



MONTHLY CASE-LAW DIGEST

February 2026

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I. FUNDAMENTAL RIGHTS: FREEDOM OF EXPRESSION

Judgment of the Court of Justice (Grand Chamber) of 26 February 2026, Commission v Hungary (Right to provide media services on a radio frequency), C-92/23

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

Failure of a Member State to fulfil obligations – Electronic communications networks and services – Radio spectrum – Directives 2002/20/EC, 2002/21/EC, 2002/77/EC and (EU) 2018/1972 – Individual rights of use – National legislation and administrative decisions depriving a commercial radio station of the possibility of broadcasting content on an analogue terrestrial FM radio frequency – Principles of proportionality, transparency, non-discrimination and good administration – Article 11 of the Charter of Fundamental Rights of the European Union – Freedom of expression and information – Freedom of the media

Hearing an action for failure to fulfil obligations concerning national measures pursuant to which a commercial radio station's application for renewal of its right to provide media services on a radio frequency was refused and its application in connection with a call for tenders for the provision of such services was rejected, the Court, sitting as the Grand Chamber, largely upholds the action brought by the Commission against Hungary. In its judgment, the Court not only clarifies the scope of the EU regulatory framework for electronic communications,¹ but also rules on the extent of media freedom, which is specifically protected by Article 11(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

In 1999, the Hungarian commercial radio station Klubrádió began broadcasting programmes on the frequency 95.3 MHz in the broadcasting area of Budapest (Hungary). In February 2014, the Médiatanács (Media Council, Hungary) and Klubrádió concluded a contract for the right to provide media services on the frequency 92.9 MHz in the same broadcasting area ('Klubládió's broadcasting contract').

In November 2019, Klubládió applied to have that contract renewed. Citing the existence of a repeated infringement of the monthly reporting obligation concerning broadcasting quotas, contained in the Hungarian Law on media services,² the Media Council refused that application ('the refusal decision').

In November 2020, the Media Council published a call for tenders concerning the use of opportunities to provide media services on the frequency 92.9 MHz ('the call for tenders at issue'), to which Klubládió replied. In March 2021, the Media Council found that Klubládió's application was invalid on substantive grounds and declared the call for tenders at issue to be unsuccessful ('the invalidity decision'). That decision cited errors in the programming schedule submitted by Klubládió and the negative net worth recorded in its accounts, factors which, according to the Media Council, were an obstacle to ensuring the presence on the media market of a radio station the functioning of which is stable and predictable.

¹ The regulatory framework common to electronic communications services, electronic communications networks and associated facilities and services, which was in force until 21 December 2020, consisted of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 37) ('the Framework Directive'), and four specific directives accompanying it, including Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21), as amended by Directive 2009/140 ('the Authorisation Directive'), which were supplemented by Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21) ('the Competition Directive'). The Framework and Authorisation Directives were repealed by Directive 2018/1972 (Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36) (together with the Competition Directive, 'the EU regulatory framework').

² Médiaszolgáltatásokról és a tömegkommunikációról szóló 2010. évi CLXXXV. törvény (Law CLXXXV of 2010 on media services and mass media communications, *Magyar Közlöny* 2010/202.; 'the Law on media services').



Klubrádió challenged both the refusal decision and the invalidity decision (together, 'the decisions at issue') before the Hungarian courts, which upheld those decisions. Furthermore, the plea of unconstitutionality raised by Klubrádió before the Alkotmánybíróság (Constitutional Court, Hungary) was dismissed.

Taking the view that, in the light of the decisions at issue and several provisions of the national legislation on which those decisions were based ('the national measures at issue'), Hungary had failed to fulfil its obligations under EU law,³ the Commission brought an action for failure to fulfil obligations before the Court under Article 258 TFEU.

Findings of the Court

Applicability of the EU regulatory framework for electronic communications and the Charter

As a preliminary point, the Court recalls that that framework establishes a harmonised regime in the field of electronic communications networks and services with a view to ensuring the implementation of an internal market in that field. To that end, it lays down, inter alia, rules on the grant of rights to use radio frequencies.

In the present case, although the national measures at issue concern the provision of media services, the evidence in the file submitted to the Court nevertheless shows that those national measures also concern the allocation of rights to use radio frequencies. The Court finds in that regard that the Hungarian system for the grant of rights relating to the provision of radio media services and the use of radio frequencies is designed and configured in such a way that those rights are directly linked. Consequently, any national measure concerning the grant of rights relating to the provision of those services, such as the national measures at issue, necessarily produces effects vis-à-vis rights to use radio frequencies and falls within the scope *ratione materiae* of the EU regulatory framework for electronic communications.

In addition, since the national measures at issue amount to an implementation of the EU regulatory framework, in adopting those measures Hungary was required to respect the fundamental rights guaranteed by the Charter and, in particular, the right to freedom of expression and information enshrined in Article 11 thereof.

It follows from all those considerations that the national measures at issue may be subject to review in the light of both the EU regulatory framework for electronic communications and the Charter.

The complaints concerning Paragraph 48(7) of the Law on media services and the refusal decision

On the substance, the Court notes that, under Paragraph 48(7) of the Law on media services ('the national provision at issue'), the right to provide media services may not be renewed inter alia where, by a final decision of the Media Council, the provider concerned has been found to have committed repeated or serious infringements of the relevant contract or of the provisions of the Law on freedom of the press⁴ or the Law on media services. It is apparent from the explanations and documents provided by the parties that that provision is applied and interpreted as meaning that, when it adopts decisions concerning applications for renewal of the right to provide media services, such as the refusal decision, the Media Council has no discretion to assess the seriousness and repeated nature of the infringements committed by the provider concerned. Therefore, the examination of the complaint alleging breach of the principle of proportionality requires the Court to examine the merits of the arguments concerning breach of that principle not by the Media Council, but by the national provision at issue.

³ In particular, the Commission argues that Hungary has failed to fulfil its obligations under several provisions of the Authorisation Directive and the Framework Directive, a provision of the Competition Directive, a provision of Directive 2015/1972, the principles of proportionality, non-discrimination and sincere cooperation, and Article 11 of the Charter.

⁴ Sajtószabadságról és a médiatartalmak alapvető szabályairól szóló 2010. évi CIV. törvény (Law CIV of 2010 on freedom of the press and the fundamental rules on media content, *Magyar Közlöny* 2010/170.).



In the first place, the Court thus examines the national provision at issue in the light of the principle of proportionality.⁵ It follows from the applicable provisions of the EU regulatory framework that rights to use radio frequencies must be allocated on the basis of objective, transparent, non-discriminatory and proportionate criteria, including when those rights are renewed.

In the present case, the national provision at issue has the effect of automatically depriving certain providers of the possibility of securing the renewal of their right to provide media services, which also concerns the use of a radio frequency. That provision therefore contributes to the definition of the criteria applying, under Hungarian law, to the allocation of rights to use radio frequencies, with the result that it must satisfy the abovementioned requirements and, in particular, the requirement relating to the proportionality of such criteria. The Court observes that the national provision at issue provides not that the existence of past infringements of the broadcasting contract concerned or of the legislation is a criterion to be taken into account, but rather that the renewal of rights to provide media services is automatically precluded for providers which have repeatedly committed such an infringement, so that the application of that provision has the effect of preventing those providers from continuing to broadcast content on a radio frequency. Accordingly, such a refusal to renew will be proportionate only if it has been determined, on a case-by-case basis,⁶ that, in the light of the seriousness of that infringement, refusal is necessary to ensure the attainment of the objective of ensuring the efficient use and effective management of radio frequencies. Consequently, by requiring the Media Council to refuse, automatically and in all cases, to renew the right to provide media services where the provider concerned has committed a repeated infringement, without allowing the Media Council any discretion in order to carry out the checks in question, the national provision at issue infringes the requirement that the renewal of rights to use radio frequencies must be based on proportionate criteria.⁷

In the second place, the Court examines the refusal decision of the Media Council in the light of the principle of non-discrimination and finds, in that regard, that the Commission has not adduced evidence to show that the refusal decision entailed discrimination vis-à-vis Klubrádió.

In the third place, the Court examines the complaint put forward by the Commission alleging that the refusal decision was not adopted in good time. After recalling that the procedure giving rise to the adoption of that decision is subject to the EU regulatory framework, the Court points out that, in the present case, the refusal decision was adopted 10 months after Klubrádió submitted its application for renewal of its right to provide media services. Accordingly, by adopting the refusal decision long after the six-week deadline had expired and by failing to provide a reasonable explanation for such delay, the Media Council infringed Article 5(3) of the Authorisation Directive and the principle of good administration with which Member States are required to comply when implementing EU law.

The complaints concerning the call for tenders at issue and the invalidity decision

As regards the call for tenders at issue and the invalidity decision, in the first place, the Court examines the Commission's complaints alleging that the three grounds for invalidity on the basis of which Klubrádió's application was rejected are contrary to the principles of proportionality and transparency, so that both the invalidity decision and, as the case may be, the rules governing the call for tenders at issue underpinning the adoption of that decision are also contrary to those principles.⁸

As regards, first, the grounds for invalidity concerning certain irregularities in Klubrádió's tender, the Court finds that, where the irregularities involve minor errors the rectification of which would have no impact on the substantive particulars of the application and would therefore not undermine the requirement that applicants be evaluated in a fair and non-discriminatory manner, the bar on the

⁵ As reflected in Articles 5 and 7 of the Authorisation Directive, Article 4 of the Competition Directive and Article 9 of the Framework Directive.

⁶ Taking into account, in particular, the nature of the repeated infringement committed and the individual circumstances of the specific case which are relevant for the purposes of ascertaining, when examining an application for renewal of the right to provide media services, the seriousness of that infringement and its consequences for the provider's access to radio frequencies with a view to broadcasting content.

⁷ That requirement follows from Article 4(2) of the Competition Directive, the second subparagraph of Article 5(2) and Article 7(3) of the Authorisation Directive and Article 9(1) of the Framework Directive.

⁸ Principles referred to in Article 5(2) of the Authorisation Directive and Article 45 of Directive 2018/1972.



Media Council being able to invite the applicant concerned to rectify such errors appears disproportionate. The irregularities in question appear to be remediable and insignificant errors which it should have been possible to rectify. Therefore, the invalidity decision declaring Klubrádió's tender to be invalid because of those irregularities, on the basis of the rules governing the call for tenders at issue which preclude any possibility of rectification, is disproportionate.

As regards, secondly, the ground for invalidity concerning Klubrádió's business and financial plan, the Court states that the reliance, as a ground for invalidity based on the applicant's unsuitability for the purpose of attaining the objective pursued by the call for tenders at issue, on a criterion linked to the applicant's financial viability, even though that criterion is not one of the criteria concerning such viability laid down in the call for tenders and cannot reasonably be inferred from any rule contained therein, does not meet the requirements relating to the principle of transparency, as set out in the case-law of the Court.

Furthermore, the Court notes that Klubrádió's activities since 1999 and its business model based, inter alia, on sponsorships and contributions demonstrate that its inability to cover its expenditure with its net turnover alone did not prevent it from carrying on its business on a stable basis and from complying with the conditions attached to the rights to use radio frequencies to which it was subject. The Court therefore finds that the complaint alleging breach of the principle of proportionality is well founded.

In the second place, on the basis of the obligation to ensure the effective management and efficient use of radio frequencies,⁹ the Court upholds the Commission's complaint alleging that the invalidity decision was not adopted in good time. In that regard, the Court finds that, when adopting measures relating to the allocation of the frequency 92.9 MHz, the Media Council failed to act diligently and thus compromised the effective management and efficient use of the radio spectrum which it was required to ensure. Had the refusal decision not been adopted with an eight-month delay, the Media Council would have been able to launch and close the tendering procedure for the right to provide media services on the frequency 92.9 MHz before the expiry of Klubrádió's broadcasting contract, thereby ensuring the continued use of that frequency.

Consequently, so far as concerns the complaints relating to the call for tenders at issue and the invalidity decision, the Court holds that Hungary has failed to fulfil its obligations on account of the fact that, in the call for tenders at issue and the invalidity decision, the Media Council imposed disproportionate conditions on the allocation of rights to use the radio spectrum, failed to determine in advance the criteria for allocating those rights, did not provide for any discretion enabling an assessment to be carried out of the seriousness and relevance of errors potentially affecting the files submitted by the applicants, which might entail their exclusion, and disregarded how minor the errors affecting Klubrádió's tender were. In addition, it holds that the failure to organise a procedure to allocate the frequency 92.9 MHz in sufficient time to allow for the adoption of a decision before the expiry of Klubrádió's rights to use that radio frequency also amounts to a failure by Hungary to fulfil its obligations.

The complaints concerning Paragraph 65(11) of the Law on media services

The Court observes that, under Paragraph 65(11) of the Law on media services, if the right to provide linear radio media services expires after having been renewed once by the Media Council, and if the tendering procedure concerning opportunities to provide media services has already been launched, the Media Council may conclude with the media service provider which previously held that right, and on application by that provider, a temporary administrative contract for a maximum term of 60 days.

The Court finds, in the first place, that the Commission has not established that that provision infringes the principle of non-discrimination. The rules governing the grant of the right to provide media services on the basis of a temporary administrative contract are not comparable to the rules governing the grant of that right on the basis of a broadcasting contract concluded following a call for tenders. The first set of rules concerns a very specific situation in which that provision seeks to ensure the uninterrupted use of a radio frequency until the tendering procedure for the grant of a new right

⁹ That obligation can be inferred from Article 8(2)(d) of Article 9(1) of the Framework Directive and from the principle of good administration.



to provide media services on that radio frequency has been closed. That situation, which is of a transitional and urgent nature, is thus different from the situation in which a right to provide media services is granted in the context of a call for tenders, which is not of the same nature.

By contrast, as regards, in the second place, the Commission's argument based on the principle of proportionality, the Court takes the view that, like Paragraph 48(7) of the Law on media services, which deprives providers that have committed a repeated infringement of the possibility of securing the renewal of their right to provide media services, Paragraph 65(11) of the Law on media services is contrary to the principle of proportionality¹⁰ inasmuch as it deprives those providers of the possibility of entering into a temporary administrative contract.

The complaints alleging infringement of Article 11 of the Charter

The Court recalls that, as regards broadcasters such as radio stations, Article 11(2) of the Charter specifically protects freedom of the media, which is associated with freedom of broadcasting and includes not only the right to impart information, but also, and inseparably, the right to use any appropriate means to disseminate information and transmit it to the widest possible audience. Those means of dissemination include the radio spectrum, which, in the light of the key role played by audiovisual media, such as radio and television, in shaping public opinion, is a fundamental channel for the exercise of the right to freedom of expression and information. The grant of rights to use radio frequencies thus has a direct impact on the right to impart information freely and the right to receive information. Against that background, the Court observes that the case-law of the European Court of Human Rights¹¹ confirms that freedom of expression and information applies not only to the content of information but also to the means by which it is disseminated. Accordingly, any national measure limiting or restricting broadcasters' access to radio frequencies is liable to interfere with their right to freedom of the media associated with freedom of broadcasting and thus falls within the scope of Article 11 of the Charter.

In the present case, Paragraph 48(7) of the Law on media services, in so far as it has the effect of restricting broadcasters' access to radio frequencies by preventing them from continuing to broadcast their radio content on a radio frequency, entails an interference with their right to exercise the freedom of broadcasting, even if they retain the possibility of broadcasting content on the internet. Irrespective of whether internet broadcasting is an equivalent means of communication to broadcasting on analogue frequencies, those broadcasters are thus prevented from pursuing proven operational and commercial strategies and must, in any event, rebuild their audiences.

As regards whether the interference is justified, the Court recalls that, in accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms guaranteed by the Charter must be provided for by law, respect the essence of those rights and freedoms, and, subject to the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. Those limitations may not exceed those provided for in Article 10(2) ECHR.¹² In that regard, the Court also recalls that Article 11 of the Charter constitutes one of the essential foundations of a pluralist, democratic society, and is one of the values on which, under Article 2 TEU, the European Union is founded. In such a context, interferences with the rights and freedoms guaranteed must be limited to what is strictly necessary, meaning that the objective pursued cannot reasonably be achieved in an equally effective manner by other means less prejudicial to those rights and freedoms.

Against that background, Paragraph 48(7) of the Law on media services, which lays down a ground for refusing to renew rights to use radio frequencies and amounts to such an interference, can be justified only if, inter alia, that refusal does not go beyond what is necessary to attain the objective of general interest pursued by that provision of the Law on media services and if the interference is

¹⁰ That principle is reflected in Article 45(1) of Directive 2018/1972.

¹¹ Which must be taken into account, in accordance with Article 52(3) of the Charter, when interpreting Article 11 thereof, corresponding to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR').

¹² Without prejudice to the restrictions which EU competition law may impose on the ability of Member States to introduce the licensing schemes referred to in the third sentence of Article 10(1) ECHR.



limited to what is strictly necessary. However, it appears that that provision goes beyond what is necessary to achieve the general interest objective which it pursues¹³ in the light of the requirements of the applicable directives. Accordingly, the interference entailed by it cannot be regarded as proportionate. Therefore, by not allowing the Media Council any discretion to assess, when examining applications for renewal of the right to provide media services submitted by providers which have committed a repeated infringement, the seriousness of that infringement and whether it warrants the interference with the rights and freedoms enshrined in Article 11 of the Charter entailed by the refusal to renew, Paragraph 48(7) of the Law on media services is liable to lead to the adoption of decisions that are contrary to Article 11, an example of which is the refusal decision. In the circumstances of the case,¹⁴ it cannot reasonably be considered that the infringement established in the refusal decision is so serious that the refusal to renew Klubrádió's right to provide media services is necessary to ensure the attainment of the abovementioned objective. Consequently, the refusal decision is disproportionate to the objective pursued and to the seriousness of the ensuing interference with Klubrádió's right to freedom of the media, with the result that, regardless of the context in which that decision was taken, it infringes Article 11 of the Charter.

