No 604/2013 – Determination of the Member State responsible for examining an application for international protection – Article 29(1) – Transfer time limit – Determination of the starting point of the six-month time limit – Bringing of an appeal with suspensive effect – New circumstance brought to the attention of the judicial authority before which that appeal was brought – Annulment of the initial transfer decision and remittal of the case to the competent administrative authority – Adoption of a second transfer decision which is also the subject of an action for annulment – Consequences for the calculation of the transfer time limit

Hearing a reference for a preliminary ruling from the Flygtningenævnet (Refugee Board, Denmark), the Court clarifies, in its judgment, the calculation of time limits for the transfer of an asylum seeker in order for him to be taken back by the Member State [51] where he had already made an application for international protection previously.

This reference for a preliminary ruling was made in proceedings against an Afghan national, H, and the Udlændingestyrelsen (Immigration Service, Denmark), [52] concerning the latter's decision to transfer the person concerned to Romania.

H entered Denmark and made an application for international protection there on 25 April 2021. The competent authority found that he had already been registered as an applicant for international protection in Romania and requested that he be taken back by that Member State, which it accepted on 7 July 2021. On 19 July 2021, the same day that the competent authority decided to transfer the person concerned to Romania, the person concerned brought an appeal with a suspensive effect against that decision before the referring tribunal. [53]

On 28 February 2022, Romania informed all Member States that it would suspend all inbound transfers, with effect from 1 March 2022, in the light of the conflict in Ukraine and the increased influx of refugees to Romania. The referring tribunal remitted the case to the competent authority. The competent authority confirmed the transfer decision and the person concerned brought a new appeal against that second decision, dated 8 April 2022. Romania then lifted the suspension of transfers on 24 May 2022, and the referring tribunal confirmed the legality of the transfer decision of 2 December 2022.

On 2 February 2023, H requested that the procedure be reopened before the referring tribunal on the ground that the six-month time limit in which the transfer of an asylum seeker must be carried out, under the Dublin III Regulation, had already expired on the date on which the competent authority took the second transfer decision, and that Denmark was now responsible for the substantive examination of his asylum application. After reopening the proceedings on 2 December 2022, the referring tribunal confirmed the legality of the transfer decision of 8 April 2022, then reopened the case once again in order to re-examine the calculation of transfer time limits provided for in the Dublin III Regulation.

The referring tribunal asks whether the Dublin III Regulation must be interpreted as meaning that, where a national court or tribunal hearing an action for annulment with suspensive effect makes a final decision on the substantive legality of a second transfer decision, adopted after a first transfer decision concerning the same person has been annulled – solely on the ground of a decisive change in circumstances – resulting in a remittal of the case to the competent administrative authority for re-examination, the six-month transfer time limit starts to run on the date of the final decision on the legality of the second transfer, or on the date on which the first transfer decision was annulled.

Findings of the Court

As a preliminary point, the Court notes that, contrary to what H argued before it, after the annulment of the first transfer decision and the remittal of the case for re-examination by the competent authority, the time limit did not start to run again from the date on which Romania had agreed to take him back, namely 7 July 2021.

In that regard, it recalls that, in accordance with the Dublin III Regulation, the transfer of the asylum seeker to the Member State responsible is to take place as soon as practically possible and, at the latest, within six months of either the acceptance by another Member State of the request to take back, or of the final decision on the appeal with suspensive effect, these two situations being mutually exclusive. The Court also recalls that, in the second case, the time limit does not start to run until the

---

51 Taken back for the purposes of Article 18(1)(c) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31; 'the Dublin III Regulation').

52 'The competent authority'.

53 In accordance with Article 27(3)(a) of the Dublin III Regulation.

judicial decision on the appeal against the transfer decision has become final, after all legal remedies provided for by the law of the Member State concerned have been exhausted. That postponement of the running of the transfer time limit until the outcome of the appeal against the transfer decision ensures equality of arms and the effectiveness of appeal proceedings, by guaranteeing that that time limit does not expire while implementation of the transfer decision has been made impossible by the lodging of an appeal with a suspensive effect against that decision. According to the Court, the interpretation relied on by H is liable to undermine the equality of arms and the effectiveness of the appeal procedures, since, according to that interpretation, the annulment of the transfer decision by the judicial authority would mean that the transfer time limit would start to run again from the date on which the Member State responsible agreed to take the person concerned. The consequence of such an interpretation could in fact be that the six-month transfer time limit expires, as the case may be, at a time when enforcement of the decision is impossible due to an action for annulment with suspensive effect.

In relation to the question posed as to whether the transfer time limit starts to run on the date of the final decision on the legality of the second transfer or the date on which the first transfer decision was annulled, the Court notes, in the first place, that the Dublin III Regulation does not contain specific rules applicable to the dispute in the main proceedings.

In the second place, the Court observes that, under that regulation, the applicant for international protection has the right to obtain a judicial review of the lawfulness of the transfer decision.

In that regard, that transfer time limit must run not from the provisional judicial decision suspending the implementation of the transfer procedure, but only from the date of the judicial decision ruling on the merits of that procedure and which is no longer capable of hindering its implementation. In the present case, it is true that there are two decisions and two distinct actions. Nevertheless, the Court holds that those decisions form part of a single procedure and that the decision by which the judicial authority annuls the first transfer decision solely on the ground of a decisive change in circumstances must be regarded as an interim decision which does not terminate the procedure relating to that transfer definitively.

In the third and final place, the Court notes that the Dublin III Regulation must be read in the light of the right to effective judicial protection guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. The EU legislature harmonised only some of the procedural rules governing an action brought against a transfer decision and did not specify whether and according to what procedures the court or tribunal hearing that action is required to take account of circumstances arising after the adoption of that transfer decision. Each Member State bound by that regulation, however, must itself organise its national law in such a way as to enable applicants for international protection to exercise their right to effective remedy.

First, in that context, the Court recalls that the Dublin III Regulation and Article 47 of the Charter of Fundamental Rights preclude national legislation which provides that the court or tribunal seised of an action for annulment of a transfer decision may not, in the context of the examination of that action, take account of circumstances subsequent to the adoption of that decision which are decisive for the correct application of that regulation, unless that legislation provides for a specific remedy entailing an *ex nunc* examination of the situation of the person concerned, the results of which are binding on the competent authorities, a remedy which may be exercised after such circumstances have arisen. In the same vein, it held that, where a court or tribunal annuls a transfer decision, where there is new information relating to decisive circumstances, and remits the case to the competent authority for re-examination in order for that authority to take that information into account, such a decision to annul and to remit cannot constitute a final decision on the appeal.

Second, the Court points out that the asylum seeker has the right to have an effective and rapid remedy. It holds, however, that a remittal to the competent authority for re-examination in the light of the circumstances subsequent to a transfer decision does not preclude that right, in so far as the national law is adapted in such a way that the authority carries out the re-examination without undue delay and that the judicial authority hearing the case rules in a short period of time. The duration of the administrative and judicial procedure cannot in any event go beyond what is necessary, in order to ensure the objective of rapidity, which guarantees effective access to international protection, and the effectiveness of judicial protection. In particular, national legislation providing for such a remittal

for re-examination cannot allow the authorities of the requesting Member State to evade their responsibility by repeatedly remitting a case to the competent administrative authority for re-examination, without the procedure for granting international protection ever being decided. In that context, the Court also notes that the transfer time limit laid down in the Dublin III Regulation and, in particular, the rule that, in case of failure to observe the time limit, the responsibility for that procedure is transferred to the requesting Member State, shows that, according to the EU legislature, such applications should, where appropriate, be examined by a Member State other than that designated as responsible pursuant to the criteria set out in Chapter III of that regulation.

It is for the referring tribunal to ascertain if the procedure for taking charge and taking back was indeed carried out without undue delay. If that tribunal finds that the procedure for taking charge and taking back was not carried out without undue delay, the application for international protection should be examined by a Member State other than the one designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation.

Judgment of the Court of Justice (Grand Chamber) of 18 December 2025, WS and Others v Frontex (Joint return operation), C-679/23 P

Link to the full text of the judgment

Appeal – Common policy on asylum and immigration – Regulation (EU) 2016/1624 – European integrated border management of the external borders of the European Union – European Border and Coast Guard – European Border and Coast Guard Agency (Frontex) – Frontex's obligations to protect fundamental rights – Joint return operation coordinated by Frontex – Frontex's non-contractual liability – Causal link between the breach of such obligations and the damage suffered

By its judgment, the Court of Justice, sitting as the Grand Chamber, partially upholds the appeal brought by WS and Others ('the appellants') against the judgment of the General Court in the case *WS and Others* v *Frontex*, [54] by which it rejected their claim for compensation for the damage allegedly suffered by them following the failure of the European Border and Coast Guard Agency ('Frontex') to comply with its obligations pursuant, inter alia, to Regulation 2016/1624. [55] On that occasion, it provides clarifications as to the obligations imposed by that regulation on Frontex, in the context of the coordination of joint return operations, as well as the consequences, for the non-contractual liability of that agency, of failure to comply with those obligations and any consequent breaches of fundamental rights during such return operations.

The appellants are a family of six Syrian nationals, of Kurdish ethnicity, who arrived on the island of Milos (Greece) on 9 October 2016 amongst a group of refugees. On 20 October, following a joint return operation carried out by the Hellenic Republic and coordinated by Frontex, they were transferred to a temporary reception centre in Türkiye. In November 2016, the Turkish authorities issued them with temporary protection documents and a temporary travel permit. After moving to Saruj (Türkiye), the appellants then moved to Iraq to settle in Erbil, for fear of being returned by the Turkish authorities to Syria.

In 2017, the appellants lodged an initial complaint with the Frontex Fundamental Rights Officer submitting that they had been returned from Greece to Türkiye as a result of the return operation carried out by Frontex. Then, in 2018, they lodged a second complaint concerning the handling of the initial complaint. Declared inadmissible, those complaints were forwarded to the Hellenic police authorities. In 2019, the Officer informed the appellants of the closure by those authorities of the

54 Judgment of 6 September 2023, *WS and Others* v *Frontex* (T-600/21, EU:T:2023:492; 'the judgment under appeal').

55 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ 2016 L 251, p. 1).

internal investigation concerning the initial complaint, forwarded to them his final report on those complaints and closed the procedure dealing with them.

On 20 September 2021, the appellants brought an action for damages before the General Court seeking compensation for the material and non-material damage which they claimed to have suffered as a result of Frontex's alleged unlawful conduct before, during and after the joint return operation.

In the judgment under appeal, the General Court first of all held that certain documents produced by the appellants were inadmissible because they were submitted out of time without justification. As regards the substance, after finding that the conditions for the European Union to incur non-contractual liability were cumulative, [56] it decided to examine in the first place the condition relating to whether there was a causal link between the conduct alleged against Frontex and the alleged damage. Thus, it held that the expenses incurred by the appellants to travel to Greece could not be a direct consequence of the conduct of which Frontex is accused since they pre-dated the return operation at issue. Next, it held that Frontex's task within the framework of the return operation at issue was only to provide technical and operational support to the Member States and not to enter into the merits of decisions to return the persons included in that operation, those decisions, as well as those relating to the granting of international protection, being taken on the basis of an assessment which is within the sole competence of the Member States. Lastly, after examining the arguments relating to the material and non-material damage that they claimed to have suffered during and after the return operation at issue, the General Court held that the appellants had not adduced evidence of a sufficiently direct causal link between the conduct of which Frontex was accused and the damage alleged, and, consequently, dismissed the action for damages in its entirety.

In support of the appeal against that judgment, the appellants submit, inter alia, that the General Court wrongly held, first, that Frontex was not under an obligation to ensure that there was a written return decision and, secondly, that there was no direct causal link between the conduct of which Frontex was accused and the alleged damage and that that link had been broken by their own 'choices'.

Findings of the Court

First of all, as regards the specific obligations imposed on Frontex by Regulation 2016/1624, the Court observes that, pursuant to that regulation, that agency is under a set of obligations intended to ensure respect for fundamental rights in the context of joint return operations that it coordinates. Those obligations arise, first, from the general obligation of the European Border and Coast Guard, of which Frontex is a component, to ensure the protection of fundamental rights in the performance of that body's tasks under that regulation and, secondly, from Frontex's obligation to monitor effectively respect for fundamental rights in all its activities.

Therefore, the Court rules, the General Court erred in law in finding that Frontex was not under any obligation as regards the verification of the existence of individual enforceable return decisions adopted in respect of persons covered by a joint return operation coordinated by that agency, on the ground that its task consists solely in providing technical and operational support to the Member States, without having the power to consider the merits of those return decisions. The Court states in that respect that the verification of the existence of such decisions is unconnected with any examination of their merits and therefore does not encroach on the exclusive competence of the Member States in the area under Article 6(1) of Directive 2008/115. Accordingly, Frontex is obliged to verify whether there are individual enforceable return decisions, which, in accordance with Article 12(1) of Directive 2008/115, must be given in writing, for all persons whom a Member State intends to include in such operations, in order to ensure that they comply with the requirements arising from Regulation 2016/1624 and with the fundamental rights of the persons concerned, and in particular the principle of non-refoulement.

---

56 According to the Court's settled case-law, the European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties. If any one of those conditions is not satisfied, the action must be dismissed in its entirety, without it being necessary to consider the other conditions for non-contractual liability on the part of the European Union, and that the EU judicature is not required to examine those conditions in any particular order.

In those circumstances, and having regard to the principle of sincere cooperation, [57] the General Court also erred in law in its assessment that any causal link between the conduct of which Frontex is accused and the damage alleged by the appellants should be rejected on the ground that that agency does not assume any obligation to verify the existence of a return decision concerning the persons included in a joint return operation coordinated by that agency.

However, contrary to the appellants' submission, the fact that Frontex is under a verification obligation in that respect does not mean that there is necessarily a causal link between a possible infringement of that obligation and all or part of the damage alleged by the appellants. It is true that the existence of such a causal link must be examined in the light of that verification obligation and the other obligations imposed on Frontex in order to ensure compliance with the requirements flowing from Regulation 2016/1624 and the fundamental rights of the persons concerned. That examination must however be undertaken taking account of all the relevant facts [58] and the legal assessments required.

Next, as regards liability for any infringements of fundamental rights committed during a return flight, the Court finds that the General Court was wrong to hold that liability for such infringements rested solely with the host Member State, to the exclusion of any liability on the part of Frontex. Taking into account the obligations imposed on Frontex pursuant to Regulation 2016/1624, it cannot be excluded a priori that a breach of those obligations by its departments or staff in the context of a particular operation may have contributed to infringements of fundamental rights taking place during a return flight, to the detriment of the persons being removed. It is irrelevant in that regard that, in accordance with Directive 2008/115 [59] and as recalled in Regulation 2016/1624, [60] the monitoring of forced returns is a matter for the Member States. Under that regulation, the assistance provided by Frontex or the coordination or organisation it ensures for joint return operations must be provided in accordance with that directive and Frontex is under monitoring obligations additional to those of the Member States.

Furthermore, in so far as Frontex staff participate or may participate in such operations, whether as coordinating officers or as experts deployed in the context of those operations, it cannot be excluded a priori that wrongful acts or omissions on the part of those members of staff may have a causal link with the occurrence of such infringements.

Finally, referring to its case-law on the direct nature of a causal link between the conduct complained of and the alleged damage, which is necessary for the European Union's non-contractual liability to be incurred, the Court held that the General Court did not err in law, first, in finding that the fact that the conduct complained of constituted a necessary condition for the damage arising, which would not have arisen in the absence of that conduct, is not sufficient to establish a causal link and, secondly, in examining the possibility, in the present case, that the causal link between the conduct of which Frontex is accused and the damage concerned had been broken by certain acts of the appellants.

However, the Court states that such an examination must necessarily be carried out *in concreto*, taking into consideration all the relevant circumstances characterising the situation of the adversely affected person. In respect in particular of family members who have fled their country of origin in search of international protection and are faced with exceptional circumstances and unforeseeable risks, account must be taken of the fact that asylum seekers may be particularly vulnerable by reason of their migration and the traumatic experiences they could have endured, and that vulnerability could affect their judgment. In such an exceptional situation, the causal link between the conduct complained of and the alleged damage may remain unbroken despite a decision of the adversely affected person taken at a time between that conduct and that damage. That decision may be regarded as a reasonable response having regard to all the circumstances characterising that situation.

---

57 Laid down in Article 4(3) TEU and recalled in Article 9 of Regulation 2016/1624.

58 The determination of which falls to the General Court.

59 In accordance, in the present case, with Article 8(6) of Directive 2008/115.

60 Recalled in Article 29(4) thereof.

Consequently, the General Court erred in finding that the appellants' choices, relating to their temporary residence in Türkiye, their flight to Iraq and their residence in Iraq, had broken any sufficiently direct causal link between the conduct of which Frontex is accused and the alleged damage, without having carried out an assessment *in concreto* of the reasonableness of those choices in the light of all the circumstances which characterised the specific context in which those choices were made.

