



MONTHLY CASE-LAW DIGEST

January 2026

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I. PROCEEDINGS OF THE EUROPEAN UNION

1. ACTIONS FOR FAILURE TO FULFIL OBLIGATIONS

Judgment of the Court of Justice (Grand Chamber) of 27 January 2026, Commission v Hungary (Rescheduling of cannabis), C-271/23

[Link to the full text of the judgment](#)

Failure of a Member State to fulfil obligations – Article 258 TFEU – Admissibility – Decision (EU) 2021/3 – Position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, established by the United Nations Economic and Social Council, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 – Position and vote of a Member State, both being contrary to that position of the European Union – Article 4(3) TEU – Principle of sincere cooperation – Effects of the alleged conduct as at the date of expiry of the deadline laid down in the reasoned opinion – Ongoing effects on the unity and consistency of the European Union’s international action – Article 3(2) TFEU – Exclusive external competence – Effect on common rules or alteration of their scope – Plea of illegality raised in the defence – Inadmissibility

Hearing an action for failure to fulfil obligations brought by the European Commission, the Court of Justice, sitting as a Grand Chamber, finds that Hungary’s failure, at a session within the United Nations Commission on Narcotic Drugs, to comply with the European Union’s position adopted by the Council of the European Union, resulted in Hungary failing to fulfil its obligations under EU law.¹ On this occasion, the Court clarifies the scope of the binding nature of decisions adopted by the Council under Article 218(9), confirms that the European Union has exclusive external competence when international commitments are capable of affecting common rules, and states that, as a matter of principle, a Member State may not dispute the legality of such decisions in the context of an action for failure to fulfil obligations. The Court also clarifies the scope of the principle of sincere cooperation in relation to the external representation of the European Union.

The Commission on Narcotic Drugs is a body established by the United Nations Economic and Social Council. The Convention on Narcotic Drugs² and the Convention on Psychotropic Substances³ confer on that commission the power to amend, on the basis of recommendations from the World Health Organization (WHO), the schedules annexed to those two conventions which concern the classification of certain substances.

By Decision 2021/3, adopted on the basis of Article 218(9) TFEU, the Council adopted the position to be taken on behalf of the European Union at the session of the Commission on Narcotic Drugs, scheduled for December 2020. That decision established, inter alia, the common position of the Member States of the European Union as regards the WHO recommendations on the amendment of the classification of cannabis and certain cannabis-related substances in the schedules annexed to the two conventions in question.

At the session of the Commission on Narcotic Drugs, Hungary did not comply with the position adopted by the Council. It voted against some of the WHO recommendations and stated that the

¹ Namely, under Council Decision (EU) 2021/3 of 23 November 2020 on the position to be taken, on behalf of the European Union, at the reconvened sixty-third session of the Commission on Narcotic Drugs, on the scheduling of cannabis and cannabis-related substances under the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, and the Convention on Psychotropic Substances of 1971 (OJ 2021 L 4, p. 1), and under Article 3(2), Article 218(9) and the fourth paragraph of Article 288 TFEU, and under Article 4(3) TEU.

² The Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, concluded in New York on 30 March 1961 (*United Nations Treaty Series*, Vol. 520, No 7515).

³ The Convention on Psychotropic Substances, concluded in Vienna on 21 February 1971 (*United Nations Treaty Series*, Vol. 1019, p. 175).



adoption of those recommendations would increase the growing use of cannabis and would involve unjustified interference with national policies.

Taking the view that Hungary's vote and the position which it had expressed within the Commission on Narcotic Drugs constituted a breach of the Council decision, undermined the European Union's exclusive external competence and were in breach of the principle of sincere cooperation, the European Commission initiated infringement proceedings against that Member State.

Findings of the Court

The Court begins by rejecting Hungary's plea of inadmissibility in respect of the action.

In the first place, the Court recalls that the Commission cannot be required to indicate, in the reasoned opinion, what steps should be taken to eliminate the impugned conduct, since the purpose of an action brought under Article 258 TFEU is to obtain a declaration that a Member State has failed to fulfil its obligations under EU law. Where there is such a finding, the Member State in question is required, under Article 260(1) TFEU, to take the measures necessary to comply with the judgment of the Court of Justice. Thus, neither the Commission nor the Court can order a Member State to take specific measures, since the Commission cannot ask the Court to issue an instruction in the context of the main proceedings. By contrast, in proceedings for interim relief based on Article 279 TFEU, the Commission may request the Court to grant interim measures, such as a direction.

In the second place, the Court rejects Hungary's argument that it can no longer bring to an end the alleged failure to fulfil obligations; it also rejects Hungary's claim that the Commission has not demonstrated the existence of actual and noticeable effects of the disputed conduct, persisting beyond the decision-making process concerned, or demonstrated that the unity and consistency of the European Union's external action has been affected.

The Court considers, first of all, that a Member State which, by its conduct, impedes the achievement of the objective inherent in a decision adopted under Article 218(9) TFEU, cannot evade infringement proceedings on the grounds that that infringement has already exhausted its effects. Otherwise, the Commission would be unable to bring proceedings, within the powers that it holds under Article 258 TFEU, against the Member State concerned before the Court with a view to obtaining a declaration of such an infringement and to perform fully its role as guardian of the Treaties. Furthermore, as to Hungary's argument that it is no longer possible to remedy the alleged harm to the reputation and credibility of the European Union, that argument cannot, in any event, give rise to the inadmissibility of the action. A Member State cannot be allowed to rely upon a *fait accompli* of which it is itself the author so as to evade proceedings brought before the Court for failure to fulfil obligations.

The Court notes, next, that to uphold the inadmissibility of an action for failure to fulfil obligations brought against a Member State on the grounds of infringement of a decision adopted under Article 218(9) TFEU would be detrimental both to the binding nature of decisions and to the respect for the values on which the European Union is founded, one such being the rule of law. A Member State could, after taking part in the deliberations and voting within the Council, eschew that decision following its adoption, while being confident that the Commission would be unable to bring proceedings before the Court for failure to fulfil its obligations.

Lastly, the Court finds that the effects of Hungary's disputed conduct at the session of the Commission on Narcotic Drugs cannot be considered to have ceased at the end of that session, since they manifest themselves as regards both the unity and consistency of the European Union's external action. Those effects go beyond the decision-making process concerned, when the very purpose of a decision taken on the basis of Article 218(9) TFEU is to safeguard those interests.

The Court then goes on to examine the substance of the case.

In the first place, as regards the Commission's complaint alleging infringement of the European Union's exclusive external competence, provided for in Article 3(2) TFEU, the Court explains that that provision is also applicable where a body established under an international agreement is called upon to adopt measures implementing it. In that regard, the fact that the European Union is not a member of an international organisation does not prevent that competence from being in fact exercised, in particular through the Member States acting jointly in the European Union's interest.

The Court emphasises that there is a risk that common EU rules might be adversely affected by international commitments, or that the scope of those rules might be altered, which is such as to establish an exclusive external competence of the European Union, where those commitments fall within the scope of those rules. It is not necessary for the areas covered by the international agreement and the EU legislation to coincide fully, where the commitments at issue may affect the meaning, scope and effectiveness of the common rules, even where there is no conflict with those rules.

In the present case, it is apparent from Framework Decision 2004/757⁴ that the concept of 'drug' is defined, *inter alia*, by reference to the two conventions in question. Therefore, as stated in Decision 2021/3, any change to the schedules of those two conventions is directly incorporated into common EU rules, with the result that such a change will directly affect the content of Framework Decision 2004/757.

In the second place, as regards Hungary's plea of illegality in respect of Decision 2021/3, the Court begins by recalling that the system of legal remedies established by the FEU Treaty distinguishes between actions for failure to fulfil obligations and actions for annulment and that those two types of action pursue different objectives and are subject to different rules. The Court states that, in the absence of a provision of that Treaty expressly permitting it to do so, a Member State cannot properly plead the unlawfulness of a decision or a directive addressed to it as a defence in an action for failure to fulfil obligations arising out of its failure to implement that decision or that directive. As a member of the Council, which was the author of the decision establishing the position to be taken on behalf of the European Union in negotiations within an international organisation, a Member State necessarily had knowledge of that decision, even if it was not formally the addressee thereof. A Member State was therefore fully in a position to bring an action seeking annulment of that decision within the period of two months laid down in the sixth paragraph of Article 263 TFEU.

The Court also recalls that an action for failure to fulfil obligations has a specific purpose consisting exclusively in seeking a declaration by the Court that a Member State has failed to fulfil its obligations, and cannot therefore be used in order to make up for the failure to bring an action for annulment of the act that was allegedly disregarded.

The Court adds that an action for failure to fulfil obligations does not in any way concern the applicability of an EU act and that, in accordance with Article 277 TFEU, the very purpose of a plea of illegality is to obtain the inapplicability of such an act.

Those factors lead the Court to confirm that a Member State cannot be authorised to raise, in such an action, a plea of illegality in respect of such an EU act, whatever it may be, unless that act contains such particularly serious and manifest defects that it could be categorised as a non-existent act. A Member State wishing to take advantage of any action for failure to fulfil obligations in order to challenge the legality of the act the failure to comply with which led to the bringing of that action, disregards the presumption of validity enjoyed by all acts of secondary legislation. That presumption imposes, on all persons subject to EU law, the obligation to acknowledge that acts of secondary EU law are fully effective as long as their invalidity has not been established by the Court of Justice of the European Union and to recognise their enforceability unless the EU Courts have decided to suspend the operation of those acts.

The Court observes that, as a result, the fact that it is impossible for a Member State to plead the illegality of the act the disregard of which has led the Commission to initiate proceedings against that Member State for failure to fulfil obligations is based on the principle that, except where expressly provided for, the scheme of the Treaties prohibits the Member States from taking the law into their own hands. If a Member State considers that an act of secondary legislation contains elements which are incompatible with EU law, it has the power to act, either within the Council, by alerting the Commission, or, ultimately, in legal proceedings to have those incompatibilities eliminated. However, a Member State may not, under any circumstances, unilaterally adopt, on its own authority, corrective

⁴ Article 1(1)(a) and (b) of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8), as amended by Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 (OJ 2017 L 305, p. 12).



or protective measures designed to cure any infringement, by another Member State or by an EU institution, of rules of EU law, without calling into question the fundamental requirement of the EU legal order that EU law be applied uniformly.

The Court points out that, where a Member State does not, within the prescribed period, bring an action for annulment, that Member State cannot subsequently call into question the legality of that act in the context of infringement proceedings, as otherwise the consistent and uniform application of EU law, which is a fundamental feature of the EU legal system, would be undermined. For a Member State to break unilaterally, according to its own conception of national interest, the equilibrium between the advantages and obligations flowing from its adherence to the European Union calls into question the equality of Member States before EU law, in breach of the duties of solidarity which are accepted by Member States as a result of their adherence to the European Union and which form part of the fundamental basis of the EU legal order. Such an attitude is also capable of creating discrimination at the expense of the nationals of Member States and, and above all, of the nationals of the State itself which places itself outside the EU rules.

In addition, the Court states that, in a context characterised by urgency caused by the concomitance or quasi-concomitance between, on the one hand, the Council decision establishing the position to be taken on behalf of the European Union in negotiations within an international body and, on the other hand, the vote within that body, a Member State which has doubts as to the validity of such a decision should take advantage of the period which runs between the Commission's submission of the final, or almost final, version of the draft decision and the Council's vote which may lead to the adoption of that decision, in order to prepare its application initiating proceedings and an application for suspension of the operation of that decision. From that perspective, the Commission must, in general, endeavour to present its proposal in sufficient time to enable the Council to complete its decision-making process with a view to establishing, in a timely manner, the position to be taken on behalf of the European Union with a view to negotiations and voting within such a body. The grant of suspension of operation of that decision would have the effect of temporarily removing its presumption of validity, without, however, relieving the Member States and the EU institutions of their duties of sincere cooperation, in particular as regards respect for unity in the external representation of the European Union.

Furthermore, the Court points out that the fact that it is impossible for a Member State to raise a plea of illegality in the context of an action for failure to fulfil obligations is without prejudice to its right to challenge the merits of the Commission's interpretation of the act of secondary legislation which that Member State allegedly infringed, since an act of secondary EU legislation must, as far as possible, be interpreted in a manner consistent with the international agreements concluded by the European Union.

In the third place, as regards the Commission's complaint alleging that Hungary acted in breach of the principle of sincere cooperation,⁵ the Court recalls that the Member States must facilitate the achievement of the European Union's tasks and abstain from any measure which could jeopardise the attainment of the objectives of the Treaties. Where the subject matter of an international agreement or of an international convention falls partly within the competence of the European Union and partly within that of its Member States, it is essential to ensure close cooperation between the Member States and the EU institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the European Union.

The Court clarifies that the special duties of action and abstention to which a Member State is thus subject do not permit that State to present, in a body set up by an international agreement, a unilateral proposal which dissociates it from a common strategy drawn up within the Council. Such a situation is likely to compromise the principle of unity in the international representation of the European Union and its Member States and also to weaken their negotiating power with regard to the other parties to the convention concerned. The Member States' obligations under the principle of

⁵ Enshrined in Article 4(3) TEU.



sincere cooperation are binding, a fortiori, on those Member States within the scope of the European Union's exclusive competences.

The Court also emphasises that it is inherent not only in the very idea of the European Union, but also in the application of a majority voting procedure in the Council, that the Member States should emphasise their interests within the framework of the mechanics of collective discussion that were created by the Treaties in order to implement the objectives of the European Union. It also recalls that compliance on the part of the Member States with a decision adopted by the Council under Article 218(9) TFEU is a specific expression of the requirement of unity in representation of the European Union, arising from the duty of sincere cooperation.