That finding also applies to the invalidity decision, which had the effect of depriving Klubrádió of the possibility of being allocated rights to use the frequency 92.9 MHz and, therefore, of restricting its access to radio frequencies, thereby preventing it from continuing to broadcast its content. The grounds for invalidity underpinning that decision are also disproportionate to the objective pursued and cannot, therefore, justify the ensuing interference with Klubrádió's right to freedom of the media. In that regard, the infringements and defects attributed to Klubrádió in the present case, which form the basis of both the refusal decision and the invalidity decision and which materially prevented that radio station from pursuing its activities in the broadcasting sector, relate either to minor inaccuracies of a formal nature or to aspects which, in themselves, should not make it impossible for a radio station to pursue its activities.

Accordingly, the Court holds that Hungary has failed to fulfil its obligations under Article 11 of the Charter on account of, first, the adoption of the refusal decision and Paragraph 48(7) of the Law on media services and, secondly, the adoption of the invalidity decision and the call for tenders at issue.

¹³ Namely to promote competition by encouraging the efficient use and ensuring the effective management of radio frequencies.

¹⁴ Those circumstances are as follows: (i) the repeated infringement at the root of that decision is the result not of an infringement of Klubrádió's obligations under Hungarian law as regards broadcasting quotas, but of an infringement of the sole obligation to transmit data relating to those quotas; (ii) during the penalty procedures preceding the adoption of those decisions, Klubrádió complied with that obligation by providing all the relevant data to the Media Council; (iii) those data did not disclose any failure on the part of Klubrádió to observe those quotas; (iv) that radio station paid the fines imposed in those decisions; (v) between 31 May 2017, the date of commission of the repeated infringement resulting in the refusal to renew Klubrádió's right to provide media services, and the date of the refusal decision, namely 8 September 2020, Klubrádió did not infringe either that obligation or the obligations under Hungarian law concerning broadcasting quotas. Moreover, it is not apparent from the file submitted to the Court that Klubrádió has committed any infringement since 31 May 2017.

II. INSTITUTIONAL PROVISIONS

1. IMMUNITIES ENJOYED BY MEMBERS OF THE EUROPEAN PARLIAMENT

Judgment of the Court of Justice (Third Chamber) of 5 February 2026, *Puigdemont i Casamajó and Others v Parliament (Waiver of parliamentary immunity)*, C-572/23 P

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

Appeal – Institutional law – Members of the European Parliament – Privileges and immunities – Decision to waive parliamentary immunity of Members of the Parliament – Article 41(1) of the Charter of Fundamental Rights of the European Union – Principle of good administration – Parliament Committee on Legal Affairs – Requirement that the rapporteur be impartial

In upholding the appeal brought by the appellants against the judgment in *Puigdemont i Casamajó and Others v Parliament*,¹⁵ the Court of Justice rules on the application of the provisions of Protocol (No 7) on immunities ('Protocol No 7')¹⁶ and of the internal rules of the European Parliament, in the context of a request for waiver of the immunity of a Member of Parliament, more specifically when appointing the rapporteur who is to deal with such a request.

The three appellants applied to stand as candidates in the elections to the Parliament held in Spain on 26 May 2019.

On 14 October and 4 November 2019, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court, Spain) issued a national arrest warrant, a European arrest warrant and an international arrest warrant against each appellant, so that they might be tried in the criminal proceedings brought in Spain against them for offences including insurgency, sedition and misuse of public funds.

At the plenary session of 13 January 2020, the Parliament took note, following the judgment in *Junqueras Vies*,¹⁷ of the election to the Parliament of the first and second appellants with effect from 2 July 2019. On the same day, the President of the Supreme Court sent the Parliament a request for waiver of the immunity of the first and second appellants.

On 10 February 2020, following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union on 31 January 2020, the Parliament took note of the election of the third appellant as a Member of the European Parliament with effect from 1 February 2020. On the same day, the President of the Supreme Court sent the Parliament a request for waiver of the immunity of third appellant.

The Vice-President of the Parliament announced in Parliament the requests for waiver of immunity and referred them to the Parliament's Committee on Legal Affairs. In turn, that committee entrusted the examination of the requests for waiver of immunity to a single rapporteur who belonged to the same political group as that to which the Members of the national political party that instigated the national criminal proceedings brought against the appellants also belonged.

By three decisions of 9 March 2021,¹⁸ the Parliament waived the immunity of the three appellants, who then brought an action for annulment before the General Court.

¹⁵ Judgment of 5 July 2023, *Puigdemont i Casamajó and Others v Parliament* (T-272/21, EU:T:2023:373) ('the judgment under appeal').

¹⁶ Protocol (No 7) on the Privileges and Immunities of the European Union (OJ 2008 C 115, p. 266).

¹⁷ Judgment of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115).

¹⁸ Decisions P9_TA(2021)0059, P9_TA(2021)0060 and P9_TA(2021)0061 of the European Parliament of 9 March 2021.

By the judgment under appeal, the General Court dismissed that action, holding, inter alia, that the appellants' right to have the requests for waiver of immunity concerning them handled impartially had not been infringed.

Findings of the Court

As a preliminary point, the Court states that Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members. It notes that, under the third paragraph of Article 9 of Protocol No 7, the Parliament has the right to waive the immunity of one of its Members and that the related procedure, despite being conducted by politicians, and the decision to waive immunity are not of a political nature, but of a legal nature. It is true that that institution enjoys a broad discretion in determining the rules applicable to the consideration of requests for waiver of immunity, which are adopted and applied by Members of the Parliament, who belong to political groups formed within the Parliament. However, the Parliament must comply, when examining such requests, with the legal rules and principles which apply to that immunity and with the Charter of Fundamental Rights of the European Union ('the Charter'). In addition, the serving of his or her term of office by the Member concerned may be hindered by a decision to waive his or her immunity. Therefore, such requests, which are capable of affecting both the term of office of the Member concerned and the proper functioning of the Parliament as a whole, must be examined in the light of the rights of the individual concerned and the principles of representative democracy and of the separation of powers, and not by reference to political guidelines.

On the basis of those considerations, first of all, the Court emphasises that the procedure which may lead to the adoption of a decision to waive immunity must be compatible with the right to good administration¹⁹ which provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the European Union, and that that right, conferred on any person, is also conferred on any Member of the Parliament concerned by a request for waiver of immunity. In addition, it recalls that the requirement of impartiality consists of two components, namely, first, subjective impartiality, in accordance with which no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, second, objective impartiality, according to which that institution must offer sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned.

Next, the Court notes that, in exercising its broad discretion, the Parliament adopted rules giving concrete expression to protection against the risk of bias, which are laid down both in its Rules of Procedure²⁰ and in Notice No 11/2019,²¹ adopted by its Committee on Legal Affairs and applicable at the material time. More specifically, it points out that, according to that notice, the Committee on Legal Affairs appoints a rapporteur for each request for waiver of immunity, in accordance with a system of rotation on an equal basis between the political groups; however, the rapporteur cannot be a member of the same political group as that of the Member concerned by such a request – or be elected in the same Member State.

Thus, the Court observes that Notice No 11/2019 gives concrete expression to the requirement of impartiality according to which a rapporteur from the same political group as that to which the Member whose immunity is at issue belongs cannot examine the request for waiver of that immunity; that approach is based on the consideration that, because they belong to the same political group, that rapporteur and that Member may share certain affinities, with the result that legitimate doubts as to possible prejudice by that rapporteur in favour of that Member cannot be ruled out.

Next, the Court notes that compliance with Article 41(1) of the Charter requires a consistent application of the guarantees established by the institution concerned in order to avoid any legitimate

¹⁹ Enshrined in Article 41(1) of the Charter.

²⁰ Rules of Procedure of the European Parliament, applicable to the ninth parliamentary term (2019 to 2024), in the version prior to their amendment by the decision of the Parliament of 17 January 2023.

²¹ Notice to Members on the principles for immunity cases, dated 19 November 2019.

doubt as to bias and to enable requests for waiver of immunity to be dealt with fairly. It states that, for the purposes of such an application, the requirement of impartiality must also be implemented in such a way that the rapporteur who belongs to a political group other than that of the Member whose immunity is under discussion appears to be objectively impartial. In the light of the objectives of the immunities granted to Members of the Parliament, that requirement means that that Member must not be able to entertain legitimate doubts as to the fact that the rapporteur who is called upon to examine the request for waiver of immunity is not guided by considerations which would prevent him or her from carrying out objectively his or her duties related to the preparation the Parliament's decision on the existence of a possible breach of the independence of the Parliament.

The Court considers that, while the opposition of such a rapporteur to the political ideas of the Member whose immunity is under discussion does not, in itself, mean that that rapporteur is not impartial, the same is not true where the rapporteur belongs to the political group which includes Members of a political party that instigated the criminal proceedings against that Member, those proceedings form the basis of the request for waiver of immunity and that political party has a specific interest in the outcome of those proceedings. It cannot be held that that requirement of impartiality applies only where the rapporteur belongs to the same political group as the Member concerned by such a request, to the exclusion of any situation in which that rapporteur belongs to another political group. Therefore, given that the Parliament established the rule that any rapporteur who is a member of the political group to which the Member concerned by a request for waiver of immunity belongs is precluded from acting in that case, that institution must also exclude, in order to comply with Article 41(1) of the Charter, a rapporteur in a situation where he or she belongs to the same political group as Members of the political party that instigated the criminal proceedings against the Member, those proceedings form the basis of that request and that party has a specific interest in the outcome of those proceedings.

Accordingly, the Court finds that, when a Member – who belongs to a political group to which Members of a political party that instigated the criminal proceedings brought against the Member concerned by a request for waiver of immunity also belong – is appointed rapporteur, within the Committee on Legal Affairs, to examine that request, such a rapporteur does not offer sufficient guarantees to exclude any legitimate doubt on the part of the Member concerned by that request as to possible bias against him or her and cannot, therefore, be regarded as impartial, in accordance with the standard established by the Parliament itself, with the result that such an appointment must be regarded as having been made in breach of Article 41(1) of the Charter.

Last, the Court of Justice adds that the facts established by the General Court relating to the organisation, by the rapporteur appointed to examine the requests for waiver of the appellants' immunity, of an event consisting of an intervention by the Secretary-General of the political party that instigated the criminal proceedings brought against the appellants, were relevant for assessing whether that rapporteur could, without undermining the requirement of impartiality, be appointed as rapporteur in the Committee on Legal Affairs dealing with the requests for waiver of the appellants' immunity. Indeed, that political party had already instigated the criminal proceedings at issue when that event was organised. The organisation of that event, by the person subsequently appointed rapporteur, was therefore such as to indicate not only support for that party's political ideas, but also a position in favour of the criminal prosecution of the appellants.

Consequently, the Court sets aside the judgment under appeal and annuls the three decisions of the Parliament of 9 March 2021.

2. INSTITUTIONS AND BODIES OF THE EUROPEAN UNION (EUROPOL/EUROJUST)

Judgment of the General Court (Fifth Chamber) of 25 February 2026, BW v Europol and Eurojust (Sky ECC I), T-1180/23

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

Cooperation between police authorities and other law enforcement agencies of Member States – Sky ECC encrypted communications service – Alleged unlawful processing of personal data – Action for annulment – Act not subject to review – Preparatory act – Admissibility – Processing of personal data by Member States and transfer of such data to Europol – Transfer of personal data by Europol to a Member State – Transfer of personal data from Eurojust to a third country – Non-contractual liability – Article 50 of Regulation (EU) 2016/794 – Joint and several liability of Europol and the Member States for unlawful data processing – Sufficiently serious breach of a rule of law conferring rights on individuals – Actual damage – Regulation (EU) 2018/1727 – Insufficient coordination by Eurojust of criminal proceedings between a Member State and a third country – Articles 71, 72, 89, 91 and 92 of Regulation (EU) 2018/1725

Dismissing an action for annulment and damages brought by BW against the European Union Agency for Law Enforcement Cooperation (Europol) and the European Union Agency for Criminal Justice Cooperation (Eurojust) in the context of police and judicial cooperation between several Member States, for the first time since the judgment in *Kočner v Europol*,²² the General Court clarifies the scope of joint and several liability, particularly with regard to the limits resulting from Article 276 TFEU. It also ruled that the transmission of personal data by Eurojust to a Member State does not constitute a challengeable act within the meaning of Article 263 TFEU, while recognising, by contrast, that the transmission of such data to a third country is challengeable in the absence of any other effective judicial review.

BW, the applicant, is a Serbian national who has been prosecuted and imprisoned in the Netherlands since May 2023 for importing cocaine, and has also been prosecuted in Serbia since autumn 2023 for offences relating in particular to drug trafficking.

The criminal proceedings brought by the Netherlands and Serbian authorities stem from investigations launched in the late 2010s by the Belgian, Netherlands and French authorities against the ‘Sky ECC organisation’, ECC meaning Elliptic Curve Cryptography, which is suspected of marketing encrypted communications products and services specifically designed to facilitate criminal activity.

Following those investigative measures, at the end of 2018 Belgium and the Netherlands issued joint investigation decisions requesting France to create an image of the servers used by the Sky ECC service and located in that State. France complied with that request by intercepting, recording and transcribing encrypted communications entering and leaving those servers, including data concerning BW.

In 2019, through a joint investigation team agreement (‘the JIT agreement’)²³ concluded between them, the Belgian, French and Netherlands authorities set up a joint investigation team (‘the JIT’). That led to the sharing between Europol and the three Member States concerned of the raw data intercepted, which was then to be analysed, as well as the results of that analysis.

As part of that cooperation, Europol stored the data in its computer system, cross-referenced it, produced intelligence reports, generated data visualisation graphics and interpreted multilingual data

²² Judgment of 5 March 2024, *Kočner v Europol* (C-755/21 P, EU:C:2024:202).

²³ This agreement was concluded on the basis of Article 13 of the Convention established by the Council in accordance with Article 34 TEU on mutual assistance in criminal matters between Member States of the European Union (OJ 2000 C 197, p. 3) and the Council Framework Decision of 13 June 2002 on joint investigation teams (OJ 2002 L 162, p. 1).

sets. For its part, Eurojust provided support and advice on opportunities for judicial cooperation, organised several coordination meetings between the relevant national authorities and Europol, and facilitated judicial cooperation between Serbia, on the one hand, and the Netherlands and France, on the other.

In that context, BW asked the General Court to annul the JIT agreement, the acts of Europol and Eurojust adopted on the basis of the latter, and the acts of processing, analysing and sharing by them and the Member States concerned of data from the Sky ECC server concerning him. He also requested that Europol and Eurojust be ordered to pay him compensation for the non-material and material damage he claims to have suffered.

Findings of the Court

First, with regard to the question of its jurisdiction, the General Court declares, in the first place, that it has no jurisdiction to hear, on the basis of Article 263 TFEU, the authorisation by the French court of the interception operations carried out by the French authorities, the conduct of those operations, the transmission to Europol by the French authorities of the documents and information obtained in the course of those operations, the transmission to Eurojust and the Serbian authorities by the French authorities of the documents and information requested by the Serbian authorities in the context of their requests for mutual legal assistance, the regularity of the criminal proceedings before the Serbian courts and the JIT agreement.

With regard, more specifically, to that agreement, the General Court notes that the EU Courts do not have jurisdiction to rule directly on its legality on the basis of Article 263 TFEU, since it is not an EU act. The JIT agreement was signed and therefore concluded by only three Member States. That finding is not called into question either by the fact that the agreement is based on a convention concluded by those Member States pursuant to Article 34 TEU and on a framework decision of the Council of the European Union, or by the creation of the JIT concerned on the initiative of Europol or Eurojust, or by the decision of Belgium, France and the Netherlands, taken under the JIT agreement to involve Europol and Eurojust as 'participants' in the JIT. In that context, the General Court specifies that the power conferred on Europol or Eurojust to propose or assist in the creation of a JIT, as well as on their agents to take part in a JIT,²⁴ does not confer on those agencies the status of 'party' to the agreement by which the three Member States created the JIT concerned.

In the second place, the General Court declares that it has no jurisdiction to hear the applicant's claim seeking a declaration that Eurojust is liable on account of the actions of Belgium, France and the Netherlands, or even Serbia, or on account of the actions of Europol. It bases that conclusion in particular on the fact that the liability of the European Union under Articles 268 and 340 TFEU cannot be sought from an institution, body or agency of the European Union other than the one which is alleged to have caused the liability, unless the EU legislature has expressly provided for a derogation from joint and several liability either between one of those institutions or bodies or agencies of the EU and one or more Member States, or even one or more third countries, or between several institutions, bodies or agencies of the EU. It finds that, in this case, no act provides for a derogation from the rules on joint and several liability between Eurojust and the Member States or between Eurojust and Serbia.

However, the General Court recognises that it has jurisdiction to hear the application seeking a declaration of liability on the part of Eurojust for its own conduct and on the part of Europol for conduct attributable both to itself and to the Member States that took part in the cooperation relating to the Sky ECC service.

Despite its jurisdiction to hear the claim seeking a declaration of Europol's joint and several liability for conduct attributable to the French authorities in particular, the General Court states that it has no jurisdiction to hear the applicant's allegations of damage allegedly caused to him by the interception of his personal data in the course of police operations carried out by those authorities. In that regard,

²⁴ Respectively conferred by Article 5 of Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on Europol and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ 2016 L 135, p. 53; 'the Europol regulation'), and Article 8(1)(d) of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on Eurojust, and replacing and repealing Council Decision 2002/187/JHA (OJ 2018 L 295, p. 138).

notwithstanding the joint and several liability regime provided for in the Europol regulation, that agency cannot be held jointly and severally liable for any damage resulting from the unlawful processing of personal data of a natural person during operations carried out by the police or other law enforcement services of a Member State, even if that processing took place in the context of cooperation based on that Regulation. It follows from Article 276 TFEU that, in exercising its powers relating to judicial cooperation in criminal matters and police cooperation, the EU Courts do not have jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services in a Member State.

Secondly, with regard to the claims for annulment, the General Court, in ruling on their admissibility, finds that the acts or conduct criticised by the applicant are not open to challenge, except for the transmission by Eurojust to the Serbian authorities, on 24 June 2022, of an email from the French authorities containing a link to a secure download site containing, in particular, some of his conversations from the Sky ECC service.

