



# MONTHLY CASE-LAW DIGEST

## March 2026

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

### Judgment of the Court of Justice (Grand Chamber) of 24 March 2026, Rzecznik Praw Obywatelskich (Recusal of a judge of an ordinary court), C-521/21

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

Reference for a preliminary ruling – Rule of law – Effective legal protection in the fields covered by EU law – Judicial independence – Second subparagraph of Article 19(1) TEU – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – National legislation and case-law prohibiting national courts from calling into question the legitimacy of constitutional courts and bodies or from establishing or assessing the lawfulness of the appointment of judges or of their judicial powers – Obligation for a judge hearing an application for the recusal of another judge to ascertain whether the requirement of a ‘tribunal previously established by law’ has been met – Appointment of judges of the ordinary courts in Poland – Lack of independence of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) – No effective remedy for candidates for the judicial post concerned – Judge not constituting an ‘independent and impartial tribunal previously established by law’ – Possibility of removing a judge from a panel of judges of the court

Ruling on a request for a preliminary ruling from the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (District Court, Stare Miasto w Poznaniu, Poznań, Poland), the Court of Justice, sitting as the Grand Chamber, clarifies its case-law relating to the requirement of a ‘tribunal previously established by law’ for the purposes of the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’). More specifically, it rules on the scope of the examination that must be carried out by the judge called upon to rule on the application for recusal of a judge of an ordinary court on account of irregularities concerning his or her appointment and on the inferences which he or she must draw therefrom.

In a dispute concerning a claim, the defendant in the main proceedings, by letter of 21 May 2021, applied for the recusal of Judge S.C., who is responsible for the examination of that case. The defendant argued that that person had not been validly appointed to the judicial post because the resolution concerning her appointment had been adopted by the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) (‘the KRS’), in its new composition, whose conformity with the Constitution had been called into question by the Naczelny Sąd Administracyjny (Supreme Administrative Court, Poland).

That application for recusal was submitted for examination to the referring court, sitting as a single judge, which has expressed doubts regarding certain factors attending the appointment of Judge S.C.

The referring court, against that background, decided to stay the proceedings in order to put questions to the Court, in essence, regarding the compatibility with EU law, first, of the procedure for the appointment of the judge in question, in particular in view of the composition of the KRS and its role in that procedure and the lack of an effective remedy for the participants in that procedure, and second, of the applicable national provisions, as interpreted by the Trybunał Konstytucyjny (Constitutional Court, Poland), under which the examination of the lawfulness of a judicial appointment comes within the limited and exclusive jurisdiction of the Izba Kontroli Nadzwyczajnej i Spraw Publicznych (Chamber of Extraordinary Control and Public Affairs, Poland) of the Sąd Najwyższy (Supreme Court, Poland).<sup>1</sup>

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<sup>1</sup> In particular, the judgment of the Constitutional Court of 14 July 2021 (Case P 7/20). That judgment was examined by the Court of Justice, after the request for a preliminary ruling in the case at hand had been made, in the judgment of 18 December 2025, *Commission v Poland* (Ultra vires review of the Court’s case-law – Primacy of EU law) (C-448/23, EU:C:2025:975).



## *Findings of the Court*

As a first step, the Court rules that the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and the principle of primacy of EU law preclude legislation of a Member State and case-law of that Member State's constitutional court interpreting the Constitution of that Member State and that legislation that confer exclusive jurisdiction on a body to adjudicate on an application seeking the recusal of a judge on the basis of the circumstances in which that judge was appointed, while depriving that body of the power to examine that application if it challenges the lawfulness of the procedure for the appointment of that judge. The Court specifies that it is for the national court hearing such an application for recusal to disapply that legislation, as interpreted in the case-law of the constitutional court, and itself to examine the lawfulness of that judge's appointment, in particular by ascertaining whether that judge meets the requirement of a 'tribunal previously established by law' and, as the case may be, by ruling that that judge should be recused where any potential irregularities vitiating that appointment entail a failure to meet that requirement.

In the present case, the referring court must therefore disapply the Polish legislation, as interpreted in particular by the Constitutional Court in its judgment of 14 July 2021, that prohibits it from examining the lawfulness of the appointment of Judge S.C. and that requires it to leave that examination for the Chamber of Extraordinary Control and Public Affairs, in order itself to carry out that examination and draw the appropriate inferences.

In that regard, the Court also notes that, in view of the systemic nature of irregular appointments to judicial posts in Poland, concerning approximately 30% of the judges of that Member State, a case-by-case assessment of compliance with the requirement of a 'tribunal previously established by law', in procedures for recusal on the basis of the circumstances in which the judges in question were appointed, cannot, in principle, suffice to ensure full compliance with the requirement, arising from the second subparagraph of Article 19(1) TEU, that cases coming within the scope of EU law be examined by independent courts or tribunals. The existence of systemic or generalised interferences with the independence of the national judiciary is liable to undermine the proper functioning of the preliminary ruling procedure as well as the uniformity, consistency and full effect of the right to effective judicial protection, of which that procedure is an essential component.

Accordingly, in order, first, to restore public trust in the judicial system and to ensure observance of the principle of the separation of powers, and second, to guarantee the continuity and effectiveness of the functioning of justice, including the effectiveness of the preliminary ruling mechanism, the national legal order must, pursuant to the second subparagraph of Article 19(1) TEU, create a legislative framework that enables an assessment of the possibilities for persons irregularly appointed to judicial posts to continue to perform their duties. However, that provision does not impose on the Member States a single model for ensuring effective judicial protection or for restoring the trust that the public has lost in the judicial system. Thus, the Member States have a broad discretion as regards the specific content of the legislative framework established for that purpose, on the condition, however, that that framework ensures that only those irregularly appointed persons who have provided sufficient guarantees of independence and impartiality may continue to perform their duties.

As a second step, the Court finds that the second subparagraph of Article 19(1) TEU and Article 47 of the Charter do not preclude classification as an 'independent and impartial tribunal' of a judicial panel consisting of a single judge who was appointed to that post following an appointment procedure characterised by the fact that, in the first place, that judge's candidature was recommended by a body that does not provide sufficient guarantees of independence to dispel all reasonable doubt in the minds of individuals as to the regularity of procedures for the appointment of judges in which that body is involved, and, in the second place, the participants in that appointment procedure did not have a right to an effective judicial remedy, where no other relevant contextual factors attending that procedure exist that are of such a kind and of such gravity, when taken together, as to call into question the independence or impartiality of that judge.

The Court recalls in that regard that an irregularity committed during the appointment of one or more judges within the judicial system concerned entails an infringement of the requirement of a 'tribunal previously established by law' particularly when that irregularity is of such a kind and of such gravity as to create a real risk that other branches of the State, in particular the executive, could exercise undue discretion undermining the integrity of the outcome of the appointment procedure and thus

give rise to reasonable doubt in the minds of individuals as to the independence and the impartiality of the judge or judges concerned.

It is ultimately for the referring court to assess any irregularities that might have been committed in the procedure for appointing Judge S.C. and the impact that such irregularities are liable to have on her status as a judge who satisfies the conditions under Article 47 of the Charter.

As regards the considerations to be taken into account in that respect, the Court points out that, concerning the circumstance that the candidature of Judge S.C. was recommended by the KRS in its new composition, the fact that that body does not provide sufficient guarantees of independence cannot, in itself, support the conclusion that the requirements inherent in the second subparagraph of Article 19(1) TEU and Article 47 of the Charter have not been met. The same applies as regards the lack of an effective judicial remedy for the participants in the appointment procedure concerned on account of the fact that an appeal may be brought only before the Chamber of Extraordinary Control and Public Affairs, which itself does not meet the requirement of 'tribunal previously established by law'.<sup>2</sup> Those two circumstances, taken in isolation, cannot therefore lead to a finding that the judge concerned does not meet that requirement or, accordingly, to a ruling that that judge should be recused.

In order to determine whether judges meet the requirements of independence and impartiality and constitute a 'tribunal previously established by law', for the purposes of the provisions cited above, it is necessary not only to examine the factors relating to the procedure for their appointment, but also to take into account other relevant contextual factors, carrying out an overall assessment of all the factors attending their appointment.

In the present case, subject to verification by the referring court, it appears that no other factual and legal circumstance attending the appointment of Judge S.C. is such as to call into question the independence or impartiality of that judge.

## II. CITIZENSHIP OF THE UNION: RIGHT TO MOVE AND RESIDE FREELY WITHIN THE MEMBER STATES

### Judgment of the Court of Justice (Second Chamber) of 12 March 2026, Shipova, C-43/24

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

Reference for a preliminary ruling – Citizenship of the Union – Article 21(1) TFEU – Right to move and reside freely within the territory of the Member States – Impediments – Request to amend gender data in the civil status registers – Directive 2004/38/EC – Article 4(3) – Article 7 of the Charter of Fundamental Rights of the European Union – Right to respect for private and family life – Obligation, for a court of a Member State, to comply with the case-law of the constitutional court of that State – Interpretation in conformity with EU law

Hearing a request for a preliminary ruling from the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), the Court of Justice interprets Article 21 TFEU and Article 4(3) of Directive 2004/38<sup>3</sup> in the context of a dispute relating to the recognition and recording in the civil status

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<sup>2</sup> In its judgment of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)* (C-718/21, EU:C:2023:1015), the Court held that that chamber does not have the status of an 'independent and impartial tribunal previously established by law'.

<sup>3</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35).



registers, by the authorities of a Member State, of the change of gender, first name, patronymic and family name of a person who is a national of that Member State.

K. M. H. is a person born and registered in Bulgaria's civil status registers as being male, with a name composed of a first name, a patronymic and a family name corresponding to that sex. Suffering from gender identity dysphoria, K. M. H. began hormone therapy in Italy, where she currently lives in a stable relationship with her partner.