In the light of the foregoing, the Court concludes that, first, by failing, within the Commission on Narcotic Drugs, to vote in accordance with Decision 2021/3 and, second, by publicly expressing its disagreement with the WHO recommendations which were on the agenda, contrary to the position adopted by the European Union in that decision, Hungary acted in breach of the principle of sincere cooperation. Such conduct undermined the effectiveness of the international action of the European Union and the latter's credibility and reputation on the international scene.

2. INTERIM MEASURES

Judgment of the Court of Justice (First Chamber) of 22 January 2026, Poland v Commission (Retroactive annulment of interim measures), C-554/24 P

[Link to the full text of the judgment](#)

Appeal – Articles 259, 260 and 279 TFEU – Compliance by a Member State with an order of the Vice-President of the Court imposing interim measures – Obligation to pay a daily penalty until the order is complied with – Failure to take the necessary measures to comply with the order and to pay the periodic penalty – Removal of the case on the merits from the register – Recovery by way of set-off of debts arising from the non-payment of the periodic penalty – Action for annulment

Hearing an appeal, which it has dismissed, brought by the Republic of Poland against the judgment of the General Court in *Poland v Commission*,⁶ the Court of Justice has clarified the effect that removing a case from the register has on periodic penalty payments imposed in order to ensure the effectiveness of interim measures ordered pursuant to Article 279 TFEU and, more specifically, the nature and consequences of the imposition of periodic penalty payments in such circumstances.

On 26 February 2021, the Czech Republic brought an action for failure to fulfil obligations against the Republic of Poland as a result of the extension and continuation of lignite mining activities at the open-cast mine in Turów (Poland), close to the Czech and German borders.⁷ At the same time, it submitted an application for interim measures seeking to obtain the immediate cessation of those lignite mining activities, which the Court granted by order of 21 May 2021.⁸

Taking the view that the Republic of Poland had not complied with that order, the Czech Republic brought, on 7 June 2021, a fresh application for interim measures asking that the Republic of Poland be ordered to pay a daily penalty. By order of 20 September 2021,⁹ the Court ordered the Republic of Poland to pay the European Commission a penalty of EUR 500 000 per day, from the date of notification of that order until it complied with the order of 21 May 2021 imposing interim measures.

⁶ Judgment of 29 May 2024, *Poland v Commission* (T-200/22 and T-314/22, EU:T:2024:329).

⁷ Case C-121/21, *Czech Republic v Poland* ('the case on the merits').

⁸ Order of 21 May 2021, *Czech Republic v Poland* (C-121/21 R, EU:C:2021:420) ('the order imposing interim measures').

⁹ Order of 20 September 2021, *Czech Republic v Poland* (C-121/21 R, EU:C:2021:752) ('the order imposing the periodic penalty payment').

In the absence of any evidence that the mining activities in question had ceased, the Commission sent the Republic of Poland, between 5 November 2021 and 8 March 2022, requests for payment of the amounts owing pursuant to that periodic penalty payment.

On 3 February 2022, the Czech Republic and the Republic of Poland concluded a settlement agreement and informed the Court that they were abandoning all claims in the case on the merits. Following the removal of the case on the merits from the register,¹⁰ the Republic of Poland applied to the Court for the cancellation of the order of 20 September 2021 imposing the periodic penalty payment, an application which the Court dismissed by order of 19 May 2022.¹¹

The Commission issued the Republic of Poland with formal notice to pay the amounts due up to 3 February 2022, stating that, if payment was not made, it would recover those amounts by way of set-off. Thereafter, by decisions adopted in February, March and May 2022 ('the contested decisions'), the Commission set off the amounts payable pursuant to the periodic penalty imposed by the Court for the period between 20 September 2021 and 3 February 2022, amounting to approximately EUR 68 500 000 in principal.

By judgment of 29 May 2024, the General Court dismissed the two actions brought by the Republic of Poland seeking the annulment of the Commission's contested decisions. Ruling on the consequences of removing the case on the merits from the register on the daily penalty payment imposed on the Republic of Poland, the General Court pointed out that it followed from the order of the Court of 19 May 2022 that that periodic penalty payment had lapsed as from 4 February 2022, the date on which the case on the merits was removed from the register. Thus, while the daily penalty had been payable during the period between the date of service of the order of 20 September 2021 imposing the periodic penalty payment and the date of the removal of the case on the merits from the register, that removal of the case from the register did not have the effect of extinguishing the Republic of Poland's obligation to settle the amount owing pursuant to that periodic penalty payment.

The Republic of Poland subsequently brought an appeal against that judgment before the Court, in support of which it alleged, *inter alia*, an infringement of Article 279 TFEU. It takes the view that the General Court misinterpreted that provision, which led it to conclude that the removal of the case on the merits from the register did not have the effect of extinguishing the Republic of Poland's obligation to settle the amount owing pursuant to the daily penalty payment imposed on that Member State in the proceedings for interim measures.

Findings of the Court

Ruling on the arguments put forward by the Republic of Poland in support of its claim that Article 279 TFEU had been infringed, the Court points out, in the first place, that the purpose of a periodic penalty payment imposed in the event of non-compliance with interim measures adopted by the judge hearing an application for such measures is to guarantee the effective application of EU law, such application being an essential component of the rule of law, a value on which the European Union is founded. First, a feature of the scope of proceedings for interim measures is the breadth of the powers which are afforded to the judge hearing an application for interim measures in order to enable that judge to guarantee the full effectiveness of the final decision. Second, that judge has the power, under Article 279 TFEU, to order that a periodic penalty payment be imposed on a Member State in the event that that Member State fails to comply with the interim measures ordered. Since the prospect of a periodic penalty payment being imposed encourages the relevant party to comply with the interim measures ordered, it enhances the effectiveness of those measures and guarantees the full effectiveness of the final decision, thus coming entirely within the ambit of the objective of Article 279 TFEU. Accordingly, the imposition, by the judge hearing an application for interim measures, of a daily penalty payment in the event of non-compliance by a Member State with a principal interim measure imposed on it must be regarded as an ancillary interim measure intended to guarantee the full effectiveness of the order imposing that principal interim measure and of the final decision to be taken. In addition, the Court explains that the ancillary nature of interim measures

¹⁰ Order of 4 February 2022, *Czech Republic v Poland (Turów mine)* (C-121/21, EU:C:2022:82).

¹¹ Order of 19 May 2022, *Czech Republic v Poland (Turów mine)* (C-121/21 R-RAP, EU:C:2022:408).



vis-à-vis the proceedings on the substance of the case does not prevent some of those measures from producing, despite their application over a specified period, irreversible effects during that period in that they produce those effects until the date fixed in the order imposing them or until delivery of the judgment closing the proceedings.

In the second place, ruling on the Republic of Poland's argument that, in proceedings for interim relief, the principle of effectiveness of EU law must be given the same weight as the principle of protection of the interests of the party seeking interim measures, the Court points out that, in a case such as that giving rise to the present dispute, the daily penalty is not paid to the party which requested that it be imposed, but to the EU budget, which proves that it is intended not to compensate that party but to ensure the effective application of EU law in the general interest. Furthermore, in so far as the judge hearing the application for interim measures must adopt any ancillary measure intended to guarantee the effectiveness of the interim measures that he or she orders, once he or she has adopted a decision imposing an interim measure, whether principal or ancillary, the party requesting that interim measure is no longer able to amend its application in respect of the past, but only in respect of the future.

According to the Court, that interpretation is supported by Articles 162 and 163 of its Rules of Procedure and by its case-law. Thus, first, the Court states that, while, under Article 163 of its Rules of Procedure, the judge hearing an application for interim measures may reconsider an order granting an interim measure only in respect of the future, it is clear that the actions of the parties to the dispute, including the conclusion of a settlement agreement, cannot have the effect of retroactively varying, annulling or setting aside an order imposing such interim measures or its effects. As regards Article 162 of the Rules of Procedure, in so far as it provides that 'no appeal shall lie' from orders imposing interim measures, it likewise leaves no room for any retroactive variation, annulment or setting aside of interim measures ordered by the judge hearing the application for interim measures. Second, the Court recalls that, notwithstanding the fact that a daily penalty payment imposed as an ancillary interim measure with the sole aim of ensuring compliance with principal interim measures is of an irreversible nature, the imposition of such a periodic penalty payment in no way prejudices the decision on the substance and therefore comes within the scope of Article 279 TFEU.

In the third place, ruling on the argument that the order imposing interim measures became devoid of purpose after the settlement agreement entered into between the Republic of Poland and the Czech Republic, the Court emphasises that the effects of an ancillary interim measure can be lifted only for the future and cannot be annulled or varied retroactively. Therefore, maintaining, despite the settlement agreement, the obligation to pay the amount owing pursuant to the daily penalty payment does not undermine the purpose of that periodic penalty payment, namely to guarantee the effective application of EU law.

In the fourth place, as regards the nature of the daily penalty payment, the Court points out that that penalty payment guarantees, from the time it is imposed, the full effectiveness of the final decision to be taken and the effective application of EU law, and is therefore preventive and not punitive in nature. The preventive nature of the periodic penalty payment is not capable of being altered by the mere fact that the Member State concerned has not complied with either the order imposing the principal interim measures or the order imposing the daily penalty payment prior to the close of the case on the merits. Any other interpretation would undermine the effectiveness of such an ancillary interim measure by allowing the party liable to make payment to rely on its own failure to act in order to challenge the legality of the measure adopted.

Consequently, the Court concludes that the General Court adopted an interpretation of Article 279 TFEU which is consistent with the case-law of the Court of Justice and free from any error of law.

II. FREEDOM OF MOVEMENT

1. FREE MOVEMENTS OF GOODS

Judgment of the Court of Justice (Fourth Chamber) of 29 January 2026, Keladis I and Keladis II, C-72/24 and C-73/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Customs union – Regulation (EEC) No 2913/92 – Community Customs Code – Regulation (EU) No 952/2013 – Union Customs Code – Importation of goods – Customs value – Undervaluation – Secondary methods for determining customs value – ‘Lowest acceptable price’ method calculated on the basis of aggregated statistical values established at EU level – Whether permissible

Hearing a request for a preliminary ruling from the Dioikitiko Protodikeio Thessalonikis (Administrative Court of First Instance, Thessaloniki, Greece), the Court of Justice rules, first of all, on the possibility of determining, in the course of a post-clearance examination, the customs value of imported goods according to a lowest acceptable price calculated on the basis of statistical values and specifies the time at which the imports used to obtain those values should be carried out.

Next, it rules on the possibility of reassessing the customs value of the goods concerned following a post-clearance examination in accordance with the method of simplifying customs declarations that was initially applied. Finally, the Court provides clarification on the person liable for the payment of value added tax (VAT).

In Case C-72/24, HF imported textile products from Türkiye in 2014 in the course of his business activities in Greece. The importation of those goods was exempt from customs duties, but was subject to import VAT on the basis of the customs value stated by the importing company in its import declarations.

In 2016, the customs authorities carried out a post-clearance examination of all the customs declarations for those goods. They had been declared in accordance with the simplified procedure, under which the authorities could, at the request of the declarant, agree that import duties should be charged on the whole consignment of goods falling within different tariff classifications on the basis of the tariff classification of the goods which were subject to the highest rate of import duty.

Following that inspection, the customs authorities found that there was a smuggling system that involved the declaration of customs values which were significantly below the minimum commercially viable values. Since HF held goods in 2014 which had been the subject of a false customs value declaration under that scheme, he was therefore considered liable under national law for the evaded VAT due on those goods.

Given that it was not possible to carry out a physical check of the goods concerned post-clearance, and that the corresponding invoices only provided a general description of the goods, the customs authorities were unable to establish the actual prices paid to the Turkish suppliers for the goods concerned or the transaction value of identical or similar products and, therefore, determined the customs value on the basis of the ‘unit price’ from a ‘threshold price’ or ‘lowest acceptable price’ (‘LAP’) calculated on the basis of aggregated statistical values established at EU level, using a risk assessment tool based on EU-wide data, developed by the European Anti-Fraud Office (OLAF).

HF brought an action challenging the adjustment notices at issue in the main proceedings before the referring court. He argues that it is unlawful to determine the customs value of the goods concerned on the basis of LAPs in so far as that value has thus been calculated on the basis of statistical data on import prices.

Since it has doubts as to whether it is possible to establish the customs value from LAPs, the referring court has made a reference to the Court of Justice for a preliminary ruling.

In Case C-73/24, the facts and the reasoning set out in the order for reference are similar.

Findings of the Court

First, the Court notes that both the Community Customs Code¹² and the Union Customs Code¹³ expressly establish a hierarchy between the various methods for determining the customs value provided for in those codes, so that the customs value of imported goods must be determined, as a matter of priority, using the transaction value method. However, the customs authorities may determine the customs value of the goods using one of the subsidiary methods, which are applied successively and include a residual method, where they have reasonable doubts as to whether the declared value of the imported goods represents the total amount paid or payable for those goods, and the actual value cannot be determined.

The residual method is applicable only if the customs value cannot be established using either the transaction value method or any of the other alternative methods.

The application of those other alternative methods, such as the unit price value, is based on an assessment of factors relating to identical or similar imported goods. If the imported goods cannot be physically checked, and if the description of those goods in the invoices attached to the customs declarations is incomplete, it will not be possible to determine whether they are identical or similar to other goods on which the customs value could be based.

Consequently, the Court determines whether an LAP, calculated on the basis of aggregated statistical values established at EU level, may be used to determine the customs value of the goods concerned, under the residual method. In accordance with that method, the customs value is determined on the basis of data available in the European Union, using reasonable means consistent with the principles and general provisions of international agreements and Chapter 3 of the Community Customs Code and of the Union Customs Code.