With regard to that transmission, the General Court points out that, although it is apparent from the case-law concerning the transmission of final reports and information to Member States by the European Anti-Fraud Office (OLAF), which is applicable by analogy to the present case, that such transmission does not constitute a challengeable act, both the Court of Justice and the General Court have, however, taken into consideration, in order to rule out the reviewability of OLAF's transmissions, the fact that the applicant had other means at its disposal to ensure the legality of those transmission decisions, including the preliminary ruling procedure. The General Court notes that the transmission of 24 June 2022 took place between an EU agency and the authorities of a third country, in this case Serbia. Thus, since it cannot be challenged in the context of the present action, the legality of that transmission under EU law can no longer be challenged and the personal data it contains may be regarded as having been lawfully transmitted to the Serbian authorities, without the applicant subsequently being able to obtain from the courts of that third country either an assessment of the validity of that transmission under EU law or a preliminary ruling from the Court of Justice on that matter. In that sense, that transfer constitutes the final stage of a special procedure whereby Eurojust transfers personal data relating to an identified person to the authorities of a third country at their request.

The General Court adds that only by recognising that the transfer of 24 June 2022 is open to challenge can effective supervision by a judicial authority or other independent body be guaranteed in relation to the transfer of intercepted personal data and their use for purposes other than those of the criminal proceedings for which they were initially collected. The fact that the applicant could bring an action before the French courts or that he could bring an action before the European Court of Human Rights following a possible conviction by the Serbian criminal courts is irrelevant. First, the French courts cannot hear an action for annulment against an act of an EU agency. Secondly, in the absence of the EU's accession to the Convention for the Protection of Human Rights and Fundamental Freedoms, that Court cannot find that the European Union has violated that convention, particularly in the context of an appeal brought against a third country.

However, the General Court rejects as unfounded the claims seeking annulment of the transfer of 24 June 2022, as the applicant has not established how that transfer gave rise to unlawful processing of his personal data.

Thirdly, with regard to the applicant's claims for compensation, the General Court considers that the first head of damage relates to allegations of incorrect processing of data by both Europol and the three Member States concerned, which fall within the scope of the derogation from joint and several liability provided for in the Europol regulation,²⁵ and thus takes into account not only the acts or conduct of Europol, under the general liability regime applicable to it under that regulation,²⁶ but also those of the three Member States concerned, under the aforementioned derogation regime of joint and several liability.

²⁵ Article 50(1) of the Europol regulation.

²⁶ General responsibility of Europol referred to in Article 49 of the Europol regulation.

The General Court adds that Europol is wrong to argue that it cannot be held responsible for the acts or conduct of Member States and that the General Court cannot assess their legality. While it is true that, under Article 276 TFEU, the EU Courts do not have jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement authorities in a Member State, including in the context of actions brought under Articles 268 and 340 TFEU, it remains that, outside those specific operations, the derogatory regime of joint and several liability provided for in the Europol regulation implicitly but necessarily implies that Europol may be held liable for acts or conduct of Member States. It follows just as necessarily that, in the context of actions for damages based on that derogatory regime, the General Court is empowered to assess the legality of acts or conduct of Member States other than those by which their police or other law enforcement services collected the data concerned, whether on the basis of EU law or on the basis of the national law of the State concerned.

With regard to the second head of damage, which essentially concerns the sole breach of the right to a fair trial due to the impossibility of verifying the 'usability' of data from the Sky ECC service in national criminal proceedings following investigations in which Europol participated, the Court finds that the applicant does not contest the lawfulness of the processing of his personal data within the meaning of Article 28 of the Europol regulation, which is the only argument that could bring a dispute within the scope of the derogation from joint and several liability provided for in that regulation. Thus, for the purpose of examining this head of damage, it takes into consideration only the acts or conduct of Europol under the general liability regime arising from that regulation.

As regards the third head of damage, relating to the alleged existence of double prosecution of the applicant for the same acts by the Netherlands and Serbian criminal authorities, the General Court points out that, in this head of claim, the applicant criticises Europol solely for failing to fulfil its obligations under the JIT agreement. Thus, it takes into consideration only the acts or conduct of Europol, under the general liability regime arising from the Europol regulation.

The General Court rejects the three heads of damage as unfounded.

III. EU LAW AND NATIONAL LAW

Judgment of the Court of Justice (Third Chamber) of 12 February 2026, Petlichev, C-56/25

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

Reference for a preliminary ruling – Article 267 TFEU – Principle of the primacy of EU law – National law alleged to be incompatible with the national Constitution and with EU law – Conditions for referring a matter to a constitutional court – Reasoned assessment of the consequences of the application of EU law – Prior reference to the Court of Justice of the European Union for a preliminary ruling – Article 94(b) of the Rules of Procedure of the Court of Justice – Determination of the national law applicable to the dispute – Content of the request for a preliminary ruling – Obligation or entitlement to refer a matter to a constitutional court before making a reference to the Court of Justice for a preliminary ruling – None

Ruling on a request for a preliminary ruling from the Sofiyski gradski sad (Sofia City Court, Bulgaria), the Court of Justice is called upon to examine whether Article 267 TFEU, the principle of the primacy of EU law and Article 94(b) of the Rules of Procedure of the Court of Justice must be interpreted as precluding a national procedural rule such as Article 18(3) of the Rules of Procedure of the Konstitutsionen sad (Constitutional Court, Bulgaria). Pursuant to that latter article, a request for a review of the constitutionality of national legislation coming within the scope of EU law made by a national court must contain, if it is not to be found inadmissible, a reasoned assessment of the law

applicable to the case before that court, including of the consequences of the application of EU law, which may lead that court first to make a reference to the Court of Justice for a preliminary ruling.

According to the referring court, those conditions for referring a matter to the Constitutional Court prevent it from making such a referral to that constitutional court first and are contrary to EU law in several respects.

First, the referring court states that, before it refers a matter to the Constitutional Court, it is required, where it considers it necessary to make a reference to the Court of Justice for a preliminary ruling, to meet the requirement of indicating clearly, in good faith, the national law applicable in the case at hand, as provided for in Article 94(b) of the Rules of Procedure of the Court of Justice. Since the referring court considers that the Bulgarian legislative provision, whose conformity with EU law it doubts, must, moreover, be regarded as unconstitutional, that provision is not covered, according to that court, by the concept of 'national provisions applicable in the case', within the meaning of Article 94(b) of the Rules of Procedure of the Court of Justice.

Second, the referring court considers that Article 18(3) of the Rules of Procedure of the Constitutional Court has as its consequence that a national provision that has already been interpreted in conformity with EU law may be subsequently held to be unconstitutional, which is, according to the referring court, contrary to the principle of the primacy of EU law.

Findings of the Court

As a preliminary point, the Court of Justice states that the requirement arising from Article 18(3) of the Rules of Procedure of the Constitutional Court may lead a referring court that has doubts regarding the interpretation of EU law to make a reference to the Court of Justice for a preliminary ruling before referring a matter to the Constitutional Court.

On the basis of that statement, the Court of Justice recalls, in the first place, that a national rule the effect of which may inter alia be that a national court will choose to refrain from referring questions for a preliminary ruling to the Court is detrimental to the prerogatives granted to national courts and tribunals by Article 267 TFEU and, consequently, to the effectiveness of that system of cooperation.

In the second place, it follows from the principle of the primacy of EU law that the national courts have jurisdiction to assess the compatibility of national law with EU law, without having to refer the matter to the constitutional court of their Member State to that end.

Consequently, Article 267 TFEU and the principle of the primacy of EU law preclude national legislation under which national courts that are uncertain whether a national provision is compatible with both the national Constitution and EU law must refer the matter to the constitutional court of their Member State before exercising their discretion or complying with their obligation to make a reference to the Court of Justice for a preliminary ruling.

In the third place, the Court notes that that provision and that principle do not, by contrast, preclude legislation of a Member State which makes the admissibility of a referral of a matter to the constitutional court of that Member State by a national court dependent on the presentation, by that national court, of a reasoned assessment of the consequences of the application of EU law to the national provisions, which could mean that that court must first make a reference to the Court of Justice for a preliminary ruling.

In fact, those conditions for referring a matter to the constitutional court of the Member State concerned do not in any way limit the possibility for other national courts to make a reference to the Court of Justice for a preliminary ruling, nor do they delay such a reference. On the contrary, those conditions for referring a matter are liable to encourage those national courts, when they intend to request a review of a national provision for constitutionality, to apply EU law first of all, without preventing them from exercising their discretion or from complying with their obligation to make a reference to the Court of Justice for a preliminary ruling. Accordingly, they are intended to promote the exercise of the rights and obligations arising from Article 267 TFEU as well as observance of the principle of the primacy of EU law in the national legal order.

Furthermore, the Court acknowledges that those conditions for referring a matter to a Member State's constitutional court, by a national court, allow that constitutional court to rule on the constitutionality of a national provision, as the case may be, after the Court of Justice has provided an

answer to a reference for a preliminary ruling from that national court in the context of the same dispute. Nevertheless, that circumstance does not, as such, contravene the principle of the primacy of EU law, provided that that national court is not prevented from drawing all inferences resulting from that principle in the context of the dispute pending before it.

First, a judgment of the Court of Justice delivered in the context of the preliminary ruling procedure is binding on the national court as regards the interpretation of EU law for the purposes of resolving the dispute before it. Therefore, the national court must, if necessary, disregard the rulings of a higher national court if it considers, having regard to the interpretation provided by the Court of Justice, that they are not consistent with EU law.

Second, the primacy principle requires national courts, where they cannot interpret a provision of their national law in conformity with EU law, to disregard that provision if it is contrary to a provision of EU law having direct effect.

In the fourth place, as regards the requirements arising from Article 94(b) of the Rules of Procedure of the Court, the Court notes that a national provision cannot be regarded as not being 'applicable', within the meaning of that article of the Rules of Procedure, solely because the referring court has doubts regarding the constitutionality of that national provision.

Thus, first, since such a national provision remains in force until the constitutional court renders a ruling that it is unconstitutional, the mere fact that a national court has doubts regarding the constitutionality of that national provision cannot warrant a failure on the national court's part to include that provision in the presentation of the law applicable to the dispute before it. Second, while it may be convenient for questions of purely national law to be settled at the time the reference is made to the Court for a preliminary ruling, national courts are free to make that reference at whatever stage of the proceedings they consider appropriate.

In the fifth and last place, the Court recalls that the constitutional courts of the Member States are required, in the same way as the ordinary courts, to observe the principle of the primacy of EU law. However, if, in breach of that principle, a constitutional court were to refuse to give effect to a judgment given by way of a preliminary ruling by the Court of Justice, the national court which made the reference to the Court of Justice would be required to disregard, in the dispute before it, the rulings of that constitutional court.

In the light of the foregoing, the Court concludes that Article 267 TFEU, the principle of the primacy of EU law and Article 94(b) of the Rules of Procedure of the Court of Justice must be interpreted as not precluding a procedural rule of a Member State under which a request for a review of the constitutionality of national legislation coming within the scope of EU law must, if it is not to be found inadmissible, contain a reasoned assessment of the law applicable to the case before the national court, including of the consequences of the application of EU law, which may lead that court first to make a reference to the Court of Justice for a preliminary ruling.

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

Order of the General Court (Sixth Chamber) of 12 February 2026, Navarro Fernández v Parlement, T-404/25

Action for failure to act – Application for an order – Application for interim measures – Applicant not represented – Failure to put in order – Manifest inadmissibility

In an action for a failure to act, accompanied by applications for an order and for interim measures, the General Court applies the new line of case-law of the Court of Justice²⁷ which provides clarification on the scope of the prohibition on non-privileged parties representing themselves before the Courts of the European Union.

The applicant brought an action before the General Court based, primarily, on the unlawful failure to act on the part of the European Parliament with a view to inducing the European Commission to initiate an infringement procedure against Spain on account of the ongoing deterioration of a Natura 2000 Network site located in Arganda del Rey (Spain).

In reliance on his status as a lawyer authorised to plead before the Spanish courts, the applicant brought that action under his signature alone.

Findings of the General Court

The General Court points out that the Statute of the Court of Justice of the European Union lays down two separate and cumulative conditions as regards the representation before the Courts of the European Union of parties not covered by the first and second paragraphs of Article 19 of that statute,²⁸ known as ‘non-privileged’ parties. The first condition lays down the requirement for those parties to be ‘represented by a lawyer’²⁹ and, according to the second condition, only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area (EEA) may represent or assist a party before the Courts of the European Union.³⁰

In that regard, the General Court states that it is apparent from the case-law of the Court of Justice that the first condition imposes a prohibition on non-privileged parties from representing themselves before the Courts of the European Union. Therefore, since no derogation from or exception to that prohibition is provided for by the Statute of the Court of Justice of the European Union or by the Rules of Procedure of the Court of Justice or of the General Court, the submission of an application signed by an applicant himself or herself cannot suffice to bring an action before the Courts of the European Union, including where that party is a lawyer authorised to plead before a national court.

The General Court adds however that it is also clear from recent case-law that, in view of the seriousness of the consequences which flow from an infringement of Article 19 of the Statute of the Court of Justice of the European Union for the applicant, namely the irremediable inadmissibility of his or her action, and in the absence of express indications to the contrary in the Statute and Rules of Procedure, it must, where it finds non-compliance with the prohibition on representing oneself, invite the applicant to designate a new lawyer before declaring the action inadmissible.

²⁷ New line of case-law adopted by the Court of Justice in the judgment of 4 September 2025, *Studio Legale Ughi e Nunziante v EUIPO* (C-776/22 P, EU:C:2025:644), since then applied in the order of the Vice-President of the Court of 30 October 2025, *Arasteh v Commission* (C-590/25 P(R), not published, EU:C:2025:861).

²⁸ The parties covered by the first and second paragraphs of Article 19 of the Statute of the Court of Justice of the European Union are the Member States, the institutions of the European Union, the States which are parties to the Agreement on the European Economic Area and the EFTA Surveillance Authority.

²⁹ Third paragraph of Article 19 of the Statute of the Court of Justice of the European Union.

³⁰ Fourth paragraph of Article 19 of the Statute of the Court of Justice of the European Union.

In view of the fact that, in the present case, despite two requests for regularisation made by the General Court, the applicant failed to appoint a new lawyer within the specified time limit, the General Court dismisses the action as manifestly inadmissible.

V. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (Grand Chamber) of 10 February 2026, WhatsApp Ireland v European Data Protection Board, C-97/23 P

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

Appeal – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 63 – Consistency mechanism – Article 65 – Dispute resolution by the European Data Protection Board – Binding decision – Action for annulment – First paragraph of Article 263 TFEU – Act open to challenge – Fourth paragraph of Article 263 TFEU – Condition that the measure against which the action has been brought must be of direct concern to the applicant

Hearing an appeal brought by WhatsApp Ireland Ltd ('WhatsApp'), the Court of Justice, sitting as the Grand Chamber, sets aside the order of the General Court in *WhatsApp Ireland v European Data Protection Board*.³¹

The Court rules, for the first time, on the legal remedies open to an undertaking with regard to a binding decision adopted by the European Data Protection Board ('the EDPB') pursuant to the General Data Protection Regulation,³² under the consistency mechanism established by that regulation. In that context, ruling on the conditions for admissibility of the action for annulment brought by WhatsApp, the Court explains the scope of the concept of 'act open to challenge' under the first paragraph of Article 263 TFEU and of the condition that measure which forms the subject matter of the action brought by the applicant must be of direct concern to the latter, under the fourth paragraph of Article 263 TFEU.

Following the entry into force of the GDPR, the Data Protection Commission (Ireland) ('the Irish supervisory authority') received complaints from users and non-users of the 'WhatsApp' messaging service concerning the processing of personal data by that undertaking. In that context, that supervisory authority, in its capacity as lead supervisory authority,³³ initiated an investigation into WhatsApp's compliance with the obligation of transparency and the obligation to provide information with regard to individuals provided for by the GDPR.

Following that investigation, under the cooperation mechanism established by the GDPR, the Irish supervisory authority submitted a draft decision to all the other supervisory authorities of the Member States concerned by the processing of personal data at issue for their opinion. Since a consensus on that draft had not been reached, the Irish supervisory authority referred the matter to the EDPB for it to resolve the dispute between the supervisory authorities concerned.³⁴ On 28 July

³¹ Order of 7 December 2022, *WhatsApp Ireland v European Data Protection Board* (T-709/21; EU:T:2022:783; 'the order under appeal').

³² Article 65(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1; 'the GDPR').

³³ In accordance with Article 56(1) of the GDPR, which confers, inter alia, competence to act on the supervisory authority of the controller's main establishment in the case of cross-border processing carried out by the latter.

³⁴ In accordance with the provisions of Article 60(4) and Article 65(1)(a) of the GDPR.

2021, the EDPB adopted Binding decision 1/2021 ('the decision at issue'), in which it adopted a position on the matters which had been the subject of relevant and reasoned objections from some of the supervisory authorities concerned. On the basis of that binding decision, which concerned inter alia a finding of infringement of certain provisions of the GDPR, the classification of lossy hashed data as personal data, and the need to increase the amount of the fines envisaged in the initial draft decision, the Irish supervisory authority adopted, on 20 August 2021, a final decision. That authority found that WhatsApp had infringed certain provisions of the GDPR and imposed on it, in particular, fines for a total amount of EUR 225 million.

WhatsApp challenged that final decision before an Irish court and, in parallel, requested that the General Court annul the decision at issue, under Article 263 TFEU.

By the order under appeal, the General Court dismissed the action for annulment as inadmissible. While acknowledging that WhatsApp was individually concerned by the decision at issue, the General Court held, inter alia, that that decision did not constitute an act open to challenge and it was not of direct concern to WhatsApp.

Findings of the Court

In the first place, the Court of Justice rules on the claim, raised by the EDPB, that the action at first instance was brought out of time.

It recalls that, under the sixth paragraph of Article 263 TFEU, actions for annulment must be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. The time limit for bringing an action for annulment starts to run, primarily, from the publication of the measure or from its notification to the applicant, those two primary criteria being placed on an equal footing in that neither of those two criteria is subsidiary to the other. By contrast, the criterion of the date on which the measure being challenged came to the knowledge of the applicant is subsidiary to the criteria of publication or notification of that measure.