Accordingly, the Court decides partially to set aside the judgment under appeal [61] and, not being in a position to rule on the substance as the General Court had not ruled on the majority of the appellants' pleas, refers the case back to the General Court.

Judgment of the Court of Justice (Grand Chamber) of 18 December 2025, Hamoudi v Frontex, C-136/24 P

Link to the full text of the judgment

Appeal – Common policy on asylum and immigration – Regulation (EU) 2019/1896 – European integrated management of the European Union's external borders – European Border and Coast Guard – European Border and Coast Guard Agency (Frontex) – Frontex's obligations relating to the protection of fundamental rights – Practices of pushback to a third country in the Aegean Sea region – Non-contractual liability of Frontex – Actual and certain damage – Burden of proof – Effective judicial protection – Prima facie evidence – Duty of the General Court of the European Union to investigate the case

In upholding the appeal brought by Mr Alaa Hamoudi, a Syrian national ('the appellant'), against the order of the General Court of 13 December 2023, [62] the Court of Justice, sitting as the Grand Chamber, clarifies, in the light of the obligation to ensure effective judicial protection, the applicable standard of proof and the duties of the General Court in investigating a case where a refugee claims to have been a victim of a pushback operation in which the European Border and Coast Guard Agency (Frontex) was allegedly involved and brings, for that reason, an action for damages against that agency.

By the order under appeal, the General Court dismissed the appellant's action [63] seeking compensation for the damage he claims to have suffered following the infringement, by Frontex, of certain rights enshrined in the Charter of Fundamental Rights of the European Union ('the Charter') [64] and certain obligations which Regulation 2019/1896 [65] imposes on that agency. That infringement, he claims, occurred in the context of Frontex operations in the Aegean Sea, and more specifically during an alleged operation involving refoulement from EU territory to Türkiye carried out by the Greek authorities ('the pushback operation'). During that operation, the appellant, together with other persons who had fled their third countries of origin, was allegedly sent back out to sea only a few hours after his arrival on a Greek island, without having had the opportunity to lodge an application for international protection.

In the proceedings at first instance, the appellant relied on several pieces of evidence to prove that he was present during that operation, namely his own witness statement, a media article published on

61 The judgment under appeal is set aside except in so far as, first, it dismisses as inadmissible certain documents lodged by the appellants, and, secondly, it finds that there is no causal link between the conduct alleged against Frontex and the damage alleged by the appellants in relation to the costs incurred in travelling to Greece.

62 Order of 13 December 2023, *Hamoudi* v *Frontex* (T-136/22, EU:T:2023:821; 'the order under appeal').

63 Action under Article 268 TFEU according to which 'the Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340' and under Article 340 TFEU, the second paragraph of which provides that 'in the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties'.

64 Articles 1, 2, 3, 4, 6, 18, 19 and 21.

65 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ 2019 L 295, p. 1). The alleged violation concerns, in particular, Article 46(4) and (5) thereof.

the internet and two videos included therein and four photographs. In addition, he had requested on several occasions that the General Court adopt measures of organisation of procedure or measures of inquiry, in particular for the purpose of having Frontex produce certain documents in its possession capable of supporting the appellant's action.

Finding that the evidence submitted by the appellant was insufficient to demonstrate conclusively that he was present during the pushback operation and, accordingly, the fact of the damage alleged, the General Court dismissed the action as manifestly lacking any foundation in law.

In support of his appeal, the appellant claims in particular that the General Court infringed the principles governing the burden of proof by imposing requirements in that regard which are difficult, or even impossible, to meet in the context of pushback operations.

More specifically, he submits that the General Court erred in law by failing to have regard to the need to adapt the burden of proof and by failing to act on his requests that it order Frontex to produce certain documents, given the specific circumstances of the action for non-contractual liability against Frontex for damage he claims to have suffered in the light of the alleged infringements of Regulation 2019/1896 and of the Charter as a result of the alleged pushback.

Findings of the Court

In its judgment, the Court of Justice determines in particular whether the General Court failed to meet its obligation to adapt the rules on the burden of proof and the taking of evidence for the purpose of ensuring effective judicial protection for the appellant.

As a preliminary point, the Court of Justice recalls, first, that, while Frontex and the national authorities responsible for border management have a shared responsibility in respect of the integrated management of the external borders of the European Union, Frontex is fully responsible and accountable for any decision it takes and for any activity for which it is solely responsible under Regulation 2019/1896. In the case of non-contractual liability, Article 97(4) of that regulation and the second paragraph of Article 340 TFEU to which it gives concrete expression provide that Frontex is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its departments or by its staff in the performance of their duties.

The Court of Justice observes that it is apparent from its case-law that the European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, in particular the condition relating to actual damage which requires that the damage for which compensation is sought be real and certain. If any one of those conditions is not satisfied, the action must be dismissed in its entirety.

Next, the Court of Justice deals with the rules on the burden of proof and the taking of evidence in relation to the European Union incurring non-contractual liability. It recalls that it is the party seeking to establish that liability which must show that the relevant conditions have been satisfied. Accordingly, that party must, in particular, prove the existence and the extent of the damage it alleges. To that end, that party may rely on any form of evidence in accordance with the principle of the unfettered production of evidence.

However, when exercising the jurisdiction conferred on the General Court and on the Court of Justice [66] to hear and determine disputes relating to compensation for damage provided for in the second paragraph of Article 340 TFEU, the EU judicature must guarantee the effective judicial protection of individuals.

An action for damages must be assessed having regard to the whole of the system established by the treaties for the judicial protection of the individual and contribute to the effectiveness of that protection. The Court of Justice clarifies in that regard that the principle of effective judicial protection follows from both Article 2 TEU and Article 47 of the Charter, and that the application of the rules relating to the burden of proof and the taking of evidence cannot undermine the effectiveness of the judicial protection of the rights which are conferred on individuals by EU law. The General Court cannot, therefore, impose a burden of proof which is excessive, if not impossible, to discharge or call

66 Article 268 TFEU, read in conjunction with Article 256(1) TFEU.

into question the principle of equality of arms, but must ensure full respect for the right to an effective remedy by taking into account the particular circumstances of the case which it is to hear and determine, adapting the rules on the burden of proof and the taking of evidence where necessary.

Lastly, the Court of Justice recalls that the General Court has been granted powers for the purpose of preparing the cases before it for hearing and investigating them, which enables it to, inter alia, adopt measures of organisation of procedure and measures of inquiry. Accordingly, the General Court may require parties to produce all documents and to supply all information which it considers necessary.

While it is for the General Court to decide on the need to make use of those powers, that decision must be taken in full compliance with the requirements stemming from Article 47 of the Charter. Accordingly, in exceptional cases where the application of the rules on the burden of proof and the taking of evidence do not make it possible to guarantee the effective judicial protection of an applicant, the General Court must exercise those powers to supplement the information it possesses in the case pending before it, provided that the applicant has produced a minimum of information indicating the utility of it intervening in that way. Thus, the General Court may not simply dismiss claims made by the appellant on the ground of insufficient evidence, when it is that court that has the power, in particular by granting a request of the appellant, to order measures of inquiry, such as the production of documents, to remove any uncertainty there might be as to the correctness of those claims.

The Court of Justice finds that it must, in the context of an appeal calling into question the General Court's application of the rules on the burden of proof and the taking of evidence, ascertain whether that court met its obligations in full compliance with the requirements stemming from Article 47 of the Charter.

In that regard, the Court of Justice observes, in the first place, that a pushback operation, such as the one in question in the case under appeal, is characterised by the significant vulnerability of the persons subject to it and by the absence of the identification and personalised treatment of those persons by the authorities. In addition, those persons are, at the time of the facts, in a position which makes it very difficult for them to collect evidence for the purpose of proving such facts, or even excludes any possibility of their doing so at all. By contrast, given its tasks laid down by Regulation 2019/1896, Frontex is, in principle, likely to possess information that is relevant for the purpose of proving the existence of pushbacks.

In the light of those specific circumstances, among others, persons such as the appellant cannot be requested to adduce conclusive proof that that operation occurred and that they were present during it. Failure to adapt the burden of proof might hinder all legal action by victims of a pushback operation against Frontex on the basis of alleged unlawful conduct by that agency, granting the latter de facto immunity and thus jeopardising the effective protection of the fundamental rights of those victims. Accordingly, full respect for the right to an effective remedy, as guaranteed by Article 47 of the Charter and by the European Convention on Human Rights as interpreted by the European Court of Human Rights, requires that it be sufficient for those persons to present prima facie evidence that that operation, in which Frontex participated, occurred and that they were present during it. The General Court thus erred in law by finding that it was necessary to assess whether the appellant had adduced conclusive proof of his presence during that operation. That error of law necessarily vitiated its findings regarding the evidence produced by the appellant since its assessment was carried out in the light of a standard of proof that was too high, without full respect for the right to an effective remedy.

In the second place, the Court of Justice examines, on the basis of the General Court's findings, whether the appellant provided such prima facie evidence. It recalls that the corollary of the principle of the unfettered production of evidence is the principle of the unfettered assessment of evidence under which the only relevant criterion for the purpose of assessing the probative value of evidence lawfully adduced relates to its credibility.

As regards, in particular, the assessment of the probative value of the appellant's witness statement, the Court of Justice finds that such an assessment requires that the credibility and the plausibility of the information that the witness statement contains be established. In particular, the witness evidence of an applicant cannot be dismissed as having little probative value without account being

taken of all the evidence submitted in a specific case. Accordingly, to find, as the General Court did, that, as a general rule, an applicant's own witness evidence has little probative value constitutes an error in law. In addition, it is apparent from the findings of the General Court that the appellant's witness statement was sufficiently detailed, specific and consistent to constitute prima facie evidence that he was, in fact, a victim of a pushback operation, which is also supported by other evidence produced by the appellant, inter alia a media article, which forms a body of consistent evidence.

In the third place, the Court of Justice finds that, where an applicant provides prima facie evidence that he or she has been a victim of a pushback and complains of Frontex's involvement in that pushback, the General Court is required to take further steps in the proceedings and investigate the case before it in order to assess, on the basis of all of the information at its disposal, the truth of that circumstance. If it is concluded that that prima facie evidence has not been rebutted during a hearing of the appellant as a witness or by evidence and arguments presented by the other parties to that case in their pleadings or even by other possible evidence obtained in the course of its investigation of the case, that circumstance must be deemed to have been proved.

In particular, the General Court was required, in the present case, to adopt measures of organisation of procedure or measures of inquiry to obtain, from Frontex, all relevant information at its disposal with a view to clarifying the facts of the pushback operation in question and to enable it to have sufficient information on the basis of which to assess whether the appellant's action was well founded, and to guarantee the effective judicial protection of the latter's rights. It therefore erred in law by rejecting the appellant's requests.

In the light of the foregoing, the Court of Justice concludes that the order under appeal must be set aside and the case referred back to the General Court.

VII. JUDICIAL COOPERATION IN CIVIL MATTERS

1. BRUSSELS Ia REGULATION

Judgment of the Court of Justice (Grand Chamber) of 2 December 2025, Stichting Right to Consumer Justice and Stichting App Stores Claims, C-34/24

Link to the full text of the judgment

Reference for a preliminary ruling – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 7(2) – Special jurisdiction in matters relating to tort, delict or quasi-delict – Determination of the territorial jurisdiction of a court of a Member State – Place where the harmful event occurred – Place where the damage occurred – Representative action seeking compensation for the damage caused by anticompetitive conduct consisting of the charging by the operator of an online platform, aimed at all users in a Member State, of excessive commission on the price of applications and digital products offered for sale on that platform – Action brought by an entity qualified to defend the collective interests of multiple unidentified but identifiable users

Having received a request for a preliminary ruling from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), the Court of Justice, sitting as the Grand Chamber, interprets Article 7(2) of

Regulation No 1215/2012 [67] in order to identify, within a market of a Member State allegedly affected by anticompetitive conduct, the court having territorial jurisdiction to hear a representative action for compensation for damage caused when purchases are made online; that action was brought by an entity defending collective interests.

The applicants in the main proceedings, two foundations governed by Netherlands law, brought representative actions against Apple Inc. and Apple Distribution International Ltd (together 'Apple'), seeking a declaration that Apple had engaged in anticompetitive conduct and seeking an order that Apple pay compensation for the damage allegedly caused by that conduct to users of the App Store app, which is an online sales platform developed and operated by Apple.

That platform offers apps free of charge and in return for payment, those apps being developed by Apple or by third parties. Third-party developers of apps are remunerated after Apple has deducted a commission of 15 or 30% of the sale price of the app. In order to access the App Store, users of Apple devices must create a user profile by indicating a country or region. When the Netherlands is entered as the country, the user is directed by default to the online shop specifically designed for that country ('the App Store NL').

The actions brought by the foundations concern the damage which, in their view, consists, in essence, of additional costs paid by users of Apple devices when purchasing an app in the App Store NL, on account of the passing on, to the purchase price, of excessive commission imposed by Apple on developers of apps.

The referring court finds that, in so far as the actions are directed against Apple Distribution International, which is established in Ireland, the disputes in the main proceedings fall within the scope of Regulation No 1215/2012. Article 7(2) of that regulation gives the applicant the choice of suing the defendant either before the courts for the place of the event giving rise to the alleged damage, or before the courts for the place where that damage occurred.

In that respect, as regards, in the first place, the territorial jurisdiction of the referring court, the latter first makes reference to the case-law of the Court of Justice and finds that the event giving rise to the damage alleged in the present case is in the Netherlands. [68] The referring court takes the view that it has international jurisdiction on account, inter alia, of the fact that the App Store NL is aimed specifically at the Netherlands market and uses the Dutch language.

As regards, second, the place where the damage occurred, the referring court notes that the alleged damage was suffered in the Netherlands, given that most of the users who made purchases in the App Store NL reside or are established in the Netherlands and paid for their purchases through Netherlands bank accounts. On the basis of the same case-law of the Court of Justice, the referring court therefore considers that it also has international jurisdiction on the basis of the place where the damage occurred.

As regards, in the second place, its territorial jurisdiction, the referring court is uncertain, however, as to where, in the present case, is the place where the alleged damage occurred in the Netherlands. For purchases made via an online platform for apps that can be downloaded worldwide, it is difficult to establish a place of purchase. It is, in that court's view, necessary to determine which court has territorial jurisdiction in relation to the registered office of the purchaser/user. Such a connecting factor could, however, lead to a division of jurisdiction between a large number of Netherlands courts, each of which would have jurisdiction only in respect of purchasers/users who reside or are established within its territorial jurisdiction.

Lastly, the referring court also raises the issue of the connecting factors to be taken into consideration in the case of a representative action brought by a legal person which defends collective interests and

---

67 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

68 More specifically, this concerns the foundations' complaint alleging infringement of Article 102 TFEU, since the referring court found that it cannot establish its jurisdiction to hear the part of the actions which concerns an infringement of Article 101 TFEU in the absence of identification of a specific event that took place in the Netherlands.

does not act as an assignee or as an agent, but enjoys an independent right of action for an indeterminate group of persons.

Findings of the Court

As a preliminary point, the Court recalls that, according to settled case-law, the concept of 'place where the harmful event occurred' refers both to the place where the damage occurred and to the place of the event giving rise to that damage. Those two places may constitute a significant connecting factor from the point of view of special jurisdiction in matters relating to tort, delict or quasi-delict.

The Court states that, in the case of pecuniary damage caused by an abuse of a dominant position, within the meaning of Article 102 TFEU, the event giving rise to the damage is based on the implementation of that abuse, that is, the actions taken by the dominant undertaking to put the abuse into practice. As regards the place where such damage occurred, where the market affected by the anticompetitive conduct concerned is in the Member State in whose territory the damage occurred, that place is in that Member State.

In that context, the Court states, in the first place, that a distinction must be drawn between, on the one hand, initial damage, resulting directly from the event giving rise to the damage, in which case the place where such damage occurred may provide a basis for jurisdiction of the courts of that place, and, on the other hand, subsequent adverse consequences which are not capable of providing a basis for jurisdiction under Article 7(2) of Regulation No 1215/2012.

In the second place, as regards the place where the damage occurred, the Court notes that the referring court considers that the Netherlands courts have international jurisdiction, but that the referring court is uncertain as to which Netherlands court or courts have territorial jurisdiction to hear the disputes in the main proceedings.