In that regard, the Court states, in the first place, that, in accordance with the Community Customs Code, the valuation methods to be used under the residual method should be those defined by the main or subsidiary methods for determining customs values; however, they should be applied with 'reasonable flexibility', in particular as regards the assessment of the concept of 'similar goods'.

Accordingly, first, data appearing in a national database relating to goods ascribed to the same code of the Integrated Tariff of the European Union and originating from the same seller as the goods concerned constitute 'data available in the [European Union]', for the purposes of application of the residual method, which can be used as a basis for determining the customs value of the goods concerned.

Second, the obligation on the Member States, under Article 325(1) TFEU, to protect the financial interests of the European Union against fraud or any other illegal activities affecting those interests entails the need, for the customs authorities, to establish a customs value in cases where the declarant does not provide sufficiently accurate or reliable information concerning the customs value of the goods concerned.

In the light of that requirement and the 'reasonable flexibility' with which the main or subsidiary methods should be applied in the context of determining the customs value under the residual method, the Court considers that data such as an LAP calculated on the basis of aggregated statistical values established at EU level and included in a database established at EU level constitute 'data available in the Community', which are capable of being taken into account for the purposes of determining the customs value of the goods concerned. However, the prohibition on determining the customs value on the basis of minimum values implies that the use of LAPs is only considered as a last resort and on condition that the economic operator concerned has the opportunity to justify the lower prices indicated in his or her customs declaration.

¹² Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1), Articles 29 to 31 of which were applicable until 30 April 2016.

¹³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), Articles 70 to 74 of which are applicable from 1 May 2016.

In the second place, the Court states that all the considerations relating to the use of LAPs set out above also apply to situations governed by the Union Customs Code. In that regard, it emphasises that the words 'reasonable flexibility', used both in the implementing regulation of the Union Customs Code¹⁴ and in the interpretative note of the Community Customs Code relating to customs value, are identical. It bases that conclusion on the fact that that implementing regulation provides for the use of 'other appropriate methods' where the customs value cannot be determined by demonstrating 'reasonable flexibility' in the application of the main method or subsidiary methods.

The use of an LAP is, moreover, an 'appropriate method' under Article 144(2) of the Implementing Regulation, in so far as it is compatible with the principles and general provisions of international agreements, as well as with the other provisions to which the provisions establishing the residual method refer.

In accordance with the requirement to state reasons, the customs authorities are required, in circumstances such as those at issue in the main proceedings, to reflect in the customs decision the reasons which led them to set aside one or more methods for determining customs value and to choose to use the residual method, and to set out the data on the basis of which the customs value was calculated. In that regard, it remains conceivable on an exceptional basis to transmit LAPs ad hoc to economic operators, within the strict limits of what is necessary.

Second, the Court states that, where the customs value is assessed in the light of an LAP calculated on the basis of aggregated statistical values established at EU level, the imports used to obtain that data must be imports carried out at or about the same time as those subject to the post-clearance examination. The 90-day time limit set for determining the customs value of goods on the basis of the 'unit price' method is applicable, by analogy, where the customs value is assessed in the light of an LAP calculated on the basis of aggregated statistical values established at EU level, since that period may be varied with reasonable flexibility.

Third, the Court considers that the reassessment of the customs value of the goods concerned following a post-clearance examination in accordance with the method of simplifying customs declarations used at the time of the importation of those goods at the request of the declarant is consistent with the provisions of Article 81 of the Community Customs Code and Article 177 of the Union Customs Code.

Finally, the Court establishes that Article 201 of the VAT Directive¹⁵ must be interpreted as meaning that the person deemed to be the owner of the imported goods by way of payment of import VAT may be liable for that tax if national provisions expressly designate or recognise that to be the case.

¹⁴ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ 2015 L 343, p. 558) ('the Implementing Regulation').

¹⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2. FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Judgment of the Court of Justice (Fourth Chamber) of 22 January 2026, NOVIS, C-18/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Freedom of establishment and freedom to provide services – Single market in insurance – Directive 2009/138/EC – Principle of supervision by the home Member State – Article 155 – Competencies of the supervisory authorities of the host Member State – Cooperation with the authorities of the home Member State – Insurance undertaking not complying with the legal provisions applicable in the host Member State – Provisions concerned – Regulation (EU) No 1286/2014 – Packaged retail and insurance-based investment products (PRIIPs) – Directive (EU) 2016/97 – Insurance distribution – Powers of the supervisory authorities of the host Member State to penalise the undertaking concerned – Scope

In proceedings concerning the imposition by the Czech insurance supervisory authority of an administrative fine on a life insurance undertaking established in Slovakia, on account of its failure to fulfil a number of obligations incumbent on it as an insurance undertaking with a branch in Czech territory, the Court provides clarification on the delimitation of the power of the authorities of the Member States as regards the supervision of insurance undertakings and as regards sanctions imposed for infringement of the rules in force in those Member States.

Novis is an insurance undertaking established in Slovakia. During the period from 23 April 2014 to 5 June 2023, it pursued business through a branch established in Prague (Czech Republic).

On 15 September 2020, the Česká národní banka (Czech National Bank, Czech Republic) found Novis guilty of three infringements relating to non-compliance with the provisions of Regulation No 1286/2014¹⁶ and the law transposing Directive 2016/97¹⁷ into Czech law, and imposed on it an administrative fine of 1 000 000 Czech koruny (CZK) (approximately EUR 39 610).

Novis lodged an administrative appeal against that decision, claiming that the Czech National Bank could not impose a fine on it without following the procedure laid down by the law transposing the Solvency II Directive into Czech law,¹⁸ which requires the supervisory authority of the home Member State to have first been informed of the alleged infringements and given the opportunity to take appropriate measures.

Following the dismissal of that administrative appeal and of an action for judicial review brought before the Městský soud v Praze (Prague City Court, Czech Republic), Novis brought an appeal on a point of law before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), which is the referring court. That court is uncertain whether the procedure for cooperation between the supervisory authority of the host Member State and the supervisory authority of the home Member State laid down in Article 155 of the Solvency II Directive applies to a situation in which the supervisory authority of the host Member State finds that an insurance undertaking pursuing business in its territory either through a branch or under the freedom to provide services is not complying with its obligations under Regulation No 1286/2014 or the national provisions transposing Directive 2016/97 into the legal order of that Member State.

¹⁶ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ 2014 L 352, p. 1).

¹⁷ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ 2016 L 26, p. 19).

¹⁸ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1), as amended by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 (OJ 2013 L 341, p. 1).

If it does, the referring court seeks to ascertain whether the application of administrative financial penalties, for infringements of Regulation No 1286/2014 and of the national provisions adopted pursuant to Directive 2016/97, is subject to the prior implementation of the procedure laid down in paragraphs 1 to 3 of Article 155 of the Solvency II Directive, or whether those penalties may be imposed directly by the competent authorities of the host Member State.

Findings of the Court

As regards the first question, the Court notes, in the first place, that both paragraph 1 and paragraph 3 of Article 155 of the Solvency II Directive refer, in general terms, to all the national provisions applicable to insurance undertakings in the host Member State. It cannot therefore be inferred from those provisions that the EU legislature intended to limit the scope of the procedure for cooperation between supervisory authorities, provided for in that article, solely to cases of infringement of the national provisions implementing the Solvency II Directive.

In the second place, the Court notes that Article 30(1) and (3) and Article 155 of the Solvency II Directive have the same purpose, which is to define the respective powers and obligations of each of the supervisory authorities concerned in the case of cross-border insurance activities, which permits the inference that those provisions must have different scopes, in order to avoid a situation in which a single legal act contains provisions governing the same issue differently. It is clear from Article 30(1) of the Solvency II Directive that that article applies only to the 'financial supervision' of insurance undertakings, which is the sole responsibility of the home Member State, implying that Article 155 has a broader scope.

In addition, it is apparent from Article 29(1) and Article 144(1)(b) and (c) of the Solvency II Directive, that that directive gives primacy to the principle of supervision of insurance undertakings by the home Member State. Moreover, it follows from the broad interpretation of Article 29(1) of the Solvency II Directive that the supervisory authorities of the home Member State are accorded not only exclusive competence to ensure the financial supervision of insurance undertakings but also a power, exercised jointly with the supervisory authorities of the host Member State, in order to ensure, more broadly, the supervision of the proper operation of the insurance or reinsurance business.

In the third place, the objective of facilitating the taking-up and pursuit of insurance activities throughout the European Union, under the freedom of establishment or the freedom to provide services, which is apparent from recitals 2 and 11 of that directive, could be compromised if the supervisory authorities of the host Member State were able, when they identify an infringement by an insurance undertaking of the regulations to which it is subject, to take any measures against that undertaking without any coordination with the supervisory authority of the home Member State which issued the prior authorisation allowing, in principle, that undertaking to pursue its activities throughout the European Union.

In addition, it is consistent with the objective of adequate protection of policyholders and beneficiaries, as set out in recitals 14 and 16 and Article 27 of the Solvency II Directive, to provide for a cooperation mechanism that enables the supervisory authority of the home Member State to be informed when an insurance undertaking, operating in the territory of that host Member State through a branch or under the freedom to provide services, fails in its obligations under the regulations to which it is subject. Indeed, where an insurance undertaking operating in more than one Member State fails seriously in its obligations, only the supervisory authority of the home Member State is entitled, under Article 144(1)(c) of the Solvency II Directive, to withdraw the authorisation it has granted to it and, therefore, to ensure adequate protection for policyholders and beneficiaries throughout the European Union.

It follows that Article 155 of the Solvency II Directive must be interpreted as applying, in principle, to any situation in which the supervisory authority of the host Member State finds that an insurance undertaking with a branch or pursuing business under the freedom to provide services in its territory is not complying with its obligations, including where those obligations arise from provisions other than the provisions of that directive, unless, however, another provision of EU law expressly derogates from the rules on the division of powers and cooperation between the competent authorities laid down in that article.

In that regard, neither Regulation No 1286/2014 nor Directive 2016/97 contains any provision that expressly derogates from that principle of applying the cooperation procedure provided for in Article 155 of the Solvency II Directive in the event that an insurance undertaking fails to fulfil its obligations under those acts.¹⁹

As regards the second question, the Court notes that Article 155(5) of the Solvency II Directive begins with identical wording to that of Article 155(4) of the same directive.²⁰ The Court has already held in relation to Article 40(6) of Directive 92/49,²¹ the wording of which was reproduced in Article 155(4) of the Solvency II Directive, that that provision must be understood as 'derogation from the [ordinary] procedure' referred to in Article 40(4) and (5) of Directive 92/49, exempting the Member State of the provision of services concerned from the obligation to notify the competent authorities of the home Member State and the obligation to inform them of its intention to take appropriate measures.²² Therefore, Article 155(5) of the Solvency II Directive allows the host Member State to impose penalties for infringements committed within its territory without it being necessary first to exhaust the procedure referred to in paragraphs 1 to 3 of that article.

Nevertheless, Article 155(5) of that directive cannot be interpreted as allowing the host Member State to derogate from the exclusive responsibility of the home Member State in order to rule on an insurance undertaking's compliance with the conditions of authorisation, the supervision of which is the sole responsibility of the home Member State.²³

Accordingly, the derogation laid down in that article cannot apply to failures of an insurance undertaking to comply with the conditions for authorisation, and the sanctions imposed by the host Member State on an insurance undertaking may not have the purpose or effect of depriving the insurance undertaking concerned of any right to pursue business in the territory of that Member State.

¹⁹ As regards Directive 2016/97, the provisions of Chapter III of that directive, on the conditions for the carrying on of intermediary activities under the rules on the freedom to provide services and the freedom of establishment, apply only to insurance, reinsurance or ancillary insurance intermediaries, to the exclusion of insurance undertakings.

²⁰ Namely 'paragraphs 1, 2 and 3 shall not affect the power of the Member States'.

²¹ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1).

²² Judgment of 27 April 2017, *Onix Asigurări* (C-559/15, EU:C:2017:316, paragraph 47).

²³ See, to that effect, judgment of 27 April 2017, *Onix Asigurări* (C-559/15, EU:C:2017:316, paragraph 49).

III. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN ARREST WARRANT

Judgment of the Court of Justice (Fifth Chamber) of 15 January 2026, Dubers, C-641/23

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant issued for the purposes of conducting a criminal prosecution – Article 2(4) – Condition of double criminality – Article 4(1) – Ground for optional non-execution of the European arrest warrant – Article 5(3) – Surrender of the person concerned subject to a guarantee of that person’s return to the executing Member State in order to serve there a custodial sentence or detention order passed in the issuing Member State – Objectives – Social rehabilitation – Combating impunity – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Article 7(3) and (4) – Article 9(1)(d) – Ground for non-recognition of the judgment and non-enforcement of the sentence due to the absence of double criminality – Article 25 – Enforcement of sentences following a European arrest warrant

Having received a request for a preliminary ruling from the rechtbank Amsterdam (District Court, Amsterdam, Netherlands), the Court of Justice rules on the relationship between Framework Decisions 2002/584²⁴ and 2008/909²⁵ where an executing State refuses to recognise and enforce a sentence imposed in another Member State following the execution of a European arrest warrant (‘EAW’), although it required that the person concerned be returned to its territory to serve there the sentence passed against him or her.

On 9 May 2023, the Sąd Okręgowy w Jeleniej Górze, Wydział III Karny (Regional Court, Jelenia Góra, Criminal Division III, Poland) issued an EAW against YM for the purpose of conducting a criminal prosecution for the failure of that person to comply with his maintenance obligation in respect of his minor son.