The Court observes that, in the present case, the decision at issue was not notified to WhatsApp, but was published on the EDPB's website.³⁵ In that regard, it specifies that the concept of 'publication' does not cover publication in the *Official Journal of the European Union* exclusively and must, on the contrary, be interpreted broadly. It also covers, inter alia, publication on the website of an EU institution, body, office or agency where such publication is provided for under secondary legislation.

Accordingly, the time limit for bringing the action, which must be calculated from the publication of the decision at issue on the EDPB's website, was not infringed in the present case.

In the second place, the Court explains further the concept of 'act open to challenge' under the first paragraph of Article 263 TFEU, pursuant to which the EU judicature is to review, inter alia, the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

The Court points out, in particular, that whether an act is open to challenge must therefore be assessed objectively, on the basis of its substance, and not by reference to the applicant. Thus, the third party for which the act concerned has legal effects need not necessarily be the applicant. Any natural or legal person distinct from the author of that act is a third party. Therefore, it is not necessary to ascertain whether an act produces effects capable of affecting the applicant's legal situation, that verification being relevant only in the context of the examination of compliance with the conditions laid down in the fourth paragraph of Article 263 TFEU.

In addition, the Court states that, in the case of acts drawn up in several procedural stages, an act is, in principle, open to challenge only if it definitively determines the position of the competent EU institution, body, office or agency, to the exclusion of intermediate measures whose aim is to prepare that final measure and which produce no independent legal effects vis-à-vis third parties.

³⁵ As provided for by the third sentence of Article 65(5) of the GDPR.

As regards the content of the decision at issue, the Court observes that that decision is an act which emanates from an EU body and is binding vis-à-vis third parties. It is binding on the lead supervisory authority, which must adopt its final decision on the basis of that binding decision, and on all the supervisory authorities concerned, to which it is addressed and which are third parties in relation to the EDPB.

Furthermore, so far as concerns the context in which the decision at issue was adopted, the Court observes that, even if that decision was drawn up in the context of a process involving several procedural stages and preceded the adoption of another act by the Irish supervisory authority, that decision definitively determines the position of the EDPB and deals exhaustively with all the issues which that body is required to resolve.

The Court concludes therefrom that, although it is not the final stage of the consistency review procedure provided for by the GDPR, the decision at issue cannot be classified as an intermediate measure not open to challenge.

It adds that, since the EDPB's decision produces binding legal effects vis-à-vis third parties, it is of no bearing that the scope of the national supervisory authority's final decision encompasses aspects which do not fall within the scope of the matters referred to the EDPB or the remit of the latter, and that the decision at issue is not enforceable against entities other than its addressees, the latter fact not relating either to the substance of the decision at issue or to its binding legal effects in the light of objective criteria.

Thus, the Court finds that the decision at issue constitutes an act open to challenge and that the General Court erred in law, first, by confusing the requirements resulting from the first and fourth paragraphs of Article 263 TFEU respectively and, second, by formulating an incorrect test, relating to the lack of direct enforceability of the act at issue against WhatsApp, and by classifying the decision at issue as an intermediate measure producing no independent legal effects.

Lastly, in the third place the Court recalls that the admissibility of an action brought by a natural or legal person against an act which is not addressed to that person, in accordance with the fourth paragraph of Article 263 TFEU, is subject, inter alia, to the condition that that act is of direct and individual concern to that person.

In that regard, the Court states that the fact that the challenged act is not directly enforceable against the applicant and the fact that the act concerned is not the final stage of a composite procedure do not preclude that act from being of direct concern to the applicant where the addressee of that act has no discretion. Consequently, it finds that the General Court erred in law in finding that the decision at issue cannot be of direct concern to WhatsApp on the ground that that decision is not enforceable against WhatsApp and does not constitute the final stage of the procedure laid down in the GDPR.

In that context, the Court recalls that the condition that a natural or legal person must be directly concerned by the measure being challenged requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of that person and, second, it must leave no discretion to its addressees who are entrusted with the task of implementing it.

As regards compliance with the first condition, the Court observes that it is necessary to assess whether the challenged act is the source of a distinct change in the position of the applicant, by examining the substance of the act and by assessing its effects in the light of objective criteria. In the present case, the Court notes that, since the EDPB decided inter alia that WhatsApp had infringed certain provisions of the GDPR, the decision at issue changes the legal position of that undertaking, WhatsApp being required, in particular, as a result of the EDPB's intervention, to change its contractual relationship with users of the messaging service which that undertaking provides. Accordingly, there is a direct link between that decision and its effects on WhatsApp's situation.

As regards the second condition, the Court states that the existence of a discretion must be discounted, in particular, if it is established that the provisions of the act which are the subject of the action had the direct consequence of subjecting the applicant to obligations the result of which could not be changed by the entity responsible for subsequently implementing that measure. In that context, the Court points out that the decision at issue is binding on the lead supervisory authority and the supervisory authorities concerned, since they could not depart from the position adopted by

the EDPB in that decision. That decision determines the issues of law which are the subject of the matters referred to the EDPB and unconditionally binds those authorities, as regards, in particular, the finding of infringement of certain provisions of the GDPR, the classification of lossy hashed data as personal data and the obligation to increase the amount of the envisaged fines. Those authorities are not able to change the result of the assessments made, as regards those issues, by the EDPB.

The Court adds that, in that context, it is of little significance that the scope of the final decision extends to matters not falling within the scope of those referred to the EDPB, namely aspects which were not the subject of relevant and reasoned objections or matters not falling within the remit of that body, such as, *inter alia*, the determination of the precise amount of the fine to be imposed on the controller or a processor, responsibility for which lies with the supervisory authority to which the matter is referred pursuant to the GDPR.

Lastly, the Court observes that, while it is true that there is an interrelation between the decision at issue and the final decision, the fact remains that they are separate acts and that the scope of the decision at issue is well defined. In those circumstances, that interrelation is not such as to preclude a finding that the decision at issue is of direct concern to WhatsApp.

The Court points out that, although the simultaneous bringing of an action for annulment before the EU judicature, on the basis of Article 263 TFEU, in respect of the binding decision of the EDPB, and before the national court, with regard to the final decision adopted by the national supervisory authority, does indeed give rise to two parallel sets of proceedings, that situation does not mean that the effects of the EDPB's decision should be regarded as indirect, in the present case, in relation to WhatsApp. First, when the outcome of the dispute before the national court depends on the validity of the decision of an EU body, it follows from the obligation of sincere cooperation that the national court should, in order to avoid reaching a decision that runs counter to that of that body, stay its proceedings pending final judgment in the action for annulment by the EU judicature, unless it considers that, in the circumstances of the case, a reference to the Court of Justice for a preliminary ruling on the validity of the decision of that body is warranted. Second, in the event of proceedings being brought concurrently before the General Court in the context of an action for annulment and the Court of Justice in the context of a request for a preliminary ruling, the principle of the sound administration of justice may warrant the Court of Justice, if it considers it appropriate to do so, staying³⁶ the proceedings before it, in order to give preference to the proceedings before the General Court.

Consequently, the Court of Justice concludes that the decision at issue is of direct concern to WhatsApp.

Therefore, having regard to the errors of law committed by the General Court, the Court of Justice sets aside the order under appeal. In addition, the Court of Justice notes that, since the conditions laid down Article 263 TFEU are satisfied, and in the absence of any other ground of inadmissibility, the action for annulment brought by WhatsApp is admissible. However, since the state of the proceedings does not permit a ruling on the merits, the Court of Justice refers the case back to the General Court for it to give judgment in that regard.

³⁶ Under the third paragraph of Article 54 of the Statute of the Court of Justice of the European Union.

VI. FREEDOM OF MOVEMENT: FREEDOM OF ESTABLISHMENT

Judgment of the Court of Justice (First Chamber) of 12 February 2026, Vilniaus tarptautinė mokykla, C-48/24

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

Reference for a preliminary ruling – Article 49 TFEU – Freedom of establishment – Scope – Economic activity – Recognition of professional qualifications – Directive 2005/36/EC – Article 53 – Knowledge of languages – National legislation laying down a requirement that teachers and the members of administrative staff in regular communication with the public and with the administrative authorities employed in a private educational institution are proficient in the official language – Article 4(2) TEU – National identity of a Member State – Protection and promotion of the official language of a Member State – Private educational institution delivering international education programmes – Necessity condition – Principle of proportionality – Requirement of proficiency in the official language with no possibility for exception or flexibility

Ruling on a request for a preliminary ruling from the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), the Court of Justice adjudicates, inter alia, on the compatibility with Article 49 TFEU of national legislation requiring a private international school to ensure that its staff comply with a requirement for proficiency in the Lithuanian language.

The Vilniaus tarptautinė mokykla (Vilnius International School, Lithuania) ('VTM'), a private educational institution in which the majority of the capital is owned by a Finnish national and a Danish national, delivers in English the Primary Years and Middle Years Programmes of the International Baccalaureate and another international secondary education programme.

In May 2022, the Valstybinė kalbos inspekcija (National Language Inspectorate, Lithuania) ('the VKI') carried out an inspection at VTM in order to review VTM's compliance with the requirements laid down by the Lithuanian legislation on the official language. It found that 18 employees of the school, including 5 EU nationals, had not passed an examination demonstrating an intermediate level of proficiency in the Lithuanian language or had not submitted the required documents.

Subsequently, the VKI adopted an order requiring VTM to ensure that the 18 employees concerned, comprising both teachers and administrative staff, pass the State examination on proficiency in the official language by a certain date, or penalties would be imposed.

The action for annulment brought by VTM against that order was dismissed. VTM then brought an appeal before the referring court, which decided to stay the proceedings and to put questions to the Court regarding the compatibility of the national legislation with EU law.

Findings of the Court

As a preliminary point, the Court recalls that, according to settled case-law, a restriction on the freedom of establishment is permissible only if, first, it is justified by an overriding reason in the public interest and, second, it observes the principle of proportionality.

As regards whether there is an overriding reason in the public interest, the national legislation at issue appears to be intended to protect and promote the use of the official language of the Republic of Lithuania, which, in principle, justifies a restriction on the fundamental freedoms provided for by EU law.

As regards whether the national legislation at issue is appropriate for ensuring the attainment of that objective, whether it does not go beyond what is necessary in order to attain it and whether it is not disproportionate to that objective, it is ultimately for the referring court, which has sole jurisdiction to assess the facts of the main proceedings and to interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions.

However, the Court states, first, that that legislation appears to be appropriate for ensuring that the objective of protecting and promoting the official language of the Member State in question is attained, since it encourages the use of that language by persons subject to that language requirement in their relations with pupils, pupils' parents and the general public and, as regards more particularly the administrative staff, with the national administrative authorities. In addition, that legislation applies not only to all educational institutions located in Lithuania, but also to all the employees of those institutions whose employment involves, inter alia, regular communication with other persons and the need to complete standard forms of official documents.

Second, as regards whether the national legislation at issue is necessary, the Court recalls that measures which restrict a fundamental freedom cannot be justified where the objective pursued can be attained by less restrictive measures. Indeed, while Member States enjoy broad discretion in their choice of the measures capable of achieving the objectives of their policy of protecting the official language, since such a policy constitutes a manifestation of national identity for the purposes of Article 4(2) TEU, that discretion cannot justify the rights which individuals derive from the provisions of the Treaties enshrining their fundamental freedoms being seriously undermined.

In the present case, the Court considers that the language requirement at issue appears to satisfy the condition of being necessary, since it has not been established that less restrictive measures could ensure an equivalent level of effectiveness in the attainment of the objective of protecting and promoting the official language.

However, the rules of evidence required by the national legislation in order to demonstrate that the language requirement is satisfied appear to go beyond what is necessary to attain the legitimate objective pursued. The obligation imposed on the persons concerned to provide a certificate issued by a Lithuanian body based on language tests organised in Lithuanian territory precludes any consideration of the level of knowledge which a person holding a certificate or diploma obtained in another Member State can be assumed to possess on the evidence of that certificate or diploma, having regard to the nature and duration of the studies which it demonstrates.

Third, as regards proportionality in the strict sense, the Court considers that, where a Member State seeks to impose, for the purposes of the objective of protecting and promoting its official language, a language requirement on teachers and certain members of the administrative staff of private educational institutions, it is for that Member State to balance properly that objective of general interest and the rights derived from Article 49 TFEU. By way of example, such a balanced weighting could be achieved by national legislation providing for the possibility to bring the proficiency in the official language progressively up to the required standard after recruitment, to be flexible regarding the level of proficiency required according to the duration of the post or even to introduce an exemption from that language requirement, justified by appropriate circumstances, in particular where no fully qualified candidate applies for the post to be filled.

In the present case, the Court observes that the language requirement at issue is imposed on all teachers and members of administrative staff who are in regular communication with the public and with the administrative authorities and who are employed in a private educational institution as soon as they begin their duties and irrespective of the duration of their employment contract, there being no exceptions or flexibility laid down in that regard.

Consequently, the national legislation at issue does not appear to comply with the principle of proportionality, in the strict sense, in that it appears to be disproportionate in relation to the objective pursued, which it is for the referring court to assess.

VII. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN ARREST WARRANT

Judgment of the Court of Justice (Fourth Chamber) of 12 February 2026, Rastoshev, C-712/25 PPU

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 criminal prosecution – Execution of the European arrest warrant – Article 4(7)(a) – Grounds for optional non-execution – Offences which have been committed in whole or in part in the territory of the executing Member State – Risk of impunity

Hearing a request for a preliminary ruling from the Apelativen sad – Sofia (Court of Appeal, Sofia, Bulgaria), the Court of Justice, in the context of an urgent reference for a preliminary ruling, rules, for the first time, on the interpretation of the ground for optional non-execution of a European arrest warrant (EAW) relating to offences which have been committed in whole or in part in the territory of the executing Member State, within the meaning of Framework Decision 2002/584.³⁷

On 18 September 2025, the Vice-President responsible for investigation at the tribunal judiciaire de Marseille (Court of Marseille, France) issued an EAW against XM for the purpose of initiating criminal proceedings and obtaining his surrender to French authorities for several offences allegedly committed between 2018 and 2024. Those offences were committed within the framework of an international criminal organisation with the aim of rigging sports competitions and took place in the territory of multiple Member States, including France and Bulgaria.

By decision of 20 October 2025, the Sofijski gradski sad (Sofia City Court, Bulgaria) ordered the execution of that EAW and placed XM in pre-trial detention until his actual surrender to the French authorities.

Called upon to examine an action introduced by XM against that decision, the referring court points out the existence of two divergent lines of case-law in respect of the interpretation of the provision transposing Article 4(7)(a) of Framework Decision 2002/584 into Bulgarian law.³⁸ According to the first line of case-law, the fact that the offence referred to in the EAW was committed, in whole or in part, in the territory of Bulgaria cannot in itself suffice to justify a refusal to execute the EAW. On the other hand, according to the second line of case-law, such a circumstance should be regarded as a sufficient ground to refuse execution, since the Bulgarian Criminal Code is applicable to all offences committed in the territory of that Member State, without exception.

In those circumstances, the referring court asked the Court about the interpretation of Article 4(7)(a) of Framework Decision 2002/584.

Findings of the Court

At the outset, the Court recalls that Framework Decision 2002/584 sets out, first, the grounds for mandatory non-execution of an EAW³⁹ and, second, the grounds for optional non-execution of an EAW,⁴⁰ which the Member States are free to transpose into their domestic law or not. However, where the latter are transposed, the Member States may not provide that the judicial authorities are required automatically to refuse to execute any EAW concerned. Those authorities must have a

³⁷ 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, and corrigendum in OJ 2006 L 279, p. 30), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

³⁸ That provision provides that the executing judicial authority may refuse to execute the EAW where the warrant relates to offences which are regarded by the law of the executing member state as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such.

³⁹ Those grounds are set out in Article 3 of Framework Decision 2002/584.

⁴⁰ Those grounds are set out in Articles 4 and 4a of Framework Decision 2002/584.

margin of discretion, allowing them to carry out an examination on a case-by-case basis, taking into consideration all of the relevant circumstances. Depriving them of that possibility would have the effect of substituting a mere option to refuse to execute an EAW with a genuine obligation, even though such a refusal constitutes the exception, the execution of the EAW being the general rule. It is thus clear from the wording of Article 4 of Framework Decision 2002/584 – in particular from the use of the verb ‘may’ – that the executing judicial authority must have discretion to decide whether or not it is appropriate to refuse to execute the EAW on the grounds referred to in Article 4.

As regards, more specifically, Article 4(7)(a) of Framework Decision 2002/584, the Court notes that, by classifying the ground for refusal provided for by that provision as optional, the EU legislature intended to allow the person who is the subject of an EAW issued for the purposes of conducting a criminal prosecution, who is liable to be prosecuted both by the issuing judicial authority and by the executing judicial authority, to be prosecuted by the authority which is in the most appropriate position from the point of view of proper administration of criminal justice.

Furthermore, in accordance with Article 1(1) of Framework Decision 2002/584, that framework decision has the objective of enabling the arrest and surrender of a requested person so that the offence committed does not go unpunished and in order to ensure that criminal proceedings are brought against that person. That objective forms part of the broader objective of the prevention and combating of crime within the area of freedom, security and justice, laid down in Article 3(2) TEU, which that framework decision seeks to implement by avoiding the risk of impunity for the perpetrators of offences. The Court considers that those objectives would be liable to be undermined if the executing judicial authority were required, irrespective of the specific circumstances of each case, to refuse to execute a EAW issued for the purposes of criminal prosecution and surrender of the requested person on the sole ground that the offence targeted by that warrant was committed, in whole or in part, on the territory of the executing Member State.

The Court concludes that the application of the ground for non-execution set out in Article 4(7)(a) of Framework Decision 2002/584 should be left to the discretion of the executing judicial authority. That authority must, to that end, have discretion enabling it to examine all of the relevant circumstances of the case, in order to determine which of the judicial authorities, the issuing or executing authority, is in the most appropriate position to ensure the proper administration of criminal justice and, consequently, to safeguard the legitimate interest of all Member States in the prevention of crime within the area of freedom, security and justice. That applies a fortiori where the offences giving rise to the EAW form part of a complex international criminal organisation, with the result that they could have been committed in part, and have produced their effects, in the territory of multiple Member States, in particular that of the issuing Member State, in which criminal prosecutions could have been brought against the person concerned.