In that context, K. M. H. requested the Rayonen sad Stara Zagora (District Court, Stara Zagora, Bulgaria) to declare that she is a female person, ordering the change of her first name, patronymic and family name, and that that change appear in her birth certificate.

Despite the medical opinions and legal assessments confirming the gender identity claimed by K. M. H., her request was rejected by the court of first instance and the appeal court.

Hearing an appeal against the refusal decision delivered on appeal, the referring court observes that it is bound by an interpretative decision of the plenary assembly of civil chambers of that court according to which the substantive law in force in Bulgaria does not provide for the possibility of changing the data relating to the sex, name and personal identification number appearing in the civil status records of a transgender person. Nevertheless, it expresses doubts as to the interpretation adopted in that decision in the light of the requirements of EU law.

Thus, the referring court asks, in essence, whether the provisions of EU law relating to the equality of Union citizens, their freedom of movement and residence within the territory of the Member States, non-discrimination and effective judicial protection preclude that national legislation and the interpretation given to it by the national courts.

#### *Findings of the Court*

As a preliminary point, the Court notes that K. M. H, as a Union citizen, has exercised her right to move and reside freely in a Member State other than her State of origin. She may therefore rely on the rights conferred by Article 21 TFEU, subject to the conditions and limitations laid down in Directive 2004/38.

As to the substance, in the first place, the Court recalls that a person's status, which is relevant to the rules on changing the family name, patronymic, first name or gender identity of a person, is a matter which falls within the competence of the Member States. Nevertheless, in exercising that competence, each Member State must comply with EU law, including with the obligation to issue, in accordance with Article 4(3) of Directive 2004/38, identity documents which enable the person concerned to exercise his or her right to move and reside freely within the territory of the Member States.

In that context, the Court observes that the discrepancy between a person's appearance and the gender data which appear on his or her identity card or passport is such as to give rise to a real risk, for that person, of having to dispel doubts as to his or her identity and the authenticity of the identity document that he or she submits or the veracity of its content, which is liable to hinder the exercise of his or her right to move and reside freely within the territory of another Member State.

In the second place, the Court observes that such a hindrance cannot be justified since it follows from the case-law of the European Court of Human Rights that the Bulgarian legislation at issue must be regarded as incompatible with the right to respect for private and family life protected in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>4</sup> that article constituting a minimum threshold of protection in the light of Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'). Moreover, to tolerate discrimination based on the difference between biological sex and gender identity would be tantamount, as regards a transgender person, to a failure to respect the dignity and freedom to which he or she is entitled, and which the Court has a duty to safeguard.

Consequently, Article 21 TFEU and Article 4(3) of Directive 2004/38, read in the light of Article 7 of the Charter, preclude national legislation which does not permit the amendment of gender data, such as

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<sup>4</sup> Convention signed in Rome on 4 November 1950 ('the ECHR').



the sex, family name, patronymic, first name and personal identification number, recorded in the civil status registers of the Member State concerned, of a national of that Member State who has exercised his or her right to move and reside freely in another Member State.

As regards the obstacle that the binding interpretation of the legislation at issue by the constitutional court of the Member State concerned may represent for the referring court, the Court states that both Article 21(1) TFEU and Article 7 of the Charter are sufficient in themselves and do not need to be made more specific by other provisions to confer on individuals rights which may be relied on. Accordingly, if it is not possible for the referring court to interpret its national law in conformity with EU law, it would be required to ensure, within its jurisdiction, the judicial protection for individuals flowing from those articles, and to ensure the full effectiveness of those articles by disapplying, if need be, the national provisions concerned, including their interpretation of those in contradiction of EU law, given by the constitutional court of that Member State.

### III. PROCEEDINGS OF THE EUROPEAN UNION

#### 1. PRELIMINARY RULINGS

##### **Judgment of the Court of Justice (Grand Chamber) of 24 March 2026, Remling, C-767/23**

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

Reference for a preliminary ruling – Article 267 TFEU – Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling – Exceptions to that obligation – Obligation to state reasons for the concrete application of those exceptions – National legislation conferring on the national court or tribunal of last instance the power to dismiss actions by means of a summary statement of reasons – Conditions required to reason a refusal to make a reference for a preliminary ruling

Hearing a request for a preliminary ruling from the Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Division of the Council of State, Netherlands), the Court, sitting as the Grand Chamber, clarifies the scope of the obligation of a national court or tribunal of last instance to state the reasons why it is refraining from making a reference to the Court of Justice for a preliminary ruling.

A.M., a Moroccan national whose wife and children reside in the Netherlands and hold Netherlands nationality, lodged an application for a residence permit valid throughout the territory of the European Union. That application was rejected, as the administrative appeal brought by A.M. was dismissed.

In the appeal brought before the referring court, A.M. claims that the trial court erred in refusing to refer a question to the Court of Justice for a preliminary ruling concerning the burden of proof in relation to a derived right of residence and reiterates his request for a preliminary ruling. The referring court considers that the answer to that question is clear from the Court's case-law. Accordingly, it considers that it is not required to make a reference for a preliminary ruling and intends to resolve the dispute in the main proceedings by adopting a summarily reasoned decision, as national legislation permits.

In that context, that court asks, in essence, whether, under the third paragraph of Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, a national court or tribunal of last instance must always expressly state the reasons why it is refraining from making a reference for a preliminary ruling, even if national law allows it to rule on the type of case at issue by means of a summary statement of reasons.

## Findings of the Court

The Court recalls that, given the fundamental role of the preliminary ruling procedure in the EU legal order, a national court or tribunal against whose decisions there is no judicial remedy under national law cannot reject grounds which raise a question concerning the interpretation or validity of a provision of EU law without first assessing whether it is required to refer that question to the Court for a preliminary ruling or whether it falls within one of the three *Cilfit* exceptions,<sup>5</sup> on the ground that the question of EU law raised is irrelevant, that the EU law provision in question has already been interpreted by the Court or that that interpretation is so obvious as to leave no scope for any reasonable doubt. Where such a court considers that one of those exceptions is applicable, it must state the reasons for its decision on that point.

That interpretation does not call into question the Court's case-law according to which a national court or tribunal of last instance may decline to refer a question to the Court of Justice for a preliminary ruling on grounds of inadmissibility specific to the procedure before that national court or tribunal, subject to compliance with the principles of equivalence and effectiveness. Save for that scenario, the dismissal of an action on the basis of summary reasoning cannot satisfy the obligation incumbent on those national courts or tribunals.

The obligation to state reasons thus applies to a national court or tribunal of last instance not only in the situation where one of the parties to the dispute has raised a question of interpretation or validity of EU law, but also in the situation where, although the parties to that dispute have not relied on EU law, that court or tribunal has, under its national law or EU law, the power or the obligation to raise of its own motion points of law based on binding rules of EU law.

Even where a Member State authorises such a court or tribunal to resort to summary reasoning, with the aim of ensuring the sound administration of justice, that reasoning must set out, specifically and concretely, the reasons why one of the three *Cilfit* exceptions applies in the context of the dispute and justifies the lack of reference to the Court for a preliminary ruling.

Such an obligation is deemed to be satisfied where the court or tribunal expressly states that it intends to appropriate the grounds relied on by the lower court in the dispute concerned, provided that that lower court set out the reasons why it considered either that the question of EU law raised was irrelevant, that the EU law provision in question had already been interpreted by the Court, or that that interpretation was so obvious as to leave no scope for any reasonable doubt.

Outside of that scenario, national courts or tribunals of last instance must provide reasoning adapted to the factual and legal circumstances of the dispute.

That reasoning should, as a general rule, be capable of being succinct where a national court or tribunal of last instance considers that the questions suggested to it by one or more of the parties to the dispute in question are irrelevant to the resolution of that dispute, that is to say, where the answer to those questions, regardless of what it may be, can in no way affect the outcome of the dispute.

Likewise, where the question raised is materially identical to a question that has already been the subject of a preliminary ruling in a similar case, or, a fortiori, in the same national proceedings, a mere reference to the relevant case-law of the Court may justify a refusal to refer the matter to the Court. Nevertheless, where the issues in dispute are not strictly identical but established case-law of the Court already resolves the point of law in question, irrespective of the nature of the proceedings which led to that case-law, a fuller statement of reasons might prove necessary to justify such a refusal.

Finally, as a general rule, a fuller statement of reasons will also be required to demonstrate that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt, since the existence of such a possibility must be assessed in the light of the specific characteristics of EU law, the particular difficulties that its interpretation presents and the risk of divergences in case-law within the European Union. Thus, a national court or tribunal of last instance must indicate why it is

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<sup>5</sup> Judgment of 6 October 1982, *Cilfit* (283/81, EU:C:1982:335).



convinced that the matter would be equally obvious to the other national courts or tribunals of last instance and to the Court of Justice.

In the light of those considerations, the Court's answer to the question referred is that the third paragraph of Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as precluding national legislation under which a national court or tribunal of last instance may rule on a question relating to the interpretation or validity of a provision of EU law raised by one of the parties to the dispute, irrespective of whether or not that question is accompanied by an express request to make a reference for a preliminary ruling, by reasoning its decision in a summary manner, unless that court or tribunal sets out the specific and concrete reasons why one of the three *Cilfit* exceptions applies in the case in question.

## 2. ACTIONS FOR ANNULMENT

### Order of the General Court (Seventh Chamber) of 25 March 2026, WS v EDPS, T-144/25

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

Action for annulment and damages – Law governing the institutions – Protection of personal data – Regulation (EU) 2018/1725 – Complaint to the EDPS concerning the processing of personal data by EUIPO – No need to adjudicate in part – Manifest inadmissibility in part

In ruling that there is no need to adjudicate on the action for annulment, accompanied by a claim for damages, the General Court interprets, for the first time, Article 63(3) of Regulation 2018/1725<sup>6</sup> which provides, *inter alia*, that, if the European Data Protection Supervisor (EDPS) does not provide information on the progress of the complaint within three months, that complaint is deemed to be rejected. It also clarifies the relationship between, first, a plea of inadmissibility concerning an application for annulment against an implicit decision and, second, the decision that there is no need to adjudicate on the application for annulment against that implicit decision, on account of the adoption of an explicit decision.