The referring court, called upon to rule on the execution of that EAW, found that the alleged offence did not constitute an offence under Netherlands law, but nevertheless envisages not applying the ground for optional non-execution, provided for in Article 4(1) of Framework Decision 2002/584, which enables the executing judicial authority to refuse to execute an EAW where the act which gave rise to that EAW does not constitute an offence under national law. Given that YM has resided in the Netherlands for more than five years and has close ties with that State, the referring court refers to the option provided for in Article 5(3) of that framework decision to make the surrender of the person concerned subject to the condition that he or she is returned to the executing Member State in order to serve there any custodial sentence or detention order passed against him or her in the issuing Member State when that person is a national or resident of the executing Member State (‘guarantee of return’).

Under the applicable national legislation, recognition of a conviction handed down in another Member State must be automatically refused where the act for which the custodial sentence or detention order was imposed would not constitute an offence under Netherlands law if it were committed in the territory of the Netherlands.

²⁴ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

²⁵ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

The referring court, which is uncertain as to whether the implementation, in those circumstances, of a guarantee of return for an act that is not punishable under the law of the executing Member State is compatible with Framework Decisions 2002/584 and 2008/909, decided to refer the matter to the Court for a preliminary ruling.

Findings of the Court

In the first place, the Court recalls that, under Article 7(3) of Framework Decision 2008/909, the executing State may make the recognition of the judgment and enforcement of the sentence imposed in another Member State subject to the condition that it relates to acts which also constitute an offence under its national law. Where that condition is not satisfied, the competent authority of the executing State may refuse to recognise the judgment and enforce the sentence under Article 9(1)(d) of that framework decision ('the ground for refusal based on double criminality'). It is therefore clear from the wording of those two provisions, in particular from the use of the verb 'may', that the executing judicial authority must have a margin of discretion in deciding whether to refuse to recognise the judgment and enforce the sentence on the grounds referred to in Article 9.

Consequently, the Member States cannot transpose that ground so as to require the judicial authority of the executing State to refuse automatically to recognise and enforce the sentence where it relates to acts which would not constitute an offence under the national law of that State, without that authority being able to take into account the circumstances specific to each case.

In the second place, the Court finds that the provisions of Framework Decision 2002/584, read together with those of Framework Decision 2008/909, preclude the competent authority of the executing Member State from relying on that ground in order to refuse to recognise the judgment and enforce the sentence imposed in another Member State for acts which would not constitute an offence under its national law, where that authority previously decided to execute the EAW which gave rise to that sentence. That is because the executing authority, first, waived its right to rely on the ground for optional non-execution provided for in Article 4(1) of Framework Decision 2002/584, arising from the absence of double criminality and, second, made the surrender of the person concerned subject to a guarantee of return.

In that regard, the Court recalls that, like Framework Decision 2002/584, Framework Decision 2008/909 gives concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition. Framework Decision 2008/909 applies, *mutatis mutandis*, to the extent that its provisions are compatible with those of Framework Decision 2002/584, to enforcement of sentences, inter alia, where a Member State has required, as a condition for the execution of a EAW for the purposes of prosecution in the issuing State, that the person concerned be returned to the executing State in order for that person to serve there any sentence imposed on him or her.

Furthermore, in view of the identical nature of the objective pursued, first, by the possibility to make the surrender of the person concerned subject to a guarantee of return and, second, by the rules laid down by Framework Decision 2008/909, namely that of facilitating the social rehabilitation of persons sentenced in another Member State, an executing judicial authority that wishes to apply the ground for refusal based on double criminality provided for in Article 9(1)(d) of Framework Decision 2008/909, must take account of those rules.

In addition, at the time of its decision to make the surrender of the person concerned subject to a guarantee of return, the executing judicial authority must make an overall assessment of all the specific elements that characterise that person's situation in order to establish whether there are connections between that person and the executing Member State demonstrating that he or she is sufficiently integrated into that State and that, therefore, his or her chances of social rehabilitation would increase if that person were to serve the sentence which may be imposed on him or her in its territory. Those elements include the family, linguistic, cultural, social or economic links that that person has with the executing Member State as well as the nature, duration and conditions of his or her stay in that Member State. In that context, where the executing judicial authority decides to make the surrender of the person concerned subject to a guarantee of return, by refraining from relying on the ground for optional non-execution referred to in Article 4(1) of Framework Decision 2002/584, it must be inferred from this that it considers that the interests relating to combating impunity and the social rehabilitation of that person take precedence over the finding that the act in question is not punishable under its national law.

It follows from the foregoing that the option for the competent authority of the executing State to refuse to recognise a sentencing judgment handed down in another Member State for acts which do not constitute an offence under its national law must be strictly limited during the implementation of the guarantee of return.

Otherwise, that guarantee of return could be deprived of practical effect, so that the objective consisting of encouraging the social rehabilitation of the person concerned, which justifies triggering the mechanism of surrender of that person, conditional on such a guarantee of return, would be liable to be compromised at the stage of recognition of the sentencing judgment. Similarly, if the competent authority of the executing State could call into question the guarantee of return at the stage of the recognition of the judgment for the purposes of the enforcement of the sentence by reassessing the circumstances which have already been assessed by the executing judicial authority at the stage of the execution of the EAW, that latter authority could be dissuaded from triggering the mechanism of surrender of the person concerned, or even from executing the EAW, which would be liable to undermine the objective of combating the impunity of that person.

Consequently, the executing authority cannot rely on the ground for refusal based on double criminality, provided for in Article 9(1)(d) of Framework Decision 2008/909, when implementing the guarantee of return, in so far as that would entail a reassessment of the circumstances which have already been taken into account by the executing judicial authority for the purposes of its decision to make the surrender of the person concerned subject to that guarantee.

The situation is different where a change in circumstances in the legal or factual situation of that person, such as the reduction or disappearance of the connections that that person has with the executing Member State, means that, at the stage of recognition of the judgment for the purposes of the enforcement of the sentence, the interest in the custodial sentence or measure involving deprivation of liberty being enforced in the executing Member State no longer prevails. Faced with such a change, the competent authority of the executing State may rely on the ground for refusal based on double criminality, provided for in Article 9(1)(d) of Framework Decision 2008/909, which best ensures compliance with the objective of social rehabilitation pursued by that framework decision.

If that provision could not, in any event, be relied on in the context of the implementation of the guarantee of return, the person concerned would risk being returned automatically to the executing Member State, even though there would no longer be any rationale for the guarantee of return. In such a situation, the use of the option provided for by that provision does not undermine the mechanism for the surrender of that person, subject to a guarantee of return. Nor does it compromise the objective of combating the impunity of the person concerned since, first, the possibility for the competent authority of the executing State to rely on the ground for refusal provided for in Article 9(1)(d) of Framework Decision 2008/909 is strictly limited and, second, where appropriate, that person will serve his or her sentence in the issuing Member State.

IV. TRANSPORT: COMPENSATION AND ASSISTANCE TO AIR PASSENGERS

Judgment of the Court of Justice (Fourth Chamber) of 15 January 2026, Verein für Konsumenteninformation (Commission collected by an intermediary), C-45/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 8(1) – Reimbursement of the price of a ticket in the event of cancellation of a flight – Commission collected by a person acting as an intermediary between the passenger and the air carrier when the ticket was bought – Conditions for inclusion – Amount of commission allegedly fixed without the air carrier’s knowledge – Burden of proof

Hearing a request for a preliminary ruling made by the Oberster Gerichtshof (Supreme Court, Austria), the Court of Justice clarifies its case-law on the obligation for an air carrier to reimburse the passenger, in the event of cancellation of a flight, for the commission paid to a third party acting as an intermediary when the airline ticket was bought.

Air passengers purchased airline tickets on the Opodo booking portal, a travel agency certified by the International Air Transport Association (IATA) and authorised to issue airline tickets for Koninklijke Luchtvaart Maatschappij NV ('KLM'), the airline operating the flights in question. The total sum paid by the passengers included the price of the tickets and an agency commission corresponding to the purchase of those tickets on the Opodo portal.

As a result of the cancellation of the flights, the passengers obtained reimbursement of the price of the tickets from KLM, with the exception of the agency commission. The Verein für Konsumenteninformation (Association for Consumer Information, Austria; 'the VKI'), to which the passengers assigned their claims for reimbursement of the cost of the tickets, then brought an action against KLM seeking payment of the sum corresponding to the agency commission, claiming that that commission should be included in the reimbursement of the cost of the tickets. The court of first instance upheld that action. Following the appeal brought by KLM before the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), that judgment was, however, set aside.

It is in that context that the VKI brought an appeal on a point of law before the Oberster Gerichtshof (Supreme Court), the referring court in the present case. Entertaining doubts as to the interpretation of Article 8(1)(a) of Regulation No 261/2004,²⁶ the referring court decided to stay the proceedings in order to make a reference to the Court of Justice for a preliminary ruling. It asks the Court, in particular, how the air carrier must be informed of the existence and exact amount of the agency commission for the purposes of including that commission in the total price of the airline ticket to be reimbursed under that provision and who bears the burden of proving awareness of the existence of that commission.

Findings of the Court

First of all, the Court notes that, in accordance with Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) of that regulation, the onus is on the air carrier, in the event of cancellation of a flight, to offer assistance to the air passengers concerned in the form of offering them, inter alia, reimbursement of their ticket, at the price at which it was bought. The wording of that Article 8(1)(a) of Regulation No 261/2004 establishes a direct link between the concept of 'ticket' and the expression 'price at which it was bought', it being possible for such a ticket to be bought either directly from the air carrier or through an intermediary such as, inter alia, the authorised agent of that air carrier, referred to in Article 2(f) of that regulation.

²⁶ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Furthermore, the Court states that the various elements of a ticket, including its price, must, if that ticket is not issued by the air carrier itself, in any event be authorised by it. Thus, only the components of the price of an airline ticket, such as an agency commission, must be regarded as necessary and, therefore, 'unavoidable' in order to avail of the services offered by that air carrier.

Next, the Court notes that the purchase of the airline ticket through an intermediary constitutes a 'single transaction' in so far as the agency commission forms part of the ticket price, within the meaning of Article 8(1)(a) of that regulation. That agency commission is therefore inseparable from the price of the airline ticket in that it cannot be avoided by the passenger when purchasing the ticket. Accordingly, the collection of such a commission, as an 'unavoidable' component of the price of the airline ticket, must be regarded as being authorised by the air carrier and, therefore, as having to be reimbursed under the abovementioned provision.

Furthermore, the Court adds that, where that air carrier accepts that the intermediary issues airline tickets in its name and on its behalf, it may be assumed that that air carrier is necessarily aware of that intermediary's commercial practice of collecting an agency commission from the air passenger when the latter purchases his or her ticket, even in the absence of any express contractual clause to that effect.

Lastly, the Court states that it is not necessary for the air carrier to know the exact amount of the agency commission in order for the passenger whose flight has been cancelled to be able to obtain reimbursement of that commission. If that were the case, that could lead that air carrier to attempt to refuse reimbursement on the ground that it was not informed of the precise amount of the agency commission. The passenger could then be forced to take action against the intermediary in order to obtain reimbursement of the ticket price including the amount of the commission, with the risk that such a procedure might delay that reimbursement and give rise to additional, or even disproportionate, costs for that passenger. Such an outcome would therefore be contrary to the objective of ensuring a high level of protection for air passengers, as set out in recital 1 of Regulation No 261/2004, and to the simplification of the procedures for reimbursement put in place by that regulation.

In the same vein, such an interpretation could lead the air passenger to forego the option of using an intermediary and to favour booking directly with the air carrier, although the price of the ticket issued by such an intermediary may prove to be financially more attractive.

Accordingly, the Court rules that Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) thereof, must be interpreted as meaning that the price of the airline ticket to be taken into consideration for the purpose of determining the amount of the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by that air carrier, which corresponds to a commission collected by a company acting as an intermediary, without the air carrier being required to know the exact amount of that commission.

V. COMPETITION

1. AGREEMENTS, DECISIONS AND CONCERTED PRACTICES (ARTICLE 101 TFEU)

**Judgment of the General Court (Third Chamber, sitting with five Judges) of 21 January 2026,
Lantmännen and Lantmännen Biorefineries v Commission, T-93/24**

[Link to the full text of the judgment](#)

Competition – Agreements, decisions and concerted practices – Markets for ethanol and for bioethanol – Decision establishing an infringement of Article 101 TFEU and Article 53 of the EEA Agreement – Staggered ‘hybrid’ procedure – Presumption of innocence – Impartiality

The General Court, sitting in with five Judges, upholds the decision of the European Commission ²⁷ of 7 December 2023 imposing a fine on Lantmännen Biorefineries AB, a producer and supplier of ethanol, and on its parent company Lantmännen ek för (together, ‘Lantmännen’) for having participated in a cartel on the European ethanol market. Since, before it adopted that decision, the Commission had closed a settlement procedure with another undertaking involved in that cartel, the Court examines the conditions under which the Commission may investigate, in a manner staggered over time, the settlement procedures and the ordinary procedures relating to the same cartel.

In 2015, the Commission initiated an investigation in order to investigate whether the Lantmännen undertakings, together with Alcogroup S.A. and Alcodis S.A. (together, ‘Alcogroup’) and Abengoa, had manipulated in a coordinated manner the wholesale prices on the European ethanol market.

At the end of 2021, by a decision adopted following a settlement procedure, ²⁸ the Commission imposed a fine on Abengoa for its participation in a cartel relating to the wholesale price formation mechanism for the European ethanol market during the period from 6 September 2011 to 16 May 2014.