In its assessment, the executing judicial authority must therefore take into account the specific circumstances of each case, which include inter alia the nature and characteristics of the offence, and in particular, where applicable, its international dimension, the place where the damage resulting from that offence materialised, and the progress of the criminal proceedings in the issuing Member State and, depending on the case, in the executing Member State.

Therefore, the international territorial jurisdiction in criminal matters provided for by Bulgarian criminal law cannot constitute a sufficient ground for refusing to execute an EAW, especially since in the present case the Bulgarian judicial authorities had not initiated criminal proceedings against the person concerned.

Consequently, the Court rules that Article 4(7)(a) of Framework Decision 2002/584 precludes case-law of a Member State to the effect that the fact that the offence, for which an EAW was issued for the purposes of conducting a criminal prosecution, was committed, in whole or in part, on the territory of the executing Member State is sufficient to refuse to execute that warrant.

VIII. COMPETITION: AGREEMENTS, DECISIONS AND CONCERTED PRACTICES (ARTICLE 101 TFEU)

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Air Canada v Commission, C-367/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Single and continuous infringement – Regulation (EC) No 1/2003 – Article 25 – Limitation period for the Commission’s powers to impose penalties – Plea based on the limitation period – Plea involving a matter of public policy

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Air France v Commission, C-369/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of airfreight services (fuel surcharge, security surcharge, and refusal to pay commission on surcharges) – Inbound airfreight services – Territorial jurisdiction of the Commission – Qualified effects – Calculation of the fine – Mitigating circumstance – Taking into account of regulatory regimes in force in third countries – Equal treatment – Duration of participation in the single and continuous infringement – Evidence – Participation in the various components of the single and continuous infringement

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Air France-KLM v Commission, C-370/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of airfreight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Parent company and subsidiaries – Attributability of unlawful conduct – Inbound airfreight services – Territorial jurisdiction of the Commission – Qualified effects – Calculation of the fine – Mitigating circumstance – Taking into account of regulatory regimes in force in third countries – Equal treatment – Duration of participation in the single and continuous infringement – Evidence – Participation in the various components of the single and continuous infringement

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Latam Airlines Group and Lan Cargo v Commission, C-375/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and Switzerland on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Single and continuous infringement – Failure to prove that a participant was aware of two elements of the infringement – Annulment in part or in full of the Commission’s decision – Territorial jurisdiction of the Commission – Finding of a ‘worldwide’ cartel

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, British Airways v Commission, C-378/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and Switzerland on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Characterisation – Single and continuous infringement – Taking into account the effects of the single and continuous infringement as a whole

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Singapore Airlines and Singapore Airlines Cargo v Commission, C-379/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Single and continuous infringement – Conduct adopted in the context of a commercial alliance – Account taken – Regulation (EC) No 1/2003 – Article 25 – Limitation period for the Commission’s powers to impose penalties – Plea based on the limitation period – Plea involving a matter of public policy

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Deutsche Lufthansa and Others v Commission, C-380/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and Switzerland on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge,

security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Single and continuous infringement

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Japan Airlines v Commission, C-381/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of airfreight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Requirement of substantiality – Requirement of immediacy – Single and continuous infringement

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Cathay Pacific Airways v Commission, C-382/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Defence alleging State constraint – Decision of the General Court of the European Union not to rule on certain pleas – Proof of participation in a single and continuous infringement – Evidence relating to recitals in the decision at issue supporting a part of the operative part thereof which was annulled by the General Court

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Koninklijke Luchtvaart Maatschappij v Commission, C-385/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Martinair Holland v Commission, C-386/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the

Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, Cargolux Airlines v Commission, C-401/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Single and continuous infringement taken as a whole – Substitution of grounds – Restriction of competition ‘by object’ – Examination of the legal and economic context – Scope – Criteria for characterising a single and continuous infringement – Liability for all the forms of conduct comprising that infringement – Conditions – Duration of participation in such an infringement – Lack of evidence of participation in an element of that infringement during significant periods of time – Equal treatment

Judgment of the Court of Justice (Fifth Chamber) of 26 February 2026, SAS Cargo Group and Others v Commission, C-403/22 P

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

Appeal – Competition – Agreements, decisions and concerted practices – Market for airfreight – Decision of the European Commission finding an infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport – Coordination of elements of the price of air freight services (fuel surcharge, security surcharge and refusal to pay commission on surcharges) – Rights of the defence – Right of access to the file – Inculpatory and exculpatory evidence – Inbound freight services – Territorial jurisdiction of the Commission – Qualified effects – Statement of objections – Right to be heard – Single and continuous infringement – Geographic scope of the cartel – State coercion defence – Conditions under which applicable – Proof of participation in a single and continuous infringement – Calculation of the fine – Unlimited jurisdiction of the General Court of the European Union – Distortion

In a series of 13 judgments, the Court of Justice dismisses almost all of the appeals brought by several airlines⁴¹ involved in the ‘airfreight cartel’ against the judgments of the General Court⁴² ruling on their actions for annulment of the decision by which the European Commission imposed fines on

⁴¹ Those airlines are Air Canada, Air France-KLM, Société Air France (‘Air France’), Koninklijke Luchtvaart Maatschappij NV (‘KLM’), British Airways plc, Cargolux Airlines International SA (‘Cargolux’), Cathay Pacific Airways Ltd, Deutsche Lufthansa AG (‘Lufthansa’), Japan Airlines International Co. Ltd (‘Japan Airlines’), Latam Airlines Group SA and Lan Cargo SA, Martinair Holland NV (‘Martinair’), SAS Cargo Group and Others (‘SAS Cargo Group’), Singapore Airlines Ltd and Singapore Airlines Cargo Pte Ltd (‘Singapore Airlines’) (together, ‘the appellants’).

⁴² Judgments of 30 March 2022, *Martinair Holland v Commission* (T-323/17, EU:T:2022:174); *Koninklijke Luchtvaart Maatschappij v Commission* (T-325/17, EU:T:2022:176); *Air Canada v Commission* (T-326/17, EU:T:2022:177); *Cargolux Airlines v Commission* (T-334/17, EU:T:2022:178); *Air France-KLM v Commission* (T-337/17, EU:T:2022:179); *Air France v Commission* (T-338/17, EU:T:2022:180); *Japan Airlines v Commission* (T-340/17, EU:T:2022:181); *British Airways v Commission* (T-341/17, EU:T:2022:182); *Deutsche Lufthansa and Others v Commission* (T-342/17, EU:T:2022:183); *Cathay Pacific Airways v Commission* (T-343/17, EU:T:2022:184); *Latam Airlines Group and Lan Cargo v Commission* (T-344/17, EU:T:2022:185); *Singapore Airlines and Singapore Airlines Cargo v Commission* (T-350/17, EU:T:2022:186).



them for participating in that cartel.⁴³ Only the appeal brought by SAS Cargo Group is upheld in part by the Court of Justice, on account of errors made by the General Court in exercising its unlimited jurisdiction when calculating the fine imposed on that airline.⁴⁴

On 7 December 2005, the Commission received an application for immunity under the 2002 Leniency Notice, lodged by Lufthansa and two of its subsidiaries. That application referred to the existence of anticompetitive contacts between a number of undertakings operating in the airfreight market ('the carriers'), relating to the introduction of fuel and security surcharges for their airfreight services and, in essence, to the refusal to grant freight forwarders a discount on those surcharges. The evidence gathered by the Commission and its investigations led it to adopt, on 9 November 2010, an initial decision⁴⁵ in respect of 21 carriers.

In that decision, the Commission found that the carriers had participated in a single and continuous infringement of Article 101 TFEU, Article 53 of the Agreement on the European Economic Area ('the EEA Agreement') and Article 8 of the EC-Switzerland Air Transport Agreement by coordinating their pricing behaviour in the provision of freight services. However, that decision was annulled, in whole or in part, by the General Court on account of contradictions vitiating the statement of reasons for that decision.

Following those annulment judgments, the Commission found, by the decision at issue, that there had been such a single and continuous infringement, by which 19 airlines had coordinated, over periods between 1999 and 2006, their pricing behaviour in the provision of freight services on a global basis by reaching an agreement on the introduction of fuel and security surcharges and on the refusal to pay commission. It thus imposed corrective measures and fines on them for their participation in that infringement.

Hearing several actions brought by the appellants seeking, in essence, the annulment, in whole or in part, of the decision at issue in so far as it concerns them, and the cancellation of, or a reduction in the amount of, the fine imposed, the General Court dismissed the actions brought by Martinair, KLM, Cargolux, Air France-KLM, Air France, Lufthansa and Singapore Airlines. By contrast, it annulled the decision at issue in part and reduced the fine in the light of the other appellants' participation in the infringement.

The appellants then brought several appeals against those judgments before the Court of Justice.

Findings of the Court

In support of their respective appeals, the appellants put forward a number of grounds of appeal, which relate in particular to:

1. the Commission's jurisdiction to find and penalise an infringement of the competition rules in relation to freight services from airports in third countries to those in Member States of the European Union or other States party to the EEA which are not members of the European Union ('inbound freight services');
2. the General Court's examination of the merits of the decision at issue;
3. infringement of the rights of the defence;
4. the General Court's exercise of its unlimited jurisdiction.

(1) The Commission's jurisdiction to find and penalise an infringement of the competition rules in relation to inbound freight services

⁴³ Commission Decision C(2017) 1742 final of 17 March 2017 relating to a proceeding under Article 101 [TFEU], Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case AT.39258 – Airfreight) ('the decision at issue').

⁴⁴ Judgment of 30 March 2022, *SAS Cargo Group and Others v Commission* (T-324/17, EU:T:2022:175).

⁴⁵ Commission Decision C(2010) 7694 final of 9 November 2010 relating to a proceeding under Article 101 TFEU, Article 53 of the EEA Agreement and Article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case COMP/39258 – Air Freight).

After clarifying that, by referring to air transport 'between' the European Union and third countries, Regulation No 1/2003,⁴⁶ as amended by Regulation No 411/2004,⁴⁷ applies both to air transport from the European Union to third countries and to air transport from third countries to the European Union, the Court of Justice rejects the grounds of appeal alleging a lack of jurisdiction on the part of the Commission to find and penalise an infringement of Article 101 TFEU and Article 53 of the EEA Agreement in relation to inbound freight services.

On that point, the Court of Justice recalls that the Commission may find and penalise conduct adopted outside the territory of the European Union or the EEA, provided that such conduct was implemented in that territory ('the implementation test') or that it was foreseeable that such conduct would have an immediate and substantial effect in that territory ('the qualified effects test').

Although the Commission had found, in the decision at issue, that those two tests were satisfied in the case in point, the General Court simply confirmed the Commission's territorial jurisdiction by reference exclusively to the qualified effects test.

In that regard, the Court of Justice notes, first of all, that the General Court did not err in law in confirming the Commission's jurisdiction by reference solely to the 'qualified effects' test, since that test and the implementation test are alternative.

Since a number of appellants also complained that the General Court inferred the presence of qualified effects from the classification of the cartel as a 'restriction of competition by object', the Court of Justice states, next, that those complaints are based on a misreading of the judgment under appeal.

The Court of Justice also rejects the complaints that the General Court substituted its own reasoning for that of the Commission as regards the application of the qualified effects test. In that regard, it notes that, where the General Court merely responds to the line of argument raised before it and explains the reasoning of the contested act, it cannot be considered that the General Court is substituting its own reasoning for that of the author of that act. Furthermore, the fact that the evidence that enabled the General Court to ascertain whether the Commission had established its extraterritorial jurisdiction in the light of the qualified effects test was taken from recitals outside the section of the decision at issue relating to the Commission's international jurisdiction cannot establish the existence of an unlawful substitution of grounds either.

Last, the Court of Justice rejects the various complaints alleging errors of law made by the General Court in its review of the Commission's application of the qualified effects test.

In that regard, the Court of Justice recalls that, in accordance with that test, the Commission must establish that the practices concerned have foreseeable, immediate and substantial effects in the European Union or, as in the case in point, in the EEA.

As regards the foreseeability of the practices concerned, the Court of Justice emphasises, first, that any loss the incurrance of which the cartel members ought reasonably to take into consideration on the basis of practical experience is foreseeable, unlike loss which results from an entirely extraordinary train of events.

Given that the fuel surcharge, the security surcharge and the refusal to pay commission constitute collusive horizontal price-fixing behaviour and that such behaviour is especially liable to affect trade, the Court of Justice considers that it is established that those practices lead to an increase in the total price of inbound freight services. It follows that the General Court was not required to verify specifically the effect of the surcharges on the total sale price of the freight services, nor did it have to establish whether and to what extent the freight forwarders had actually passed on that price increase to the shippers, or whether and to what extent the shippers had actually passed on that increase in transport costs to consumers.

⁴⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

⁴⁷ Council Regulation (EC) No 411/2004 of 26 February 2004 repealing Regulation (EEC) No 3975/87 and amending Regulations (EEC) No 3976/87 and (EC) No 1/2003, in connection with air transport between the Community and third countries (OJ 2004 L 68, p. 1).

In accordance with the general rules on the taking of evidence, the General Court also did not reverse the burden of proof by examining whether the appellants had adduced evidence capable of rebutting the finding that the effects of the conduct at issue in the EEA were foreseeable.

As regards the immediacy of the effects of the practices concerned, the Court of Justice states, second, that it is sufficient that the anticompetitive conduct in question is liable to have an immediate effect in the European Union or in the EEA in order for that requirement to be satisfied.

In that context, the Court of Justice rejects, *inter alia*, the complaints alleging that the effects of the appellants' conduct on competition in the EEA were not immediate, in so far as those effects depended on the intervention of other actors in the causal chain, namely freight forwarders and shippers, since that intervention resulted objectively from the cartel at issue, in accordance with the normal functioning of the market.

As regards the substantial nature of the effects of the practices concerned, the Court of Justice rejects, third, the complaints that the General Court relied on characteristics of the cartel at issue that did not appear in the decision at issue in order to conclude that the effect on the prices of imported goods was substantial.

Furthermore, since the Commission had established that the qualified effects test was satisfied as regards coordination in relation to inbound freight services taken in isolation, it was for the sake of completeness that the General Court examined whether the qualified effects test was satisfied having regard to the effects of the single and continuous infringement taken as a whole.

(2) *The examination of the merits of the decision at issue*

As regards the General Court's review of the merits of the decision at issue, some of the appellants raise complaints concerning, in particular:

- (a) the existence of a single and continuous infringement and their participation therein;
- (b) the classification of the practices concerned as a restriction by object;
- (c) the annulment only in part of the decision at issue in respect of Latam Airlines Group and Lan Cargo;
- (d) the limitation period for the Commission's power to impose penalties in respect of conduct relating to intra-EEA routes and EU-Switzerland routes.

(a) *The existence of a single and continuous infringement and the appellants' participation therein*

In the first place, as regards the geographic scope of the practices concerned, the Court of Justice notes that there is no contradiction between the operative part of the decision at issue, which classifies the scope of the anticompetitive conduct at issue as worldwide, and the grounds of that decision, which exclude certain EU-third country routes. It is necessary to distinguish the concept of 'conduct', which refers to a body of facts, from the concept of 'infringement', which refers to the legal classification given to that conduct. Furthermore, whatever the grounds on which a decision adopted by an EU institution is based, only the operative part of that decision, read in the light of the grounds which constitute the essential basis for it, is capable of producing legal effects.

In the second place, the Court of Justice recalls that, for the purpose of characterising various instances of conduct as a single and continuous infringement, it is not necessary to ascertain whether they present a link of complementarity, in the sense that each of them is intended to deal with one or more consequences of the normal pattern of competition, and, through interaction, contribute to the attainment of the set of anticompetitive effects desired by those responsible, within the framework of a global plan having a single objective. Therefore, even if the Commission had failed to establish such a link of complementarity between the agreements and practices at issue, as some of the appellants claim, that failure would not, in itself, vitiate the classification of those agreements and practices as a single and continuous infringement.

In the third place, the Court of Justice emphasises that it has only partially accepted the possibility of excluding particular anticompetitive conduct from the scope of Articles 101 and 102 TFEU, on the ground that it has been required of the undertakings by national legislation or that the legislation has eliminated any possibility of competitive conduct on their part. Thus, if a national law merely encourages or makes it easier for undertakings to engage in autonomous anticompetitive conduct,

those undertakings remain subject to Articles 101 and 102 TFEU. Since that case-law applies both to the laws of the Member States and to those of third countries, it is for the undertakings in question to prove that the national legislation of the third countries concerned had not encouraged them but obliged them to adopt the conduct at issue.

In the fourth place, the Court of Justice rejects the arguments put forward by the appellants in order to dispute their participation in the single and continuous infringement penalised by the Commission.

In that regard, the Court of Justice recalls in particular that, where an infringement extends over several years, the fact that direct evidence of the implementation of an agreement by an undertaking has not been adduced for certain specific periods does not preclude its participation in that agreement from nevertheless being established in respect of those periods, provided that such a finding is based on objective and consistent indicia. In such a case, the General Court may base its assessment of the existence and duration of an anticompetitive practice or agreement on an overall evaluation of all the relevant evidence and indicia provided by the Commission, including in particular the effects produced by the anticompetitive conduct concerned.

The Court of Justice also rejects Air Canada's ground of appeal alleging that the General Court erred in law by holding it liable in respect of routes on which it does not operate or on which it is not allowed to operate, namely intra-EEA routes and EU-Switzerland routes.

On that point, the Court of Justice notes that it is apparent from the findings of the General Court in the judgment under appeal that Air Canada intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives. The General Court thus did not err in law in inferring therefrom that the Commission was entitled to find Air Canada liable for the single and continuous infringement in so far as it concerned intra-EEA routes and EU-Switzerland routes, irrespective of whether it was a potential competitor on those routes.

In the fifth place, the Court of Justice emphasises that, while it is for the Commission to produce sufficiently precise and consistent evidence to support the conviction that the infringement was committed, the General Court is not required to annul a decision of the Commission simply because the Commission refers to facts that do not constitute direct evidence of the participation of the undertaking concerned in the alleged infringement. It is sufficient that the General Court ascertain, as it did in the case in point, that all the items of evidence examined were such as to support the finding that the undertaking in question participated in the single and continuous infringement. In that regard, the Court of Justice states, in addition, that evidence relating to contacts prior to the period of the infringement or relating to conduct in respect of which the Commission does not have jurisdiction can corroborate the interpretation of other evidence relating to that period, in order to provide context for that conduct or demonstrate the recurrence of certain kinds of conduct or practices.