WS requested from the European Union Intellectual Property Office (EUIPO) access to certain documents.<sup>7</sup> As EUIPO failed to acknowledge receipt of either that application or the subsequent confirmatory applications, WS requested that it be treated as a data breach. Following confirmation by EUIPO of the decision refusing access to the documents, WS lodged, on 25 November 2024, a complaint before the EDPS relating to the processing and breach of his data by EUIPO. Having considered an implicit rejection to have occurred because the EDPS had not informed him of the progress of his complaint, WS brought an action before the General Court on 2 March 2025. By his action, he sought, *inter alia*, the annulment of the implicit decision of the EDPS not to take further action on his complaint ('the contested decision').

Subsequently, on 16 April 2025, the EDPS informed the applicant of his decision to close the file for the complaint, considering that that complaint did not fall within his mandate and that there were not sufficient grounds to open an investigation, since that complaint did not concern the processing of personal data.

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<sup>6</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

<sup>7</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).



### *Findings of the Court*

In order to determine whether the subject matter of the application for annulment existed at the time that the action was brought, the Court begins by determining whether, in the present case, an implicit decision occurred on 26 February 2025.

In that connection, it notes that, under Article 63(3) of Regulation 2018/1725, an implicit rejection decision occurs where two cumulative conditions are satisfied. First, the EDPS must not have informed the complainant of the outcome of the complaint within the three-month time limit. Secondly, the EDPS must not have informed the complainant of the progress of the complaint within the same time limit.

The Court notes that, as regards the first condition, it is common ground between the parties that the EDPS did not inform the applicant of the outcome of the complaint within the three-month time limit which, in the present case, ran until 25 February 2025. That condition was therefore satisfied.

As regards the second condition, the Court makes clear that the various pieces of information communicated by the EDPS to the applicant before 26 February 2025 cannot be classified as information on the progress of his complaint. The term 'progress' presupposes a certain genuine progression in the processing of the complaint. The information related to the loss – then recovery – of the complaint, and the mere communication of the case number and the statement that the complaint would be processed, do not reflect any genuine progression in the processing of a complaint and therefore do not preclude the occurrence of an implicit decision.

Accordingly, the Court concludes that, at the time that the action was brought, the subject matter of the application for annulment existed.

However, it notes that the subject matter of that application disappeared in the course of proceedings.

In that connection, the Court observes that the adoption of the explicit decision of 16 April 2025 had the effect of withdrawing the implicit decision of 26 February 2025. The latter decision disappeared from the EU legal order and is no longer capable of being the subject of an application for annulment.

Furthermore, it points out that the applicant did not modify the form of order sought following the adoption of the explicit decision to extend the subject matter of his application for annulment to include that decision. Therefore, the application for annulment is directed solely against the implicit rejection decision, which has, however, ceased to exist. The disappearance of the contested decision results in the loss of the subject matter of the application for annulment.

The Court also states that the fact that the explicit decision confirmed the substance of the rejection of the complaint as expressed in the contested decision does not preclude the disappearance of that decision nor, accordingly, does it preclude the disappearance of the subject matter of the application for annulment.

Consequently, the Court concludes that there is no longer any need to adjudicate on the claim for annulment of the contested decision.

## IV. PROTECTION OF PERSONAL DATA

### Judgment of the Court of Justice (Fifth Chamber) of 19 March 2026, Comdribus, C-371/24

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

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data for the purpose of combating criminal offences – Directive (EU) 2016/680 – Article 10 – Processing of special categories of personal data – Collection of biometric data – Taking of fingerprints and of photographs – Person reasonably suspected on one or more grounds of having committed or attempted to commit a criminal offence – Whether strictly necessary – Discretion – Obligation to state reasons – Refusal of the data subject to consent to the collection of his or her biometric data – National legislation allowing a person to be prosecuted for and convicted of a specific criminal offence penalising such a refusal, even in the absence of any prosecution or conviction in respect of the criminal offence that formed the basis of the envisaged collection of those data

Ruling on a request for a preliminary ruling from the cour d'appel de Paris (Court of Appeal, Paris, France), the Court of Justice clarifies the scope of the concept of 'strictly necessary', within the meaning of Article 10 of Directive 2016/680,<sup>8</sup> which provides a framework for the collection of sensitive personal data, such as biometric data, in criminal matters.

During a demonstration held in Paris in May 2020 by climate activists, several participants, including HW, were detained by law enforcement officers for organising that demonstration without giving prior notice. HW, who was placed in police custody, refused, inter alia, to consent to the taking of fingerprints and photographs, even though he had been informed that that refusal constituted a criminal offence. In September 2021, the tribunal correctionnel de Paris (Criminal Court, Paris, France) acquitted HW of the offence of organising a demonstration without giving prior notice but found him guilty of the offence of refusing to consent to the taking of fingerprints and photographs and sentenced him to a fine of EUR 300. HW and the ministère public (Public Prosecutor's Office, France) each brought an appeal against that judgment before the referring court.

The referring court notes that the Court of Justice has not yet ruled on whether national legislation that authorises, first, the systematic collection of biometric data solely on the basis of reasonable suspicions that an offence has been committed or attempted, without the person in question being first accused thereof, and second, such data collection on the basis of a refusal to consent to the gathering of identification data, irrespective of any prosecution or conviction in respect of the offence forming the basis of the collection, is compatible with the 'strictly necessary' condition laid down by Directive 2016/680. The referring court observes, moreover, that uncertainty remains as to whether the requirement to provide a sufficient statement of reasons as to why the collection of a person's biometric and genetic data is strictly necessary is the subject of a preliminary assessment by the competent authority or of a subsequent examination by a court that may be called upon to adjudicate on the lawfulness of that collection.

#### *Findings of the Court*

First of all, the Court finds that Directive 2016/680 prohibits the systematic collection of biometric data of any person reasonably suspected on one or more grounds of having committed or attempted to commit a criminal offence, unless the national law defines the specific and concrete purposes pursued by that collection in an appropriate and sufficiently precise manner and the competent authority is required to assess, in each case, whether that collection is strictly necessary for achieving those purposes.

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<sup>8</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ 2016 L 119, p. 89).

In the present case, the Court notes that the collection of biometric data authorised by the national legislation at issue concerns all persons reasonably suspected on one or more grounds of having committed or attempted to commit a criminal offence. The mere fact that such suspicions exist does not suffice for it to be presumed that it is established that that collection is strictly necessary, having regard to the rights to respect for private life and to the protection of personal data.<sup>9</sup> First, despite the existence of reasonable suspicion, the collection of biometric data might not reflect any specific necessity. Second, it must be assessed, in any event, whether that collection is strictly necessary in the light of all the relevant factors.

If the national legislation at issue provides for the systematic collection of biometric data of any person reasonably suspected on one or more grounds of having committed or attempted to commit a criminal offence, without there being an obligation, on the part of the senior police officer, to verify whether and demonstrate that, on a case-by-case basis, that collection is strictly necessary, that legislation would be contrary to Article 10 of Directive 2016/680, since it would lead to the indiscriminate and generalised collection of such data. It is, however, for the national court to ascertain whether that legislation requires the police authority to act in that automatic manner and whether the actual implementation of that legislation might lead to systematic collection.

Next, the Court states that Directive 2016/680 precludes national legislation which does not lay down an obligation, on the part of the competent authority, to provide a sufficient statement of reasons, in each case, as to why it is strictly necessary to collect biometric data.

That statement of reasons is necessary for the data subject to exercise his or her right to an effective judicial remedy.<sup>10</sup> Such a statement of reasons may be succinct, provided that it is sufficiently clear. That obligation is all the more important since it enables a court called upon to rule on the lawfulness of the collection to exercise its power of review and follows, moreover, from the wording of Directive 2016/680. Thus, the existence of such judicial review cannot compensate for the absence of an obligation on the part of the competent authority to state the reasons why the collection of the biometric data is strictly necessary. Moreover, that obligation cannot be regarded as constituting an excessive burden for the competent authority.

Lastly, the Court considers that Directive 2016/680 does not preclude national legislation penalising a person's refusal to allow the collection of his or her biometric data, in the absence of any prosecution or conviction of that person in respect of the criminal offence forming the basis of that collection, provided that the collection is strictly necessary and the penalty observes the principle of proportionality.

In that regard, first, in so far as the attempt to process personal data, such as that taking place where a person refuses the collection of his or her biometric data, for purposes in the criminal field, comes within the scope of Directive 2016/680, the lawfulness of the penalty for such a refusal is dependent on whether the collection meets the requirements under that directive. That penalty is therefore possible only if the envisaged collection satisfies the 'strictly necessary' condition, assessed in the light of the circumstances at the time that collection is decided upon by the competent authorities. The fact that the data subject has not been prosecuted for or convicted of the offence giving rise to that collection is not, in itself, decisive for determining whether that condition has been satisfied.

Second, since a criminal penalty for an offence penalising a person's refusal to consent to the collection of his or her biometric data comes within the scope of EU law, it must observe the principle of proportionality. That principle requires that the penalty befits the seriousness of the offence and that the individual circumstances of the case, in particular the conduct and profile of the person in question, his or her criminal record and the seriousness of the alleged offence giving rise to the envisaged collection, are taken into account in determining the penalty and the amount of the fine.

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<sup>9</sup> Charter of Fundamental Rights of the European Union ('the Charter'), Articles 7 and 8.

<sup>10</sup> Provided for in Article 47 of the Charter and Article 54 of Directive 2016/680.