By the contested decision, which was adopted at the end of an ordinary procedure, the Commission found that, by participating in that cartel, Lantmännen had infringed Article 101(1) TFEU and Article 53(1) of the EEA Agreement and imposed on Lantmännen a fine of EUR 47.718 million on that basis.

Lantmännen brought an action for annulment of that decision before the General Court, alleging, as its principal argument, a failure to respect the presumption of innocence and, in the alternative, a failure by the Commission to respect the duty of impartiality.

Findings of the Court

In the first place, the Court rejects the plea that the Commission failed to have regard to their right to be presumed innocent, in particular in so far as the settlement decision contained clear and unambiguous references to the participation in the infringement at issue and the alleged liability of the undertakings which had not settled, such references not being necessary for Abengoa’s liability to be called into question.

On that point, the Court points out that, while the Commission was indeed required to ensure that the right to be presumed innocent of undertakings which had refused to enter into a settlement and which were the subject of an ordinary procedure was preserved, the fact remains that, in the settlement decision, the Commission took sufficient drafting precautions in order to avoid a premature judgement as to Lantmännen’s participation in the cartel in question.

²⁷ European Commission Decision C(2023) 8320 final of 7 December 2023 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case AT.40054 – Ethanol Benchmarks (‘the contested decision’)).

²⁸ Decision C(2021) 8913 final of the European Commission of 10 December 2021 (‘the settlement decision’).

After having established the defined term 'other parties to the investigation' in order to refer in the settlement decision to Lantmännen and Alcogroup jointly, the Commission stated on a number of occasions that the 'other parties to the investigation' were not the addressees of the settlement decision and that that decision neither established nor sought to establish, even on a preliminary basis, any liability of those other parties for any participation in any infringement.

Contrary to Lantmännen's assertions, those drafting precautions were not rendered devoid of sense in the remainder of the settlement decision. It is true that the scope of some of the statements disputed by Lantmännen could be regarded as lacking precision as to whether the legal classification made therein extends not only to the conduct of Abengoa, but also to that of the 'other parties to the investigation'. However, in the light of their reasoning and context, the references to 'other parties to the investigation' in those statements constitute, at most, drafting errors, which do not, in themselves, entail any clear, explicit or implicit assessment of the guilt of the non-settling parties.

The Court also rejects Lantmännen's complaints that the Commission gave more information relating to their involvement in the cartel than was necessary for the purposes of Abengoa incurring liability.

In that regard, the Court states that the disputed references to the 'other parties to the investigation' in the settlement decision were, without exception, references to the parties and Abengoa jointly, the latter being presented as the party mainly responsible for the unlawful conduct. Accordingly, those references are used only to describe and classify Abengoa's conduct and may therefore be regarded as being objectively necessary for that purpose.

In the second place, the Court rejects Lantmännen's plea, raised in the alternative, that the adoption of the settlement decision for Abengoa prior to the ordinary procedure being closed compromised the Commission's impartiality as regards Lantmännen.

On that point, the Court recalls, first of all, that the right to good administration, enshrined in Article 41 of the Charter, provides that every person has the right, *inter alia*, to have his or her affairs handled impartially by the institutions of the European Union. That requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned.

Pointing out that the alternative plea put forward by Lantmännen covers solely the concept of 'objective impartiality', the Court then finds that Lantmännen's arguments do not support the conclusion that there are legitimate doubts as to possible bias on the part of the Commission as regards their guilt in relation to the infringement at issue.

In support of this, the Court rejects Lantmännen's argument that the fact that the settlement decision was addressed exclusively to a single undertaking meant that the Commission necessarily was required to conclude that at least one 'other party to the investigation' had participated.

Indeed, as is apparent from the analysis of the first plea, the adoption of the settlement decision does not, in itself, entail any legal consequence affecting decisions taken at a later stage in the ordinary procedure as regards a non-settling party, since the Commission is only bound by the statement of objections and is required to take into consideration the new information brought to its attention during that procedure.

In that context, the Court points out, moreover, that, in its decision adopted in respect of Alcogroup, the Commission ultimately reached the conclusion that the evidence in the file was not sufficiently conclusive to support the conclusion that Alcogroup had participated in the infringement after 14 March 2013, with the result that the Commission was time-barred from imposing a fine on it. Since the settlement decision does not affect the outcome of the ordinary procedure, there was nothing to prevent the Commission from adopting a decision similar to that concerning Alcogroup in respect of Lantmännen, following the examination of the evidence placed on the file in the ordinary procedure, even after that procedure had been closed in respect of Alcogroup.

The Court also rejects Lantmännen's argument that the Commission's reasoning in a number of passages of the contested decision and during certain exchanges in the ordinary procedure illustrated the Commission's lack of impartiality. According to the Court, it is not apparent either from

Lantmännen's arguments concerning the content of the contested decision or from any of the documents in the file submitted to it for assessment that the administrative procedure was not organised so as to ensure sufficient guarantees to exclude any legitimate doubt as to possible bias.

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

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

Judgment of the Court of Justice (Second Chamber) of 29 January 2026, *Meliá Hotels International*, C-286/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union – Directive 2014/104/EU – Article 5(1) – Scope – Special declaratory action for the disclosure of documents preceding a potential action for damages – Assessment of the plausibility of the claim for damages

Ruling on a request for a preliminary ruling from the Supremo Tribunal de Justiça (Supreme Court, Portugal), the Court of Justice interprets the provisions of Directive 2014/104²⁹ which govern the disclosure before national courts of evidence in the control of the defendant or a third party in the context of an action for compensation for harm caused by infringements of the competition rules.

On 21 February 2020, the European Commission imposed a fine on the hotel company *Meliá Hotels International*, S.A. ('*Meliá*') for having infringed Article 101 TFEU and Article 53 of the EEA Agreement³⁰ by implementing, by means of contracts, vertical practices that differentiated between consumers on the basis of their nationality or country of residence.³¹

Associação lus Omnibus, a consumer protection association, brought a special declaratory action before the Portuguese court with jurisdiction seeking from *Meliá* the disclosure of documents that were relevant to a potential collective action for damages brought on behalf of consumers in Portugal who were harmed by the anti-competitive practice identified by the Commission.

The courts of first and second instance upheld that special declaratory action, and *Meliá* subsequently appealed to the Portuguese Supreme Court.

In those circumstances, the Portuguese Supreme Court decided to refer a number of questions to the Court of Justice for a preliminary ruling concerning Article 5(1) of Directive 2014/104, which requires Member States to ensure that, in proceedings relating to compensation for the harm caused by infringements of the competition rules, the claimant can obtain from the national court an order requiring the defendant or a third party to disclose relevant evidence, provided that it has substantiated the plausibility of his or her claim for damages by presenting sufficient and reasonably available facts and evidence.

In that context, the Portuguese Supreme Court asks, in essence, whether Article 5(1) of Directive 2014/104 is to be interpreted as meaning that:

²⁹ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1).

³⁰ Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement').

³¹ Decision C(2020) 893 final relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.40528 – *Meliá* (Holiday Pricing)).

- it applies to an action under national law seeking the disclosure of evidence prior to the bringing of an action for compensation for damage caused by infringements of competition rules;
- the claimant's demonstration that its claim for damages is plausible requires proof that it is more likely than not that the conditions for liability for an infringement of competition law are met; and
- a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object is sufficient to establish the plausibility of the claim for damages, and whether the answer to that question is affected by the fact that that decision was adopted at the end of a settlement procedure.

Findings of the Court

In the first place, following a literal, systematic and teleological interpretation, the Court confirms that Article 5(1) of Directive 2014/104 is applicable to a prior action such as that provided for in the present case by Portuguese law, which allows persons harmed by an infringement of the competition rules to obtain access to the relevant evidence before the bringing of an action for damages on that basis.

According to the Court, that interpretation is supported, in particular, by the objectives of Directive 2014/104, which are to facilitate the exercise of the right to damages, in view of the need to remedy the information asymmetry characterising those disputes, and thus to ensure the effectiveness of the private enforcement of competition law.

In the second place, the Court examines the question referred for a preliminary ruling asking whether the condition laid down in the first subparagraph of Article 5(1) of Directive 2014/104, which makes the gathering of requested evidence dependent on the claimant submitting a reasoned justification supporting the plausibility of its claim for damages, is met where there is a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object, and whether the answer to that question is affected by the fact that that decision was adopted at the end of a settlement procedure.

In that regard, the Court observes, first of all, that Article 5(1) of Directive 2014/104 requires, in essence, that the person injured by an infringement of competition law must put forward, in support of his or her request for the disclosure of evidence, a reasoned justification containing reasonably available facts and evidence sufficient to establish the plausibility of his or her claim for damages, that is to say, the plausibility of the existence of an infringement, of harm and of a causal link between that infringement and that harm.

Regarding the demonstration of the plausibility of the infringement, the Court notes, next, that a Commission decision finding an infringement of Article 101 TFEU enables the national court to find that the existence and, a fortiori, the plausibility of the infringement have been established, since the national court cannot take decisions running counter to such a decision. By contrast, that decision is not sufficient, as such, to support the plausibility of a claim for damages in all circumstances. To that end, it is still necessary to demonstrate the plausibility of harm and of the causal link.

Regarding the demonstration of the plausibility of the harm, the Court recalls, in addition, that Article 17(2) of Directive 2014/104 establishes a rebuttable presumption as to the existence of harm resulting from a cartel which, as follows from point 14 of Article 2 of that directive, must be understood as a horizontal restriction of competition between two or more competitors. This therefore precludes such a rebuttable presumption from applying to a vertical restriction of competition involving non-competing undertakings which operate at different levels of the production or distribution chain.

Consequently, in the event of a Commission decision finding a prohibited cartel, the plausibility of the harm caused by the infringement must be deemed to have been established, unless the defendant can prove otherwise. However, the same does not apply in the event of a Commission decision finding an infringement of Article 101 TFEU in the form of a vertical restriction, even if it is a restriction of competition by object. That being said, such a decision may include relevant indicia for the purposes of assessing the plausibility of the harm and the causal link.

In the light of the foregoing, the Court concludes that Article 5(1) of Directive 2014/104 must be interpreted as meaning that a Commission decision finding an infringement of EU competition law in the form of a vertical restriction by object is not sufficient to establish the plausibility of a claim for

damages, since that claim requires proof not only of the plausibility of such an infringement, as established by such a decision, but also of damage and of a causal link between that damage and that infringement. The fact that that decision was made at the end of a settlement procedure makes no difference to the answer to that question.

In the last place, the Court finds that, in order to demonstrate the plausibility of a claim for damages within the meaning of Article 5(1) of Directive 2014/104, it is not necessary to establish that it is more likely than not that the conditions for liability for an infringement of competition law are met. It is sufficient for the claimant to demonstrate that the assumption that those conditions are met is reasonably acceptable.

Pointing out that the concept of plausibility within the meaning of Article 5(1) of Directive 2014/104 must be given an autonomous interpretation in EU law, the Court notes that, according to its usual meaning, the concept of the plausibility of a claim for damages does not require a particularly high degree of probability that the conditions for liability are met, but rather suggests that it is necessary and sufficient to convince the national court ruling on the request for disclosure of evidence that the assumption that those three conditions are met is reasonably acceptable.

That interpretation is supported by a contextual analysis of the concept of plausibility of the claim for damages set out in Article 5(1) of Directive 2014/104. First, in the general scheme of that provision, read in the light, in particular, of recitals 6, 14 and 15 of that directive, the fact that the claim for damages has been demonstrated to be plausible does not result in compensation being awarded in the context of an action on the merits. Rather, it leads to the issuance of an order for the prior disclosure of evidence necessary for such an action to be effective. The standard of proof required to obtain the evidence necessary for the purposes of the main action must therefore be lower than that required for the purpose of establishing that the conditions for incurring substantive liability are satisfied.

Second, it is apparent from Article 5(1) of Directive 2014/104 and recital 16 of that directive that the plausibility of the claim for damages must be established solely on the basis of the facts and evidence which are reasonably available to the claimant, which reflects the intention of the EU legislature not to impose an excessive burden of proof on that applicant, but merely to require the claimant to make a plausible assertion that an infringement of competition law has caused him or her harm.

According to the Court, that interpretation is also the only interpretation compatible with the objectives of Directive 2014/104, which seek, inter alia, to remedy the information asymmetry which characterises actions for damages for infringements of competition law. The evidence necessary to prove a claim for damages is often held exclusively by the opposing party or by third parties, and is not sufficiently known by, or accessible to, the claimant.

If the claimant were required to establish, in support of his or her request for the disclosure of evidence necessary for an action for damages, that it is more likely than not that the conditions for liability for an infringement of competition law are met, that would constitute a strict legal requirement that could prevent the effective exercise of the right to compensation. Such an evidentiary requirement would be incompatible with the objective of facilitating actions for damages, since the standard of proof required would make it virtually impossible or excessively difficult for the claimant to bring an action for damages.

Accordingly, the objectives of Directive 2014/104 support the view that the concept of plausibility of the claim for damages and of the claimant's burden of proof should be interpreted as meaning that the claimant must, on the basis of the information reasonably available to him or her, convince the national court ruling on his or her request for disclosure of evidence that it is reasonably acceptable to assume that the three cumulative conditions for liability for an infringement of competition law are met.

VI. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (Eighth Chamber) of 14 January 2026, Leone and Others v EUIPO – Incom (Leone), T-64/25

[Link to the full text of the judgment](#)

EU trade mark – Invalidity proceedings – EU word mark Leone – Relative ground for invalidity – Right to an earlier name under Austrian law – Article 60(2)(a) of Regulation (EU) 2017/1001

By its judgment, the General Court annuls the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO)³² and rules on the meaning of the right to a name under Article 60(2)(a) of Regulation 2017/1001³³ and the relationship between that provision and the national law relied on by the parties, under which an earlier right enjoys protection.