In the sixth and last place, the Court of Justice rejects Cargolux's ground of appeal to the effect that the General Court breached the principle of equal treatment by confirming Cargolux's participation in the element of the infringement relating to the refusal to pay commission while ruling out British Airways' involvement in that regard, since those two carriers were not in comparable situations as regards the evidence used against them in order to establish their participation in that element of the infringement.

Similarly, the General Court's decision not to grant Cargolux a reduction in the fine equivalent to that granted to SAS Cargo Group cannot constitute a breach of the principle of equal treatment either, since SAS Cargo Group benefited from that reduction because the finding that it participated in the element of the infringement relating to the refusal to pay commission was annulled.

(b) The classification of the practices concerned as restrictions by object

In the first place, the Court of Justice recalls that, in order to determine whether an agreement between undertakings or a decision by an association of undertakings reveals a sufficient degree of harm to competition that it may be considered a restriction of competition 'by object' within the meaning of Article 101(1) TFEU, regard must be had, in accordance with settled case-law, to the content of its provisions, its objectives and the economic and legal context of which it forms a part. However, for collusive agreements or practices constituting particularly serious infringements of the competition rules, such as, as in the case in point, a horizontal price-fixing cartel, the Commission may

limit its analysis of the economic and legal context of which the practice forms part to what is strictly necessary in order to establish the existence of a restriction of competition by object.

In the second place, the Court rejects the argument based on the fact that the collusive conduct in question concerned only part of the price of the product or service concerned, since that fact cannot in any way establish that that conduct does not fall within a form of coordination which must be regarded, by its very nature, as being harmful to the functioning of normal competition. On the contrary, such conduct leads, by its very nature, to higher prices, resulting in poor allocation of resources to the detriment, in particular, of consumers.

The argument that the refusal to pay commission constituted a legitimate response by the airlines to the allegedly unlawful conduct of the freight forwarders is also unconvincing, since it is for the public authorities and not private undertakings to ensure compliance with statutory requirements. Thus, even if it were established, that circumstance could not in any event legitimise an infringement of Article 101 TFEU, let alone a collusive practice which has been found to be sufficiently harmful to competition to be characterised as a restriction by object.

(c) The annulment only in part of the decision at issue in so far as it concerns Latam Airlines Group and Lan Cargo

By its judgment in *Latam Airlines Group and Lan Cargo v Commission*, the General Court annulled the decision at issue in so far as it concerned the participation of Latam Airlines Group and Lan Cargo in the elements of the single and continuous infringement relating to the security surcharge and the refusal to pay commission, on the ground that the Commission had incorrectly found that Lan Cargo was aware of those elements of the infringement.

In support of their appeal, Latam Airlines Group and Lan Cargo criticised the General Court for annulling the decision at issue only in part with regard to them, whereas the error made by the Commission should have led to the annulment of that decision in its entirety.

In that regard, the Court of Justice recalls that the finding that the Commission has failed to prove to the requisite legal standard that, when participating in one of the forms of anticompetitive conduct comprising a single and continuous infringement, an undertaking was aware of the other anticompetitive conduct adopted by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and was prepared to take the risk, cannot lead that undertaking to be relieved of its liability for that part of the conduct in which it has undeniably taken part or for conduct for which it can undeniably be held liable. In that case, the EU judicature must confine itself to partial annulment of the Commission decision challenged before it.

It follows that, in so far as Lan Cargo's participation in the exchanges relating to the fuel surcharge had not been called into question, the General Court did not err in annulling the decision at issue only in part.

Moreover, the fact that the Commission did not establish that Lan Cargo was aware of the exchanges relating to the security surcharge or of those relating to the refusal to pay commission was not such as to call into question the single and continuous nature of the infringement found, even though liability could not be attributed to that carrier in respect of that infringement in its entirety.

(d) The limitation period for the Commission's power to impose penalties in respect of conduct relating to intra-EEA routes and EU-Switzerland routes

The Court of Justice also rejects the complaints that the General Court should have raised of its own motion that the Commission's powers to impose penalties were time-barred in respect of the conduct relating to the intra-EEA routes and EU-Switzerland routes, in accordance with Article 25 of Regulation No 1/2003.

In that regard, the Court of Justice notes that it is apparent from the wording of Regulation No 1/2003, its context and the objectives which it pursues that the time limits laid down, inter alia, in Article 25 thereof constitute limitation periods. It is apparent from settled case-law that compliance with a limitation period may not be raised by the EU judicature of its own motion but must be raised by the party affected.

In that context, the Court of Justice also rejects the argument that the plea based on the expiry of the limitation period for the Commission's powers to impose penalties should be treated in the same way as a plea alleging that the Commission lacked competence to impose fines on the appellants. Although Article 25 of Regulation No 1/2003 requires the Commission to impose a penalty for a particular infringement within a certain period, that provision has neither the object nor the effect of divesting the Commission of its power to impose penalties in respect of infringements other than that covered by the limitation period. Furthermore, even where the limitation period for the Commission's powers to impose penalties has expired, the Commission remains competent to make a finding of infringement after the expiry of that period, provided that it demonstrates a legitimate interest in adopting a decision finding that the infringement was committed.

According to the Court of Justice, the appellants concerned also cannot rely on a breach of the principle of equal treatment in relation to the airlines which were successful before the General Court in claiming that the Commission's action was partially time-barred, since that difference in treatment results exclusively from the objective circumstance that those appellants refrained from raising that plea, whereas they could have done so.

In addition, the Court of Justice emphasises that the limitation period is not comparable to procedural time limits either, since the latter are laid down with a view to ensuring due administration of justice, clarity and legal certainty. That is not the case with the limitation period, which is principally intended to protect the undertakings concerned.

Furthermore, the fact that fines imposed under Article 23(2) of Regulation No 1/2003 should be classified as 'criminal' within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not in itself mean that the limitation period for the Commission's power to impose penalties pursues an objective in the public interest going beyond the protection of the undertakings concerned.

(3) *The infringement of the rights of the defence*

As regards observance of the appellants' rights of defence, the Court of Justice finds that the mere fact that the Commission did not give full and automatic access to other cartel participants' replies to the Statement of Objections does not entail an infringement of the rights of defence of the undertakings concerned, which must adduce prima facie evidence that the documents which were not disclosed to them would be useful for their defence. It recalls, in that regard, that there is no right of full and automatic access to the file during an administrative procedure.

The Court of Justice also notes that the Commission does not infringe the rights of defence of the undertakings to which a statement of objections is addressed, and in particular their right to be heard as regards the Commission's international jurisdiction to penalise anticompetitive conduct adopted outside the territory of the European Union or the EEA, merely because the Commission does not expressly state, in that statement, the test on which it intends to base its jurisdiction to penalise that conduct, where the Commission states, in that statement, that it intends to penalise the undertakings to which it is addressed for an infringement of Article 101 TFEU and Article 53 of the EEA Agreement by reason of such conduct and where it sets out the essential factors which it intends to take into account for that purpose.

(4) *The General Court's exercise of its unlimited jurisdiction*

As regards the General Court's exercise of its unlimited jurisdiction, the Court of Justice observes that, although the exercise of that jurisdiction cannot, when determining the amount of fines, result in discrimination between undertakings which have participated in an infringement of the competition rules, the General Court does not infringe the principle of equal treatment when it reduces the fine of an undertaking whose plea to that effect has been upheld, without granting a similar reduction for other undertakings that are in a comparable situation but have not raised the same plea before it.

By contrast, as regards the General Court's calculation of the fine imposed on SAS Cargo Group, the Court of Justice finds that, by including, in the basis for calculating that fine, the turnover achieved by that undertaking on internal routes, in order to ensure equal treatment with the other incriminated carriers, the General Court made several errors of law in exercising its unlimited jurisdiction. In particular, the evidence submitted to it in no way established that all of the incriminated airlines which had challenged the decision at issue had, unlike SAS Cargo Group, had their turnover which

may have been achieved on routes operated within a single EEA State included in the value of their sales which served as the basis for the calculation of their fines. The General Court therefore did not have information which would have enabled it to establish with certainty a breach of the principle of equal treatment which it was required to rectify.

Consequently, the Court of Justice sets aside in part the judgment of the General Court in *SAS Cargo Group and Others* and, ruling definitively on that dispute, imposes on those undertakings lower fines than those imposed in the judgment under appeal.

By contrast, in the light of all of the foregoing, the Court of Justice dismisses all the other appeals brought by the airlines involved in the 'airfreight' cartel.

IX. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the Court of Justice (Fifth Chamber) of 5 February 2026, *EUIPO v Nowhere*, C-337/22 P

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

Appeal – Application for the EU figurative mark APE TEES – Earlier non-registered figurative trade marks representing a monkey, protected in the United Kingdom of Great Britain and Northern Ireland – Regulation (EC) No 207/2009 – Article 8(4) – Relative ground for refusal – Opposition – Appeal before the Board of Appeal – Dismissal – Action before the General Court – Article 50(1) and (3) TEU – Withdrawal of the United Kingdom from the European Union – Articles 126 and 127 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Transition period – Expiry – Circumstances prior to the adoption of the decision at issue – Relevant moment for assessing the existence of an earlier mark – Principle of territoriality – Territorial scope of the EU trade mark – Existence of a conflict

Ruling on an appeal, which it upholds, the Court of Justice sets aside the judgment of the General Court in *Nowhere v EUIPO – Ye (APE TEES)*.⁴⁸ The Court rules on the identification of the relevant times for the assessment of the existence of an earlier mark on which opposition proceedings are based, in the particular context of the withdrawal of the United Kingdom from the European Union.

On 30 June 2015, Mr Ye filed an application for registration of an EU trade mark with the European Union Intellectual Property Office (EUIPO) in respect of the figurative sign APE TEES. Nowhere filed a notice of opposition against that application on the basis of three earlier non-registered figurative marks used in the course of trade in the United Kingdom.⁴⁹ The Opposition Division rejected that opposition.

By a first decision of 8 October 2018, the Board of Appeal confirmed that rejection. However, it subsequently revoked that decision because of an obvious error attributable to EUIPO. By a second decision of 10 February 2021 ('the decision at issue'), it once again upheld the rejection of the opposition on the ground that, after the withdrawal of the United Kingdom from the European Union

⁴⁸ Judgment of 16 March 2022, *Nowhere v EUIPO – Ye (APE TEES)* (T-281/21, EU:T:2022:139; 'the judgment under appeal').

⁴⁹ On the basis of Article 8(4) of Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1; 'Regulation 207/2009').

and after the expiry, on 31 December 2020, of the transitional period provided for in the Withdrawal Agreement,⁵⁰ any rights that might exist in the United Kingdom no longer constituted a basis for opposition proceedings on the basis, inter alia, of Article 8(4) of Regulation 207/2009.

On 21 May 2021, Nowhere thus brought an action before the General Court seeking the annulment and alteration of the decision at issue. By the judgment under appeal, the General Court upheld that action and annulled the decision at issue, holding that it was apparent from its 'now settled' case-law that the existence of a relative ground for refusal had to be assessed as at the date of filing of the application for registration of an EU trade mark against which an opposition was filed. Accordingly, it concluded that, having regard to the fact that the application for registration at issue had been filed before the date of entry into force of the Withdrawal Agreement and the date of expiry of the transition period, the earlier marks on which the opposition proceedings were based were, in principle, capable of forming the basis of those proceedings.

It is in that context that EUIPO lodged an appeal before the Court of Justice against that judgment. The Federal Republic of Germany intervened in support of EUIPO.

Findings of the Court

In the first place, the Court rules on the intervener's argument that Nowhere had no interest in bringing proceedings before the General Court.

In that regard, the Court points out that arguments submitted by an intervener are not admissible unless they fall within the framework provided by the forms of order sought and pleas in law raised by the main parties. However, by raising a plea involving a matter of public policy, an intervener does not go beyond the scope of the dispute. In the context of an appeal, the interest of the party which brought the action before the General Court in having the contested act annulled, in particular, constitutes such a plea involving a matter of public policy. The existence of an interest in bringing an action for annulment requires that, through its outcome, the action must be capable of procuring an advantage to the person which brought it.

In the present case, the decision at issue confirmed the Opposition Division's decision to reject Nowhere's opposition, on the ground that Nowhere could no longer claim the benefit of its earlier non-registered marks in the United Kingdom in support of its opposition as from the date of expiry of the transition period provided for in the Withdrawal Agreement. Accordingly, Nowhere was capable of benefiting from the annulment of the decision at issue. Consequently, the Court rejects the intervener's arguments as unfounded.

In the second place, the Court examines the line of argument by which EUIPO alleges that the General Court erred in law in the interpretation of Article 8(4) of Regulation 207/2009. In that regard, it notes that the General Court relied on its *Brownie* case-law.⁵¹ That case-law is based on the premiss that, since the existence of a relative ground for refusal relied on in support of an opposition to the registration of an EU trade mark must be assessed as at the date of filing of the application for that registration, the fact that the earlier mark relied on in support of that opposition loses, after that date, the status of a trade mark registered or protected in a Member State has, in principle, no bearing on the outcome of that opposition. However, that premiss has no basis either in the wording and context of Article 8(4) or in the objectives of the opposition proceedings.

First, the Court considers that it can be inferred from the wording of that provision that, admittedly, the acquisition of the earlier right relied on in support of an opposition based on that provision must be assessed in the light of the date of filing of the application for registration of the EU trade mark concerned or, as the case may be, the priority date. However, it also follows that it is necessary, in order for that opposition to be upheld, that that earlier right confer on its proprietor the 'right to prohibit the use of a subsequent trade mark' under the legislation of a Member State or that of the European Union, not only on that date, but also on the later date on which that opposition was filed

⁵⁰ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7; 'the Withdrawal Agreement').

⁵¹ Judgment of 30 January 2020, *Grupo Textil Brownie v EUIPO – The Guide Association (BROWNIE)* (T-598/18, EU:T:2020:22, paragraph 19; 'the *Brownie* case-law').



and until the date on which a decision is taken as to whether 'the trade mark applied for shall not be registered'.

Secondly, the Court finds that that interpretation is supported by the context of which Article 8(4) of Regulation 207/2009 forms part and, in particular, the wording of Article 8(1) and (2), and by the Court's case-law in relation to Article 8(4) of Regulation 40/94.⁵² The Court concludes that the question whether there is still a validly protected earlier right must be assessed on the date on which EUIPO gives a final decision on the opposition, including at the stage of the appeal before the Board of Appeal. It is therefore a preliminary issue that EUIPO must resolve before ascertaining whether the opposing party has proved that that earlier right also satisfied the substantive conditions laid down in Article 8(4) of Regulation 207/2009, and in particular that it conferred on its proprietor the right to prohibit the use of a subsequent trade mark.

Thirdly, as regards the objectives of opposition proceedings, the Court observes that those proceedings serve a preventive purpose, namely to prevent the registration of EU trade marks liable to conflict with other marks or other signs used in the course of trade by enabling the proprietor of an earlier mark to prevent a sign that is liable to infringe that mark from being registered.

However, the Court notes that the General Court's interpretation in the judgment under appeal, in line with the *Brownie* case-law, necessarily means that EUIPO may have to refuse registration of an EU trade mark on account of a potential conflict with an earlier trade mark, even though, on the date of that refusal, the latter mark is no longer protected in that territory by the legislation or treaty provisions applicable to it. Accordingly, the General Court's interpretation of Regulation 207/2009 is contrary to the general objective of that regulation of balancing the interests of the proprietor of an earlier mark and those of third parties in having signs capable of designating their goods and services.

In the light of the foregoing, the Court considers that the General Court erred in law in relying on the premiss that the existence of a relative ground for refusal relied on in support of an opposition to the registration of an EU trade mark must be assessed only as at the date of filing of the application for that registration.

In the third place, the Court analyses the General Court's reasoning that a conflict between the earlier marks and the mark applied for could exist, at the very least, during the period between the date on which the EU trade mark application was filed and the expiry of the transition period.

In that regard, first, it observes that, contrary to the premiss on which the General Court's reasoning is based, the rejection of the opposition of the proprietor of the earlier marks, on the ground that no conflict between those marks and the mark applied for could arise after the expiry of the transition period, does not mean that that proprietor should be refused protection of its earlier non-registered marks used in the course of trade in the United Kingdom before that date. In so far as it actually had, under national legislation, the right to prohibit the use of a subsequent trade mark, that proprietor was, during that period, entitled to bring before the courts of the United Kingdom an action for infringement of its rights against the use of the EU trade mark applied for, and the registration of that mark could not preclude such an action.

Secondly, the Court explains that, unlike infringement proceedings, opposition proceedings do not concern a conflict linked to the actual use of the marks in the course of trade, but a potential conflict, conditional on the registration applied for and linked to the coexistence of two competing intellectual property rights, which are equally valid and enforceable. In addition, an EU trade mark is to prevail against third parties only from the date of publication of the registration of that mark.

In the present case, on the date on which the transition period expired, the opposition of the proprietor of the earlier marks was pending and enabled it to protect the essential function of the earlier marks at issue by preventing the registration of the mark applied for. In the event of registration, that EU trade mark would become valid and enforceable only on a date on which there is no, even potential, conflict, with those earlier marks. Accordingly, in finding that there could be a

⁵² Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

conflict between the earlier marks and the mark applied for after the end of the transition period, the General Court relied on erroneous premisses.

In the fourth place, the Court analyses EUIPO's line of argument alleging that the General Court failed to have regard to the legal consequences arising from Articles 126 and 127 of the Withdrawal Agreement and to the principle of territoriality.⁵³

First, the Court notes that, under Article 50(3) TEU, the Treaties ceased to apply to the United Kingdom on the date of entry into force of the Withdrawal Agreement, namely 1 February 2020, with the result that that State is no longer, since that date, a Member State. However, Articles 126 and 127 of that agreement provide for a transitional period, starting on the date of entry into force of that agreement and ending on 31 December 2020, during which, unless otherwise provided in that agreement, EU law is applicable to and in the United Kingdom and any reference to Member States in that law is to be understood as including that State.