The Court recalls in that regard that, in respect of an action for compensation for damage caused by anticompetitive arrangements concerning the prices of material goods, the court having jurisdiction may be either the court within whose jurisdiction the legal person claiming to be harmed purchased the goods affected by those arrangements, or, in the case of purchases made by that person in several places, the court within whose jurisdiction that person's registered office is situated.

First, the Court states that, in the present case, in order to preserve the effectiveness of Article 7(2) of Regulation No 1215/2012, it is necessary to adapt the connecting factors on account of the difficulties associated with applying them in the event that digital products are purchased on an online platform by an indefinite number of natural and/or legal persons who were unidentified at the time when the action was brought. It finds that the damage suffered when purchases are made in the virtual space of the App Store NL can occur throughout the territory of the Netherlands, irrespective of the place where the users are situated at the time of the relevant purchase.

Second, the Court observes that the applicant foundations in the main proceedings have not put forward multiple claims for compensation assigned to them by the identified victims of anticompetitive conduct, but act as an independent promoter of the interests of persons with similar interests. Under Netherlands law, those foundations exercise their own right, namely the right to represent and defend the collective interests of a strictly defined group which brings together unidentified but identifiable persons.

In such circumstances, a court cannot be required to identify, for each alleged victim of anticompetitive conduct, the precise place where the damage that may have been suffered occurred, or to identify those victims.

Third, the fact that it is impossible to determine the place where the damage occurred for each alleged victim does not preclude the application of the special jurisdiction referred to in Article 7(2) of Regulation No 1215/2012, since that place corresponds to a well-defined geographical area, namely the whole of the territory to which the market affected by the relevant anticompetitive conduct belongs.

Therefore, the Court considers that, in situations such as those at issue in the main proceedings, any court having substantive jurisdiction to hear a representative action brought by an entity qualified to defend the collective interests of multiple unidentified but identifiable users will have international

and territorial jurisdiction, on the basis of the place where the damage occurred and in respect of the entirety of that action.

The Court points out that such a conclusion is consistent with the objectives pursued by Regulation No 1215/2012, namely proximity and predictability of the rules of jurisdiction and the sound administration of justice.

First of all, in view of the specific features of the actions in the main proceedings, each court having substantive jurisdiction to examine such an action has the same relationship of proximity with the subject matter of that action. Next, in so far as the App Store NL targets the Netherlands market specifically, it is predictable that a representative action for damages for purchases made on that platform will be brought before any Netherlands court having substantive jurisdiction. Lastly, the solution adopted is consistent with the objective of the sound administration of justice because it allows both efficient procedural management of the dispute and the taking and evaluation of the evidence by a single court, as well as the prevention of the risk of divergent decisions.

The Court adds that, in competition law cases requiring a complex factual and economic analysis, the grouping of individual claims is likely to facilitate both the exercise of the right to compensation by injured persons and the task incumbent on the court seised, in particular where there are practices of operators running digital platforms. Article 7(2) of Regulation No 1215/2012 therefore does not preclude the application of national rules aimed at ensuring a centralisation of jurisdiction where representative actions are brought by qualified entities before several national courts.

2. ROME I REGULATION

Judgment of the Court of Justice (Fourth Chamber) of 4 December 2025, Liechtensteinische Landesbank, C-279/24

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EC) No 593/2008 – Article 3(1) and (2) – Choice of the applicable law – Article 6 – Scope – Contract concluded between a professional and a consumer residing in another Member State – Activity of the professional directed to the Member State in which the consumer has his or her habitual residence after the date of conclusion of the contract containing a choice-of-law clause

Ruling on a request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria), the Court of Justice provides clarification on the law applicable to a consumer contract concluded between a consumer residing in one Member State and a bank established in another, in the light of the Rome I Regulation. [69]

In 2013, AY, a consumer residing in Italy, concluded a contract with the Austrian bank Liechtensteinische Landesbank (Österreich) AG ('the bank') to open a current account and a securities deposit account.

In accordance with the 'General terms and conditions for banking transactions' provided by the bank, and of which AY was aware, all legal relationships between the parties to the contract were governed by Austrian law. Furthermore, both when the contract was signed and when his client profile was subsequently updated, the person concerned had opted for an 'execution-only relationship'.

In 2016, AY took part in an event organised in Padua (Italy) by an Italian investment company ('the Padua event'), during which the managing director of that company presented a fund whose portfolio

69 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'the Rome I Regulation').

also included exchange-traded notes (ETNs). An employee of the bank also took part in that event in order to introduce the bank to the investors in attendance.

Some time later, AY, acting on his own initiative, purchased, through the bank, ETNs and shares in the fund which had been presented at the Padua event.

Taking the view that he had suffered financial loss as a result of those purchases, AY brought legal proceedings seeking compensation for damage on the ground that the bank had failed to fulfil its obligations to provide advice and information. He considers that Italian law, which is more advantageous to him than Austrian law, is applicable because, by appearing at the Padua event, the bank had directed its activity towards the Italian market. The lower courts rejected his claim, and AY brought the matter before the referring court, which made a reference to the Court of Justice for a preliminary ruling on the law applicable to the dispute in the main proceedings.

Findings of the Court

First of all, the Court reiterates the general rule that, in accordance with Article 3 of the Rome I Regulation, the contract is to be governed by the law chosen by the parties. Furthermore, Article 6 of that regulation, entitled 'Consumer contracts', provides, in paragraph 1 thereof, that a contract concluded by a consumer with a professional is to be governed by the law of the country where the consumer has his or her habitual residence, provided that the conditions set out in that provision are met, namely that the professional pursues his or her commercial or professional activities in the country where the consumer has his or her habitual residence, or that, by any means, he or she directs such activities to that country or to several countries including that country, and that the contract falls within the scope of such activities.

It is only where the contract at issue does not satisfy those conditions, which must be verified at the date of its conclusion, that that contract is governed by the law chosen by the parties. [70]

In the present case, on the date on which the contract concerned was concluded, the bank was not pursuing its commercial or professional activities in the country where the consumer had his habitual residence, and was not directing such activities to that country, with the result that those conditions were not met.

However, the bank subsequently directed its professional activities to the country in which the consumer had his habitual residence, with the result that that condition was satisfied after the contract concluded between that consumer and the bank was signed.

The Court then gives a literal, contextual and teleological interpretation of Article 6(1) of the Rome I Regulation.

Having regard to the literal interpretation, the wording of that provision does not make express provision for the possibility of changing the law applicable to a consumer contract if the conditions set out in that provision were not met at the date of conclusion of that contract, but are subsequently met during the course of the business relationship.

As regards the contextual and teleological interpretation, it should be recalled, first, that the Rome I Regulation seeks, inter alia, to ensure legal certainty in the European judicial area through highly foreseeable conflict-of-law rules.

Second, Article 3(2) of that regulation states that a change in the law applicable to a contract, as determined by the agreement of the parties at the time of conclusion of that contract, may result only from the agreement of those parties, whose freedom to choose the applicable law should, moreover, be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations. In order to give full effect to the principle of the freedom of contract of the parties to a contract, it must be ensured that the choice freely made by those parties as regards the law applicable to their contractual relationship is respected.

Third, parties to a contract who are considered weaker should be protected by conflict-of-law rules that are more favourable to their interests than the general rules. However, an interpretation

---

70 Article 3 and Article 6(1)(a) and (b) and (3) of the Rome I Regulation.

whereby it would be possible to derogate from the conflict-of-law rules laid down by the Rome I Regulation for determining the law applicable to consumer contracts, on the ground that another law would be more favourable to the consumer, would necessarily seriously undermine the general requirement of predictability of the law and, therefore, the principle of legal certainty in contractual relationships involving consumers.

In the light of all of the foregoing, the possibility of changing the law applicable to a consumer contract when the conditions set out in Article 6(1) of the Rome I Regulation were not met at the date of conclusion of that contract, but are subsequently met during the course of the commercial relationship, is excluded by the wording of that provision, the scheme and objectives pursued by that provision corroborating that interpretation. Moreover, such a change would undermine the choice of law made by the parties in accordance with Article 3(1) of that regulation.

Judgment of the Court of Justice (First Chamber) of 11 December 2025, Locatrans, C-485/24

Link to the full text of the judgment

Reference for a preliminary ruling – Rome Convention on the law applicable to contractual obligations – Article 6 – Contract of employment – Choice made by the parties – Mandatory rules of the law which would be applicable in the absence of choice – Determination of the law applicable – Habitual place of work – Change of habitual place of work in the course of the employment relationship – Contract of employment more closely connected with another country – Criteria for assessment – Taking into account of the last habitual place of work

Hearing a request for a preliminary ruling made by the Cour de cassation (Court of Cassation, France), the Court of Justice clarifies the criteria, laid down by the Rome Convention, [71] for determining the law applicable in the context of a contract of employment.

In 2002, ES was employed as a driver by Locatrans, a transport company established in Luxembourg. His contract of employment stipulated that the law applicable was Luxembourg law and that the countries essentially covered by the transport performed by ES were Germany, the Benelux countries, Italy, Spain, Portugal and Austria.

In 2014, Locatrans informed ES that it had observed that, over the preceding 18 months, he had carried out a substantial part of his employment activity, namely over 50%, in France and that, consequently, it had to register him with the French social security system.

In the same year, the employment relationship between Locatrans and ES ended, on account of the latter's refusal to agree to the reduction of his working time, of which he had been informed at the beginning of the year.

In 2015, ES brought proceedings before the conseil de prud'hommes de Dijon (Labour Tribunal, Dijon, France) seeking to challenge the termination of his contract of employment and to obtain payment of certain sums by way of compensation.

By judgment of 4 April 2017, that tribunal dismissed the claims brought by ES on the grounds that Luxembourg law was applicable to the performance and termination of his contract of employment, and that that termination was the result of ES resigning and not of any wrongful termination by Locatrans.

ES brought an appeal against that decision before the cour d'appel de Dijon (Court of Appeal, Dijon, France) which set that decision aside in 2019. As regards the choice of the law applicable to the contract of employment, the cour d'appel de Dijon (Court of Appeal, Dijon) found that, having regard

71 Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1).

to Article 6 of the Rome Convention, [72] the choice of Luxembourg law made by the parties could not have the result of depriving ES of the protection afforded to him by the mandatory rules of French law concerning the amendment and termination of employment contracts. This is why that court reclassified the termination of the employment contract as a dismissal not based on a genuine and serious reason, and ordered Locatrans to pay ES certain sums by way of compensation.

Locatrans brought an appeal against that decision before the referring court.

In that context, the referring court is unsure as to the determination of the law applicable to the contract of employment. In essence, it asks whether, where an employee, having worked for a certain time in one place, is called upon to take up his or her work activities in a different place, which is intended to become the new habitual place of work, account should be taken of the latter place in determining the law which would be applicable.

Findings of the Court

The Court begins by recalling that, in accordance with the general rule contained in Article 3 of the Rome Convention, the contract is to be governed by the law chosen by the parties.

By way of derogation from that general rule, Article 6 of the Rome Convention lays down special conflict rules relating to individual contracts of employment. Thus Article 6(1) thereof provides that the choice of law is not to have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under Article 6(2) in the absence of choice.

According to the Court, the connecting factors of the contract of employment, on the basis of which the *lex contractus* to which that second paragraph refers is to be determined, are not only relevant in the absence of any choice made by the parties, but also where the parties have, as in the present case, made such a choice of law, but that choice deprives the employee of the protection afforded to him by the mandatory rules of the law applicable by virtue of those factors.

Those factors are that of the country in which the employee habitually carries out his work and, in the absence of such a country, that of the place of business through which the employee was engaged. Moreover, according to the last limb of Article 6(2) of the Rome Convention, those two connecting factors are not applicable where it appears from the circumstances as a whole that the employment contract is more closely connected with another country, in which case the contract will be governed by the law of that country.

As regards the factor of the country in which the employee habitually carries out his work, referred to in Article 6(2)(a) of the Rome Convention, the Court observes that the wording of that article provides no clarification as to the period of the employment relationship to be relied upon in order to determine the country in the scenario where the habitual place of work of the employee, who carried out his activities in several States, travelled on the territory of another State intended to become that employee's new habitual place of work. In the absence of such clarification, it is therefore necessary to take the employment relationship into consideration as a whole.

However, where, over the course of that relationship, a change has occurred with regard to the habitual place of work, the factor of the country in which the employee habitually carries out his work does not serve to identify any country.

In that connection, the Court states that it is not possible to interpret that criterion in a manner similar to the criterion of the 'place where the employee habitually carries out his work', within the meaning of Article 5(1) of the Brussels Convention, [73] in accordance with its judgment in *Weber*. [74]

---

72 Article 6 of the Rome Convention states, in paragraph 1 thereof, that 'notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice'.

73 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention.

74 Judgment of the Court of 27 February 2002, *Weber* (C-37/00, EU:C:2002:122).

In that judgment, the Court ruled that weight should be given to the most recent period of work where the employee, after having worked for a certain time in one place, then takes up his or her work activities on a permanent basis in a different place, since the clear intention of the parties is for the latter place to become a new habitual place of work within the meaning of the latter provision.

However, contrary to Article 5(1) of the Brussels Convention, which became Article 19 of the Brussels I Regulation [75] and refers expressly to both 'the place where the employee habitually carries out his work' and 'the last place where he did so', Article 8 of the Rome I Regulation, [76] which replaced Article 6 of the Rome Convention, makes no such distinction, since the EU legislature refrained from aligning that provision with that under Article 19 of the Brussels I Regulation.

Accordingly, in so far as it is not possible, in the present case, to determine the country in which the employee habitually carries out his work, reference must be made to the criterion of the place of business through which he was engaged, referred to in Article 6(2)(b) of the Rome Convention, which is situated in Luxembourg in the present case.

Nevertheless, in accordance with the last limb of Article 6(2) of the Rome Convention, it is for the national court to disregard these specific connecting factors where it follows from all of the circumstances that the contract of employment is more closely connected with another country and to apply the law of that country.

To that end, the referring court must take account of all the elements which define the employment relationship and single out one or more as being, in its view, the most significant. As part of that examination, the place where the employee has carried out his work during the most recent period of the performance of his contract of employment, which place is intended to become a new habitual place of work, constitutes a relevant factor [77] to be taken into consideration.

In the present case, it is thus for the referring court to determine whether the contract of employment is more closely connected with France than with Luxembourg, by taking into consideration all of the factors that characterise the employment relationship, such as the most recent habitual place of work of ES and the obligation to pay social security contributions in France.

VIII. COMPETITION: ABUSE OF A DOMINANT POSITION (ARTICLE 102 TFEU)

Judgment of the Court of Justice (Third Chamber) of 18 December 2025, OSA, C-161/24

Link to the full text of the judgment

Reference for a preliminary ruling – Competition – Article 102 TFEU – Abuse of dominant position – Collective management organisation handling copyright – Rates for royalties for the provision of a licence to make copyrighted works available – Hotel establishments – Calculation method – Failure to take into account the rate of occupancy of rooms – Unfair prices

Ruling on a request for a preliminary ruling, the Court of Justice states the conditions under which the failure, by a collective management organisation handling copyright, to take account of the occupancy rate of rooms in hotel establishments when calculating the royalties payable by the latter for the

75 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; 'the Brussels I Regulation') replaced the Brussels Convention.

76 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'the Rome I Regulation') replaced the Rome Convention.

77 See judgment of 12 September 2013, *Schlecker* (C-64/12, EU:C:2013:551, paragraphs 40 and 41).

grant of a licence to make copyrighted works available may constitute an abuse of a dominant position within the meaning of Article 102 TFEU.

OSA, one of the collective management organisations handling copyright in the Czech Republic, holds a dominant position on the relevant market.

By a decision of 18 December 2019, the Úřad pro ochranu hospodářské soutěže (the Office for the Protection of Competition, Czech Republic) ('the Czech competition authority') found that, during the period from 19 May 2008 and 6 November 2014, OSA had charged hotel establishments, for their use of copyrighted works by means of television and radio receivers installed in the rooms of those establishments, royalties calculated without taking account of the occupancy rate of the hotel establishments concerned, without any objective justification. According to that decision, OSA thus had required the payment of royalties in respect of unoccupied rooms in which no use of such works had taken place.

The Czech competition authority took the view that, by that practice, OSA had imposed unfair trading conditions on the national market for the granting of licences for the use of copyrighted works, which constitutes an abuse of a dominant position prohibited by Article 102 TFEU and by the corresponding provisions of Czech competition law. It therefore ordered OSA to pay a fine of 10 676 000 Czech koruny (CZK) (approximately EUR 429 000) and prohibited that organisation from engaging in that practice.

OSA submitted a complaint against that decision, which the Chairperson of the Czech competition authority rejected by a decision of 23 November 2020.