## Judgment of the Court of Justice (Fourth Chamber) of 19 March 2026, Brillen Rottler, C-526/24

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

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 12(5) – Article 15(1) – Data subject’s right of access to the personal data concerning him or her – Controller’s right to refuse to act on the request for access – Excessive character of the request – Abuse of rights – First request for access – Right to compensation and liability – Article 82(1) – Action based on infringement of the right of access – Non-material damage – Loss of control over personal data

Ruling on a request for a preliminary ruling from the Amtsgericht Arnsberg (Local Court, Arnsberg, Germany), the Court of Justice clarifies the limits on the exercise of the right of access to personal data under Article 15 of the General Data Protection Regulation<sup>11</sup> in the event of an ‘abuse of rights’ and the conditions for the right to compensation under Article 82 of that regulation.

In 2023, TC, a private individual residing in Austria, subscribed to the newsletter of Brillen Rottler, a German optician company, by providing his personal data and consenting to the processing of those data. Shortly afterwards, he made a request to that company for access to those data. Although his request was refused by that company, which considered it to be abusive, TC nevertheless repeated it, adding a claim for compensation for the non-material damage that he claims to have suffered as a result of that company’s refusal to grant him access to his personal data. Brillen Rottler then brought an action before the referring court seeking a declaration that TC was not entitled to compensation, arguing that, according to publicly available information, TC systematically and abusively makes requests for access to various controllers for the sole purpose of obtaining compensation.

Harbouring doubts as to the relevant circumstances for the purpose of characterising a request for access as ‘excessive’ within the meaning of Article 12(5) of the GDPR, which allows the controller, inter alia, not to act on such a request, and as to the right to claim, on the basis of Article 82(1) of that regulation, compensation for the damage resulting from an infringement of the right of access, the referring court has referred the matter to the Court.

### *Findings of the Court*

As regards the possibility of characterising a first request for access to personal data made by the data subject to the controller as ‘excessive’, within the meaning of Article 12(5) of the GDPR, the Court notes that that provision refers to the repetitive character of requests for access solely by way of example, so that such characterisation is not determined simply by the number of requests submitted by the same data subject. The excessive character of a request for access must therefore be assessed qualitatively, in order to determine whether it constitutes an abuse of rights.

The Court states that such an abuse exists where, despite formal observance of the conditions laid down for the exercise of the right of access to personal data within the meaning of Article 15 of the GDPR, there has been an abusive intention on the part of the data subject, in particular, where that data subject makes a request for access not for the purpose of asserting his or her rights under that regulation, but for another purpose, such as that of artificially creating the conditions laid down for obtaining an advantage from that regulation.

However, in so far as Article 12(5) of the GDPR establishes an exception to the obligation of controllers to facilitate data subjects’ right of access to their personal data, it must be interpreted restrictively. Thus, a controller may rely on the excessive character of a request for access only exceptionally, where it demonstrates, in the light of all the relevant circumstances of each case, that that request was made with an abusive intention. The fact that the data subject has made a large

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<sup>11</sup> 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’).

number of requests for access, followed by claims for compensation, to various controllers may also be taken into consideration in that regard.

As regards the interpretation of Article 82(1) of the GDPR, the Court finds, first, that that provision also confers on the data subject a right to compensation for the damage solely resulting from an infringement of the right of access provided for in Article 15(1) of that regulation. It notes that that Article 82(1) contains no reference to 'processing', so that, in order not to undermine the effectiveness of that right to compensation, that right cannot be limited to damage resulting from the processing of personal data as such. Such a limitation would exclude from the scope of that article damage caused by the infringement of certain rights provided for by that regulation, such as the right of access, the infringement of which results, in principle, from the refusal to act on a request with regard to the exercise of those rights, rather than from the actual processing of data.

Second, the Court provides clarification on the concept of 'non-material damage' suffered by the data subject within the meaning of Article 82(1) of the GDPR. It notes, in particular, that that concept encompasses the data subject's loss of control over his or her personal data or his or her uncertainty as to the whether those data have been processed, provided that it is demonstrated, in particular, that the data subject actually suffered such damage and that his or her conduct was not the determining cause of that damage.

In that context, the Court states, after recalling that the causal link between the alleged infringement of the GDPR and the damage allegedly suffered by the data subject is a *condicio sine qua non* for a right to compensation under Article 82(1) of that regulation, that the causal link is broken by the data subject's conduct where the loss of control over his or her personal data or the uncertainty as to whether those data have been processed was caused by the data subject's decision to submit those data to the controller with the aim of artificially creating the conditions laid down for the application of that provision.

## V. FREEDOM OF MOVEMENT: FREE MOVEMENT OF WORKERS

### Judgment of the Court of Justice (Fifth Chamber) of 12 March 2026, Marhaux, C-150/25

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

Reference for a preliminary ruling – Article 45 TFEU – Freedom of movement for workers – Income tax – Employment income received in another Member State – Exemption with progression in the Member State of residence – Failure to apply a bilateral convention for the avoidance of double taxation by a contracting State – Loss of part of the tax advantages relating to the personal and family circumstances of the taxpayer

Ruling on a request for a preliminary ruling from the tribunal de première instance du Luxembourg (Court of First Instance of Luxembourg, Belgium), the Court of Justice states that, in order to ensure the freedom of movement for workers guaranteed by Article 45 TFEU, the State of residence of a taxpayer receiving foreign employment income exempt under a tax convention must take account of all his or her personal and family circumstances, where the State of employment does not apply that convention and does not allow the corresponding tax advantages to be granted in full.

BX is a Belgian tax resident who receives employment income from Belgian and, inter alia, French sources. In accordance with the Belgium-France Tax Convention,<sup>12</sup> French-source income is to be taxed in France and is exempt from personal income tax in Belgium.<sup>13</sup>

When he submitted his personal income tax returns in Belgium in respect of the 2020 and 2021 tax years, BX deducted from his total income the maintenance payments which he had paid to his daughter and former spouse, who reside in Belgium. The Belgian tax administration, however, granted BX the deduction of the maintenance payments made only in proportion to his Belgian-source income.

Since his initial complaints were unsuccessful, BX brought an action before the referring court, claiming that the rule on the proportionate allocation of the deductible maintenance payments between the Belgian-source income and the foreign-source income, exempt from that tax, is contrary to Article 45 TFEU.

In those circumstances, after finding that the French tax administration misapplied the Belgium-France Tax Convention by not allowing account to be taken of the taxpayer's family circumstances in proportion to the income taxable in France in respect of the deduction of the part of the non-deductible maintenance payments from that taxpayer's income taxable in Belgium, the referring court is uncertain whether the Belgian legislation, in so far as it results in the loss in part of the benefit of a tax deduction designed to take account of the personal and family circumstances of resident taxpayers, is compatible with the freedom of movement for workers guaranteed by Article 45 TFEU.

#### *Findings of the Court*

The Court recalls that although it is, in principle, for the Member State which applies a principle of taxation, at the place of residence, to the total income of the taxpayers, including that from a foreign source, to take into account in full the personal and family circumstances of those taxpayers,<sup>14</sup> such a Member State may, in certain circumstances, be released in part from that obligation, pursuant to conventions for the avoidance of double taxation.<sup>15</sup>

However, such a possibility cannot relieve the Member States of their obligation to exercise their powers of taxation in a non-discriminatory way in respect of EU nationals who have exercised their right to freedom of movement for workers, guaranteed in Article 45(1) and (2) TFEU.

Where the Member State of residence concludes a bilateral tax convention by which that Member State and the Member State of employment apportion the taxation of the total income of taxpayers who have exercised their right to freedom of movement for workers and, in proportion to that apportionment, the taking into account of their personal and family circumstances, the Member State of residence must be regarded as having exercised its powers in a non-discriminatory manner only if the taxpayers concerned are guaranteed that, as the end result, all their personal and family circumstances will be duly taken into account, as in the case of resident taxpayers who do not have income from another Member State.

Otherwise, EU nationals who have exercised their right to freedom of movement for workers would be placed in a situation less advantageous from a legal or a factual point of view compared with resident taxpayers who have not exercised their right to freedom of movement for workers, in breach of the principle of non-discrimination, as given concrete expression in particular in Article 45(1) and (2) TFEU.

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<sup>12</sup> Convention between France and Belgium seeking to avoid double taxation and to establish mutual administrative and legal rules of assistance in the field of income tax, of 10 March 1964.

<sup>13</sup> French-source income is, however, to be taken into account, after applying a tax scale by income band, in order to determine the tax in Belgium, which is then reduced by the fraction of the tax calculated on the part of the exempt income.

<sup>14</sup> See, to that effect, judgments of 14 February 1995, *Schumacker* (C-279/93, EU:C:1995:31, paragraph 32), and of 12 December 2013, *Imfeld and Garcet* (C-303/12, EU:C:2013:822, paragraph 43).

<sup>15</sup> See, to that effect, judgments of 12 December 2002, *de Groot* (C-385/00, EU:C:2002:750, paragraph 99) and of 15 July 2021, *État belge (Loss of tax advantages in Member State of residence)* (C-241/20, EU:C:2021:605, paragraph 44).

By contrast, where it appears that the State of employment applies the tax convention in a manner which does not allow taxpayers resident in the Member State of residence to obtain, in the State of employment, a deduction on account of their personal and family circumstances, in proportion to the income received in that State, designed to compensate for the loss suffered in the State of residence, the Member State of residence must be regarded as not being released from its obligation to take account in full of the personal and family circumstances of resident taxpayers.

As a result, the legislation of that Member State of residence, in so far as it does not allow resident taxpayers who have exercised their right to the freedom of movement for workers to regain, in those circumstances, a right to have their personal and family circumstances taken into account in full, must be regarded as imposing a restriction on the freedom of movement for workers, provided that there is no overriding reason in the public interest capable of justifying such a restriction.