By contrast, the provisions of that agreement relating to intellectual property do not state what treatment is to be given to an opposition brought before the date of entry into force of that agreement, on the basis of an earlier right protected in the United Kingdom, and which is pending at the end of that period. In that regard, the Court notes that, under Article 8(4) of Regulation 207/2009, the earlier trade mark or right referred to in that provision must, in particular, 'pursuant to ... the law of the Member State governing [that trade mark or that sign]', confer on its proprietor 'the right to prohibit the use of a subsequent trade mark'. From the end of the transition period, the law of the United Kingdom, relied on in support of the opposition at issue, no longer constituted, in the absence of any provision to the contrary in the Withdrawal Agreement, the 'law of a Member State'.

The General Court therefore erred in finding that there were no express provisions in the Withdrawal Agreement as regards the treatment of an opposition that was brought before the date of entry into force of that agreement, without, however, drawing appropriate legal inferences as regards the possibility of relying, after the end of the transition period, on the earlier marks protected in the United Kingdom on which the opposition was based.

Secondly, as regards the principle of territoriality, the Court points out that, under that principle, the legal effects of a trade mark are limited to the territory in which it is protected. It states that the provisions of the Withdrawal Agreement did not provide, by way of derogation from the principle of territoriality, for an EU trade mark registered after the date of expiry of the transition period to have effect in the territory of the United Kingdom. There can be no conflict between earlier trade marks that are protected in the United Kingdom and an EU trade mark in the event that the latter is registered after the date of expiry of the transition period, given that the latter mark will, in that case, have effect in a territory other than that in which those earlier trade marks are protected.

Thus, by referring to a potential conflict between those marks, the General Court relied on an incorrect premiss and erred in law in that it did not correctly take into account the legal consequences of the end of the transition period and the principle of territoriality.

Furthermore, the Court adds that the fact that the opposition was filed on a date on which the withdrawal of the United Kingdom was not foreseeable is irrelevant since, in order for an opposition to be upheld, the earlier mark protected under EU law must continue to exist until the date of delivery of the final decision ruling on that opposition. It therefore upholds the appeal and sets aside the judgment under appeal.

Lastly, after finding that the state of the proceedings so permits, the Court dismisses the action brought by the proprietor of the earlier marks on the ground that the earlier rights relied on in support of an opposition must continue to exist until the date on which EUIPO rules on the opposition, including at the stage of the appeal before the Board of Appeal, which was not the case here.

⁵³ The principle of territoriality is set out, inter alia, in Article 1(2) of Regulation 207/2009.

2. MOTOR INSURANCE

Judgment of the Court of Justice (Fourth Chamber) of 12 February 2026, Stichting Koskea, C-490/24

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

Reference for a preliminary ruling – Compulsory insurance against civil liability in respect of the use of motor vehicles – Directive 2009/103/EC – Article 12(1) – Obligation for personal injuries to all passengers, other than the driver, arising out of the use of a vehicle to be covered by civil liability insurance – Scope – Road traffic accident involving a single vehicle – Damage suffered by the driver of the vehicle as a result of the intervention of a passenger in the driving of the vehicle

Ruling on a request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the Court of Justice clarifies the concept of ‘driver’ in the context of the compulsory insurance against civil liability in respect of the use of motor vehicles provided for by Directive 2009/103.⁵⁴ The Court rules that damage suffered by the driver of the only vehicle involved in a road traffic accident as a result of a passenger’s intervention in the driving of that vehicle does not have to be covered by that insurance.

At the end of 2016, ED was involved in a road traffic accident while driving a minibus, belonging to a football club, that was carrying a former coach of that club. While the minibus was travelling at a speed of approximately 70 km/h, the former coach, who was sitting behind and to the right of the driver, suddenly pulled the handbrake. The minibus skidded and hit several pillars. ED was seriously injured and suffers permanent and very serious lasting effects from the accident.

In order to obtain compensation for the damage suffered by ED as a result of that accident, the foundation that administers his assets and defends his interests claimed cover under the passenger and driver indemnity insurance taken out by the football club. The insurer did not grant that claim, arguing that ED was under the influence of alcohol when he got behind the wheel of the minibus. ED was informed that he was not covered under the compulsory civil liability insurance either, as it did not cover damage suffered by the driver.

Against that background, the foundation acting on behalf of ED brought an action before the court of first instance. That court held that ED should not have been excluded from the compulsory civil liability insurance cover provided for by Directive 2009/103 since, although he was at the wheel of the vehicle at the time of the accident, he could no longer be regarded as the driver because, by pulling the hand brake, the former coach had acted as the driver. As ED’s appeal was upheld by that court, the insurer brought an appeal against that decision before the court of appeal, which, taking the view that ED had not lost his status as driver as a result of the former coach pulling the handbrake, overturned the judgment of the court of first instance.

The foundation representing ED brought an appeal on a point of law before the referring court, which, in that context, has doubts regarding the interpretation of a provision of Directive 2009/103 which excludes drivers from the compulsory civil liability insurance cover. It notes that, first, the Court has always emphasised the importance of protecting passengers who are victims of a road traffic accident as well as the objective of ensuring that that insurance allows all passengers to be compensated for the damage which they have suffered. Second, Directive 2009/103 distinguishes the driver from other passengers, but does not define the concept of ‘driver’.

⁵⁴ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11), first, second and fourth paragraphs of Article 3.



Findings of the Court

In the first place, the Court recalls that, under Article 12(1) of Directive 2009/103, compulsory insurance against civil liability in respect of the use of motor vehicles covers civil liability for personal injuries to all passengers other than the driver. The Court thus states that, first, in the absence of a definition of the concepts of 'driver' and 'passenger' in that directive, the scope of those terms must be determined by reference to their usual meaning in everyday language. Second, the term 'driver' usually refers to the person who is at the controls or the wheel of the vehicle and is responsible for driving it, whereas the term 'passenger' refers to a person who is elsewhere in the vehicle concerned and who is not driving it. In that respect, it observes that there may be, in a vehicle, several passengers other than the driver, but, in principle, only one driver at a time. Third, Article 12(1) of Directive 2009/103 does not include damage suffered by the driver of a vehicle in the cover provided by the compulsory insurance against civil liability in respect of the use of motor vehicles.

In the second place, as regards the context of which Article 12(1) of Directive 2009/103 forms part, the Court points out, in the light of the definition of the concept of 'vehicle' within the meaning of that directive, that every vehicle in use has, in principle, a driver and a driver's seat, and that that driver is the person who, inside the vehicle, operates or is in a position to operate the mechanical power for the purposes of its movement, while at the wheel. Accordingly, like that provision, several other provisions of Directive 2009/103,⁵⁵ distinguish the driver of the vehicle from other persons who may have been in that vehicle and other road users who were not in the vehicle but who may have been affected by a road traffic accident involving a vehicle. Thus, the categories of victims of an accident are, in essence, determined as distinct from the driver of the vehicle involved in the accident.

In addition, the Court emphasises the distinction between, on the one hand, the obligation to cover, by compulsory insurance against civil liability under Directive 2009/103, damage caused to third parties, and, on the other hand, the extent of compensation for damage caused to third parties on the basis of civil liability for the accident, which is, in essence, governed by national law. Accordingly, the role that any occupant of the vehicle, such as, in the present case, the passenger who pulled the handbrake, may have played in the accident and, therefore, in the occurrence of damage, may, in accordance with the rules on civil liability in force in the Member State in which the accident occurred, determine who is civilly liable for the accident and influence the extent of compensation.

In the light of the foregoing, the Court notes that the intervention of a passenger in the driving of a vehicle, which causes an accident, cannot have the effect of depriving the person who is in the driving seat of that vehicle and is steering it of his or her status as driver of that vehicle. To conclude otherwise would undermine both the fundamental distinction between driver and third-party victim, which characterises the system of compulsory insurance against civil liability established by Directive 2009/103, and the distinction between the obligation to provide that insurance cover and the extent of compensation for damage on the basis of civil liability for the accident, which is governed by national law.

In the third and last place, the Court finds that that interpretation is supported by the objectives pursued by Directive 2009/103, in particular the objective of protecting the victims of accidents caused by motor vehicles, which has continuously been reinforced during the development of EU legislation in the field of compulsory insurance against civil liability in respect of the use of motor vehicles. That objective would be undermined if, depending on random factual circumstances, the person at the wheel of a vehicle could lose his or her status as driver because of a passenger's intervention in the driving of that vehicle. The legal uncertainty which would result from such a possibility is, in itself, incompatible with that objective.

The Court also states that those legislative developments have been marked by the consistent and explicit exclusion of coverage, by compulsory civil liability insurance provided for by EU law, of damage suffered by the driver. Furthermore, nothing in that legislative development indicates any intention on the part of the EU legislature to harmonise the obligation to insure against civil liability in respect of the use of motor vehicles beyond the coverage of damage caused to third parties.

⁵⁵ Article 12(2) and (3) and Article 13(3) of Directive 2009/103.

Therefore, under current EU law, the question of whether there may be an obligation to cover, by insurance, damage suffered by the driver of the only vehicle involved in a road traffic accident remains governed by the national laws of the Member States.

It follows that the damage suffered by the driver of the only vehicle involved in a road traffic accident does not have to be covered by the compulsory insurance against civil liability in respect of the use of motor vehicles provided for by Directive 2009/103, even where a passenger intervened in the driving of that vehicle and that intervention caused the accident.

X. ENVIRONMENT: RELEASE OF GENETICALLY MODIFIED ORGANISMS (GMOS)

Judgment of the Court of Justice (First Chamber) of 5 February 2026, Fidenato, C-364/24 and C-393/24

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

References for a preliminary ruling – Environment – Deliberate release of genetically modified organisms (GMOs) – Measures to avoid the unintended presence of GMOs in the environment – Directive 2001/18/EC – Article 26c(1) and (3) – Regulation (EC) No 1829/2003 – Implementing Decision (EU) 2016/321 – Prohibition of the cultivation of MON 810 GMO maize in Italy – Validity – Free movement of goods – Articles 34 and 114 TFEU – Principles of proportionality and non-discrimination – Freedom to conduct a business – Articles 16 and 21 of the Charter of Fundamental Rights of the European Union

Hearing requests for a preliminary ruling made by the Consiglio di Stato (Council of State, Italy) and the Tribunale di Udine (District Court, Udine, Italy), in two separate cases, the Court of Justice confirms the validity of Article 26c(1) and (3) of Directive 2001/18,⁵⁶ in the light of the provisions of the FEU Treaty concerning the establishment of the internal market and the free movement of goods, of the principle of proportionality and of the principle of non-discrimination as well as the freedom to conduct a business, laid down in the Charter of Fundamental Rights of the European Union ('the Charter'). That provision permits Member States, since 2015,⁵⁷ to restrict or prohibit the cultivation of genetically modified organisms (GMOs) within their territory, with the consent of the economic operator concerned. The Court also confirms the validity of Implementing Decision 2016/321⁵⁸ which was adopted on the basis of the same provision of Directive 2001/18 and provides for the prohibition on the cultivation of genetically modified MON 810 maize in Italy.

As regards Case C-364/24, Mr Fidenato, a farmer established in Italy, cultivated, in the year of sowing 2021, MON 810 GMO maize plants. By order of 14 October 2021, the competent national authorities pointed out to him that, under Implementing Decision 2016/321, Italy had prohibited the cultivation of MON 810 GMO maize, and ordered him to destroy his crops. As the order had not been implemented by Mr Fidenato within the prescribed deadline, the competent authority took care of destroying the crops itself.

When his action against that order, by which he claimed the unlawfulness of the order to destroy the crops, was dismissed, Mr Fidenato brought an appeal before the Council of State which is the

⁵⁶ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1), as amended by Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 (OJ 2015 L 68, p. 1).

⁵⁷ In 2015, Article 1(2) of Directive 2015/412 inserted Articles 26b and 26c into Directive 2001/18.

⁵⁸ Commission Implementing Decision (EU) 2016/321 of 3 March 2016 adjusting the geographical scope of the authorisation for cultivation of genetically modified maize (*Zea mays* L.) MON 810 (MON-ØØ81Ø-6) (OJ 2016 L 60, p. 90).

referring court in that case. That court asks the Court whether the possibility available to Member States on the basis of Articles 26b and 26c of Directive 2001/18 to seek the prohibition of the cultivation of GMOs within their territory, without having to provide any justification to that effect or proof of an actual threat that the GMO product in question, having obtained an authorisation to place on the market,⁵⁹ could represent for health or for the environment, is in conformity with primary EU law, in particular the fundamental freedoms of the internal market and, more generally, with the principle of proportionality.

In Case C-393/24, administrative fines totalling EUR 50 000 were imposed on Mr Fidenato on 19 June 2023 for having infringed the prohibition to cultivate MON 810 GMO maize in two Italian provinces. He then brought actions, inter alia, before the District Court, Udine, the referring court in that case, challenging the fine imposed on him for the seedlings of MON 810 GMO maize cultivated in the province of Udine.

In that context, the District Court, Udine, asks the Court to rule on the validity of Articles 26b and 26c of Directive 2001/18 in the light of, inter alia, the rules of primary EU law on the free movement of goods, the freedom to conduct a business and non-discrimination. Furthermore, as concerns Implementing Decision 2016/321, that court is uncertain, first, whether that decision could be adopted on the basis of Article 114 TFEU and has doubts as to the interpretation of the prohibition established by that implementing decision which, according to that court, does not mention the grounds on which the adjustment of the geographical scope of the authorisation concerning MON 810 GMO maize is based. Second, the District Court, Udine, has doubts as to the validity of Implementing Decision 2016/321.

Findings of the Court

As a preliminary point, the Court examines the admissibility of the questions referred, in particular with respect to the actual facts of the disputes in the main proceedings. The Court notes that, in Case C-364/24, Mr Fidenato stated that he intended to pursue the sowing of MON 810 GMO maize for the purposes of research until the Court has given a ruling on the lawfulness of Directive 2015/412. However, the Court finds that it is not obvious from the material before the Court that the parties to the main proceedings colluded to obtain a ruling from the Court by means of a fictitious dispute. Mr Fidenato does not appear to have acted together with the national authorities, which have imposed on him administrative fines, a fact which is beyond doubt.

Furthermore, as the disputes in the main proceedings concern measures decided pursuant to the prohibition to cultivate adopted on the basis of Article 26c(1) and (3) of Directive 2001/18, the Court considers that it is not necessary to assess the validity of Article 26b and Article 26c(2) and (4) of that directive.

In the first place, the Court rules on the validity of Article 26c(1) and (3) of Directive 2001/18 in the light of Article 3 TEU, Articles 26, 34 to 36 and Article 114 TFEU and the principle of proportionality.

The Court thus observes that Directive 2015/412, which inserted Articles 26b and 26c into Directive 2001/18, was adopted, like Directive 2001/18, on the basis of Article 114 TFEU, which allows the adoption of measures for the approximation of the provisions laid down by law, regulation and administrative action in Member States which have as their object the establishment and functioning of the internal market. The Court also emphasises that the provisions of Directive 2001/18 establish common rules setting out the conditions under which a Member State may prohibit the cultivation of a GMO or a group of GMOs in all or part of its territory and considers that those provisions therefore are covered by the measures referred to in Article 114 TFEU.

As regards the respect, by those measures, for the free movement of goods and the principle of proportionality, the Court recalls that the EU legislature enjoys broad discretion when it is called upon to legislate in an area which entails political, economic and social choices on its part, and in which it is called upon to undertake complex assessments, as is the case with the placing on the market or the

⁵⁹ On the basis of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1).

cultivation of GMOs. In such a situation, the lawfulness of a measure can be affected only if the measure is manifestly inappropriate in relation to the objective which it pursues.

As concerns the objective pursued by the EU legislation on GMOs, it follows from Article 1 of Directive 2001/18 and Article 1 of Regulation No 1829/2003 that that legislation aims to ensure protection of health, the environment, and the interests of consumers, while also ensuring the proper functioning of the internal market. In the present context, by adopting Articles 26b and 26c of Directive 2001/18, the EU legislature, while continuing to regulate issues related to the placing on the market and the import of GMOs at EU level, intended more specifically and in accordance with the principle of subsidiarity to afford Member States more flexibility as regards the cultivation of GMOs. The latter issue has strong national, regional and local dimensions, given its link to land use, to local agricultural structures and to the protection or maintenance of habitats, ecosystems and landscapes. However, that flexibility should not adversely affect the common authorisation procedure for the placing on the market of GMOs, which is based on the evaluation of the risks to human health and the environment. Thus, by allowing that the cultivation of a GMO or a group of GMOs, by means of a clear and predictable mechanism, may be excluded in all or part of the territory of a Member State, the EU legislature also intended to facilitate the decision-making process as regards the cultivation of GMOs.

In the light of those objectives, the Court states that the mechanism established in Article 26c(1) and (3) does not appear to be manifestly inappropriate.

The Court observes, first, that the measures adopted on the basis of Article 26c of Directive 2001/18 – including the prohibition measures adopted on the basis of paragraphs (1) and (3) of that provision – are limited to the cultivation of GMOs as they may not affect the free circulation of authorised GMOs as, or in, products. Therefore, the prohibition of such cultivation does not affect either the right of economic operators to import products containing GMOs or the freedom of choice of consumers, irrespective of the Member State where they reside, whether or not to consume the products derived from cultivation of the GMO in question.

Second, the adoption of those measures prohibiting the cultivation of GMOs is subject to the tacit consent by the holder of the authorisation for the GMO in question, in the form of a lack of opposition of that holder within 30 days from the communication of the demand of a Member State seeking the adjustment of the geographical scope of the authorisation with respect to the seeds concerned. Since the holder consented to it, his or her rights based on the free movement of goods may not be regarded as being affected by any barrier to that free movement which results from the application of Article 26c(1) and (3) of Directive 2001/18. In addition, the free movement of GMO seeds is conditional on obtaining an authorisation for the placing on the market of, or in, such products and is restricted to the strict framework of that authorisation. It follows that, where the geographical scope of such an authorisation has been restricted, with the tacit consent of its holder, so that the cultivation of a GMO seed is prohibited in all or part of the territory of a Member State, farmers cannot rely on the rights deriving from the free movement of goods in order to circumvent that prohibition.