OSA then brought an action against that decision before the Krajský soud v Brně (Regional Court, Brno, Czech Republic), which decided to put questions to the Court regarding the interpretation of the concept of 'abuse of a dominant position', within the meaning of Article 102 TFEU, in a situation such as that at issue in the case before it.

Findings of the Court

The Court points out that a collective management organisation which has a monopoly, in the territory of a Member State, over the management of copyright relating to a category of protected works and which makes those works available, in return for the payment of royalties, to economic operators so that those operators may communicate them to the public, must be regarded as an undertaking which has a dominant position in a substantial part of the internal market, within the meaning of Article 102 TFEU. In the present case, it is not disputed that OSA holds such a dominant position.

It then states that, where the allegedly unfair nature of the conduct of such a collective management organisation concerns the level of those royalties, that pricing must be assessed in the light of the criteria in relation to excessive prices. Such conduct may consequently constitute abuse prohibited under Article 102 TFEU if that organisation charges a price which is excessive in relation to the economic value of the service provided, which must be assessed in the light of all the circumstances of the case.

In that regard, it is necessary to take account not only of the economic value of the collective management service as such, but also of the nature and scope of the use of the works and of the economic value generated by that use.

As regards hotel establishments, the making available of radio and television sets capable of capturing signals and thus of broadcasting protected works in the rooms of such an establishment constitutes communication to the public, within the meaning of Article 3(1) of Directive 2001/29/EC, [78] without it being decisive to ascertain whether or not that public, which consists of the customers present in that hotel establishment, chooses to access the works thus made available. On the other hand, for the purposes of the application of Article 102 TFEU, the number of persons of which that public consists is a relevant factor when assessing, first, what the scope is of the potential use of the

[78] Directive of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

copyrighted works and, second, what benefit the hotel establishment may derive from the licence it acquires from the collective management organisation.

The occupancy rate of the hotel establishments is accordingly a fact which must be taken into account for the purposes of evaluating, using a statistical model or on the basis of other objective, stable, readily accessible and verifiable criteria, the scope of the use of the works and the economic value which their use represents and, thus, for the purposes of determining whether the royalties required for the grant of the licences which allow the communication of the works to the public are 'unfair' within the meaning of point (a) of the second paragraph of Article 102 TFEU.

Thus, it cannot in principle be accepted that a collective management organisation may require from hotel establishments royalties which do not take into account the fact that a significant proportion of their rooms is inaccessible to the customers, because, for example, of a seasonal reduction in the activity of such an establishment, partial closure for renovation or an exceptional situation such as a health crisis.

More generally, while it may be based on a flat rate, the royalty must take account, at the very least, of an estimation of the number of copyrighted works actually used.

In the present case, it is for the referring court, in the light of all the circumstances of the case, including the availability and reliability of the data in relation to the occupancy rate of the hotel establishments, and the technological tools in existence, to assess whether it was possible for OSA, without it entailing a disproportionate increase in the expenses incurred by it for the purposes of the management of its agreements with the users of the protected works and the monitoring of the use of the copyrighted works, to take into account, in setting the royalties, the foreseeable occupancy rate in the hotel establishments.

It therefore cannot be ruled out that the method applied to calculate the royalties, which did not take into account the occupancy rate of the hotel establishments, must be classified as 'abuse' within the meaning of Article 102 TFEU. If a method for calculation of the royalties which took account of that occupancy rate could be used at a reasonable cost and entailed a substantial reduction in the amount of the royalties, the use of the current calculation method could be regarded as leading to unfair prices, within the meaning of point (a) of the second paragraph of Article 102 TFEU.

That finding is without prejudice to the obligation, on the referring court, to take account of any other factor which may also be relevant for the purposes of assessing whether or not the level of the royalties is fair. Such factors may support or invalidate any indicia of a potential abuse of a dominant position which may stem from a failure to take into account the occupancy rate of hotel establishments.

As regards the burden of proof borne by the national competition authority, the Court states, first, that the finding of abuse of a dominant position is substantiated to the requisite legal standard where it is established that the practice concerned is capable of impairing an effective competition structure, without it being necessary to prove that that practice may also cause direct harm to consumers.

Secondly, a competition authority is required to prove that an abuse has an appreciable effect on trade between Member States. The abusive prices charged by a collective management organisation holding a monopoly are liable to produce an effect on cross-border trade where organisation manages not only the rights of rightsholders who are nationals of the Member State in which it has a monopoly, but also those of rightsholders of other Member States.

Judgment of the Court of Justice (Third Chamber) of 18 December 2025, Lukoil Bulgaria and Lukoil Neftohim Burgas, C-245/24

Link to the full text of the judgment

Reference for a preliminary ruling – Competition – Article 102 TFEU – Abuse of a dominant position – Market for the storage of automotive fuels – Abuse – Refusal of access to essential infrastructure for third-party undertakings – Infrastructure financed by public funds – Privatisation of that infrastructure

Hearing a reference for a preliminary ruling, the Court rules on the conditions for applying Article 102 TFEU to a refusal by a dominant undertaking to provide access to essential infrastructure that it owns following the privatisation of a former State monopoly.

On the basis of a privatisation contract concluded in 1999, the Lukoil economic group, to which the undertakings 'Lukoil Bulgaria' EOOD ('Lukoil Bulgaria') and 'Lukoil Neftohim Burgas' AD ('Lukoil Burgas') belong, became the owner of transport and storage infrastructure for petroleum products previously operated by a Bulgarian State-owned undertaking. That infrastructure consists in three pipelines and seven oil depots and terminals.

Since that privatisation, Lukoil Burgas, the main producer of petroleum products in Bulgaria, has operated the refinery of Burgas and has had a concession for operating the Rosenets port terminal. Lukoil Bulgaria, which is active in the distribution of petroleum products, has depots spread out across Bulgaria, tax warehouses and a national network of petrol stations.

After finding that, in March 2020, the retail price of fuels had decreased in Bulgaria to a lesser extent than the crude oil price on the global markets, the Komisia za zashtita na konkurentsiata (Commission on Protection of Competition, Bulgaria) ('the Bulgarian competition authority') was entrusted with investigating whether any infringements of competition law relating to the setting of retail fuel prices existed.

As a result of the investigation, that authority found that, in the period between 2016 and 2021, Lukoil Bulgaria and Lukoil Burgas had engaged in several types of abuse of a dominant position with a common anticompetitive aim, by refusing other producers or importers of fuels access to the transport and storage infrastructure that they operated. Lukoil Bulgaria and Lukoil Burgas refused those producers and importers, in particular, access to the tax warehouses, the sea depots and the pipelines that they own ('the actions at issue').

The Bulgarian competition authority found that some of those actions had to be categorised as 'refusing, without any justification, to provide goods or services', within the meaning of the Bulgarian Law on the Protection of Competition, whereas other actions had to be categorised as 'limiting production, trade and technical development to the prejudice of consumers', within the meaning of that law. Nevertheless, the fact that those actions were part of a common strategy of the Lukoil Group led that authority to regard them as a single infringement, both of Article 102 TFEU and of provisions of the Law on the Protection of Competition. By way of a penalty, that authority imposed fines on Lukoil Bulgaria and Lukoil Burgas.

After Lukoil Bulgaria and Lukoil Burgas contested that decision before the Administrativen sad Sofia-oblast (Administrative Court, Sofia Province, Bulgaria), that court decided to refer several questions for a preliminary ruling concerning the assessment of the actions at issue in the light of Article 102 TFEU.

Findings of the Court

Pointing out that, according to the Bulgarian competition authority, some of the actions at issue can be regarded as a refusal of access to facilities forming part of one and the same essential infrastructure, while other actions constitute restrictions of trade, the referring court asks, in the first place, whether the categorisation of the actions at issue as abuse of a dominant position within the meaning of Article 102 TFEU requires that the Bulgarian competition authority demonstrate that the conditions laid down in that provision are satisfied with regard both to the conduct categorised as restrictions of trade and to the conduct categorised as refusals of access to the facilities at issue.

In that regard, the Court finds that the dispute in the main proceedings concerns the unilateral conduct of two companies belonging to the same undertaking, which were each subject to a penalty due to, essentially, their refusal to grant access to several facilities under their respective control; those facilities, together, are alleged to be, on the relevant market, essential infrastructure. Therefore, Lukoil Bulgaria and Lukoil Burgas are criticised, on the basis of Article 102 TFEU, for having engaged in one type of abusive conduct, rather than different types of conduct.

The Court recalls that it is settled case-law that EU competition law, inasmuch as it targets the activities of undertakings, enshrines as the decisive criterion the existence of unity of conduct on the market, without allowing the formal separation between various companies that results from their

separate legal personalities to preclude such unity for the purposes of the application of the competition rules.

In the light of those considerations, the Court answers the referring court that, for a competition authority to be able to find that the conduct of two companies belonging to the same dominant undertaking, consisting, according to that authority, in refusing to grant access to facilities that are under their respective control and that form part of the same essential infrastructure controlled by that undertaking, and in restricting trade in that regard, constitutes an abuse of a dominant position prohibited by Article 102 TFEU, that authority is not required to establish that the conditions of that provision are satisfied with regard both to the types of conduct regarded as unjustified refusals of access to those facilities and to the types of conduct regarded as restrictions of trade, provided that the authority is able to establish that those conditions are satisfied with regard to the overall abusive conduct for which that undertaking is criticised.

In the second place, the referring court asks, in essence, whether Article 102 TFEU must be interpreted as meaning that the conditions laid down in paragraph 41 of the judgment in *Bronner*, [79] under which a refusal to grant access to infrastructure may be regarded as an abuse of a dominant position, are not applicable where that infrastructure was developed not by the dominant undertaking for the needs of its own business, but by the public authorities, and was either subject to a service concession granted by the State in favour of that undertaking or was acquired by that undertaking in the context of a privatisation.

In paragraph 41 of the judgment in *Bronner*, the Court, in essence, held that a refusal to grant access to infrastructure developed by a dominant undertaking for the purposes of its own business and owned by that undertaking may constitute an abuse of a dominant position provided not only that that refusal is likely to eliminate all competition in the market in question on the part of the entity applying for access and that such a refusal is incapable of being objectively justified, but also that the infrastructure, in itself, is indispensable to carrying on that entity's business, inasmuch as there is no actual or potential substitute for that infrastructure.

In that regard, the Court emphasises that it is, in particular, the need for undertakings in a dominant position to continue to have an incentive to invest in developing high-quality products or services, in the interest of consumers, which justifies applying the conditions laid down in paragraph 41 of the judgment in *Bronner* where an undertaking in a dominant position has developed infrastructure for the needs of its own business and, moreover, owns that infrastructure. Since the latter two criteria are cumulative, it is sufficient for one of them not to be fulfilled in order for the conditions laid down in the judgment in *Bronner* to be inapplicable.

As regards the criterion according to which the dominant undertaking must own the infrastructure in question, the Court specifies that the circumstance that a dominant undertaking does not have full decision-making autonomy with regard to the access to the infrastructure that it operates is sufficient to preclude it from being considered to be the owner thereof and, consequently, to preclude the application of the conditions laid down in paragraph 41 of the judgment in *Bronner*. In such a situation, the cumulative nature of the two criteria for applying those conditions renders the question of whether or not the infrastructure at issue was developed for the needs of the dominant undertaking's own business irrelevant.

Contrary to what is argued by Lukoil Bulgaria and Lukoil Burgas, the same conclusion applies where infrastructure, over which the dominant undertaking does not have full decision-making autonomy, was established and developed by public authorities with public funds and then acquired by that undertaking at a competitively set price, and in which that undertaking subsequently invested, irrespective of the amount of the price paid or of the investments made.

Conversely, where the dominant undertaking enjoys such full decision-making autonomy, it cannot be deemed that the fact that the infrastructure was established or developed by the public authorities or with public funds is sufficient to preclude, in each instance, the application of the conditions laid down in paragraph 41 of the judgment in *Bronner*. Provided that a dominant undertaking has acquired, at a

---

79 Judgment of 26 November 1998, *Bronner* (C-7/97, EU:C:1998:569).

price and under conditions resulting from a competitive procedure, such infrastructure or exclusive rights which confer on that undertaking a decision-making autonomy allowing it fully to control access to that infrastructure, that infrastructure is akin to infrastructure established or developed by that undertaking. By contrast, if it is determined that the privatisation process was not suitable for guaranteeing the competitive nature of the price and conditions for acquisition, such analogous treatment should then be ruled out.

In the light of the foregoing, the Court answers the referring court that Article 102 TFEU must be interpreted as meaning that the conditions laid down in paragraph 41 of the judgment in *Bronner*, under which a refusal to grant access to infrastructure may be regarded as an abuse of a dominant position, are applicable to infrastructure which was developed by the public authorities before being acquired by a dominant undertaking, following privatisation, or before being used by that undertaking pursuant to exclusive rights transferred to it by those public authorities, provided that that privatisation or transfer of exclusive rights took place under conditions suitable for guaranteeing the competitive nature of the price and the other conditions for that privatisation and provided, moreover, that that undertaking enjoys full decision-making autonomy with regard to access to that infrastructure.

IX. APPROXIMATION OF LAWS

1. COPYRIGHT

Judgment of the Court of Justice (First Chamber) of 18 December 2025, SACD and Others, C-182/24

Link to the full text of the judgment

Reference for a preliminary ruling – Intellectual property – Copyright and related rights – Directive 2001/29/EC – Articles 2 to 4 and 8 – Directive 2004/48/EC – Articles 1 to 3 – Directive 2006/115/EC – Directive 2006/116/EC – Articles 1, 2 and 9 – Articles 17 and 47 of the Charter of Fundamental Rights of the European Union – Remedies – Right to an effective remedy – National legislation making the admissibility of an action for infringement brought by one of the co-holders of the copyright in a cinematographic work conditional on all of the co-holders of that copyright being called on to participate in the proceedings

Hearing a request for a preliminary ruling from the tribunal judiciaire de Paris (Court of Paris, France), the Court of Justice rules on the compatibility with EU law of national legislation that makes the admissibility of an action for infringement of the copyright in a collective work conditional on all of the co-holders of that copyright being called on to participate in the proceedings.

Mr Chabrol produced fourteen films, five of which he made in collaboration with Mr Gégauff. In 1990, they assigned the exploitation rights to those films to a distributor for a period of thirty years. In 2019, the respective heirs of Mr Chabrol and Mr Gégauff, the applicants in the main proceedings, brought an action against the distributor in question and other companies, seeking, inter alia, an award of damages for the loss suffered as a result of breach of contractual obligations and infringement of the copyright in the films at issue.

On the basis of the national legislation at issue, the defendants in the main proceedings raised an objection of inadmissibility, on the basis that the 19 co-authors of the films had not been called on to participate in the proceedings. The applicants were unable to locate or identify all of the co-authors or their successors in title, owing to the number of films concerned, the age of those films, the wide range of individuals involved and the death of some of those co-authors.

In that context, the referring court is uncertain, in essence, whether the national legislation at issue is compatible with Article 8 of Directive 2001/29, [80] Article 3 of Directive 2004/48 [81] and Article 1 of Directive 2006/116, [82] read in conjunction with Articles 17 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

In the first place, the Court notes that Article 8 of Directive 2001/29, Article 3 of Directive 2004/48 and Article 1 of Directive 2006/116 require Member States to provide for the procedures necessary to ensure the effective protection of the intellectual property rights covered by those directives, prohibiting inter alia procedures which are unnecessarily complicated or costly. By contrast, none of those articles determines, by its wording alone, the detailed rules for that protection where there are multiple co-holders of a copyright. As regards the context of those provisions, the Court observes that the other articles of the three directives also do not lay down the detailed rules for the exercise of the remedies concerned where there are multiple co-holders of a copyright. As regards the objectives pursued, it is apparent from the recitals of those directives that they seek, inter alia, to ensure a high level of protection of intellectual property, including copyright. In particular, as regards Directive 2004/48, its provisions are not intended to govern all aspects of intellectual property rights, but only those aspects inherent, first, in the enforcement of those rights and, second, in infringement of them, by requiring that there must be effective legal remedies designed to prevent, terminate or rectify any infringement of an existing intellectual property right. Consequently, subject to the obligation to provide remedies that are not unnecessarily complicated or costly, it is for the Member States, under the principle of procedural autonomy, to determine the detailed procedural rules governing the remedies concerned, including in cases where there are multiple co-holders of intellectual property rights.

In the second place, the Court examines whether the procedure at issue is not unnecessarily complicated or costly and whether it is liable to conflict with the principles of equivalence and effectiveness and with the requirements stemming from Articles 17 and 47 of the Charter. In that regard, it observes that the interpretation of the national legislation by the Cour de cassation (Court of Cassation, France) has the effect that an action brought by a co-author will be inadmissible where all of the other co-authors or, where appropriate, their successors in title have not been called on to participate in the proceedings, even where it proves very difficult, if not impossible, to call on them to participate, by reason of circumstances beyond the applicant's control.