## VI. BORDER CHECKS, ASYLUM AND IMMIGRATION

### 1. ASYLUM POLICY

#### Judgment of the Court of Justice (Second Chamber) of 5 March 2026, Daraa, C-458/24

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

Reference for a preliminary ruling – Asylum policy – Regulation (EU) No 604/2013 – Article 3(2) – Article 29 – Transfer of the asylum seeker to the Member State responsible for examining the application for international protection – Suspension, by the Member State responsible, of the taking charge and taking back of asylum seekers – Directive (EU) 2013/32 – Article 33 – Inadmissible applications

Hearing a request for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen, Germany), the Court of Justice interprets Regulation No 604/2013<sup>16</sup> and Directive 2013/32<sup>17</sup> in order to clarify the responsibilities relating to the examination of applications for international protection where the Member State responsible has suspended the taking charge of the applicants concerned.

DO, a Syrian national, entered Germany on 18 April 2023 and applied for asylum on 26 April 2023. The Italian Republic was, however, identified as the Member State responsible for examining that application.

The Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) sent the Italian Republic a request to take charge of DO, but received no reply. In accordance with Article 22(7) of the Dublin III Regulation, it therefore deemed the application to have been accepted and decided, on 18 July 2023, to dismiss DO's application for asylum as inadmissible.

On 27 July 2023, DO brought an appeal against that decision before the Administrative Court, Sigmaringen, which is the referring court.

That court notes that it is apparent from two circulars issued by the Italian authorities in December 2022 that, provisionally and subject to exceptions, the Italian Republic would no longer accept

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<sup>16</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31; 'the Dublin III Regulation').

<sup>17</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

transfers of applicants for international protection to Italy under the Dublin III Regulation. It would thus refuse to take charge of any applicants for whom it is responsible pursuant to that regulation.

In those circumstances, the referring court decided to refer several questions to the Court for a preliminary ruling seeking, in essence, to ascertain whether, first, in the specific situation where a Member State designated as responsible unilaterally suspended the taking charge and taking back of applicants for international protection, responsibility for examining an application is to be transferred to the determining Member State. Second, the referring court asks the Court to clarify whether Directive 2013/32 allows a Member State responsible to reject an application for international protection as inadmissible on the ground that it is not willing to take charge or take back an applicant for international protection.

### *Findings of the Court*

In the first place, as regards the responsibility for examining an application for international protection, the Court points out, first of all, that the determining Member State may itself become responsible for that examination. That is the case where, because of 'systemic flaws' in the asylum procedure and in the reception conditions for applicants resulting in 'a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter [of Fundamental Rights of the European Union]', the applicant cannot be transferred to the Member State responsible and if it finds, following further examination of the criteria set out in Chapter III of the Dublin III Regulation, that the transfer cannot be made to any Member State designated on the basis of those criteria or to the first Member State with which the application was lodged.

The Court has already held that unilateral suspension of the taking charge and taking back of applicants for international protection, such as that at issue in the present case, is not capable, in itself, of justifying a finding of such a systemic flaw resulting in a risk of inhuman or degrading treatment.

In such a case, the determining Member State must neither continue to examine the criteria set out in Chapter III of the Dublin III Regulation on the basis of that provision, nor itself become the Member State responsible under the third subparagraph of Article 3(2) of that regulation.

Therefore it cannot be held that there is an unwritten condition of application of the second and third subparagraphs of Article 3(2) of the Dublin III Regulation, according to which the Member State responsible should be willing to take charge or take back applicants for international protection.

Next, still in the context of a unilateral suspension of the taking charge and taking back of applicants for international protection by a Member State, the Court examines the risk, referred to by the referring court, that the applicant for international protection concerned may have access to the international protection procedure unduly impeded and that, ultimately, no Member State will examine the application.

In that regard, it recalls that Article 29(2) of the Dublin III Regulation provides for the automatic transfer of responsibility to the requesting Member State, without making that transfer conditional on any reaction by the Member State responsible, where the transfer of the applicant in question to the Member State responsible does not take place within the time limit for transfer, which is, in principle, six months. That provision is worded in broad terms, without any limitation of the transfer of responsibility to specific situations. That transfer of responsibility thus occurs regardless of the reasons why the transfer did not take place within the prescribed time limit and irrespective of whether this is attributable to the requesting Member State, the Member State responsible or to the person concerned. It therefore occurs also where the transfer of the person concerned could not be carried out within the prescribed time limit for transfer on account of the unilateral suspension of the taking charge and taking back by the Member State designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation.

The objectives pursued by the Dublin III Regulation support that interpretation. In that regard, the Court notes that, in view of the objectives of rapid determination of the Member State responsible for examining an application for international protection and of guaranteeing effective access to the procedures for granting such protection, it is essential that applications for international protection are, when necessary, examined by a Member State other than that designated as responsible

pursuant to the criteria set out in Chapter III of the Dublin III Regulation, where the transfer of the applicant does not take place within the prescribed time limit for transfer.

In that regard, the Court acknowledges that that interpretation allows the Member State responsible to escape, at the end of the time limit for transfer and simply by unilateral suspension of the procedures for taking charge and for taking back of asylum seekers, its responsibilities under the Dublin III Regulation. However, it points out that, even in such a case, it is for the requesting Member State and the Member State responsible to consult each other and cooperate with a view to a transfer before the expiry of the time limit for transfer. In addition, the responsibility of the latter Member State remains full and complete during the time limit for transfer, with the result that, during that time, the system of criteria for determining responsibility established by the Dublin III Regulation is to be maintained.

The automatic transfer of responsibility for examining the application for international protection where the person concerned does not take place within that time limit is, ultimately, the only way in which that person can be guaranteed effective access to the asylum procedure.

Last, a Member State may not rely on the fact that other Member States have also failed to perform their obligations in order to justify its own failure to fulfil its obligations. The remedy for a possible infringement of the Dublin III Regulation by the Member State initially designated as responsible lies in the possibility for the European Commission and any other Member State to institute proceedings for failure to fulfil obligations against that Member State.

In the second place, as regards the question whether an application for international protection may be rejected as inadmissible on the ground that the Member State responsible is not willing to take charge or take back the applicant for international protection, the Court finds that Article 33(1) of Directive 2013/32 lists exhaustively the situations in which Member States may consider an application for international protection to be inadmissible. Accordingly, and in view of the exceptional nature of the grounds of inadmissibility listed therein, that provision must be interpreted strictly and cannot therefore be applied to a situation which does not correspond to its wording.

That provision clearly distinguishes cases in which an application for international protection is not examined under the Dublin III Regulation from those in which such an application may be rejected as inadmissible on one of the grounds exhaustively listed in Article 33(2) of that directive.

Consequently, the Court states that that provision does not allow an application for international protection to be rejected as inadmissible on the ground that the Member State responsible is not willing to take charge or to take back an applicant for international protection.

## 2. IMMIGRATION POLICY

### **Judgment of the Court of Justice (Fourth Chamber) of 5 March 2026, Aroja, C-150/24**

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

Reference for a preliminary ruling – Immigration policy – Common standards and procedures for returning illegally staying third-country nationals – Directive 2008/115/EC – Detention for the purpose of removal – Article 15(5) and (6) – Calculation of the length of the detention already completed – Aggregation of all of the previous periods of detention – Conditions – Enforcement of one and the same return decision – Second sentence of Article 15(3) – Prolonged detention beyond the initial maximum period laid down under Article 15(5) – Review by a judicial authority – National legislation making the implementation of that review contingent on an application by the detained person – Point in time when such a review must be carried out – Consequence where a review is not carried out in good time

Hearing a request for a preliminary ruling from the Korkein oikeus (Supreme Court, Finland), the Court of Justice rules on the calculation of the maximum periods of detention for the purpose of

removal of illegally staying third-country nationals and on the procedural safeguards applicable to extended periods of detention, in the light of Article 15 of Directive 2008/115.<sup>18</sup>

In September 2022, A, a Moroccan national, arrived illegally in Finland while he was subject to an entry ban covering the Schengen area. On the day of his arrival, he was detained for the first time for the purpose his removal to Morocco.

In September 2023, A was detained for the third time for the purpose of his removal to Morocco. On that date, he had already been detained for a total period of five months and 23 days. However, according to the referring court, the conditions for exceeding the initial maximum period of detention of six months were satisfied, given that implementation of the removal had been delayed due, on the one hand, to A's lack of cooperation and, on the other, to the fact that the necessary documents had not been obtained from the Kingdom of Morocco. That third detention period was examined *ex officio* and maintained by the Etelä-Karjalan käräjäoikeus (District Court, South Carelia, Finland) after the initial maximum period of six months' detention could have been exceeded.

After his appeal was dismissed, A applied for that decision to be set aside before the referring court. In support of his application, he claims that his detention is unlawful on the ground that the issue of exceeding the maximum period of six months was not dealt with in accordance with the applicable procedural rules. The referring court, for its part, is of the view that an interpretation according to which all the periods of detention completed must be taken into account in order to assess the maximum period of detention may be justified by the fact that, during those periods, A's detention had the same legal basis.

In the light of those factors, the referring court asks whether consecutive periods of detention, interrupted by periods of liberty, must be aggregated without exception, or if so and, on what grounds, previous periods of detention may be excluded from the calculation. It also has doubts regarding the time limits to which the judicial review of extended periods of detention is subject and the consequences of any irregularity in that review.

#### *Findings of the Court*

In the first place, the Court interprets Article 15(5) and (6) of Directive 2008/115 as meaning that, in order to determine whether the maximum period of detention laid down by a Member State under one of those provisions has been reached, it is necessary to aggregate all the periods of detention completed in that Member State by an illegally staying third-country national under Article 15 of that directive, with a view to the enforcement of one and the same return decision. That interpretation is not called into question by the fact that those periods of detention are interspersed with periods of liberty.