In 2022, Ms Lisa Leone, Mr Giorgio Leone and Leone & Leone OG, the applicants, filed an application for a declaration of invalidity³⁴ of the EU word mark Leone.³⁵ Their application was based, inter alia, on three earlier rights allegedly protected under Austrian law.

The Cancellation Division of EUIPO rejected the application for a declaration of invalidity in its entirety. That decision was confirmed by the Board of Appeal of EUIPO, which found that the earlier rights relied on by the applicants fell within the scope of Article 60(1)(c) of Regulation 2017/1001 and not that of Article 60(2)(a) of that regulation, with the result that the application for a declaration of invalidity was unfounded.

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

Findings of the Court

As a preliminary point, the Court recalls that, when interpreting a provision of EU law, it is necessary to consider its wording, the context in which it occurs and the objectives pursued by the rules of which it is part.

First, as regards the wording of Article 60(2)(a) of Regulation 2017/1001, the Court notes, first, that the words 'right to a name' do not provide any support for a restrictive interpretation to the effect that that provision concerns only that right as an attribute of personality and does not cover commercial exploitation of a name.

Second, it notes that neither that article nor any other provision of EU law defines the meaning of the 'right to a name' or the conditions under which it is possible to have the use of an EU trade mark prohibited on that basis, but that that article makes a reference to national law for that purpose. Thus, EUIPO may declare an EU trade mark invalid, upon the application of the person concerned, where its use may be prohibited pursuant to, inter alia, the right to a name protected by national law.

Third, the form of words 'right to a name' used in that article does not exclude the possibility that such a right may lie, under national law, not only in a surname, but also in a trade name, such as the name

³² Decision of the Second Board of Appeal of EUIPO of 27 November 2024 (Case R 971/2023-2).

³³ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).

³⁴ On the basis of Article 60(2)(a) of Regulation 2017/1001, in conjunction with provisions of Austrian law.

³⁵ The goods and services covered by that mark are in Class 30 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and consist of ice creams and various ice-cream products.

of a company or other legal person, or the name under which an undertaking presents itself or a business name.

Next, as regards the context of Article 60(2) of Regulation 2017/1001, the Court finds that that article, which lists four earlier rights which may be invoked by the person concerned in connection with an application for a declaration of invalidity of an EU trade mark, contains the adverb 'in particular', stating that that list is not exhaustive. It is apparent from that non-exhaustive list that the rights cited by way of examples are intended to protect interests of different types. Therefore, the wording and structure of that article do not allow, if a right to a name is asserted, the application to be restricted merely to situations where the registration of an EU trade mark conflicts with a right intended exclusively to protect a name as an attribute of the personality of the person concerned.

Moreover, the expression 'another earlier right' appearing in Article 60(2) of Regulation 2017/1001 draws a distinction between the rights listed there, which include the 'right to a name', and the rights referred to in Article 60(1)(c) of that regulation, which refers to Article 8(4) of that regulation, namely 'a non-registered trade mark or ... another sign used in the course of trade'.

In that regard, the Court notes, first, that the reference to 'a non-registered trade mark' must be understood as designating a sign the function of which is to distinguish the goods or services of one undertaking from those of other undertakings and thus to guarantee the commercial origin of those goods or services. Even if 'personal names' can constitute trade marks, the fact remains that, as an indication of the commercial origin of the goods or services covered by it, a mark consisting of a personal name has a different function than a personal name as such, which identifies a particular person. Secondly, as regards the wording 'another sign used in the course of trade', the Court points out that the purpose of a company, trade or shop name is not, of itself, to distinguish goods or services. Accordingly, where the use of a company name, trade name or shop name is limited to identifying a company or designating a business which is being run, such use cannot be considered as being 'in relation to goods or services'.

It follows that names, including trade names, can be covered by the expression 'non-registered trade mark or [other] sign used in the course of trade' within the meaning of Article 60(1)(c) of Regulation 2017/1001, read in conjunction with Article 8(4) of that regulation, where they are used in the course of trade as signs intended to designate goods or services and so to guarantee the commercial origin of those goods or services. By contrast, such names, used to identify a person or an undertaking as such, do not fall within that definition and may fall within the scope of the 'right to a name' under Article 60(2)(a) of that regulation, the precise content of which and the conditions for the protection of which are defined solely in applicable national law.

Consequently, the distinction between the earlier rights referred to, respectively, in Article 60(1)(c) of Regulation 2017/1001, read in conjunction with Article 8(4) of that regulation and in Article 60(2)(a) of that regulation is not based on the use or lack of use of the earlier rights in the course of trade, but on the difference in nature that characterises the grounds for invalidity referred to in those provisions.

Lastly, as regards the objectives pursued by the legislation at issue, the Court observes that the rules on the EU trade mark are aimed at contributing to the system of undistorted competition in the Union, in which each undertaking must be able to have registered as trade marks signs which enable the consumer to distinguish the goods or services originating from that undertaking.

Furthermore, Article 60(1)(c) of Regulation 2017/1001, read in conjunction with Article 8(4) of that regulation, addresses the situation of a conflict between a non-registered trade mark or another sign used in the course of trade and an EU trade mark. Such a conflict therefore involves signs that are of the same nature and have the same essential function, which is to distinguish the goods and services of one undertaking from those of other undertakings. Such a conflict is not regarded as liable to distort competition in the internal market, in particular, where the non-registered trade mark or other sign is not used in the course of trade or where it is of merely local significance, a condition the observance of which must be examined in accordance with the uniform standards established by Regulation 2017/1001.

Article 60(2) of that regulation, for its part, addresses cases of conflict between an EU trade mark and other rights of a different nature whose function is other than that of distinguishing the goods and services of one undertaking from those of other undertakings. Accordingly, point (a) of that provision

addresses, in particular, the case where the 'right to a name', possibly used in the course of trade to identify a person or undertaking, as such, is protected against potential commercial infringements caused by an EU trade mark. In such a case, the content of and the conditions for asserting such a right against a later EU trade mark flow from the national law governing its protection.

In the light of the foregoing, the Court annuls the decision of the Board of Appeal, in so far as it found that the protection under Article 60(2)(a) of Regulation 2017/1001 could not extend to the 'right to a name' on the sole ground that the names claimed had been used, *inter alia*, in the course of trade.

2. CHEMICALS

Judgment of the General Court (Sixth Chamber) of 21 January 2026, Djchem Chemicals Poland and The Goodyear Tire & Rubber Company v Commission, T-174/24

[Link to the full text of the judgment](#)

Environment and protection of human health – Regulation (EC) No 1272/2008 – Classification, labelling and packaging of certain substances and certain mixtures – Delegated Regulation (EU) 2024/197 – Classification and labelling of 1,4-Benzenediamine, N,N'-mixed Ph and tolyl derivs. – Criteria for classification of a substance in the hazard class reproductive toxicity category 1B – Multi-constituent substance – Relevance of adverse effects in humans – Read-across – Manifest errors of assessment – Equal treatment – Proportionality – Rights of the defence

In dismissing the action for annulment, the General Court examines, for the first time, certain questions relating to the application of the criteria for the harmonised classification and labelling of a substance, under Regulation No 1272/2008,³⁶ in the hazard class reproductive toxicity category 1B, which corresponds to presumed human reproductive toxicants, including adverse effects on sexual function and fertility of adult men and women and adverse effects on the development of their offspring. The Court also explains the use of the read-across approach and the application of the principle of proportionality in that regard.

The present case concerns the harmonised classification and labelling of the substance 1,4-Benzenediamine, N,N'-mixed Ph and tolyl derivs. ('DAPD'), which is used in synthetic materials, such as polymers or industrial rubber products.

The applicants, Djchem Chemicals Poland S.A. and The Goodyear Tire & Rubber Company, are companies which are incorporated under, respectively, Polish law and the law of the United States of America, and which market and use DAPD and products containing that substance.

In February 2021, the competent German authority³⁷ submitted to the European Chemicals Agency (ECHA) a proposal for harmonised classification and labelling of DAPD for, *inter alia*, the hazard class reproductive toxicity, category 1B, with the hazard statement code 'H360FD'³⁸ (May damage fertility. May damage the unborn child). Between March and May 2021, several interested parties submitted their comments on that classification proposal.

³⁶ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1).

³⁷ Namely, the Bundesstelle für Chemikalien (Federal Office for Chemicals, Germany) of the Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (Federal Institute for Occupational Safety and Health, Germany).

³⁸ Proposal for harmonised classification and labelling submitted in accordance with Article 37(1) of Regulation No 1272/2008.

In November 2021, the ECHA Committee for Risk Assessment ('RAC') adopted an opinion, by which it proposed the classification of DAPD in, inter alia, the hazard class reproductive toxicity, category 1B, with the hazard statement code 'H360FD'.³⁹

In October 2023, on the basis of that opinion, the European Commission adopted Delegated Regulation 2024/197,⁴⁰ by which DAPD was added to Table 3 of Part 3 of Annex VI to Regulation No 1272/2008, with harmonised classification and labelling in the hazard class reproductive toxicity, category 1B, with the hazard statement code 'H360FD' ('the contested classification').

The applicants then brought an action before the General Court seeking annulment of Delegated Regulation 2024/197, as regards the harmonised classification and labelling of DAPD.

Findings of the Court

In the first place, the Court rejects as unfounded the applicants' plea alleging (i) a lack of clear evidence demonstrating the relevance of the adverse effects of DAPD in humans; (ii) a failure to take into account all the relevant information; and (iii) failure to use the read-across approach.

The Court begins by recalling that, in accordance with Regulation No 1272/2008, the classification for reproductive toxicity is divided into categories, including, inter alia, category 1B, corresponding to presumed human reproductive toxicants, and category 2, corresponding to suspected human reproductive toxicants.

Next, the Court considers that, contrary to what the applicants claim, the criteria for classification of a substance as toxic for reproduction category 1B, laid down in Regulation No 1272/2008, do not require clear evidence of the relevance, for humans, of the adverse effects observed in animals. However, those criteria require, in essence, the existence of data, in particular from animal studies, clearly demonstrating an adverse effect on sexual function and fertility or on development in animals, as well as the absence of other toxic effects. Where other toxic effects are observed, a substance is presumed to be toxic for human reproduction if there are data demonstrating that the toxic effect on reproduction is considered not to be a secondary non-specific consequence of those other toxic effects. Furthermore, there must be no information casting doubt on the relevance of the adverse effects for humans and making the classification of a substance in the category of suspected human reproductive toxicants (category 2) possibly more appropriate.

In the present case, RAC found that DAPD had adverse effects both on sexual function and fertility and on development, relying on data from animal studies which it identified. It considered that those studies demonstrated adverse effects on female fertility and adverse effects on foetal development, which were regarded as relevant for humans. It stated, inter alia, that there were no available human data on adverse effects on sexual function or fertility in the event of exposure to that substance and that there was no evidence that the adverse effects observed in animal studies were not relevant for humans. The Court concludes that the applicants' line of argument did not call into question the plausibility of that assessment by RAC.

As regards the allegation that the Commission failed to take into account all the relevant information for the purposes of the contested classification, the Court, after referring to the criteria for the classification of a substance as toxic for reproduction category 1B, rejects that allegation. In that context, it recalls that an assessment of hazards under Regulation No 1272/2008 must be distinguished from the risk assessment provided for in Regulation No 1907/2006 and that that assessment of the hazards linked to substances' intrinsic properties must not be limited in the light of specific circumstances of use, and may be properly carried out regardless of the place where the substance is used or the possible levels of exposure to the substance.

As regards the Commission's non-use of the read-across approach, the Court notes that that approach makes it possible to predict, by interpolation, the properties of a target substance by using

³⁹ In accordance with Article 37(4) of Regulation No 1272/2008.

⁴⁰ Commission Delegated Regulation (EU) No 2024/197 of 19 October 2023 amending Regulation (EC) No 1272/2008 as regards the harmonised classification and labelling of certain substances (OJ L 2024/197).

data relating to one or more substances in the same group.⁴¹ However, the use of that approach is subject to the conditions referred to in Regulation No 1272/2008 and is not, in any event, mandatory.⁴² Thus, even if the conditions for using that approach were met, the fact remains that the Commission was not under an obligation to use that approach, in view of the broad discretion available to it. Moreover, although the evaluation of substances chemically related to the substance under study may also be taken into account for the classification, particularly when information on the substance under study is scarce, the Court finds that that was not the case here since there were studies relating to DAPD itself.

In the second place, the Court rejects the plea alleging breach of the principle of equal treatment. In that regard, the applicants maintained that the classification of the substance at issue as belonging to category 1B was arbitrary and unjustified, in so far as that substance is similar to other substances, which are classified as toxic for reproduction category 2. However, the Court considers, in essence, that the procedure for harmonisation of classification and labelling of substances under Regulation No 1272/2008 is unique and autonomous and, on that basis, does not entail any comparison with the classification and labelling of other substances in other procedures. Thus, that procedure relates only to the substance which is the subject of the procedure for harmonised classification and labelling at issue. It follows that different classifications of other substances with alleged similarities to the substance at issue cannot give rise to a breach of the principle of equal treatment.

In the third and last place, the Court rejects as unfounded the plea alleging breach of the principle of proportionality and infringement of the rights of the defence.