First, the Court finds that the requirement to call on all of the co-authors and/or their successors in title to participate in the proceedings has the effect of making it impossible to examine their claims before the courts, in view of the difficulty of identifying and, consequently, calling on all of the successors in title of the co-holders of the copyright concerned to participate in the proceedings. It is for the referring court to ascertain whether, in the present case, that requirement has the effect of making the procedure concerned unnecessarily complicated and costly.

Second, the file does not suggest any breach of the principle of equivalence. However, as regards the principle of effectiveness, the Court notes that, where there are serious and persistent difficulties in identifying and locating co-authors of a collective work, making the admissibility of legal proceedings brought by co-authors of that work who intend to defend their rights conditional on all of the other co-authors of that work being called on to participate in the proceedings is liable to make the exercise of the rights which EU law confers on co-authors excessively difficult.

Third, as regards the right to property enshrined in Article 17 of the Charter, the Court finds that, where several persons jointly hold intellectual property, such as copyright, in the same work, they are all regarded as having acquired, under EU law, the right to own that intellectual property and are

---

80 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

81 Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and corrigendum OJ 2004 L 195, p. 16).

82 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (OJ 2006 L 372, p. 12).

protected in the same way. Recognition of the status of author of a cinematographic work, such as in the present case, is a sufficient condition for exercising the right to property.

As regards the right to an effective remedy, the Court recalls that the essence of that right, enshrined in Article 47 of the Charter, includes the possibility of accessing a court or tribunal with the power to ensure respect for the rights guaranteed by EU law and, to that end, to consider all the issues of fact and of law that are relevant for resolving the case before it. It is true that a restriction such as that resulting from the national legislation protects the rights of co-holders who are absent, enabling them to have sufficient information to decide whether or not to participate in the proceedings, which contributes, inter alia, to ensuring respect for the right to property of those co-holders and to achieving, with regard to them, the objective pursued by the three directives. However, it appears that the effect of that legislation, despite the efforts and diligence of the applicants in calling on all of the co-holders of the copyright to participate in the proceedings, is to make it impossible to examine their claims before the courts. In such a case, the obligation to call on all of those co-holders to participate in the proceedings, failing which the action concerned will be inadmissible, appears to prevent those applicants from exercising their own rights. The right of co-holders to defend their copyright cannot be made conditional on procedural requirements that are impossible or very difficult to meet, which would, in practice, be tantamount to neutralising that right and would thus infringe the fundamental right guaranteed in Article 47 of the Charter.

Subject to verification by the referring court, it thus appears that the interpretation and application of the procedural requirements imposed on the applicants may be such as to make the procedure concerned unnecessarily complicated and costly and to undermine both the principle of effectiveness and Article 47 of the Charter. If the referring court were to find that it is not possible to interpret its national law in conformity with EU law, it would be required to ensure, within its jurisdiction, the judicial protection for individuals flowing from that Article 47, and to ensure its full effectiveness by disapplying, if need be, the national provisions concerned.

Accordingly, the Court states that Article 8 of Directive 2001/29, Article 3 of Directive 2004/48 and Article 1 of Directive 2006/116 do not preclude national legislation that makes the admissibility of an action for infringement of the copyright in a collective work conditional on all of the co-holders of that copyright being called on to participate in the proceedings, provided that the interpretation and application of that legislation do not make the procedure provided for unnecessarily complicated or costly, and that legislation must not make it impossible or excessively difficult for a single co-author or several co-authors to bring such an action. The national court must, in any event, ensure compliance with the right to effective judicial protection enshrined in Article 47 of the Charter.

2. PUBLIC PROCUREMENT

Judgment of the Court of Justice (Third Chamber) of 18 December 2025, Mara, C-769/23

Link to the full text of the judgment

Reference for a preliminary ruling – Public procurement – Mixed procurement involving defence aspects – Services directly linked to military equipment – Directive 2009/81/EC – Directive 2014/24/EU – Determining the applicable directive – Contract award criteria – Third subparagraph of Article 67(2) of Directive 2014/24/EU – Prohibition on using price as the sole award criterion – Proportionality – Public contracts for labour-intensive services

Ruling on a request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy), the Court of Justice rules on the novel question of the relationship between Directives 2009/81 [83] and 2014/24 [84] in the case of mixed contracts relating to services linked to goods which are, in part, military equipment.

On 14 July 2022, the Ministero della Difesa (Ministry of Defence, Italy) launched an open procedure for the award of a public service contract for the needs of the Italian army consisting in loading and unloading operations, stacking and unstacking materials and moving equipment. That contract, for 2023 and renewable for three years, was divided into nine lots.

The call for tenders laid down the lowest price as the criterion for the award of the contract, on the ground that the services covered had standardised characteristics, in that they consisted in repetitive and not very technical tasks. Moreover, it was stated that, in the performance of the contract, the salaries were to be paid on the basis of the sectoral collective agreement. Therefore, tenderers could not offer reductions on labour costs. Any reduction had to relate exclusively to the remuneration for the service, so that the gesture of goodwill thus proposed would reduce only the potential profit of the tenderer and not the salaries of its staff.

For one of the lots of the contract, which concerned the provision of services for the needs of the Aeronautica Militare area nord (Air Force, northern area), three tenderers, including Mara Soc. Coop. arl ('Mara') and Gruppo Samir Global Service Srl ('Samir') offered a 100% reduction on the remuneration for their services. In those circumstances, the bids of these three tenderers were considered to be equivalent. Ultimately, the contract was awarded to Mara by drawing lots.

Samir brought an action against the decision awarding that lot before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which upheld that action. Mara brought an appeal against that judgment before the Consiglio di Stato (Council of State), the referring court, which, harbouring doubts as to the interpretation of, inter alia, Directive 2014/24 and the principle of proportionality, decided to stay the proceedings and to refer a question to the Court of Justice for a preliminary ruling.

Findings of the Court

In the first place, the Court examines the nature of the public contract at issue. In that regard, it takes the view that some of the services covered by that contract may be directly linked to military equipment, since they concern, in part, the handling of ammunition and explosives cargo, those goods constituting military equipment. [85] The provision of cargo handling services may involve physical access to the military equipment contained in such cargo as well as access to certain sensitive information relating to that equipment.

However, the Court finds that the contract at issue in the main proceedings must be classified as a mixed contract, in the sense that it relates both to purchases falling within the scope of Directive 2009/81, which establishes a specific legislative framework for the award of contracts concerning goods or services in the field of defence, and to purchases falling within the scope of Directive 2014/24, which relates more generally to the award of public contracts. In that regard, it notes that Article 3 of Directive 2009/81 and Article 16 of Directive 2014/24 each contain provisions intended to determine the directive applicable to such mixed contracts and that those provisions differ in part in their respective scopes.

Specifically, the Court notes that, while Article 3 of Directive 2009/81 lays down, in principle, an obligation for the contracting authority to apply that directive to such mixed contracts, Article 16 of

---

83 Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ 2009 L 216, p. 76; 'Directive 2009/81').

84 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), as amended by Commission Delegated Regulation (EU) 2021/1952 of 10 November 2021 (OJ 2021 L 398, p. 23) ('Directive 2014/24').

85 Within the meaning of Article 1(6) of Directive 2009/81.

Directive 2014/24 provides only for the possibility, under certain conditions, of applying Directive 2009/81.

Article 3 of Directive 2009/81 provides that a contract having as its object works, supplies or services, which falls within the scope of that directive and partly within the scope of Directive 2014/24, is to be awarded in accordance with Directive 2009/81, provided that both the requirement that the award of a single contract is justified for objective reasons and the condition that the decision to award a single contract is not taken for the purpose of excluding the contract concerned from the application of Directive 2014/24 are satisfied.

However, Article 16 of Directive 2014/24 distinguishes between mixed contracts the different parts of which are either objectively not separable or objectively separable. Specifically, as regards mixed contracts the different parts of which are objectively not separable, such a contract may be awarded without applying that directive where it includes elements to which Article 346 TFEU applies and, otherwise, it may be awarded in accordance with Directive 2009/81. The first situation, which concerns the application of Article 346 TFEU, is reserved for situations in which the award of the contract in question meets such a level of security or confidentiality requirement that even the specific provisions of that directive would not be sufficient to safeguard the essential security interests of the Member State concerned. In the second situation, which concerns mixed contracts with parts that are objectively not separable and to which Article 346 TFEU does not apply, the contract in question may, but does not have to, be awarded in accordance with Directive 2009/81 and the contracting authority may decide whether to award that contract in accordance with the rules laid down in that directive or in accordance with the rules laid down in Directive 2014/24.

As regards mixed contracts the different parts of which are objectively separable, the contracting authority may either award separate contracts for the separate parts, with the directive applicable to each contract then being determined on the basis of their specific characteristics, or award a single contract, which thus remains a mixed contract. That said, where the contracting authority chooses to apply Directive 2009/81 to that single contract, its decision not to award separate contracts must be justified for objective reasons. By contrast, the contracting authority is not subject to such a requirement when it chooses to award a single contract by applying Directive 2014/24. That said, in any event, the decision to award a single contract despite the existence of objectively separable parts of the contract is not to be taken for the purpose of excluding contracts from the application of either Directive 2014/24 or Directive 2009/81.

The Court finds that the rules on conflict between Directive 2009/81 and Directive 2014/24 laid down in Article 16 of the latter directive are more recent and more detailed than those contained in Article 3 of Directive 2009/81. Article 16 of Directive 2014/24 therefore expresses the intention of the EU legislature at the time of adoption of that directive and must be applied to the detriment of Article 3(1) of Directive 2009/81, which has a different scope but must be regarded as having been superseded by the legislative developments brought about by Directive 2014/24.

In the second place, the Court examines the Member States' obligation to comply with the principle of proportionality where they exercise the option to prohibit the use of the price as the sole criterion for the award of a contract, laid down in the third subparagraph of Article 67(2) of Directive 2014/24.

In that regard, the Court holds that the exercise of the option would infringe the principle of proportionality if a Member State decided to prohibit the use of price or cost as the sole award criterion for a type of public contract the nature of which is such that it proves impossible or excessively difficult to determine criteria that would allow for a qualitative differentiation between the works, supplies or services provided for in the tenderers' bids. In the present case, a national rule according to which public contracts for labour-intensive services must, even if they have standardised characteristics, be awarded on the basis of the criterion of the most economically advantageous tender according to the best price-quality ratio, appears, notwithstanding the fact that that rule covers services which are by nature not very technical, to be compatible with the third subparagraph of Article 67(2) of Directive 2014/24 and with the principle of proportionality. Several qualitative aspects, such as the organisation and experience of the staff assigned to perform such services, may affect the quality of performance of the contracts and, as a result, the economic value of the tenders. In those circumstances, it is neither impossible nor excessively difficult to differentiate, in qualitative terms, between the services provided for in the tenderers' bids.

3. BIOCIDAL PRODUCTS

Judgment of the General Court (Sixth Chamber) of 3 December 2025, AlzChem Trostberg v Commission, T-536/23

Link to the full text of the judgment

Public health – Biocidal products – Decision not approving cyanamide as an existing active substance for use in biocidal products of product-types 3 and 18 – Regulation (EU) No 528/2012 – Transitional measures – Manifest error of assessment – Proportionality

In its judgment, the General Court dismisses the action for annulment brought by the company AlzChem Trostberg GmbH against the decision of the European Commission [86] not to approve cyanamide as an existing active substance intended for use in biocidal products of product-types 3 and 18 [87] in accordance with Regulation (EU) No 528/2012. [88] It thus examines the application of the transitional rules between the system under Directive 98/8 [89] and that under Regulation No 528/2012, [90] in the evaluation of an existing active substance, in the present case cyanamide, completed before the date of entry into force of that regulation. The General Court also clarifies the scope of the judicial review relating to questions of law and complex scientific assessments and also the scope of the rights of the defence in the decision-making process for an existing active substance intended for use in biocidal products. It further finds that the Commission has a broad margin of discretion in assessing and managing the risks posed by such a substance, in particular when it applies the precautionary principle in relation to substances having endocrine-disrupting properties. AlzChem Trostberg is a company under German law that is currently placing on the market, in the European Union, biocidal products containing cyanamide. Cyanamide was notified to the Commission as an existing active substance in biocidal products and, more recently, included in the list of existing active substances to be evaluated with a view to their possible approval for use in biocidal products. [91] In 2006, the applicant submitted a number of applications for approval of cyanamide as an active substance for product-type 3 and product-type 18 to the evaluating competent authority, in the present case the Federal Republic of Germany ('the evaluating competent authority'). In 2013, that authority submitted an initial evaluation report, with its conclusions, to the Commission. In 2016, the Biocidal Products Committee of the European Chemicals Agency (ECHA) ('the BPC') [92] adopted a number of opinions on cyanamide. In 2018, the Commission asked the ECHA [93] to revise those opinions and to specify whether cyanamide also had endocrine-disrupting properties according to the

86 Commission Implementing Decision (EU) 2023/1097 of 5 June 2023 not approving cyanamide as an existing active substance for use in biocidal products of product-types 3 and 18 in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ 2023, L 146, p. 27; 'the contested decision').

87 Product-type 3 concerns biocidal products intended for veterinary hygiene use, whilst product-type 18 concerns insecticides, acaricides and products to control other arthropods, as described in Annex V to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

88 Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

89 Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

90 Articles 89 to 95.

91 That list is in Annex II to Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8, and amending Regulation (EC) No 1896/2000 (OJ 2003 L 307, p. 1).

92 Introduced under Article 75 of Regulation No 528/2012.

93 Pursuant to Article 75(1)(g) of Regulation No 528/2012.

scientific criteria laid down in Delegated Regulation 2017/2100. [94] The evaluating competent authority subsequently informed the applicant that all applications for approval for cyanamide for which no decision had been taken would be subjected to an assessment of the potential application of the scientific criteria laid down in that regulation. The applicant, informed of the possibility of submitting additional information, submitted a position paper including an initial assessment of the endocrine-disrupting properties of cyanamide.

In September 2019, the BPC's Working Groups reviewed the assessment of the endocrine-disrupting properties of cyanamide at meetings attended by the applicant. The applicant also submitted comments on the revised draft BPC opinions on cyanamide. In December 2019, the BPC adopted revised opinions for product-types 3 and 18 and concluded that cyanamide could be approved for these two product-types; it also found that cyanamide should be considered to have endocrine-disrupting properties according to the criteria laid down in Delegated Regulation 2017/2100. In September 2020, the Commission asked the ECHA to issue further opinions concerning the evaluation of quantitative or qualitative risks for human health and the environment that took into account the endocrine-disrupting properties of cyanamide. In November 2021, the BPC adopted its revised opinions for product-types 3 and 18, in which it concluded that neither a positive nor a negative conclusion could be drawn on whether cyanamide fulfilled the approval conditions for the active substances listed in Article 4 of Regulation No 528/2012, [95] in particular with regard to the criteria referred to in Article 19 of that regulation. [96] After the Standing Committee on Biocidal Products delivered a positive opinion on the draft contested decision, not approving cyanamide as an existing active substance intended for use in product-types 3 and 18 biocidal products, in June 2023 the Commission adopted the contested decision. Subsequently, the applicant brought an action for annulment before the General Court, arguing, inter alia, that the Commission infringed the transitional rules between the system under Directive 98/8 and that under Regulation No 528/2012, [97] that it infringed its rights of defence and made manifest errors of assessment in the adoption of the contested decision.

Findings of the Court

As a preliminary point, the Court finds that, in the complex scientific assessments which the Commission must make when, in the course of examining requests for approval of active substances and risk assessment under Regulation No 528/2012, the Commission must be allowed a wide discretion. In such a situation, judicial review is confined to determining whether the relevant procedural rules have been complied with, whether the facts established by the Commission are correct and whether there has been a manifest error of appraisal of those facts or a misuse of powers. However, as regards questions of law and the Commission's conclusions which do not involve complex technical or scientific assessments, the Court points out that it has jurisdiction to carry out full judicial review. The questions of law include the interpretation to be given to legal provisions on the basis of objective factors and whether or not the conditions for the application of such a provision are satisfied. In order to establish that an institution committed a manifest error in assessing complex facts such as to justify the annulment of an act, the evidence adduced by the applicant must be sufficient to make the factual assessments used in the act implausible. Subject to that review of plausibility, it is not the Court's role to substitute its assessment of complex facts for that made by the institution which adopted the decision. The limits to the review by the Courts of the European Union do not, however, affect their duty to establish whether the evidence relied on is factually accurate, reliable and consistent, whether that evidence contains all the information which must be taken into account in order to assess a complex situation, and whether it is capable of substantiating the conclusions drawn from it. In that regard, a scientific risk assessment carried out as thoroughly as possible on the basis of scientific advice founded on the principles of excellence, transparency and

---

94 Commission Delegated Regulation (EU) 2017/2100 of 4 September 2017 setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012 of the European Parliament and Council (OJ 2017 L 301, p. 1).