The Court recalls that any detention of a third-country national constitutes a serious interference with the right to liberty, enshrined in Article 6 of the Charter of Fundamental Rights of the European Union. It also states that such a measure is intended to ensure the effectiveness of the return procedure and does not pursue any punitive purpose.

Furthermore, the Court points out that making the possible aggregation of periods of detention subject to the presence of certain factual circumstances could undermine the objective of ensuring a common maximum period of detention in the Member States. Moreover, failure to take account of those periods would, depending on the circumstances, be likely to result in a breach of the principle of proportionality, which requires that any detention prior to removal must be as brief as possible.

As regards the risk of absconding and the fact that the national concerned avoids or hampers the preparation of return or the removal process the Court states that those factors constitute grounds for detention. However, allowing a new period of detention to begin to run on the basis of those grounds, when the enforcement of one and the same return decision is at issue, could deprive the maximum period of detention laid down by Directive 2008/115 of any practical effect. As regards the possibility of taking into account other factual circumstances characterising the situation of the

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<sup>18</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

national concerned, which are not specified and which are by nature variable and subjective, that would expose the persons concerned to a risk of arbitrariness, in view of the legal uncertainty which would ensue.

In the second place, since a review by a judicial authority of the decision to extend the initial detention period beyond six months must necessarily be carried out, the Court finds that the second sentence of Article 15(3) of Directive 2008/115 precludes the implementation of the review, by a judicial authority, of whether the initial maximum period of detention of six months under Article 15(5) of that directive has been exceeded from being made contingent on an application by the detained person.

In the third place, the Court points out that, in the absence of rules laid down by EU rules concerning the procedural requirements relating to the judicial review of reviews of detention in the case of prolonged periods of detention, the Member States remain competent, in accordance with the principle of procedural autonomy and subject to compliance with the principles of equivalence and effectiveness, to determine those requirements, whilst at the same time ensuring that fundamental rights are respected and that the provisions of EU law are fully effective. Therefore, subject to compliance with those principles, Member States are not required to provide that the review, by a judicial authority, of the decision of the administrative authority to extend the detention beyond the initial maximum period of detention is to take place before that period has been reached. That said, the principle of equivalence requires that that review must take place no later than the review provided for in Article 15(2) of Directive 2008/115 in the case of detention, given that the detention and the extension of the detention are similar in nature. It must therefore take place as soon as possible after the adoption of that decision.

Lastly, in the fourth place, the Court considers that the absence of a review, by a judicial authority in good time, of the administrative decision to extend the detention beyond the initial maximum period of six months provided for under Article 15(5) of Directive 2008/115 does not automatically entail the obligation to bring an immediate end to the detention where, at the time that judicial review is carried out, all the substantive conditions justifying continued detention are satisfied and the maximum period of detention provided for under Article 15(6) of that directive has not been reached. On that point, the Court recalls that the obligation for a review, by a judicial authority, of decisions of administrative authorities extending the detention beyond the initial maximum period of six months is not one of the conditions governing the lawfulness of detention under Directive 2008/115, but one of the conditions intended to ensure the right of third-country nationals detained by a Member State to effective judicial protection.

## VII. JUDICIAL COOPERATION IN CRIMINAL MATTERS: CONFISCATION OF CRIME-RELATED PROCEEDS, INSTRUMENTALITIES AND PROPERTY

### Judgment of the Court of Justice (Grand Chamber) of 17 March 2026, Županijsko državno odvjetništvo, C-8/24

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

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Regulation (EU) 2018/1805 – Article 1(1) and (4) – Confiscation order issued in criminal proceedings – Point 2 of Article 2 and point 3(a) and (d) of Article 2 – Confiscation in relation to a criminal offence, but without a final conviction – Confiscation order imposed in a judgment of acquittal finding that the goods to be confiscated are the product of a criminal offence other than the offence giving rise to that judgment and in which offence persons other than the defendants acquitted were involved – No indictment against those persons – Article 19(1)(h) – Grounds for non-recognition and non-execution of confiscation orders – Exceptional situations in which there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the confiscation order would, in the particular circumstances of the case, entail a manifest breach of a fundamental right as set out in the Charter of Fundamental Rights of the European Union – Article 47 of the Charter of Fundamental Rights – Right to an effective remedy and rights of the defence – No use of effective remedies in the issuing Member State

Hearing a request for a preliminary ruling from the Visoki kazneni sud (High Criminal Court, Croatia), the Court of Justice, sitting as the Grand Chamber, interprets, for the first time, the provisions of Regulation 2018/1805.<sup>19</sup> On this occasion, it clarifies the scope of that regulation and rules on the scope of the ground for non-recognition and non-execution of a confiscation order concerning a manifest breach of a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter').

In criminal proceedings against four defendants suspected of having committed an abuse of position or abuse of power by providing the company I.J.S. with an unlawful economic advantage when purchasing shares in the company L.Z. the Okrožno sodišče v Mariboru (District Court, Maribor, Slovenia) established that the constituent elements of two other criminal offences, namely that of acting to the detriment of the creditors of I.J.S. and that of money laundering, were present in respect of persons other than the defendants, on account, inter alia, of the indirect sale, by that company, of the shares in L.Z. to the company D. established in Croatia.

By judgment of 27 May 2020, the Okrožno sodišče v Mariboru (District Court, Maribor) acquitted the four defendants and issued a confiscation order in respect of the shares in L.Z. owned by D. ('the confiscation order at issue'). D. did not appeal against the judgment imposing the confiscation order at issue, which became final on 22 December 2021.

On 17 February 2022, that court issued a certificate of confiscation of the shares in L.Z., which it transmitted to the Županijsko državno odvjetništvo u Zagrebu (County Public Prosecutor's Office, Zagreb, Croatia), with a view to the recognition and execution of the confiscation order at issue. That certificate was accompanied by a translation into Croatian of certain extracts from the judgment of 27 May 2020.

By judgment of 25 November 2022, the Županijski sud u Zagrebu (County Court, Zagreb, Croatia), seised by the public prosecutor's office, recognised the confiscation order at issue.

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<sup>19</sup> Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018 L 303, p. 1).

D. then brought an appeal against that judgment before the referring court.

Expressing doubts, first, as to whether the confiscation order at issue falls within the scope of Regulation 2018/1805 and, second, as to whether, in the criminal proceedings which led to the adoption of that decision, D.'s fundamental rights under the Charter were observed, the referring court decided to stay the proceedings in order to refer questions to the Court of Justice for a preliminary ruling on the interpretation of Regulation 2018/1805.

#### *Findings of the Court*

In the first place, the Court states that a confiscation order issued, following criminal proceedings, in a judgment acquitting the defendants of the offence that was the subject of those proceedings and declaring that the property to be confiscated constitutes the proceeds of a criminal offence different from that offence, involving a person who was not one of the acquitted defendants, against whom no indictment has been drawn up, falls within the scope of Regulation 2018/1805.

The Court notes, in that regard, that, under Article 1(1), that regulation lays down detailed rules for the recognition and execution by a Member State, in its territory, of freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters.

It thus follows from the wording of point 2 of Article 2 of Regulation 2018/1805, which defines the concept of 'confiscation order', and from point (3)(a) and (d) of Article 2 of that regulation, relating to the concept of 'property', that the scope of that regulation includes all types of confiscation orders which are issued following proceedings in relation to a criminal offence, including those issued without a final conviction.

In the second place, the Court rules that the executing authority of a Member State cannot refuse, on the basis of Article 19(1)(h) of Regulation 2018/1805,<sup>20</sup> to recognise and execute a confiscation order on the basis of an alleged failure in the issuing Member State to observe the fundamental rights of the person affected by that order, where that person, having been effectively served, in a language which he or she understands, with parts of the judgment imposing that order sufficient to enable him or her to bring an action against that order, has not made use of the legal remedies available to him or her in the issuing Member State to challenge that confiscation order.

As regards the ground for refusal of recognition and execution of a confiscation order set out in Article 19(1)(h), the Court finds that, by establishing that specific ground for refusal, which is intended to ensure observance of the fundamental rights enshrined in the Charter, the EU legislature expressly chose to give concrete expression to the general provision of Article 1(2) of Regulation 2018/1805 through a ground based on particular examination rules, requiring only an individual assessment of the existence of a risk of a manifest breach of fundamental rights by the executing authority of the Member State concerned.

Such an individual examination need not necessarily be preceded by a finding that there are, in the issuing Member State, either systemic or generalised deficiencies or deficiencies affecting more specifically an identifiable group of persons, contrary to what is required by the Court in the context of the two-step examination which must, in principle, be carried out in the context of Framework Decisions 2002/584 and 2008/909.<sup>21</sup>

That said, the Court observes that Article 19(1)(h) of Regulation 2018/1805, which must be interpreted strictly, lays down strict conditions and a high threshold of seriousness for a manifest infringement of the fundamental rights set out in the Charter.

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<sup>20</sup> Under that provision, the executing authority of a Member State may decide not to recognise or execute a confiscation order issued in another Member State only where, in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of that confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.

<sup>21</sup> Council Framework Decisions 2002/584/JAI of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and 2008/909/JAI of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).



In that regard, the Court specifies that the fundamental rights enshrined in the Charter, which include the right to an effective remedy and to a fair trial, set out in Article 47, apply to all proceedings covered by Regulation 2018/1805. In the context of the system of judicial cooperation between the Member States in criminal matters, the observance of those rights falls primarily within the responsibility of the issuing Member State.

In those circumstances, the person concerned by a confiscation order cannot, where he or she has not made use of the legal remedies available to him or her in the issuing Member State, be regarded as satisfying the conditions of Article 19(1)(h) of Regulation 2018/1805, unless he or she can demonstrate that particular circumstances made it impossible or, at the very least, excessively difficult, to exercise those remedies, or that those circumstances affected their effectiveness.