As regards the principle of proportionality, the Court notes that the purpose of Regulation No 1272/2008 is to ensure a high level of protection of human health and the environment as well as the free movement of chemical substances, mixtures and certain specific articles within the EU market. It states that, in the context of that regulation, the objective of free movement cannot be achieved without ensuring a high level of protection of human health and the environment, which is achieved by, inter alia, the harmonised classification and labelling of substances in order to identify and communicate their hazards. Moreover, harmonised classification and labelling do not result in a prohibition on the placing on the market of substances which comply with the provisions of that regulation. Thus, the Court considers that, in the present case, the contested classification, in so far as it adopts a harmonised classification and labelling under Article 37 of Regulation No 1272/2008, in order to identify and communicate the reproductive toxicity hazard of DAPD, must be regarded as a means of enhancing protection of health which, however, does not prevent the free movement of the substance within the EU market.

Furthermore, as regards the applicants' argument based on the absence of an economic cost-benefit analysis, the Court observes, in essence, that such an analysis is not provided for in the context of the procedure for harmonisation of classification and labelling of substances referred to in Title V of Regulation No 1272/2008 and that, in any event, such an analysis cannot derogate from the criteria, for classification of substances, set out in Regulation No 1272/2008.

As regards the alleged infringement of the rights of the defence and, in particular, of the right to be heard, the Court recalls, in the case of acts of general application, that neither the process of drafting them nor those acts themselves require, in accordance with the general principles of EU law, such as the right to be heard, consulted or informed, the participation of the persons affected. The situation would be different if an express provision of the legal context governing the adoption of that act confers such a procedural right on a person affected.

The Court explains that Delegated Regulation 2024/197 lays down measures of general application, including the contested classification. Against that background, the procedural rights which the

⁴¹ Section 1.5. of Annex XI to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

⁴² As follows from Section 3.7.2.3.1. of Annex I to Regulation No 1272/2008.

applicants enjoy in the procedure for harmonisation of classification and labelling are those expressly provided for in Regulation No 1272/2008.

In that regard, the Court notes that Article 37(4) of Regulation No 1272/2008, which provides for the possibility of submitting comments on the proposal for harmonised classification and labelling, must be interpreted in the light of the procedure for harmonisation of classification and labelling of substances, referred to in that article. That procedure takes place in several stages, namely, first of all, the submission of a classification proposal; next, the adoption of an opinion by RAC 'giving the parties concerned the opportunity to comment'; subsequently, the forwarding, by ECHA, of that opinion and all comments to the Commission; and, lastly, the Commission's adoption of a delegated act, where it considers that harmonisation of classification and labelling of the substance concerned is appropriate.

The Court concludes from this that the public consultation provided for in Article 37(4) of Regulation No 1272/2008 is intended to allow interested parties to comment on the classification proposal and thus possibly to contribute elements not mentioned in that proposal, so as to allow RAC to take into consideration, in its opinion, the comments and elements presented by the interested parties during that phase. By contrast, that article does not provide for the possibility for the parties concerned to submit observations on the RAC opinion.

Thus, the Court observes that, in the present case, the applicants had the right to comment on the proposal for harmonised classification and labelling and to be heard in that regard before RAC, which did happen, and that RAC took into consideration their comments.

In those circumstances, the Court finds that the applicants did not have a right to be heard on the RAC opinion.

VII. ENVIRONMENT: RIGHT OF ACCESS TO INFORMATION

Judgment of the Court of Justice (Fifth Chamber) of 15 January 2026, Coillte Cuideachta Ghníomhaíochta Ainmnithe, C-129/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Environment – Aarhus Convention – Directive 2003/4/EC – Public access to environmental information – Concepts of 'applicant' and 'request' – Anonymous applicants or applicants using pseudonyms – Right of access to environmental information – Practical arrangements – Obligation for applicants to provide their actual name and a current physical address – Invalidity of the request

Ruling on a request for a preliminary ruling, the Court clarifies the concept of 'request for access to environmental information' within the meaning of Directive 2003/4,⁴³ read in the light of the Aarhus Convention,⁴⁴ and adjudicates on whether a public authority may deem such a request invalid on the ground that the applicant has failed to comply with national legislation requiring him or her to indicate his or her actual name and/or current physical address.

⁴³ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

⁴⁴ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention').

Between March and June 2022, Coillte Cuideachta Ghníomhaíochta Ainmnithe ('Coillte'), a commercial forestry undertaking partly owned by the Irish State, received 97 requests for access to environmental information from anonymous applicants or applicants using pseudonyms, without a physical address being provided.

The national legislation transposing Directive 2003/4 provides that any person making a request for access to environmental information must indicate his or her actual name and/or address. Taking the view that the anonymous or pseudonymised requests were not genuinely seeking to elicit environmental information, but were part of an organised campaign engaged in for questionable motives such as disrupting its operations, Coillte asked the applicants concerned to provide it with their current addresses and to confirm that, in those requests, they had used their real legal names. Having received no response, it essentially rejected those requests as invalid.

The applicants concerned then requested Coillte to carry out an internal review of those rejection decisions. That undertaking again asked those applicants to confirm or indicate their legal names and to provide it with their current addresses. That information not having been provided, the requests for internal review were rejected as invalid.

Of those rejection decisions, 81 were the subject of administrative appeals to the Commissioner for Environmental Information (Ireland). Ruling on the first 58 cases of rejection, the Commissioner adopted a decision finding that Coillte had not been justified in treating the requests for environmental information concerned as invalid.

Coillte brought an appeal against that decision before the High Court (Ireland), the referring court. That court referred questions to the Court for a preliminary ruling seeking to ascertain, in essence, whether the concept of 'applicant', within the meaning of Article 2(5) of Directive 2003/4, read in the light of the Aarhus Convention, must be interpreted as meaning that it requires a natural or legal person to be identified by his or her actual name and/or a current physical address and, if not, whether it precludes national legislation which requires such identification of the applicant.

Findings of the Court

The Court begins by pointing out that Directive 2003/4 does not make the status of 'applicant' subject to the identification of the natural or legal person requesting environmental information by indicating his or her actual name and/or his or her current physical address, meaning that the Member States are not under the obligation to require such identification.

That absence of an obligation is not called into question by the objectives pursued by Directive 2003/4, namely, first, to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise and, second, to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public.

That being so, the Court notes that Directive 2003/4 does not require the public authorities to make environmental information held by them or on their behalf available to any entity other than a natural or legal person. Nor does that directive require those authorities, after having given a natural or legal person access to that information, to give access to the said information, within a very short period of time, following a significant number of identical requests made by that natural or legal person. Such requests are liable to affect the effectiveness of access to environmental information of other natural or legal persons, given that the public authorities do not have unlimited resources.

Accordingly, in the absence of provisions of EU law defining more precisely the practical arrangements for access to environmental information, it is for the Member States to define in their respective legal systems detailed rules for ensuring that requests for access to environmental information are actually made by natural and legal persons and do not constitute requests such as those referred to above.

The Court specifies, however, that those detailed rules must not be less favourable than those governing similar situations subject to domestic law (principle of equivalence) or make it impossible in practice or excessively difficult to exercise rights conferred by EU law (principle of effectiveness). In this case, the Court has no doubts as to the conformity of the national legislation at issue with the principle of equivalence. In addition, disclosing the actual name and/or current physical address of

the applicant concerned does not make it impossible in practice or excessively difficult to exercise the right of access to environmental information conferred by EU law.

In those circumstances, the Court concludes that national legislation may require that any person making a request for access to environmental information within the meaning of Directive 2003/4 be identifiable by the public authority to which such a request is made, by name, address and any other relevant contact information, in compliance with the principles of equivalence and effectiveness.

VIII. ENERGY

Judgment of the Court of Justice (Fourth Chamber) of 22 January 2026, *Secab*, C-423/23

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Internal market for electricity – Directive (EU) 2019/944 – Article 5 – Market-based supply prices – Directive (EU) 2018/2001 – Promotion of the use of energy from renewable sources – Regulation (EU) 2022/1854 – Emergency intervention to address high energy prices – Articles 6 and 7 – Cap on the market revenues obtained by electricity producers using certain energy sources – Article 8 – National measures further limiting market revenues – Conditions – National legislation not guaranteeing that producers retain 10% of surplus revenues above the cap – Preservation of investments in the renewable energy sector – No cap on the revenues obtained from the sale of energy produced from hard coal – No legislation differentiating between different sources of production

Ruling on a request for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia (Regional Administrative Court, Lombardy, Italy), the Court of Justice provides clarification as to the option that Member States have under EU law to cap market revenues obtained by certain electricity producers, in particular during the 2022/2023 winter period, which was characterised by a surge in energy prices.

By the adoption of Regulation 2022/1854,⁴⁵ the European Union established a temporary emergency intervention to address the surging energy prices. Thus, for the period from 1 December 2022 to 30 June 2023, that regulation provides, inter alia, for a mandatory cap on market revenues obtained by electricity producers using certain energy sources, generally characterised by their lower marginal costs when compared to those of gas electricity producers, for which the Russian Federation's war of aggression against Ukraine led to a significant reduction in supply. The energy sources concerned include hydropower without reservoir.

At the beginning of 2022, the Italian Republic adopted Decree-Law No 4/2022,⁴⁶ Article 15-*bis* of which provided for a temporary measure capping market revenues obtained by operators of certain plants producing electricity from renewable energy sources for the period from 1 February 2022 to 30 June

⁴⁵ 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).

⁴⁶ Decree-Law No 4/2022, converted, with amendments, by legge n. 25 – Conversione in legge, con modificazioni, del decreto-legge 27 gennaio 2022, n. 4, recante misure urgenti in materia di sostegno alle imprese e agli operatori economici, di lavoro, salute e servizi territoriali, connesse all'emergenza da COVID-19, nonché per il contenimento degli effetti degli aumenti dei prezzi nel settore elettrico (Law No 25 converting into law, with amendments, Decree-Law No 4 on urgent measures to support businesses and economic operators, labour, health and local services, in the context of the COVID-19 crisis, and to contain the effects of price increases in the electricity sector), of 28 March 2022 (GURI No 73, of 28 March 2022, Ordinary Supplement No 13) ('Decree-Law No 4/2022'), as amended by Decree-Law No 115/2022, converted, with amendments, by legge n. 142 – Conversione in legge, con modificazioni, del decreto-legge 9 agosto 2022, n. 115, recante misure urgenti in materia di energia, emergenza idrica, politiche sociali e industriali (Law No 142, amending Decree-Law No 115 of 9 August 2022 on urgent measures in the field of energy, water crisis, social and industrial policies) of 21 September 2022 (GURI No 221 of 21 September 2022, p. 1).

2023. Hydroelectric plants are included among those plants. Moreover, Decree Law No 197/22⁴⁷ was adopted, which, pursuant to Regulation 2022/1854, provided for a cap similar to that applicable to other types of plants, for the period from 1 December 2022 to 30 June 2023.

Although that Article 15-*bis* of Decree-Law No 4/2022 was adopted prior to Regulation 2022/1854, it constitutes, in essence, the provision of national law implementing that regulation as regards energy generated by plants referred to in that provision, for the period from 1 December 2022 to 30 June 2023.

Pursuant to Article 15-*bis*, the Italian company Secab Società Cooperativa, which is active in the production of electricity from run-of-river hydroelectric power plants, received several invoices issued by the entity authorised for that purpose. That electricity producer therefore brought an action before the Regional Administrative Court, Lombardy, seeking the annulment, inter alia, of those invoices, in support of which it claims that Article 15-*bis* of Decree-Law No 4/2022 is contrary to relevant EU law.

In those circumstances, the Regional Administrative Court, Lombardy, referred several questions to the Court of Justice for a preliminary ruling. Those questions seek, in essence, to ascertain whether Article 5(4) of Directive 2019/944⁴⁸ and Article 6(1), Article 7(1) and (5) and Article 8 of Regulation 2022/1854 preclude national legislation which, for the period from 1 February 2022 to 30 June 2023, set a cap on the market revenues obtained by electricity producers using run-of-river hydroelectric power plants, and which:

- (a) does not guarantee that those producers retain 10% of their revenues exceeding that cap;
- (b) introduces a cap lower than that provided for in Regulation No 2022/1854 and determined on the basis of an arithmetic average of the prices recorded in the corresponding market zone during the period from 1 January 2010 to 31 December 2020, adjusted for inflation; and
- (c) does not provide for a cap on revenues from the sale of energy produced from hard coal or a differentiated cap for producers of electricity from solar, geothermal or wind sources.

Findings of the Court

In the first place, the Court examines whether Article 5(4) of Directive 2019/944 or Articles 6 to 8 of Regulation 2022/1854 preclude national legislation which sets a cap on the market revenues obtained by electricity producers from run-of-river hydroelectric power plants without guaranteeing that those producers retain 10% of their revenues above that cap.

On that point, the Court recalls, first of all, that Article 5(4) of Directive 2019/944 seeks to regulate Member States' interventions in the setting of the prices at which electricity is sold by electricity suppliers to certain categories of customers. That provision therefore being unrelated to the setting of a cap on market revenues from the sale of electricity by certain producers, it does not preclude national legislation such as that at issue in the main proceedings.

As regards Regulation 2022/1854, the Court states, next, that Articles 6 to 8 of that regulation were applicable from 1 December 2022 to 30 June 2023, with the result that they cannot be interpreted as precluding national legislation such as that at issue during the period from 1 February 2022 to 30 November 2022. That clarification applies to each of the three questions of the referring court.

For the period from 1 December 2022 to 30 June 2023, the Court notes that Article 6(1), read in conjunction with Article 7(1)(d) and (5) of Regulation 2022/1854, requires Member States to cap at a maximum of EUR 180 per MWh of electricity produced the market revenues obtained by electricity producers using run-of-river hydroelectric power plants, while providing for the option – and not the obligation – for Member States to apply that cap to only 90% of the revenues referred to.