95 Article 4(1).

96 More specifically, the criteria laid down in Article 19(1)(b)(iii) and (iv).

97 As laid down in Articles 89 to 95 and, more specifically, in Article 90(2) of Regulation No 528/2012.

independence is an important procedural guarantee whose purpose is to ensure the scientific objectivity of the measures adopted and preclude any arbitrary measures. However, even though such judicial review is of limited scope, it requires that the EU authorities which have adopted the act in question must be able to show before the EU judicature that in adopting the act they actually exercised their discretion, which presupposes that they took into consideration all the relevant factors and circumstances of the situation the act was intended to regulate. In the first place, the Court observes, as a preliminary point, that, given that cyanamide is included in the existing active substances [98] and that the evaluation of that substance by the evaluating competent authority was finalised before 1 September 2013, the date of entry into force of Regulation No 528/2012, only the substantive conditions for approval of active substances provided for in Directive 98/8 were applicable to the Commission's evaluation of cyanamide. In that regard, the Court finds that the Commission did not make an error of law in the application of the transitional rules provided for by Regulation No 528/2012 at the time of adoption of the contested decision, inasmuch as it was the substantive conditions for approval of active substances provided for in Directive 98/8 that were applied for the adoption of that decision.

The contested decision was adopted on the basis of Article 89 of Regulation No 528/2012 relating to transitional measures. [99] In the present case, it is apparent from that decision [100] that the use of cyanamide in biocidal products of product-types 3 and 18 was not approved because the applicant has failed to demonstrate that those products satisfy the conditions for granting authorisation for a biocidal product laid down in Article 5(1), [101] read in conjunction with Article 10(1) of Directive 98/8. Moreover, it is apparent from the evidence in the dossier that the legal framework providing for derogations that was applied to the examination of cyanamide in relation to the exclusion criteria laid down in Article 5 of Regulation No 528/2012 was indeed taken into account at the various stages of the procedure. Thus, the six opinions of the BPC [102]refer to the fact that, though cyanamide meets the exclusion criterion for active substances having endocrine-disrupting properties, [103] the analysis of the derogations to those exclusion criteria [104] is not relevant for the approval decision. Similarly, various sets of minutes of meetings of the BPC and of the Standing Committee on Biocidal Products [105] confirm the application of the transitional measures.

Moreover, the Commission's statement of reasons for the contested decision included a risk assessment for cyanamide, [106] as provided for in Article 5(1) of Directive 98/8. [107] Had the Commission applied the exclusion criteria laid down in Article 5 of Regulation No 528/2012, as argued by the applicant, such a risk assessment would not have been necessary. In that scenario, the refusal to approve cyanamide could have been based solely on the fact that it had endocrine-disrupting properties. In the present case, it cannot be inferred from the dossier that the Commission requested the applicant to demonstrate that cyanamide satisfied at least one of the conditions for derogating from the exclusion criteria laid down in Article 5(2) of Regulation No 528/2012.

In the second place, the Court rejects the plea alleging infringement of the applicant's rights of defence. First, the applicant had the opportunity to submit its observations to the evaluating competent authority at each stage of the procedure set in motion by its application for approval of

---

98 Under Article 89(1) of Regulation No 528/2012.

99 Article 89(1), third subparagraph.

100 Recital 15 of Implementing Decision 2023/1097.

101 More specifically, in Article 5(1)(b)(iii) and (iv) of Directive 98/8.

102 Opinions of 16 June 2016, 10 December 2019 and 30 November 2021.

103 Laid down in Article 5(1)(d) of Regulation No 528/2012.

104 Laid down in Article 5(2) of Regulation No 528/2012.

105 More specifically, the minutes of the 16th meeting of the BPC, held from 14 to 16 June 2016, and the minutes of the 55th meeting of the Standing Committee of 24 November 2017.

106 See, for example, recital 13 of Implementing Decision 2023/1097.

107 Article 5(1)(b)(iii).

cyanamide as an active substance. It was also invited to submit comments and did so both in writing and at those BPC meetings which it attended. In those circumstances, the Commission did not in any way infringe the applicant's rights of defence, rights which it in fact exercised. Secondly, the applicant may not claim that its right to be heard was infringed in the procedure that led to the adoption of the contested decision. That decision is not based on any factor on which the applicant was not given the opportunity to express its views during the evaluation procedure which, moreover, lasted over 17 years.

In the last place, as regards the manifest errors of assessment allegedly made by the Commission, the Court rejects, first, the applicant's argument to the effect that it is stated in the BPC's opinions of 30 November 2021 that no assessment of the risks for the environment was carried out as regards the endocrine-disrupting properties of cyanamide. The fact that the BPC's opinions of 30 November 2021 do not examine whether or not the risk of cyanamide for human health and the environment is acceptable does not change the fact that a risk assessment was carried out in those opinions. The BPC merely refrained from making a statement as to whether or not the risk identified was acceptable.

Next, the Court rejects the applicant's complaint alleging that the risk assessment of cyanamide was not based on a guidance document as to how to proceed with such an assessment. Although the risk assessment for cyanamide ought to have been based on a guidance document, it would have potentially been necessary to postpone indefinitely the assessment of the risks of that active substance since, according to the Commission, the ECHA was unable to develop guidance. The Court accordingly concludes that, in view of the Commission's margin of discretion in the area, the Commission did not make a manifest error of assessment in basing the contested decision on a risk assessment that was not based on a guidance document. In the present case, it would not have been compatible with the objective of maintaining a high level of protection for human and animal health and the environment for the Commission to postpone the decision on approval of cyanamide until such a guidance document had been prepared. On the contrary, it was for the Commission, acting under the precautionary principle, to adopt protective measures without having to wait for the seriousness of the risks, highlighted by the BPC's opinions of 30 November 2021, to be fully demonstrated.

Next, the Court finds that the applicant has failed to establish that the Commission made a manifest error of assessment in finding that it was not possible to set safe thresholds for cyanamide and has failed to adduce sufficient evidence to render implausible the assessments and facts on which the contested decision is based.

Lastly, the Court rejects the applicant's argument that the risk assessment erred in assuming an excessively slow degradation rate of the active substance cyanamide. It was not sufficient for the applicant to rely on the fact that the Voelkel study, used for the risk assessment, was old in order to call its reliability into question. It still had to provide sufficiently precise and objective indicia supporting a contention that possible recent scientific developments called into question the well-foundedness of that study and, consequently, that of the disputed rate of degradation. The applicant has failed to provide such indicia by referring to a more recent study.

4. COMBATING LATE PAYMENT IN COMMERCIAL TRANSACTIONS

Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, E. (Set-off of claims), C-481/24

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 2011/7/EU – Combating late payment in commercial transactions – Article 3(1) and (3)(a) – Interest for late payment – Article 6(1) and (2) – Compensation for recovery costs – Conditions – National legislation providing for the set-off of reciprocal claims by declaration with retroactive effect – Simultaneous extinguishment of claims up to the amount of the lowest claim – Effects on interest and on compensation

Ruling on a request for a preliminary ruling from the Sąd Rejonowy dla m.st. Warszawy w Warszawie (District Court for the Capital City of Warsaw, Poland), the Court of Justice provides clarification on the scope of the harmonisation of the rules on late payment in commercial transactions brought about by Directive 2011/7 [108] and on the autonomy enjoyed by the Member States in the regulation of mechanisms for extinguishing claims corresponding to the rights granted by that directive, such as a mechanism for offsetting claims by means of a declaration with retroactive effect.

Company E. has several claims against Company C. Those claims correspond to the performance of transport services which gave rise to the issue of unpaid invoices within the prescribed periods. On account of the late payment of those claims, Company E. brought an action before the referring court seeking payment of those claims, together with interest at the statutory rate, and compensation for recovery costs, in accordance with the provisions of the Polish Law on excessive delays.

Company C. submits that its debt has been extinguished, in particular because, on 2 September 2022, it submitted a set-off declaration based on a claim for compensation which it held against Company E. Company C. submits that, as from 7 March 2022, the date on which the period for payment of that claim for damages expired, Company E. lost, by virtue of the retroactive effect which Article 499 of the Polish Civil Code grants to such a declaration, the right to claim the interest and compensation provided for by the Polish Law on excessive delays.

The referring court recalls that that provision of the Civil Code provides that the set-off declaration has retroactive effect from the moment when the set-off became possible, that is to say, when the claim of the person making that declaration fell due as a result of the expiry of the period for payment. In that context, that court asks whether that retroactive effect, which entails the loss of the right of the other creditor to claim both interest and compensation for recovery costs, may infringe Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7 ('the provisions whose interpretation is sought').

Findings of the Court

As a preliminary point, the Court recalls that, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part.

First of all, as regards the wording of the provisions whose interpretation is sought, the Court points out that, under Article 3(1) of Directive 2011/7, Member States are to ensure that, in commercial transactions between undertakings, a creditor is entitled to interest for late payment, without the necessity of a reminder, provided that the creditor has fulfilled its obligations and has not received the amount due on time, unless the debtor is not responsible for the delay. In addition, under Article 3(3)(a) of that directive, where those conditions are satisfied, the creditor is entitled to that

[108] 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).

interest from the day following the date for payment or the end of the period for payment fixed in the contract. Furthermore, according to Article 6(1) of that directive, Member States are to ensure that, where interest for late payment becomes payable in commercial transactions between undertakings, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40. Under Article 6(2), Member States are to ensure that that fixed sum is payable, even in the absence of a reminder sent to the debtor, and that that sum is intended to compensate the creditor for the recovery costs incurred. Thus, the interest for late payment and the right to a minimum fixed sum provided for in Directive 2011/7 are to become payable automatically upon expiry of the period for payment laid down in Article 3(3) to (5) of that directive, provided that the conditions set out in paragraph 1 thereof are satisfied.

However, the Court finds that it is not apparent from the wording of the provisions whose interpretation is sought that they govern the conditions under which the claims corresponding to that interest and that fixed sum may, where appropriate, be extinguished, inter alia because the principal claim from which they arise no longer exists.

Next, that literal interpretation is borne out by the context of those provisions. It is true that Directive 2011/7 provides that the creditor's right to obtain that interest and that fixed sum arises from a 'late payment'. That concept refers to any payment not made within the contractual or statutory period of payment, where the creditor has fulfilled its contractual and legal obligations and has not received the amount due on time, unless the debtor is not responsible for the delay. [109] In addition, the concept of 'amount due' [110] is defined as the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges. However, neither those definitions nor that of the concept of 'interest for late payment', [111] nor, moreover, any other provision of Directive 2011/7 lays down the conditions under which the claims corresponding to that interest and that fixed sum may, where appropriate, be extinguished.

Lastly, the literal interpretation of the provisions whose interpretation is sought is also supported by the purpose of Directive 2011/7 the objective of which is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings. Nevertheless, in order to achieve that objective, that directive does not harmonise fully all of the rules relating to late payments in commercial transactions. That directive lays down only certain rules in that area, which include those relating to interest for late payment and to compensation for recovery costs. Therefore, Directive 2011/7 is not intended to establish a general legal framework for contractual obligations, but merely lays down certain specific rules which must be incorporated into national civil and commercial law.

Consequently, the Court finds that the Member States remain free to regulate the mechanisms for extinguishing claims corresponding to interest for late payment and the fixed sum provided for by Directive 2011/7 – such as a set-off mechanism – provided, however, that they do not undermine the objectives pursued by that directive or deprive it of its practical effect.

In the present case, since the reciprocal claims are extinguished not on the date of the set-off declaration, but at the earlier date on which the set-off became possible, the Court considers that those claims cannot give rise to any right to interest for late payment as from the date on which they are extinguished. Furthermore, since a set-off declaration with retroactive effect does not entail the loss of a right to that interest, but rather results in that right's being deemed never to have existed, it is irrelevant that the offset claims could have given rise, in the event of late payment, to interest calculated on the basis of different rates depending on the legal, contractual or compensatory nature of the claims concerned.

As regards the fact that, following a set-off declaration with retroactive effect, the creditor to whom that declaration is addressed is not entitled to compensation for recovery costs, the Court notes that it follows from Article 6(1) of Directive 2011/7 that the right to the fixed minimum sum provided for in

---

109 The definition of that concept follows from Article 2(4) of Directive 2011/7, read in conjunction with Article 3(1) thereof.

110 The definition of that concept is set out in Article 2(8) of Directive 2011/7.

111 The definition of that concept is set out in Article 2(5) of Directive 2011/7.

that provision arises under the same conditions as those for the accrual of interest for late payment. Accordingly, no right to such a fixed sum can arise in the absence of a right to such interest. It is true that a creditor, where it does not obtain payment within the prescribed period, could take steps to recover its claim and thus incur certain costs which it will not be able to recover as a result of the retroactive effect of the set-off declaration. However, any reasonably well-informed creditor undertaking must consider the possibility of such set-off as soon as it becomes, at the same time, the debtor and creditor of another undertaking.

Accordingly, the Court concludes that Article 3(1) and (3)(a) and Article 6(1) and (2) of Directive 2011/7 must be interpreted as not precluding national legislation under which the creditor is not entitled to statutory interest for late payment and compensation for recovery costs where the debtor has settled the amount due by means of a set-off declaration, though made after the expiry of the contractual period for payment, on account of the retroactive effect of that declaration from the time when the set-off became possible.

X. ECONOMIC AND MONETARY POLICY: SINGLE RESOLUTION MECHANISM

Judgment of the Court of Justice (Grand Chamber) of 11 December 2025, ABLV Bank v SRB, C-602/22 P

Link to the full text of the judgment

Appeal – Economic and monetary policy – Banking union – Regulation (EU) No 806/2014 – Single Resolution Mechanism for credit institutions and certain investment firms – Article 7 – Division of tasks within the Single Resolution Mechanism – Article 18 – Resolution procedure – Conditions – Decision of the Single Resolution Board (SRB) not to adopt a resolution scheme – Competence of the SRB

Hearing an appeal against the judgment of the General Court of 6 July 2022, *ABLV Bank* v *SRB* (T-280/18, EU:T:2022:429), which it dismisses, the Court of Justice, sitting as the Grand Chamber, rules for the first time on the competence of the Single Resolution Board ('the SRB') to take a decision not to adopt a resolution scheme.

The appellant, ABLV Bank AS, is a credit institution established in Latvia and the parent company of the ABLV group. ABLV Bank Luxembourg SA is a credit institution established in Luxembourg and is one of the subsidiaries of the ABLV group; the appellant is the sole shareholder of ABLV Luxembourg. Those two institutions were categorised as 'significant entities' and as such were subject to supervision by the European Central Bank (ECB) under the Single Supervisory Mechanism (SSM). [112]

On 13 February 2018, the United States Department of the Treasury announced a proposed measure to designate the appellant as an institution of primary money laundering concern. Following that announcement, the appellant was no longer able to make payments in US dollars. The ECB invited the Finanšu un kapitāla tirgus komisija (Financial and Capital Markets Commission, Latvia) and the Commission de surveillance du secteur financier (Financial Sector Supervisory Commission, Luxembourg) to suspend payments of the financial obligations of the appellant and ABLV Bank Luxembourg respectively. On 23 February 2018, the ECB concluded that the appellant and ABLV Bank Luxembourg were failing or likely to fail. By two decisions of 23 February 2018, concerning the appellant and ABLV Bank Luxembourg, respectively, the Single Resolution Board (SRB), endorsing the

[112] Under 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).

ECB's conclusion that the latter credit institutions were failing or likely to fail, nevertheless took the view that resolution action in respect of them was not necessary in the public interest. [113]

Findings of the Court

As regards the error of law alleged by the appellant concerning the interpretation of Article 18 of Regulation No 806/2014 adopted by the General Court, which rejected the plea alleging that the SRB had no power to take a formal decision not to adopt a resolution scheme within the meaning of that provision, the Court recalls, as a first consideration, that, according to its settled case-law relating to the interpretation of a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part. [114]

First of all, the wording of Article 18 of that regulation states [115] that the SRB is to adopt a resolution scheme in respect of, inter alia, financial institutions and groups that are regarded as significant only if it takes the view that the conditions of that regulation [116] are met, that is to say (i) whether the entity or group concerned is failing or is likely to fail, (ii) the absence of alternative measures with regard to resolution, and (iii) whether a resolution action is necessary in the public interest.