As regards the situation at issue in the main proceedings, the Court points out, first, as regards the need to serve the full text of the judgment imposing the confiscation order at issue, that respect for the right to effective judicial protection requires not only the notification of those decisions to the addressees thereof, but also that such notification allow those addressees to ascertain the reasons upon which the decision taken in relation to them is based, as well as the legal remedies against such a decision and the time limit prescribed to that end.

In the present case, according to the Court, the service of the extracts from the judgment imposing the confiscation order at issue, relating to the introduction, the operative part, the part of the statement of reasons relating to the confiscated goods and reference to the legal remedies, appears, in principle, sufficient. The confiscation order at issue was based on criminal offences other than the offence in respect of which that judgment acquitted the four defendants concerned. To that extent, service on D. of the parts of that judgment relating to the latter criminal offence and to that acquittal does not appear to be essential to the effective exercise, by that company, of the legal remedies available to it in the issuing State, which it is, however, for the referring court to ascertain.

Secondly, as regards the fact that that company disputes that that service actually took place, the Court points out that, in so far as the confiscation certificate is intended to facilitate the mutual recognition of confiscation orders, and in view of the mutual trust which the courts of the Member States must have, the executing authority had to rely on the information contained in that certificate in the absence of sufficiently precise and objective evidence capable of casting doubt on its credibility.

In the event of doubt concerning such service or, more generally, as to the observance of the fundamental rights of the person concerned, that authority is required, in accordance with Article 19(2) of Regulation 2018/1805, before deciding not to recognise or execute the confiscation order, under Article 19(1)(h) of that regulation, to consult the issuing authority and, where appropriate, to request it to provide any necessary information without delay.

## VIII. TRANSPORT: RAILWAY TRANSPORT

### Judgment of the Court of Justice (Fourth Chamber) of 19 March 2026, DB InfraGO and DB RegioNetz Infrastruktur, C-770/24

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

Reference for a preliminary ruling – Rail transport – Directive 2012/34/EC – Railway infrastructure – Management independence – Article 4(2) – Independence of infrastructure managers – Infrastructure and services charges – Article 29(1) – Establishing, determining and collecting charges – Charging scheme for charges for the use of the German railway infrastructure – Short-distance rail passenger transport – Calculation of the amount of the charges – Multiplication of the amount of the average charges levied during a reference period by a fixed annual rate of increase laid down by law

Ruling on a request for a preliminary ruling from the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), the Court of Justice is called upon to interpret Article 4(2) of Directive 2012/34,<sup>22</sup> relating to the principle of the independence of railway infrastructure managers, and Article 29(1) of that directive, which governs the setting of charges for the use of infrastructure.

The request for a preliminary ruling was made in a dispute concerning the approval, by a decision of the Bundesnetzagentur (Federal Network Agency, Germany), of the amount of the charges applicable for the use of railway infrastructure managed by railway infrastructure managers. That decision reduced the charges submitted for approval by DB InfraGO and DB RegioNetz Infrastruktur for the short-distance rail passenger services sector ('the SPNV sector') by recalculating them in accordance with the requirements of the German legislation on charging, and increased the charges for long-distance rail passenger transport services ('SPFV') and rail freight services ('SGV'). Those railway infrastructure managers brought an action against that decision before the referring court, which is uncertain whether the German legislation on charging – which requires railway infrastructure managers to calculate charges in the SPNV sector by multiplying the average charges levied during a reference year by an annual rate of increase fixed by that legislation – undermines the independence of railway infrastructure managers, as provided for in Directive 2012/34.

#### *Findings of the Court*

The Court replies that Articles 4(2) and 29(1) of Directive 2012/34 preclude national legislation which requires the railway infrastructure manager to calculate the amount of the charges applicable in the SPNV sector by means of a mathematical formula consisting of multiplying the amount of the average charges levied during a reference period by a fixed annual rate of increase laid down by law.

In that regard, the Court notes its case-law according to which national legislation which limits the exercise of the powers of the railway infrastructure manager to determine the amount of the specific charges in each particular case, by applying a formula established in advance by ministerial order, does not comply with the requirement of independence of that manager. If railway infrastructure managers did not have a certain degree of flexibility in setting the amount of the charges, first of all, they would not be able to optimise the use of that infrastructure, by means, inter alia, of charging schemes, within the framework established by the Member States. Next, they would not be encouraged by the infrastructure charging schemes to invest in the railway infrastructure or to reduce the costs of provision of that infrastructure and the level of access charges. Lastly, those managers would not be able to set or continue to set higher charges on the basis of the long-term costs of certain investment projects or to introduce a system of discounts on the charges levied on operators.

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<sup>22</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ 2012 L 343, p. 32), as amended by Directive (EU) 2016/2370 of the European Parliament and of the Council of 14 December 2016 (OJ 2016 L 352, p. 1).

The Court states that those considerations can be applied to the German legislation on charging, which requires railway infrastructure managers to determine, in each Land, the amount of the charges applicable in the SPNV sector by means of a mathematical formula over which they have no control. Thus, the role of the manager is limited to applying that formula, without having any degree of flexibility.

In particular, first, the possibility for managers to create additional market sub-segments cannot compensate for that lack of degree of flexibility, since the same mathematical formula would be applicable to each of those sub-segments. Second, the fact that the manager was able to influence the amount of the average charges for the 2020/2021 reference period does not permit the inference that it had a degree of flexibility in setting the charges applicable to the 2024/2025 working timetable, especially since that manager could not have anticipated that the 2020/2021 charges would be taken into account in determining the amount of the charges for the 2024/2025 period.

Furthermore, the Court rejects the argument based on an alleged 'large' degree of flexibility that the railway infrastructure manager has in determining the amount of the charges applicable in the SPFV and SGV sectors, which 'compensates' for the lack of flexibility in determining the amount of charges for the SPNV sector, since such compensation cannot be sufficient to guarantee the management independence of that manager. The SPNV sector represents more than 50% of the total volume of charges and, even in the SPFV and SGV sectors, the degree of flexibility relating to charges appears to be limited by the obligation imposed by the national legislation to cover all the costs incurred. Thus, where the charges in the SPNV sector do not cover those costs, the coverage shortfall is passed on to the charges for the SPFV and SGV sectors, which considerably reduces the degree of flexibility in those sectors. Moreover, it appears that the amounts of the charges applicable in the SPFV and SGV sectors had, as a result, increased to such an extent that their levels could no longer be reconciled with the objective of making rail transport efficient and competitive compared to other modes of transport.

Lastly, the fact that the transport activity in the SPNV sector is financed principally, or even exclusively, by public funds does not justify the railway infrastructure manager being deprived, in that sector, of any degree of flexibility in determining the amount of the charges for the use of infrastructure. Although Article 8(2) and (4) of Directive 2012/34 allows Member States to use public funds to ensure the financial balance of infrastructure managers, no provision of that directive provides for any derogation from the principle of independence of those managers on the ground that the sector concerned benefits from public funding.

## IX. COMPETITION

### 1. STATE AID

#### Judgment of the Court of Justice (Ninth Chamber) of 19 March 2026, *Outletico*, C-870/24

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

Reference for a preliminary ruling – State aid – Regulation (EU) No 651/2014 – Categories of aid which may be considered to be compatible with the internal market – Exemption provided for aid to small and medium-sized enterprises – Article 1 of Annex I – Concept of an ‘enterprise’ – Article 3(3) of Annex I – Concept of ‘linked enterprises’ – Natural person holding the majority of voting rights associated with the shares of an enterprise – Engaging in an economic activity – Control actually exercised through direct or indirect involvement in the management of the enterprise

Ruling on a request for a preliminary ruling from the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), the Court of Justice clarifies which criteria a natural person with a controlling interest in certain enterprises is to satisfy in order to be him or herself regarded as being an ‘enterprise’, through which those enterprises indirectly have relationships with one another capable of classifying them as ‘linked enterprises’, within the meaning of the third subparagraph of Article 3(3) of Annex I to Regulation No 651/2014.<sup>23</sup>

In 2021, *Outletico*, a company incorporated under Latvian law, was granted two State aid measures intended to support small and medium-sized enterprises (SMEs) affected by the COVID-19 outbreak.

By decisions adopted in December 2021 and in March 2022, the Latvian tax authority ordered the repayment of that aid on the ground that *Outletico*, as a member of a group of linked enterprises, within the meaning of Article 3(3) of Annex I to Regulation No 651/2014, was to be regarded as forming part of a ‘large enterprise’, within the meaning of point 24 of Article 2 of that regulation, which was, both on 31 December 2019 and on the date that aid was granted, ‘in difficulty’, within the meaning of point 18 of Article 2 of that regulation.

Since 60% of *Outletico*’s capital was held, through the company RRE Tradecenters holding, by a natural person, A, who held a controlling interest also in two other companies, namely Esterkin Family Investments and IC Industries Holdings, that authority found that A engaged in an economic activity and, therefore, was to be classified as an ‘enterprise’, within the meaning of Article 1 of Annex I to Regulation No 651/2014, through which all those companies as well as the company Business Park, 100% owned by *Outletico*, were ‘linked’, within the meaning of the third subparagraph of Article 3(3) of Annex I.

Hearing an appeal brought by the tax authority against the judgment of the court of first instance by which, in essence, that court annulled that authority’s decisions, the referring court raises the question whether, for the purpose of classifying *Outletico* as an SME or as a ‘large enterprise’, within the meaning of Regulation No 651/2014, A is to be regarded, in view of the shares held in the companies in question, as engaging in an economic activity and thus as constituting an ‘enterprise’ through which *Outletico* is linked to Esterkin Family Investments and IC Industries Holdings.