⁴⁷ Legge n. 197 – Bilancio di previsione dello Stato per l'anno finanziario 2023 e bilancio pluriennale per il triennio 2023-2025 (Law No 197 on the national provisional budget for the 2023 financial year and multi-year budget for the three-year period 2023-2025) of 29 December 2022 (GURI No 303 of 29 December 2022, Ordinary Supplement No 43).

⁴⁸ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ 2019 L 158, p. 125).

As the cap provided for in Article 15-*bis* of Decree-Law No 4/2022 is lower than that of EUR 180 per MWh of electricity produced provided for in Article 6(1) of Regulation 2022/1854, the Court points out, lastly, that, in accordance with Article 8(1) of that regulation, Member States may, in the event of a crisis, maintain or introduce measures that further limit the market revenues of producers generating electricity from run-of-river hydroelectric power plants, provided that they comply with the conditions set out in Article 8(2). However, that paragraph does not impose an obligation on Member States to apply that national cap to only 90% of the revenue exceeding that cap.

In the light of the foregoing, the Court concludes that, in so far as they are applicable *ratione temporis*, Article 6(1) and Article 8 of Regulation 2022/1854, read in the light of Article 7(5) thereof, cannot preclude national legislation which has set a cap on the market revenues obtained by electricity producers from run-of-river hydroelectric power plants on the ground that such legislation does not guarantee that those producers retain 10% of their revenues exceeding that cap.

In the second place, the Court finds that EU law also does not preclude a Member State from setting a cap on the market revenues obtained by electricity producers from run-of-river hydroelectric power plants by determining that cap on the basis of an arithmetic average of the prices recorded in the corresponding market zone during the period from 1 January 2010 to 31 December 2020, adjusted for inflation, provided that such legislation does not adversely affect investments in the renewable energy sector, within the meaning of that Article 8(2)(b) and (c) of that regulation.

For the period from 1 December 2022 to 30 June 2023, the Court notes that the mere fact that the amount of the cap set by a Member State under Article 8(1) of Regulation 2022/1854 is lower than that provided for in Article 6(1) of that regulation is not in itself such as to establish the incompatibility of that first cap with that regulation, those provisions leaving a certain margin of discretion to the Member States, which allows them to determine the cap that they set by taking into account characteristics specific to their national market.

Thus, in the absence of any binding indication contained in Regulation 2022/1854 as to the methodology to be followed by the Member States when setting a cap under Article 8(1) of Regulation 2022/1854, it is the conditions set out in paragraph 2 of that article that must be complied with, namely, in particular, not to jeopardise investment signals and ensure that investment and operating costs are covered.

The assessment of the compatibility of the cap chosen by the national authorities in the light of those criteria, however, being factual in nature and depending on the specific characteristics of the national market and on all the legal and factual circumstances characterising, *inter alia*, the situation of the electricity producers concerned, it falls within the competence of the national authorities and, in the present case, that of the referring court.

However, in order to guide the referring court in the examination that it is called upon to carry out in the case in the main proceedings, the Court specifies the relevant factors to be taken into consideration in that context, namely:

- first, the determination of the cap at issue in the main proceedings by reference to an objective criterion based on the average market conditions prevailing before the energy crisis over a relatively long period and the fact that, in addition, inflation was taken into account;
- second, the exceptional nature and the limited temporal scope of the cap at issue, in particular when they are viewed against the average period of operation of plants producing electricity from renewable sources concerned by it;
- third, the cost structure of the plants concerned and the levelised cost of energy for the technology concerned;
- fourth, the fact that the cap in question is accompanied by a mechanism creating a legal obligation to compensate the producers concerned in the event of an excessive reduction in market prices, with the result that that cap also constitutes a guaranteed minimum price for those producers, which suggests that that cap is set at a level sufficient to satisfy the conditions of Article 8(2)(b) and (c) of Regulation 2022/1854;
- fifth, the fact that, as an emergency intervention in order to ensure the protection of the public interest, Regulation 2022/1854, including the powers which it confers on Member States to set a lower

cap than that provided for in Article 6(1) of that regulation, balances the interests of renewable energy producers against those of consumers and seeks, by Article 10(1) thereof, to ensure that the surplus revenues resulting from the application of the cap on market revenues are used by Member States to finance support measures for final electricity customers that mitigate the impact of high electricity prices on those customers.

In the last place, the Court holds that EU law also does not preclude national legislation which has set a cap on the market revenues obtained by electricity producers from run-of-river hydroelectric power plants, without imposing a cap on revenues from the sale of energy produced from hard coal or a differentiated cap for producers of electricity from solar, geothermal or wind sources.

In that regard, the Court states, on the one hand, that the cap provided for in Article 6 of Regulation 2022/1854 applies to market revenues from the sale of electricity produced from the sources listed in Article 7(1) of that regulation, which do not include hard coal.

By contrast, Article 8(1) of Regulation 2022/1854 states, in point (c), that Member States may maintain or introduce national measures to limit the market revenues of producers generating electricity from sources not referred to in Article 7(1) of that regulation, and, in point (d), that Member States may set a specific cap on the market revenues obtained from the sale of electricity produced from hard coal. However, as the unequivocal wording of those provisions indicates, they are mere powers granted to the Member States. The latter are therefore not obliged to provide for a cap on market revenues obtained by producers of electricity from hard coal.

The same is true, on the other hand, of the option provided for in Article 8(1)(a) of Regulation 2022/1854, by which Member States have only the possibility of differentiating between technologies. They may therefore provide for the same revenue cap for producers of electricity from solar, geothermal and wind sources.

IX. JUDGMENT PREVIOUSLY DELIVERED

FREEDOM OF MOVEMENT: FREE MOVEMENT OF WORKERS

Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, Jouxty and Others, C-296/24 to C-307/24

[Link to the full text of the judgment](#)

Reference for a preliminary ruling – Article 45 TFEU – Freedom of movement for workers – Equal treatment – Regulation (EU) No 492/2011 – Article 7(2) – Social advantages – Family allowance – Condition for granting that allowance to a non-resident worker for a child of his or her spouse or registered partner – Requirement that that worker must ‘support’ that child – Assessment criteria – Presumption based on the existence of a joint household – Directive 2004/38/EC – Article 2(2)(c) – Concept of ‘family member’

In the context of disputes concerning the refusal of the Caisse pour l’avenir des enfants (Children’s Future Fund, Luxembourg) (‘the CAE’) to pay family allowances to frontier workers, the Court of Justice, ruling on requests for a preliminary ruling, provides clarification on the requirement that the non-resident worker must support the child of his or her spouse or registered partner in order to be entitled, under EU law, to such an allowance for that child.

The applicants in the main proceedings are frontier workers residing in Belgium, Germany or France and pursuing an activity as an employed person in Luxembourg.

By decisions of the CAE, the applicants were either refused family allowances for the children of their spouses or registered partners or had their entitlement to allowances received for such children withdrawn with effect from 1 August 2016. According to the CAE, those children did not have a child-parent relationship with the frontier workers concerned, and therefore did not have the status of 'members of the family', which confers entitlement to the family allowance provided for under Luxembourg law.

The court of first instance hearing their actions against those decisions upheld them, but the appeal court confirmed the decisions of the CAE.

The applicants in the main proceedings then lodged appeals on a point of law before the referring court.

The referring court notes that, in its judgment in *Caisse pour l'avenir des enfants*,⁴⁹ the Court made the frontier worker's entitlement to the payment of the family allowance in respect of the child of his or her spouse or registered partner, with whom that worker does not have a child-parent relationship, subject to proof that he or she supports that child.⁵⁰

In so far as, in the cases in the main proceedings, the appeal court considered that such proof had not been adduced, the referring court is uncertain as to the objective evidence capable of proving that support.

In that context, it asks the Court, in essence, whether Article 45 TFEU, Article 1(i) and Article 67 of Regulation No 883/2004, read in conjunction with Article 7(2) of Regulation No 492/2011 and with Article 2(2) of Directive 2004/38,⁵¹ as interpreted by the case-law of the Court, must be interpreted as meaning that the condition for the grant to a non-resident worker, in the Member State of employment, of a family allowance for the child of his or her spouse or registered partner, namely that that worker is required to support that child, is satisfied merely by reason of the fact that that worker and that child share the same household or whether other objective factors must be taken into account in order to establish the existence of such support.

Findings of the Court

As a preliminary point, the Court notes, as regards the family allowance at issue in the main proceedings, that it has already held, in the judgment in *Caisse pour l'avenir des enfants*,⁵² first, that an allowance of that nature is a social advantage within the meaning of Article 7(2) of Regulation No 492/2011.⁵³ Secondly, it held that national legislation under which non-resident workers are entitled to receive that family allowance solely for their own children, and not for a spouse's children with whom they have no child-parent relationship, but whom those workers support, whereas any child residing in that Member State is entitled to receive that allowance, is contrary to that provision.

In the present case, following that judgment, the appeal court held that the CAE had rightly refused to grant the family allowance at issue in the main proceedings to the applicants on the ground that they did not provide full support for the children of their spouses or registered partners.

⁴⁹ Judgment of 2 April 2020, *Caisse pour l'avenir des enfants* (Child of the spouse of a non-resident worker) (C-802/18, EU:C:2020:269).

⁵⁰ The Court relied on the interpretation of Article 1(i) and Article 67 of 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), read in conjunction with Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1) and with Article 2(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

⁵¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35).

⁵² Judgment of 2 April 2020, *Caisse pour l'avenir des enfants* (Child of the spouse of a non-resident worker) (C-802/18, EU:C:2020:269).

⁵³ It follows from that provision that non-resident workers are to enjoy, in accordance with the principle of non-discrimination, the same social and tax advantages as national workers.

In that regard, the Court recalls that, according to the case-law,⁵⁴ children are presumed to be dependent until the age of 21 years and that the status of dependent member of the family of the child of the spouse or registered partner of a frontier worker may be evidenced objectively by a joint household shared by that worker and the child concerned.

The Court infers from this that the existence of a joint household shared by the non-resident worker and the child of his or her spouse or registered partner is, in principle, sufficient in itself to demonstrate that that worker supports that child, since the joint household characterises a stable connection between them. According to the Court, any other interpretation would not only be contrary to the principle that the provisions of EU law establishing the free movement of workers must be construed broadly, but would also disregard the Court's case-law⁵⁵ which requires account to be taken of the definition of 'family member' provided for in Article 2(2) of Directive 2004/38, which includes the direct descendants of the spouse or partner, in order to assess whether the frontier worker is able to benefit indirectly from equal treatment under Article 7(2) of Regulation No 492/2011.

The Court concludes from this that the existence of a joint household shared by the non-resident worker and the child of his or her spouse or registered partner is sufficient to demonstrate that the requirement relating to support for that child is met. It may be presumed that that worker contributes to covering at least part of the household expenditure, namely, inter alia, the costs of housing and living expenses and, therefore, of meeting the needs of its members, including those of the child of the spouse or registered partner. The Court specifies, however, that that joint household does not necessarily have to be on a full-time basis. First, given the prevalence of blended families, the child may also live for part of the time with his or her other biological or adoptive parent. Secondly, because he or she is pursuing studies, the child may live away from that household for part of the time.

In view of the referring court's questions, the Court adds, first, that the national authorities or, where applicable, the national courts cannot require the non-resident worker to establish more specifically, beyond proof of the existence of a joint household, that he or she contributes to the daily expenses or to meeting the particular needs of the child concerned. That said, where there is no joint household at all between the non-resident worker and the child concerned, because, inter alia, the child is pursuing studies, other objective factors displaying a certain degree of stability, such as, in particular, contributing to that child's accommodation, travel and/or living expenses, must be capable of being taken into account in order to enable that worker to demonstrate that he or she continues to support the child.

Secondly, the existence of a maintenance contribution payable by the other biological or adoptive parent of the child of the spouse or registered partner of the non-resident worker, or the existence of visiting and accommodation rights for that parent are not circumstances that would preclude that worker from supporting that child, with whom he or she shares the same household. Such an exclusion would be contrary to the principle of a broad interpretation of the provisions establishing the free movement of workers. That is all the more so since the maintenance contribution payable by the other biological or adoptive parent of the child does not constitute a condition precluding entitlement to a family allowance for the child of the spouse or registered partner of a resident worker with whom that worker shares the same household.

Thirdly, the grant of the family allowance to a non-resident worker may be refused only in exceptional circumstances. Such a refusal may be justified only if it is apparent from the case file that that worker has made false declarations or does not contribute, in reality, in any way to the costs associated with the upkeep of the child, as those costs are entirely borne by a third party.

Consequently, under EU law,⁵⁶ the condition for the grant to a non-resident worker, in the Member State of employment, of a family allowance for the child of his or her spouse or registered partner,

⁵⁴ Judgment of 15 December 2016, *Depesme and Others* (C-401/15 to C-403/15, EU:C:2016:955).

⁵⁵ Judgments of 15 December 2016, *Depesme and Others* (C-401/15 to C-403/15, EU:C:2016:95), and of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a non-resident worker)* (C-802/18, EU:C:2020:269).

⁵⁶ The Court relies on Article 45 TFEU, Article 1(i) and Article 67 of Regulation No 883/2004, read in conjunction with Article 7(2) of Regulation No 492/2011 and with Article 2(2) of Directive 2004/38.

namely that that worker is required to support that child, is satisfied where that worker and the biological or adopted child of his or her spouse or registered partner form a family unit, which is characterised by the existence of a joint household shared by that worker and that child.

Nota bene:

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

- Judgment of the Court of Justice (Fourth Chamber) of 18 December 2025, PAN Europe v Commission, C-316/24 P