Third, by giving Member States the possibility to prohibit the cultivation of a GMO in all or part of their territory, Article 26c(1) and (3) of Directive 2001/18 affords them, in the absence of consensus on the issue, more flexibility as concerns their choices with respect to the cultivation of GMOs, while the issues relating to the placing on the market and the import of GMOs, including assessing any risks to health and the environment, remain regulated at EU level in order to preserve the internal market. Moreover, the mechanism established by that provision of Directive 2001/18 facilitates the GMO authorisation procedure and contributes to legal certainty for operators.

Accordingly, the Court finds that Article 26c(1) and (3) of Directive 2001/18 does not undermine any rights that economic operators may derive from the free movement of goods; does not affect the freedom of choice of consumers; and contributes to the proper functioning of the internal market within the meaning of Article 114 TFEU. That finding is not undermined by the fact that the prohibition on the cultivation of a GMO on the basis of that provision of Directive 2001/18 is not conditional on any particular justification on the part of the Member States since such a measure may only be adopted with the tacit consent of the holder of the authorisation for the GMOs in question. By contrast, where that holder objects, Article 26c(4) of Directive 2001/18 requires Member States

wishing to prohibit the cultivation of a given GMO in all or part of their territory to provide compelling grounds in support of their demand.⁶⁰

In the second place, the Court rules on whether, by allowing the prohibition on the cultivation of a GMO or a group of GMOs in all or part of the territory of the Member States, Article 26c(1) and (3) of Directive 2001/18 introduces discrimination contrary to Article 18 TFEU and Article 21 of the Charter.

The Court recalls that the provisions of the latter article correspond to the provisions of Article 18 TFEU and must be applied in accordance with Article 18 TFEU. Article 18 TFEU applies independently only in situations governed by EU law for which the FEU Treaty lays down no specific rules of non-discrimination. Given that the principle of non-discrimination is implemented, in the field of free movement of goods, inter alia, by Articles 34 and 35 TFEU, it is in the light of those provisions that the Court carries out its assessment.

Ruling, first, on possible discrimination between farmers from different Member States, depending on whether those Member States authorise or prohibit the cultivation of GMOs, the Court finds that the adoption of measures prohibiting the cultivation of GMOs on the basis of Article 26c(1) and (3) of Directive 2001/18 does not introduce any distinction between national and non-national products, as such measures apply indistinctly, irrespective of the place of origin of the seeds in question. Moreover, the prohibition on discrimination does not cover any disparities in treatment which may result from divergences existing between the rules applicable in the various Member States, so long as those rules affect all persons subject to them equally. In addition, given the broad discretion which the EU legislature enjoys as concerns the placing on the market or the cultivation of GMOs, that legislature, without exceeding the limits of its discretion, could assume that the situations of farmers from different Member States are not comparable given the specific nature of GMO cultivation, which, inter alia, is linked to the place of production and to the specific nature of that place.

In those circumstances, the Court holds that no discrimination can be found between farmers from different Member States on the ground that some of those States prohibit the cultivation of a given GMO in all or part of their territory and others do not.

As concerns, second, possible discrimination between farmers from the same Member State prohibiting the cultivation of GMOs, to the prejudice of farmers wishing to cultivate seeds thus modified, the Court notes that the cultivation of GMOs has particularities due to, inter alia, the effects it may have on other crops, so that the situation of farmers wishing to cultivate a given GMO is not comparable to the situation of farmers who have not expressed such a wish. Consequently, no discrimination can be found between the former and the latter on the ground that the cultivation of that GMO was prohibited in all or part of the territory of a Member State.

In the third place, concerning the validity of Article 26c(1) and (3) of Directive 2001/18 in the light of Articles 16 and 52 of the Charter, the Court emphasises that it is apparent from the orders for reference that the disputes in the main proceedings concern the lawfulness of the measures prohibiting the cultivation of GMOs in a Member State that were adopted on the basis of those provisions and which may only be adopted with the tacit consent of the holder of the authorisation for the GMO in question. Accordingly, those provisions of Directive 2001/18 cannot be regarded as constituting an interference with the authorisation holder's freedom to conduct a business. The same applies, a fortiori, to any users of GMO seeds affected by the restriction of the geographical scope of the authorisation as initially requested, since the freedom to conduct a business does not confer on third parties the right to pursue an economic activity by making use of products whose placing on the market or use has been prohibited. Since Article 26c(1) and (3) of Directive 2001/18 does not appear to be contrary to Article 16 of the Charter, it is not necessary to rule on the validity of those provisions in the light of Article 52 of the Charter.

In the last place, the Court rules that the decisions adopted on the basis of Article 26c(1) and (3) of Directive 2001/18, which are not conditional on any specific justification, must not necessarily be covered by one of the grounds set out in points (a) to (g) in the first subparagraph of Article 26b(3) of that directive. The Court reiterates that Article 26c(1) and (3) of Directive 2001/18 allowed Member

⁶⁰ Such as the grounds stated in points (a) to (g) of the first paragraph of Article 26b(3) of Directive 2001/18.

States, in the transitional period from 2 April until 3 October 2015, to demand the prohibition on the cultivation of GMOs in all or part of their territory, without any specific justification, provided that the holder of the authorisation for the GMOs in question gave his or her tacit consent. It is only in the absence of such a demand by a Member State or in the case of opposition by the holder of the authorisation for the GMOs concerned by that demand, in the form of confirmation of the geographical scope of the authorisation as initially requested, that Article 26c(4) of Directive 2001/18 refers to the application, *mutatis mutandis*, of Article 26b(3) of that directive. In the absence of consent by the holder of the authorisation for the GMOs in question, Article 26b(3) of Directive 2001/18 makes the adoption by a Member State of measures restricting or prohibiting the cultivation of a GMO or a group of GMOs in all or part of its territory conditional on the measures being in conformity with EU law, reasoned, proportional and non-discriminatory and based on compelling grounds such as those referred to in points (a) to (g) in the first subparagraph of Article 26b(3) of that directive.

Consequently, the Court confirms the validity of Article 26c(1) and (3) of Directive 2001/18 and that of Implementing Decision 2016/321, adopted on the basis of that provision.

XI. JUDGMENT PREVIOUSLY DELIVERED

APPROXIMATION OF LAWS: PLANT PROTECTION PRODUCTS

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

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

Appeal – Agriculture – Plant protection products – Article 4 – Regulation (EC) No 1107/2009 – Implementing Regulation (EU) 2021/2049 – Renewal of the approval of the active substance ‘cypermethrin’ – Request for internal review – Regulation (EC) No 1367/2006 – Article 10(1) – Decision refusing the request – Risk assessment and risk management – Identification of critical areas of concern – Realistic conditions of use – Precautionary principle

By its judgment, the Court of Justice sets aside in part the judgment of the General Court in *PAN Europe v Commission*, whereby the General Court dismissed the action for annulment of the decision⁶¹ of the European Commission of 23 June 2022 refusing the request for an internal review of Implementing Regulation 2021/2049⁶² renewing the approval of the active substance ‘cypermethrin’. Finding that the state of the proceedings so permits, the Court of Justice itself gives final judgment and annuls the Commission’s decision in part.

Cypermethrin is an insecticide used within the European Union and was authorised for incorporation in plant protection products in 2005.

In the context of the renewal of the approval of cypermethrin, the European Food Safety Authority (EFSA) identified, in its 2018 conclusion, four critical areas of concern relating to that active substance. Next, in September 2019, at the Commission’s request, it adopted a statement on risk mitigation measures for cypermethrin.

⁶¹ Judgment of 21 February 2024, *PAN Europe v Commission* (T-536/22, EU:T:2024:98; ‘the judgment under appeal’).

⁶² Commission Implementing Regulation (EU) 2021/2049 of 24 November 2021 renewing the approval of the active substance cypermethrin as a candidate for substitution in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2021 L 420, p. 6).

Following that risk assessment, the Commission on 24 November 2021 adopted Implementing Regulation 2021/2049, which renews the approval of cypermethrin, accompanied by a set of specific provisions.

In January 2022, the appellant, the environmental organisation Pesticide Action Network Europe (PAN Europe), made a request to the Commission for an internal review⁶³ of Implementing Regulation 2021/2049. It claimed that there had been a breach of the precautionary principle and of the obligation for the European Union to ensure a high level of protection of human health and the environment. The Commission refused that request.

PAN Europe's action against the decision at issue was dismissed by the General Court and it lodged an appeal against the judgment of the General Court.

Findings of the Court

In the first place, the Court of Justice considers that the General Court acted in breach of the obligation to state reasons, distorted the evidence and made an error of law vitiating its assessment of the critical area of concern relating to the lack of information on the representativity of the batches used and that relating to the high risk for non-target arthropods.

As a preliminary point, the Court observes that, where the Commission is required to determine an application for renewal of the approval of an active substance, it must carry out a risk assessment, taking account of both the draft renewal assessment report ('the RAR') prepared by the rapporteur Member State ('the RMS') and the conclusion adopted by EFSA. Where the assessments carried out by the RMS and by EFSA diverge, the Commission, which has a broad discretion, must carry out complex scientific and technical assessments. Therefore, review by the Courts of the European Union must be limited to ascertaining whether the procedural rules have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or misuse of powers or whether there has been a failure to fulfil the obligation to state reasons.

In carrying out that review, the General Court must state the reasons on which its decision is based and clearly and unequivocally disclose the reasoning followed, so that the persons concerned can be apprised of the justification for the decision taken and the Court of Justice can exercise its power of review.

In the present case, the Court of Justice finds, first, that the General Court provided insufficient reasons for rejecting the appellant's argument seeking to challenge the Commission's analysis relating to the critical area of concern identified by EFSA concerning the data gap relating to the composition of the batches of pesticides used in the ecotoxicological studies submitted by the applicants for approval.

The Court of Justice observes, on one hand that in relying on the fact that the RMS had confirmed that a number of checks of equivalence carried out in the context of the draft RAR had made it possible to establish equivalence between the technical material used at the time of the first approval and that used at the time of the renewal procedure, and that the data gap could be overcome either at zonal or national level, or on the occasion of the next renewal, the General Court did not state the reasons why it was necessary to give priority to the position of the RMS over that of EFSA, or identify risk mitigation measures that would have allowed the Commission to depart from a risk assessment that identified a critical area of concern.

On the other hand, the Court of Justice considers that the General Court's finding relating to the data gap concerning the impurities of the material and their genotoxic potential is vitiated by insufficient reasoning and distortion of the evidence.

In that regard, the Court of Justice emphasises first of all that it was for the General Court to ascertain whether the Commission had fulfilled its obligation to examine carefully and impartially the aspects of

⁶³ On the basis of Article 10(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies (OJ 2006 L 264, p. 13), as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1).

the particular case and whether the dossier enabled it to substantiate its assertion that EFSA had 'confirmed' that, other than hexane, no impurity would be considered toxicologically relevant, relying at least on a study or on a specific document drawn up by EFSA that was amenable to judicial review.

In those circumstances, the General Court could not merely adopt the Commission's finding, contained in the decision at issue, that the increase in the level of minimum purity of the active substance according to the new specification chosen means lower impurity levels by comparison with the situation prevailing at the time of the first approval of the active substance.

Last, having relied on the fact that in the EFSA conclusion the genotoxicity of cypermethrin had been considered to be unlikely, the General Court did not respond to the appellant's argument to the requisite legal standard relating to the genotoxic potential of the impurities.

The Court of Justice concludes from all of those considerations that the General Court's assessment of the proportionate nature of the risk mitigation measures adopted by the Commission is unfounded.

Second, as regards the critical area of concern relating to the high risk for non-target arthropods, the Court observes that an active substance can be approved or have its approval renewed, only if it is established that at least one representative use of a plant protection product ('PPP') containing that substance has no harmful effect on human or animal health and has no unacceptable effect on the environment, in realistic conditions of use. The same applies where the renewal of the approval of the active substance is subject to conditions or restrictions, or where the substitution of that active substance is envisaged, as in the present case.

However, it is not apparent from the judgment under appeal that the General Court ascertained that, for the purposes of the renewal of the approval of cypermethrin, the Commission had actually ensured that such a safe use had been demonstrated, in realistic conditions of use, in such a way as to achieve the level of risk mitigation required for non-target arthropods.

Furthermore, the General Court followed the Commission's position that the verification of the realistic and practicable nature of the risk mitigation measures which it adopted is ultimately a matter for the Member States when they authorise PPPs containing cypermethrin. It is for the Commission to verify, when, in the context of risk management, it is claimed that a 'safe' use of a PPP containing the active substance at issue has been identified as permitting the envisaged level of risk mitigation to be achieved, that that use satisfies, in a realistic manner, the criteria provided for in Article 4(1) to (3) of Regulation No 1107/2009.

The Court of Justice therefore considers that the General Court vitiated its judgment by an error of law in rejecting the appellant's argument calling into question the Commission's assertion that a 'safe' use had been identified within the Standing Committee.

In the second place, the Court of Justice holds that the General Court made an error of law in holding that the second request for confirmatory information on the toxicity of the isomers did not constitute an abuse.

In declaring that the appellant's argument that that second request failed to satisfy the requirement laid down in the fourth paragraph of point 1.9 of Part A of the annex to Regulation No 283/2013⁶⁴ was inadmissible, on the ground that that argument was put forward only at the stage of the reply, when the appellant had expressly relied on it in its request for an internal review and in its application for annulment, the General Court distorted the appellant's arguments.

The Court of Justice observes that that distortion is not in itself sufficient to justify the judgment under appeal being set aside, since the General Court examined the substance of that argument and rejected it on the ground that the isomers had indeed been taken into account, but that EFSA had considered it necessary to have more specific information and had found that there was a data gap.

Nonetheless, the General Court's reasoning makes it difficult to understand how it actually responded to the appellant's argument.

⁶⁴ Commission Regulation (EU) No 283/2013 of 1 March 2013 setting out the data requirements for active substances, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ 2013 L 93, p. 1).

In so far as cypermethrin is a mixture of eight isomers, the dossiers submitted by the applicants for renewal of its approval had to include the information specified in the fourth paragraph of point 1.9 of Part A of the annex to Regulation No 283/2013, namely the ratio or range of ratios of the isomers and the relative biological activity of each isomer.

In the present case, it was not established that those data were to be found in the dossiers submitted by the applicants for renewal of the approval of cypermethrin. The General Court was therefore wrong to consider that that information was mere 'additional confirmatory information', within the meaning of Article 6(f) of Regulation No 1107/2009.

In the third place, the Court of Justice holds that the General Court was wrong to consider that the appellant had not given rise to 'plausible doubts' as to the legality of the decision at issue on account of the absence of an assessment of the long-term toxicity of the representative use submitted by the applicant for renewal of the approval of cypermethrin.

First of all, the Court of Justice observes that the General Court erred in law in holding that it was not the purpose of Article 4(5) of Regulation No 1107/2009 to extend to PPPs, in one or more representative uses, the requirements laid down in paragraphs 1 to 3 of Article 4 of that regulation. It considers, however, that such an infringement is not capable of leading to that judgment being set aside. In the present case, the General Court was correct to hold that the Commission cannot approve or renew the approval of an active substance where the only PPP tested containing that active substance presents long-term toxicity.

The Court notes, next, that the General Court's findings are based on the presumption that long-term toxicity was evaluated. However, in order to ensure compliance with the precautionary principle, there is no presumption that a PPP has no harmful effects.

In those circumstances, the Court of Justice holds that the General Court could not consider, without vitiating its judgment by an error of law, that the Commission was able to infer from the fact that the RMS and EFSA had not examined the long-term toxicity of a PPP, in one or more of its representative uses, that that product did not present any problematic aspect. On the contrary, the General Court was required to ensure that, in the context of the procedure for renewal of the approval of cypermethrin, the Commission had ascertained that it was indeed 'established' that at least one of the representative uses of the PPP containing that active substance did not present long-term toxicity. The Court makes clear, in that regard, that the fact that the PPPs are already present on the market has no impact on the Commission's obligation under Article 4(5) of Regulation No 1107/2009.

Furthermore, there is no indication in the case file that the General Court, while seeking to preserve the confidentiality of Volume 4 of the evaluation dossier prepared by the RMS, requested access thereto in order to ascertain, with the necessary rigour, the reality of the Commission's assertions that the long-term toxicity of at least one representative use was the subject of an evaluation.

Last, the ground on which the General Court relied, alleging that the safety data sheets were drawn up, in application of the REACH Regulation⁶⁵ and Regulation No 1272/2008,⁶⁶ for each component of the representative use of a PPP containing the active substance in question, does not address the appellant's argument that the evaluation of each of the components in isolation did not permit an assessment of the overall toxicity resulting from their interaction. In order to ensure that the criteria laid down in Article 4(3) of Regulation No 1107/2009 have been met, the effects resulting from the interaction between the active substance concerned and the other components of the product must be taken into consideration. Furthermore, the evaluation of long-term toxicity requires that specific tests are carried out that allow the risk of such toxicity to be excluded.

⁶⁵ 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).

⁶⁶ 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).

In the light of the foregoing, the Court of Justice sets aside the judgment of the General Court in that it rejected the appellant's arguments alleging, respectively, that:

- no information about the representativity of the batches of pesticides was provided;
- the risk mitigation measures in respect of non-target arthropods in off-field areas were unrealistic;
- the second request for confirmatory information about the toxicity of the isomers constituted an abuse; and
- the long-term toxicity of the representative use of the plant protection product containing cypermethrin submitted by the applicants for renewal of the approval of that active substance was not examined.

Finding that the state of the proceedings so permits, the Court itself gives final judgment in the matter and annuls the decision of the Commission of 23 June 2022 in that it:

- finds that the batches of pesticides used for the assessment of cypermethrin were shown to be representative;
- justifies the renewal of the approval of cypermethrin on the basis of a risk mitigation measure in respect of non-target arthropods in off-field areas which was not shown to be realistic;
- considers that the second request for further confirmatory information which the Commission sent to the applicants for renewal of the approval of cypermethrin did not constitute an abuse;
- finds that there was no long-term toxicity in the representative use of the plant protection product containing cypermethrin submitted by the applicants for renewal of the approval of that active substance.