In that regard, as regards the first of those conditions, it is apparent from Regulation No 806/2014 [117] that the ECB is to carry out the assessment of whether the entity or group concerned is failing or is likely to fail ('the assessment') after consulting the SRB and that the SRB may make such an assessment only if, after it has informed the ECB of its intention, the ECB does not make the assessment within three calendar days of receipt of that information. Such an assessment by the ECB results in the procedure provided for in Article 18 of that regulation being initiated and, consequently, in an examination of the conditions provided for in that regulation by the SRB. [118] Therefore, that provision provides for the SRB to have the power to examine those conditions in all cases where the resolution procedure has been initiated on the basis of the assessment of the ECB or, as the case may be, carried out by the SRB itself, even though that article does not contain express instructions regarding the follow-up steps that must be taken vis-à-vis that procedure where the SRB takes the view that those conditions are not satisfied. In addition, although the provisions of Regulation No 806/2014 [119] make the entry into force of the resolution scheme subject to the European Commission's endorsement, in the absence of objections on the part of the Commission or the European Council, provision for such involvement by the latter is not made in the event that a resolution scheme is not adopted, which in such circumstances constitutes the final step of the resolution procedure provided for in that regulation.

Next, as regards the context, the Court notes, first, that Article 7(2) of Regulation No 806/2014 is not such as to rule out the possibility of the SRB having the power to take a decision not to adopt a resolution scheme. Although there is disparity between the language versions of that provision, the Court recalls that, according to settled case-law, a purely literal interpretation of one or more language versions of a text of EU law, to the exclusion of the others, cannot prevail since the uniform application of EU rules requires that they be interpreted, inter alia, in the light of the versions drawn up in all the languages. By contrast, recital 33 of Regulation No 806/2014 specifies that the SRB should prepare all 'decisions concerning resolution procedure' and, to the fullest extent possible, adopt those decisions, which indicates that the EU legislature intended that the range of types of decision that the SRB is tasked with adopting in the context of the Single Resolution Mechanism be broad.

---

113 Within the meaning of Article 18 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1; 'the SRM Regulation').

114 See judgments of 17 November 1983, *Merck* (292/82, EU:C:1983:335, paragraph 12), and of 25 February 2025, *BSH Hausgeräte* (C-339/22, EU:C:2025:108, paragraph 27).

115 Article 18(1) and (6).

116 Article 18(1)(a) to (c) of Regulation No 806/2014.

117 Second subparagraph of Article 18(1) of Regulation No 806/2014.

118 To that effect, judgment of 6 May 2021, *ABVL Bank and Others* v *ECB* (C-551/19 P and C-552/19 P, EU:C:2021:369, paragraph 67).

119 Article 18(7) of Regulation No 806/2014.

Lastly, as regards the objectives pursued by Regulation No 806/2014, it is clear from its recitals [120] that, by putting in place a uniform and centralised decision-making process with regard to resolution, the purpose of that regulation is to establish a swift and effective decision-making process in resolution in the banking union with a view, inter alia, to ensuring greater predictability regarding the outcome of bank failure, to maintaining financial stability, to ensuring the continuity of essential financial services and to protecting depositors. An assessment by the ECB that the entity concerned is failing or is likely to fail [121] results in the procedure provided for in Article 18 of that regulation being initiated and, consequently, in an examination of the conditions provided for in that provision by the SRB.

Therefore, the Court finds that an interpretation of Article 18 to the effect that the SRB does not have the power to take a decision not to adopt a resolution scheme where it takes the view that the conditions are not met would not make it possible to ensure sufficient transparency as regards the outcome of the resolution procedure carried out by the SRB following a finding that an entity is failing or is likely to fail and, accordingly, to ensure a certain level of predictability as regards the consequences of that failure, in particular concerning the measures that will be taken following that finding. In that regard, the Court recalls that, in the situation where the SRB takes the view that those conditions are not satisfied, that conclusion constitutes the final step of the resolution procedure. [122] For reasons of transparency, it is important that national competent authorities be informed of the outcome of the resolution procedure led by the SRB.

Consequently, the Court finds that the General Court did not err in law when it found that Article 18 of Regulation No 806/2014 must be interpreted as meaning that the SRB does have the power to take a decision not to adopt a resolution scheme when it takes the view that the conditions provided for in paragraph 1 of that article are not met.

As a second consideration, the Court finds that that conclusion is not called into question by the case-law arising from the judgments of 13 June 1958, *Meroni* v *High Authority* (9/56, EU:C:1958:7), and of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520).

In that regard, the Court recalls that the regime put in place by Regulation No 806/2014 is based on the finding [123] that the exercise of the resolution powers falls within the resolution policy of the European Union, which only EU institutions may establish, and that a margin of discretion remains in the adoption of each specific resolution scheme, given their considerable impact on the financial stability and fiscal sovereignty of the Member States and on the European Union itself. For those reasons, the EU legislature considered it necessary to provide for the adequate involvement of the Council and the Commission, thereby strengthening the necessary operational independence of the SRB while respecting the principles of delegation of powers to agencies which arise from the Court's case-law. [124]

Specifically, with regard to the provisions of Article 18 of Regulation No 806/2014, the Court found that they are such as to avoid a transfer of responsibility. [125] While conferring on the SRB the power to assess whether the conditions for the adoption of a resolution scheme are met and the power to determine the tools necessary for the purposes of such a scheme, those provisions confer on the Commission, or, as the case may be, on the Council, the responsibility for the final assessment of the discretionary aspects of the scheme which fall within the scope of EU policy for the resolution of credit institutions The latter aspects involve a specific balancing of various objectives and interests, relating to the safeguarding of the financial stability of the European Union and the integrity of the

---

120 Recitals 2, 10 to 12, 31, 58 and 122.

121 Within the meaning of Article 18(1)(a) of Regulation No 806/2014.

122 Article 18 of Regulation No 806/2014.

123 In essence, in recitals 24 and 26 of Regulation No 806/2014.

124 Judgment of 13 June 1958, *Meroni* v *High Authority* (9/56, EU:C:1958:7). See also, to that effect, judgments of 22 January 2014, *United Kingdom* v *Parliament and Council* (C-270/12, EU:C:2014:18), and of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520, paragraph 69).

125 Within the meaning of the case-law resulting from the judgment of 13 June 1958, *Meroni* v *High Authority* (9/56, EU:C:1958:7).

internal market, the taking into account of the fiscal sovereignty of the Member States and the protection of the interests of shareholders and creditors.

Furthermore, the Court notes that, although a wide margin of discretion is granted to the SRB as regards the appropriateness of implementing a resolution procedure, it is subject to objective criteria and conditions delimiting the SRB's scope of action, which relate to both the resolution tools and conditions. In addition, Regulation No 806/2014 provides for the participation of the Commission and of the Council in the procedure leading to the adoption of a resolution scheme, which, in order to enter into force, must be endorsed by the Commission and, where relevant, the Council. [126]

Accordingly, the Court found that, while Regulation No 806/2014 [127] provides that the SRB is responsible for drawing up and adopting a resolution scheme, the SRB does not however have the power to adopt an act producing independent legal effects and specified that, in such a procedure, endorsement by the Commission is an essential element both for the entry into force and for the determination of the content of that scheme. However, the Court points out that it cannot be inferred from the above that it found that the SRB does not in any circumstances have the power to adopt an act producing independent legal effects. The purpose of the findings in the judgment of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520), is to provide reasons for the assessment that a resolution scheme cannot produce binding legal effects irrespective of the Commission's endorsement decision. Those findings relate only to the case of resolution schemes.

In addition, although the Court has held that adequate involvement by the Commission and the Council was required in the context of the adoption of a resolution scheme in order to avoid a transfer of responsibility, the Court acted on the basis of a combination of factors characterising the adoption by the SRB of such a scheme. However, not all those factors are present where the SRB decides not to adopt a resolution scheme.

First, the Court inferred from Article 18(6) of Regulation No 806/2014 that, in order to adopt a resolution scheme, the SRB must assess, on a discretional basis, two separate aspects of the situation at issue, the first of which concerns whether the conditions justifying the adoption of such a scheme are met [128] and the second of which concerns the determination of the resolution tools necessary [129] for that purpose and, where appropriate, the use of the SRF. In order for the SRB to adopt a decision not to adopt a resolution scheme, it need only conclude that the cumulative conditions justifying the adoption of such a scheme are not met, sparing it from having to determine the tools that would have been necessary for the resolution, recourse to which requires a specific balancing of various objectives and interests, as referred to previously.

Therefore, the scope of the discretionary assessments which must be made by the SRB in order to decide not to adopt a resolution scheme is necessarily more restricted than the scope of the assessments that must be carried out when adopting such a scheme. The SRB's power to assess whether the conditions laid down in Article 18(1) of Regulation No 806/2014 are met is circumscribed by objective criteria and conditions delimiting the SRB's scope of action. [130]

Second, unlike a resolution scheme, a decision not to adopt a resolution scheme cannot, in itself, have the effect of imposing concrete measures or committing funds, its sole effect being to bring to an end the resolution procedure led by the SRB.

Consequently, in the light of all of those findings, the Court of Justice rejects the appellant's unfounded line of argument to the effect that the interpretation of Article 18(1) of that regulation adopted by the General Court in the judgment under appeal has no basis in the wording of that provision or in the regulation itself and misconstrues the limits of the powers of the SRB defined in that provision as they result from the case-law of the Court of Justice resulting from the judgments of

---

126 Judgment of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520, paragraph 77).

127 Articles 7 and 18.

128 Article 18(1) of Regulation No 806/2014.

129 Article 22(2) of Regulation No 806/2014.

130 Article 18(1), (4) and (5) of Regulation No 806/2014.

13 June 1958, *Meroni* v *High Authority* (9/56, EU:C:1958:7), and of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520).

Taking the view, moreover, that the other arguments and grounds of appeal put forward by the appellant must be rejected, the Court of Justice dismisses the appeal.

XI. CONSUMER PROTECTION: UNFAIR TERMS

Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, Soledil, C-320/24

Link to the full text of the judgment

Reference for a preliminary ruling – Consumer protection – Unfair terms in consumer contracts – Directive 93/13/EEC – Article 6(1) and Article 7(1) – Power of review and obligations of the national court – Penalty clause – No review of the court's own motion of whether that term is unfair – *Res judicata* – Principle of effectiveness – Article 47 of the Charter of Fundamental Rights of the European Union – Reliance on the unfairness of a contractual term before a court to which the case has been remitted following cassation

Ruling on a request for a preliminary ruling from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), the Court of Justice rules on how to reconcile, on the one hand, the requirement of legal certainty and the principle of *res judicata* which stems from it with, on the other, the requirement to effectively protect consumers.

In 1998, CR and TP, two promisee purchasers, concluded a preliminary contract for the sale of a property with the company Soledil Srl, the promissor vendor, under which the former paid the latter an advance payment. That preliminary contract for sale contained a clause allowing the promissor vendor to retain, as a penalty, the sums paid as an advance payment in the event of non-performance of the promisee purchasers' obligation to conclude the final contract.

Since the final contract relating to that sale was never concluded, the dispute was brought before an arbitral tribunal, which, in 2002, declared the termination of the preliminary contract, ordering the promisee purchasers to return the property in question and the promissor vendor to repay the sums received as advance payment. That award was declared void on procedural grounds by a judgment of the Corte d'appello di Ancona (Court of Appeal, Ancona, Italy) in 2009, which, ruling on the substance, reached the same conclusions and repeated the prior orders, while, however, reducing the sum of the penalty.

That judgment was quashed in 2015 by the Court of Cassation for failure to state reasons for the decision to reduce that penalty. The case was therefore remitted before the Corte d'appello di Bologna (Court of Appeal, Bologna, Italy), which, by a judgment delivered in 2018, held that the penalty was excessive and reduced its sum. The promisee purchasers then lodged an appeal before the referring court claiming that the penalty clause in question imposed on them an excessive penalty and was, therefore, an unfair term.

The referring court notes that, under the national legislation, the principle of *res judicata* does not allow a national court, to which the case has been remitted following cassation, to examine of its own motion the nullity of an allegedly unfair term where the unfairness of that term was not relied on by the consumer or raised of a court's own motion during the proceedings. Harbouring doubts as to the compliance of that legislation with Article 6(1) and Article 7(1) of Directive 93/13, [131] read in the light of

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

Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), it decided to make a reference to the Court for a preliminary ruling.

Findings of the Court

First of all, the Court recalls that, under the principle of *res judicata*, and in order to ensure stability of law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question.

Next, it notes that, in the case where, in a previous examination of a contract in dispute which led to a decision which has become *res judicata*, a national court limited itself to examining of its own motion one or certain terms of that contract, Directive 93/13 requires it to assess, at the request of the parties or of its own motion, where it is in possession of the legal and factual elements necessary for that purpose, the potential unfairness of other terms of that contract. In the absence of such a review, consumer protection would be incomplete and insufficient and would not constitute either an adequate or effective means of preventing the continued use of that type of term.

By contrast, that protection would be ensured if the competent court had reviewed whether the terms of the contract concerned were unfair and if, first, that review, accompanied by at least a summary statement of reasons, had not revealed the existence of any unfair terms and, secondly, the consumer had been duly informed that, if no appeal was brought within the time limit prescribed by national law, that consumer would be time barred from subsequently pleading the unfair nature of those terms. A judicial decision which meets those requirements may therefore have the effect of preventing a further review of whether the contractual terms are unfair in subsequent proceedings.

In addition, the Court finds that, in the present case, in accordance with the national legislation at issue, the principle of *res judicata* precludes the alleged unfairness of a contractual term from being examined in remitted proceedings where that plea was not raised in the proceedings which gave rise to the judgment of the court of last instance. Accordingly, under that legislation, an examination by a court's own motion of whether the penalty clause concerned is unfair is deemed to have implicitly taken place and become *res judicata*, even without any statement of reasons to that effect. However, that makes the review required by Directive 93/13 and the principle of effectiveness impossible.

Lastly, the Court notes that, while the need to comply with the principle of effectiveness cannot be stretched so far as to make up fully for the complete inaction on the part of a consumer, in the present case, the promisee purchasers took part in all the various stages of the judicial proceedings and did raise the unfairness of the penalty clause concerned, albeit not until the second appeal to the Supreme Court of Cassation. Accordingly, their behaviour cannot be classified as total inaction.

In the light of the foregoing, the Court rules that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness and Article 47 of the Charter, must be interpreted as precluding national legislation under which the application of the principle of *res judicata* does not allow a national court, to which a case has been remitted following cassation, to examine of its own motion the nullity of an allegedly unfair contractual term where (i) the plea of the unfairness of that term was not relied on by the consumer at earlier stages of the judicial proceedings and (ii) the nullity of such a term was not raised by the national courts of their own motion in the proceedings which gave rise to the judgment of the court of last instance.

XII. ENERGY

Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, Electrabel and Others, C-633/23

Link to the full text of the judgment

Reference for a preliminary ruling – Internal market for electricity – Regulation (EU) 2022/1854 – Emergency intervention to address high energy prices – Article 2(5) and (9) – Articles 6 to 8 – Cap on market revenues obtained by electricity producers using certain energy sources – Determination of 'market revenues' – National legislation providing for the use of presumptions that are either irrebuttable or rebuttable by means of other presumptions – Principle of proportionality – Article 22(2)(c) – Period of application of Articles 6 to 8 of that regulation – Application of a measure capping revenue for a period prior to that provided for in that regulation, pursuant to national legislation adopted after the entry into force of that regulation – Principles of the primacy and effectiveness of EU law – Principle of sincere cooperation

Hearing a request for a preliminary ruling from the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), the Court of Justice rules on the interpretation of Regulation 2022/1854, which introduced emergency measures to mitigate the effects of high energy prices, in particular by means of a mandatory cap on revenues obtained by electricity producers from certain sources. [132] In that context, it examined the methods for determining the revenues from the electricity market subject to that cap and clarified the temporal scope of that regulation in relation to national legislation adopted while the regulation was in force and which also provided for the application of a measure capping revenues from that market.

Pursuant to Regulation 2022/1854, the Belgian Electricity Law has introduced a cap on the market revenues of certain electricity producers, through a levy payable to the State on surplus revenues generated during a specified period. [133]

On 28 February 2023, the Commission de régulation de l'électricité et du gaz (Electricity and Gas Regulatory Commission (CREG)) adopted, in accordance with a provision of the Electricity Law, [134] a decision on the declaration model and format of documents to be submitted by debtors subject to the levy introduced by that law.

On 29 and 30 March 2023, the applicants, which are either private legal entities subject to this levy, in particular electricity producers and/or suppliers, or federations of companies in the energy sector acting on behalf of their members, brought three actions before the referring court seeking the annulment of that decision. In support of their claims, the applicants allege that the CREG's decision of 28 February 2023 was adopted in breach of Regulation 2022/1854, Article 288 TFEU and the principles of primacy and effectiveness of EU law.

The referring court notes that the revenue declaration model provided for in the CREG decision of 28 February 2023 is based on a set or series of presumptions from which the debtor can never completely escape, with the result that the debtor is unable to declare the actual revenue it has actually obtained. In that regard, it doubts that the possibility of allowing Member States to use

---

132 Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ 2022 L 261 I, p. 1), Articles 6 and 7.

133 Article 22*ter* of the loi relative à l'organisation du marché de l'électricité (Law on the organisation of the electricity market) of 29 April 1999 (*Moniteur belge* of 11 May 1999, p. 16264), as amended by the Law amending the loi modifiant la loi relative à l'organisation du marché de l'électricité et introduisant un plafond sur les recettes issues du marché des producteurs d'électricité (Law on the organisation of the electricity market and introducing a cap on the revenues of electricity producers) of 16 December 2022 (*Moniteur belge* of 22 December 2022, p. 98819) ('the Electricity Law').

134 The fourth subparagraph of Article 22*ter*(6) of the Electricity Law stipulates that debtors subject to the levy introduced by Article 22*ter* are required to submit a declaration to the CREG by a certain date, and specifies the content of that declaration.

estimates to calculate the cap on market revenue [135] authorises them to provide for a system based solely on irrebuttable presumptions, or on presumptions that are partly rebuttable but in a way that leaves elements theoretically predetermined by the Member State, without taking into account the revenue actually obtained. Furthermore, with regard to the period covered by the CREG decision of 28 February 2023, the referring court questions whether the option for Member States to maintain or introduce measures that further limit market revenues [136] includes the option of introducing a cap system before the date of entry into force of that regulation.

Findings of the Court

In the first place, with regard to determining the amount of revenue from the market to which the revenue cap measure imposed by Regulation 2022/1854 must apply, the Court finds that it follows from the wording of its provisions that this cap measure cannot be applied to theoretical revenues that do not correspond to the reality of the market, but must be applied to amounts reflecting the reality of the revenues received by the operators concerned. However, none of the relevant provisions of the regulation specifies the method by which those revenues are to be determined.

The Court therefore emphasises that it is for the Member States to determine the methods by which the market revenue to which the revenue cap measure is to be applied is determined. However, in so far as, in the context of that exercise, the Member States are implementing Regulation 2022/1854, they must exercise their powers in a manner that preserves the effectiveness of the provisions of that regulation.

As regards the question whether, in the context of that exercise, Member States are permitted to use presumptions, the Court points out, first, that, given the large number of transactions for which the competent authorities of the Member States must ensure that the cap on market revenue is applied, those authorities should be able to use reasonable estimates to calculate that cap. An estimate is by its nature an approximation of a given value and does not always correspond to an exact value. Therefore, a possible difference between actual revenue and presumed revenue may be accepted without the use of presumptions necessarily being incompatible with Regulation 2022/1854, provided that that difference, whether positive or negative, remains reasonable, namely, moderate, and that the estimates used in applying those presumptions are representative of the reality of the market during the period in question.

Secondly, Regulation 2022/1854 [137] aims, in particular, to introduce emergency measures to mitigate the effects of high energy prices by means of exceptional, targeted and temporary measures. These measures are aimed, in particular, at capping the market revenues that certain producers derive from electricity generation and redistributing them in a targeted manner to end customers of electricity. Therefore, the use of reasonable estimates, including in the form of presumptions, in order to implement short-term measures quickly, may be an appropriate, or even necessary, means of ensuring the effectiveness of the revenue cap measure imposed by Regulation 2022/1854 and thus of achieving that objective.

Thirdly, the Court notes that, under Regulation 2022/1854, [138] Member States are required to put in place effective measures to ensure that the cap is effectively applied and to prevent it from being circumvented, and it may be necessary to collect and monitor a very large amount of data. Thus, depending on the specific characteristics of the national market in question or the technical difficulties that may exist in isolating the revenues that are actually subject to the cap imposed by that regulation, it may be necessary to resort to presumptions.

The Court concludes that Regulation 2022/1854 does not preclude a Member State from using presumptions to determine the amount of revenue from the market that must be subject to the

---

135 According to recital 37 of Regulation 2022/1854, Member States should be able to use reasonable estimates to calculate the cap on market revenues.

136 Provided for in Article 8(1)(a) of Regulation 2022/1854.

137 As stated in Article 1.

138 Article 6(3), Article 6(2) and Article 7(6).

capping measure imposed by that regulation, provided that those presumptions make it possible to obtain reasonable estimates of that revenue which are representative of the reality of the market during the period in question.

Given the urgency of implementing the revenue cap measure imposed by Regulation 2022/1854 and the exceptional and time limited nature of that measure, the use of presumptions, including, where applicable, irrebuttable presumptions, in order to determine precisely the amount of revenue to which that measure should be applied appears proportionate, provided that those presumptions make it possible to obtain reasonable estimates of those revenues, which are representative of the reality of the market during the period in question. The assessment of whether a given presumption meets this condition falls within the competence of the national authorities, acting under the supervision of the national courts. For the purposes of that assessment, account must be taken of all the factual and technical elements characterising not only the situation of the operators and installations concerned, but also the national electricity market.

Consequently, the Court considers that Regulation 2022/1854 [139] and the principle of proportionality do not preclude national legislation under which the amount of revenue to which a cap on market revenue provided for under that regulation applies is determined, on the basis of the electricity generation facilities concerned, either on the basis of irrebuttable presumptions or on the basis of rebuttable presumptions, but which can only be rebutted under certain conditions, provided that those presumptions make it possible to obtain reasonable estimates of those revenues, which are representative of the reality of the market during the period in question.

In the second place, with regard to the temporal scope of Regulation 2022/1854, the Court finds that nothing in that regulation indicates that it applies to a measure capping revenue introduced by national legislation for a period prior to its entry into force, nor, a fortiori, that such legislation must comply with the conditions laid down in that regulation. Thus, in the absence of EU legislation on the matter that is applicable *ratione temporis*, it cannot be considered that Member States are deprived of the power to exercise their competences by adopting a measure capping market revenues that is similar to that required by Regulation 2022/1854, but with a temporal scope different from that provided for by that regulation.

The fact that such national legislation was adopted even though Regulation 2022/1854 was already in force is irrelevant in this regard, since none of the provisions of that regulation indicates that the EU legislature intended to deprive Member States of that option or to make its exercise subject to EU authorisation. On the contrary, the EU legislature expressly envisaged the possibility that Member States might introduce or maintain measures capping market revenues that are stricter [140] than the cap provided for in that regulation. [141] Very high prices had been observed on the electricity markets since September 2021, and Russia's war of aggression against Ukraine had led to significant further increases and increased volatility in electricity prices. [142] Furthermore, the EU legislature noted [143] that all Member States had been affected by this energy crisis, albeit to varying degrees, and that an extreme and sustained increase in prices had been observed since February 2022.

Furthermore, the referring court has not indicated that it has any doubts as to the compatibility of the national legislation at issue with other provisions of EU law that may apply *ratione temporis*. In addition, the Court emphasises, first, that neither Article 288 TFEU nor the principles of primacy and effectiveness of EU law can alter the scope of a regulation as determined by the EU legislature. Secondly, under the principle of sincere cooperation, [144] Member States must refrain, in particular, from any measure that could jeopardise the achievement of the Union's objectives. However, in view

---

139 In particular, Articles 6 to 8, read in conjunction with Article 2(5) and (9).

140 Article 8(1)(a) of Regulation 2022/1854.

141 Article 6(1).

142 Recital 1 of Regulation 2022/1854.

143 Recital 5 of Regulation 2022/1854.

144 Article 4(3) TEU.

of the fact that the introduction of a measure to cap revenue similar to that provided for in Regulation 2022/1854 pursues objectives compatible with those of that regulation, it cannot be considered that, by applying such a measure at national level before it is imposed at EU level, a Member State would be in breach of that principle.

Consequently, the Court rules that Regulation 2022/1854, [145] read in conjunction with Article 288 TFEU and the principles of primacy and effectiveness of EU law and of sincere cooperation, does not preclude national legislation adopted after the entry into force of that regulation which provides for the application of a measure capping market revenues similar to that imposed by that regulation, but for a period prior to that laid down by that regulation.

XIII. COMMON COMMERCIAL POLICY: RESTRICTIVE MEASURES TAKEN BY A THIRD COUNTRY

Judgment of the General Court (Second Chamber, Extended Composition) of 10 December 2025, Middle East Bank, Munich Branch v Commission, T-518/23

Link to the full text of the judgment

Commercial policy – Protection against the effects of the extraterritorial application of legislation adopted by a third country – Restrictive measures taken by the United States against Iran – Secondary sanctions preventing natural or legal persons of the European Union from having commercial relationships with undertakings targeted by those measures – Prohibition on complying with such legislation – Second paragraph of Article 5 of Regulation (EC) No 2271/96 – Commission decision authorising a legal person of the European Union to comply with that legislation – Notification of the decision to the undertaking targeted by the restrictive measures of the third country – Retroactive effect – Account taken of that undertaking's activities excluded from the scope of those measures

Sitting in extended composition, the General Court upheld the decisions of the European Commission authorising the German bank Clearstream Banking AG to block the securities of Middle East Bank (Munich Branch) deposited with it in order to comply with a sanctions regime adopted by the United States against Iran. On that occasion, it observes, first, that the Commission was not obliged to communicate those authorisation decisions to Middle East Bank (Munich Branch). Second, it provides clarification as to whether it is possible for the Commission to give retroactive effect to such decisions.

In May 2018, the President of the United States of America decided to withdraw his country from the Iranian nuclear agreement and to reinstate sanctions against the Islamic Republic of Iran prohibiting, inter alia, trading relations with persons on a list drawn up by the US authorities. In order to comply with that decision, Clearstream Banking AG, which is the only securities depository bank authorised in Germany, blocked the securities of Middle East Bank (Munich Branch).

In 2021, Clearstream Banking AG submitted to the Commission, pursuant to the second paragraph of Article 5 of Regulation No 2271/96, [146] an application for authorisation to comply with the sanctions regime adopted by the United States. Having become aware of the existence of that request, Middle

---

145 Specifically, Articles 6 to 8 and Article 22(2)(c).

146 Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ 1996 L 309, p. 1).

East Bank (Munich Branch) contacted the Commission in order to be heard in that regard. The Commission then invited that bank to submit observations, an invitation which it accepted.

By letter of 21 June 2023, the Commission informed Middle East Bank (Munich Branch) that, on 27 April 2023, it had adopted an implementing decision [147] granting Clearstream Banking AG authorisation, under the second paragraph of Article 5 of Regulation No 2271/96, to comply with certain laws of the United States of America specified in the annex to that regulation ('the laws specified in the annex') in respect of the securities or funds of Middle East Bank (Munich Branch) which are in its custody or deposited with it for a period of 12 months ('the initial authorisation').

In June 2024, the Commission adopted a second implementing decision [148] granting Clearstream Banking AG a new authorisation to comply, pursuant to the same provision, with the laws specified in the annex concerning the securities or funds of Middle East Bank (Munich Branch) for a further period of twelve months ('the new authorisation').

Before the General Court, Middle East Bank (Munich Branch) seeks, inter alia, the annulment of both those implementing decisions ('the contested decisions').

Findings of the Court

In support of its action, Middle East Bank (Munich Branch) claimed, inter alia, that the Commission had infringed its procedural rights by forwarding to it, not the full text of the contested decisions, but only a description of the scope of the first of those decisions.

That complaint was rejected by the General Court, which states that neither Regulation No 2271/96 nor Implementing Regulation 2018/1101 [149] requires the Commission to communicate to a third party targeted by the restrictive measures of a third country its decision granting authorisation to another person to comply with those restrictive measures. From that point of view, the Court also finds that, although the second paragraph of Article 296 TFEU concerns the statement of reasons for legal acts, it does not in any way govern the issue of the persons to whom a legal act must be communicated.

Furthermore, the fact that Middle East Bank (Munich Branch) was heard during the procedure which led to the adoption of the initial authorisation and was informed by the Commission of the outcome of that procedure cannot give rise to an obligation on the part of that institution to communicate the contested decisions in favour of that bank. Regulation No 2271/96 and Implementing Regulation 2018/1101 do not provide for any procedural role for third parties targeted by restrictive measures adopted by a third country. Thus, the fact that the Commission decides to hear such a third party cannot have the effect of altering the balance of the system established by the legislature in the context of Regulation No 2271/96 and, in particular, of imposing on the Commission the obligation to communicate to it the decision taken under the second paragraph of Article 5 of that regulation.

The General Court also rejects the arguments of Middle East Bank (Munich Branch) that the Commission infringed the principles of legal certainty and the protection of legitimate expectations by attaching retroactive effect to the initial authorisation and the new authorisation.

Since those authorisations were indeed granted retroactively, the Court points out that the principle of legal certainty, as a general rule, precludes an EU measure from taking effect from a point in time before its publication or notification. Nevertheless, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected. In the present case, that twofold condition was satisfied.

First, as regards the condition relating to fulfilment of an objective of general interest, the Court notes that, in so far as the aim of an authorisation by way of derogation granted under the second paragraph of Article 5 of Regulation No 2271/96 is to prevent, in specific and duly justified circumstances, serious damage to the interests of the European Union or the applicant resulting from

---

147 Commission Implementing Decision C(2023) 2963 final of 27 April 2023.

148 Commission Implementing Decision C(2024) 4478 final of 24 June 2024.

149 Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Regulation No 2271/96 (OJ 2018 L 199 I, p. 7).

non-compliance with the laws specified in the annex, it cannot be ruled out that, in pursuing such an objective, the Commission may be required to confer retroactive effect on such authorisation if this proves necessary in view of the objective to be achieved.

After providing that clarification, the Court finds that, in the contested decisions, the Commission expressly stated the reasons which led it to confer retroactive effect on the initial authorisation and the new authorisation in the light of the risks to the interests of Clearstream Banking AG and the European Union. None of the arguments put forward by Middle East Bank (Munich Branch) was capable of calling those justifications into question.

Second, as regards the condition relating to the protection of the legitimate expectations of the persons concerned, the Court rejects the argument of Middle East Bank (Munich Branch) that the Commission's Guidance Note entitled 'Questions and Answers: adoption of update of [Regulation No 2271/96]' [150] gave rise to a legitimate expectation on its part that the authorisations granted under the second paragraph of Article 5 of that regulation would not have retroactive effect.

Although the EU administration is required to observe the principle of the protection of legitimate expectations when it applies the indicative rules which it has imposed on itself, the fact remains that the explanations provided in that guidance note cannot be understood as a self-imposed limitation on the Commission's power to give retroactive effect to any authorisation granted under the second paragraph of Article 5 of Regulation No 2271/96. In particular, the Court states that, just as the third subparagraph of Article 297(2) TFEU cannot be understood as precluding the possibility that, exceptionally, the date on which a decision designating an addressee takes effect may be fixed retroactively if the conditions laid down by the case-law are met, the same applies, even more so, to the guidance note.

The Court also rejects the complaints of Middle East Bank (Munich Branch) that the Commission exercised its discretion incorrectly and disproportionately.

In that regard, the Court notes that, contrary to what Middle East Bank (Munich Branch) claimed, it is expressly apparent from the contested decisions that the Commission limited the scope of the initial authorisation and of the new authorisation to situations in which the laws specified in the annex required Clearstream Banking AG to behave in a certain way towards Middle East Bank (Munich Branch). The scope of the contested decisions is therefore not disproportionate or imprecise, but is limited solely to the conduct in which Clearstream Banking AG is required to engage under those laws.

The General Court also points out that, when assessing an application for authorisation under the second paragraph of Article 5 of Regulation No 2271/96, the Commission is required only to examine whether the interests of the party applying for authorisation or those of the European Union are likely to suffer serious harm in the event that the party applying for that authorisation does not comply with the laws specified in the annex with regard to a third party targeted by the restrictive measures. Thus, contrary to what Middle East Bank (Munich Branch) claimed, it was not for the Commission to classify any operations or assets of that third party in the light of the laws specified in the annex.

In the light of the foregoing and having rejected the other complaints put forward by Middle East Bank (Munich Branch), the Court dismisses the action for annulment in its entirety.

---

[150] Guidance Note – Questions and Answers: adoption of update of [Regulation No 2271/96], OJ 2018 C 277 I, p. 4.

Nota bene:

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

- Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, Jouxy and Others, C-296/24 to C-307/24
- Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, PAN Europe v Commission, C-316/24 P