#### *Findings of the Court*

In the first place, the Court clarifies that the concept of ‘enterprise’, within the meaning of Article 1 of Annex I to Regulation No 651/2014, extends to any entity engaged in an economic activity, irrespective of its legal form.

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<sup>23</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1).

In the second place, it points out that an economic activity may be carried out both by an operator directly on the market, and, indirectly, by an entity controlling that operator as part of an economic unit which they together form.

In that regard, an entity, including a natural person, holding shares in a company, can be classified as an 'enterprise' only if two conditions are satisfied. First, the shares held must allow that entity to exercise control over a company. Second, that entity must actually exercise that control by involving itself directly or indirectly in the management of that company.

It follows that the mere fact of holding a majority interest in a company, or even fully owning its capital, does not, in itself, allow the inference that control is actually exercised. It must be established individually, in practical terms, whether that is indeed the case, on the basis of evidence capable of showing that the entity concerned involves itself, directly or indirectly, in the management of that company.

In that regard, the fact that Latvian law confers on any entity holding shares in the capital of a company certain rights that attach to the status of shareholder, such as voting rights and rights to take part in the general meeting, does not, in itself, imply that any entity holding shares actually exercises control over that company by involving itself, directly or indirectly, in the management thereof.

By contrast, other evidence, such as whether the person with a controlling interest exercises functions within the company's supervisory bodies or the board of directors, whether that person is an entrepreneur with a controlling interest in a number of companies acting in a coordinated manner or pursuing a common goal or whether that person has declared an intention to put in place a commercial strategy through the controlled company, can be taken into account in order to verify whether that person involves him or herself directly or indirectly in the management of an enterprise and, therefore, exercises actual control over its activity.

In the light of the foregoing, it is for the referring court to verify whether A exercises actual control over the activities of the companies in which he holds a controlling interest, allowing him to be classified as an 'enterprise', through which Outletico indirectly has relationships with Esterkin Family Investments and IC Industries Holdings capable of classifying those companies as 'linked enterprises' within the meaning of the third subparagraph of Article 3(3) of Annex I to Regulation No 651/2014.

## 2. REPAYMENT OF A FINE

### **Judgment of the General Court (Ninth Chamber, sitting with five Judges) of 25 March 2026, Air Canada v Commission, T-310/21**

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

Non-contractual liability – Competition – Agreements, decisions and concerted practices – Market for airfreight – Reduction of the fine by the General Court – Refusal of the Commission to pay interest on the overpayment – Limitation period – Starting point of the limitation period – Interruption – Admissibility – Concept of 'interest' – Rate applicable

Upholding an action for damages brought by Air Canada against the European Commission, the General Court clarifies the rules for calculating the limitation period applicable to such actions. It also recalls the rules for calculating the interest to be paid by the Commission on the amount of a fine which, following a judgment of the Courts of the European Union, must be repaid to the undertaking concerned.

By decision of 9 November 2010, the Commission imposed a fine on Air Canada for having participated in a single and continuous infringement of the competition rules of EU law. Air Canada brought an action for annulment of that decision while also making a provisional payment of the fine imposed on it.

Since the General Court annulled the decision of 9 November 2010 in so far as it concerned Air Canada,<sup>24</sup> the Commission, on 8 February 2016, repaid to Air Canada the amount corresponding to the fine paid, plus the interest yielded on that sum.

On 4 February 2021, Air Canada applied to the Commission for payment of the difference between the interest received in respect of interest yielded and the interest which it should have received as interest at a standard rate. On 25 March 2021, the Commission rejected that application on the ground that it was barred under Article 46 of the Statute of the Court of Justice of the European Union.

On 2 June 2021, Air Canada brought an action seeking, principally, compensation for the damage sustained on account of the Commission's refusal to pay it all the interest due.

### *Findings of the Court*

As a preliminary point, the Court recalls that, in matters arising from non-contractual liability, the limitation period begins to run once the damage to be made good has materialised, namely, in the present case, on 8 February 2016, the date on which the Commission repaid the principal amount of the fine unduly paid, plus only the interest yielded on that sum.

In accordance with Article 46 of the Statute of the Court of Justice of the European Union, that period was interrupted by the prior application made to the Commission on 4 February 2021 seeking compensation for the alleged damage. The Commission having rejected that application, it is nevertheless apparent from Article 46 of the Statute that the limitation period was to be interrupted only if proceedings had been instituted within the period of two months laid down in Article 263 TFEU.

Given that Air Canada had brought its action two months and eight days after the rejection of its application by the Commission, the Court had to rule on whether the ten-day extension on account of distance provided for in Article 60 of the Rules of Procedure should be added to the period of two months laid down in Article 263 TFEU.

In that regard, the Court finds that the extension on account of distance is indeed applicable. Although that extension on account of distance does not apply to the limitation period as such, the reference, in the first paragraph of Article 46 of the Statute of the Court of Justice of the European Union, to the period provided for in Article 263 TFEU has the effect of rendering applicable, as far as interruption of the limitation period is concerned, the rules for calculating the applicable time limits under Article 263 TFEU. Therefore, Air Canada brought its action within the period of 2 months and 10 days available to it.

As to the substance, the Court holds, first, that, following the annulment of its decision imposing a fine on Air Canada, the Commission was required to repay to that company the amount corresponding to the fine paid, plus interest at a standard rate. By repaying only the interest yielded on the sum unduly paid, without ensuring that that amount was at least equal to the amount of standard-rate interest owed, the Commission therefore committed a sufficiently serious breach of the first paragraph of Article 266 TFEU capable of giving rise to the European Union's non-contractual liability.

Next, since the interest owed to Air Canada is at a standard rate, that company was, moreover, not required to prove the existence of damage other than the failure to pay that interest in full.

As regards the interest rate that is applicable for the purpose of determining the amount of interest to be paid, in the absence of any specific provision in the applicable Financial Regulations, the Court considers that it is appropriate to apply, by analogy, the provisions setting the interest rate for amounts receivable not repaid on the deadline as laid down in Article 86(2)(b) of Regulation No 2342/2002<sup>25</sup> and Article 83(2)(b) of Delegated Regulation No 1268/2012.<sup>26</sup>

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<sup>24</sup> Judgment of 16 December 2015, *Air Canada v Commission* (T-9/11, not published, EU:T:2015:994).

<sup>25</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).



In that regard, the Commission's argument that a lower interest rate should be applied, such as the one provided for in Article 86(5) of Regulation No 2342/2002 and in Article 83(4) of Delegated Regulation No 1268/2012 where a financial guarantee is provided by the debtor, has not been accepted. The Court considers that the Commission is not in a situation comparable to that of the debtor which has made a provisional payment of the fine. Thus, the interest which the undertaking must pay in such a situation is not comparable to the interest at a standard rate which the Commission must pay when a ruling of a Court of the European Union finds its decision to be unlawful.

In addition, the Court finds that the Commission's failure to fulfil its obligation to award interest at a standard rate has a sufficiently direct causal link with the damage sustained by Air Canada. The latter's choice to make a provisional payment of the fine instead of providing a bank guarantee cannot break that causal link.

Lastly, the Court observes that, while the Commission's obligation to pay default interest arises on the date of the judgment establishing the obligation to make good the damage, the award of such interest in respect of an earlier period is possible in special circumstances.

In the present case, such special circumstances obtained from the date on which the prior application of 4 February 2021 was made, since the Commission's obligation to include interest at a standard rate on the repayment of the fine paid by Air Canada follows from Article 266 TFEU and since, in its prior application, Air Canada clearly requested compound interest until full payment by the Commission. Thus, the Court concludes that default interest must be awarded on the principal amount from 5 February 2021 until payment in full by the Commission.

In addition, the Court rejects as inadmissible Air Canada's claim for annulment, put forward in the alternative, on the ground that that claim seeks to obtain the same result as its claim for damages which has been upheld.

## **X. FISCAL PROVISIONS: TRANSACTIONS SUBJECT TO VAT**

### **Judgment of the Court of Justice (Fourth Chamber) of 5 March 2026, J-GmbH (Selective application of the reduced rate of VAT) and Others, C-409/24 to C-411/24**

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

References for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 98 – Option for the Member States to apply a reduced rate of VAT to certain supplies of goods and services – Short-term accommodation in hotels and similar establishments – Annex III, point (12) – Reduced rate of VAT applicable to accommodation provided in hotels and similar establishments – Supplies that are ancillary to accommodation – National regulations establishing a mechanism for separating taxable transactions – No application of the reduced VAT rate to supplies that are not directly used for the accommodation – Principle of fiscal neutrality

Ruling on a request for a preliminary ruling from the Bundesfinanzhof (Federal Finance Court, Germany) in three separate cases, the Court confirms that Member States may, under certain conditions, exclude from the scope of the reduced rate of value added tax (VAT) applicable to short-

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<sup>26</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

term accommodation services in hotels and similar establishments supplies that are not directly used for such accommodation, even where they could be considered to be ancillary to it.

In Case C-409/24, J, a company incorporated under German law, operated a hotel and restaurant with a car park which could be used by its guests without them having to pay a supplement. In addition to the overnight stay, the accommodation also included an optional breakfast, the cost of which would be deducted from the total amount invoiced if the customers decided to forgo the breakfast.

Taking the view that the overnight stay, the breakfast and the making available of parking spaces constituted a single supply, J applied the reduced VAT rate of 7%, as laid down by national legislation for supplies of short-term accommodation services,<sup>27</sup> to the entirety of the supply.

Finanzamt K (Tax Office K, Germany) found that the breakfast and the making available of parking spaces had to be separated from the supply of accommodation and taxed at the standard VAT rate of 19%. J lodged appeals against the assessment notices issued by that tax office, which were rejected.

In Case C-410/24, D operated a guesthouse in the course of 2013 and offered guests overnight accommodation with breakfast, which was included in the flat-rate overall price, regardless of whether customers chose to have it or not.

After declaring in 2013 transactions at the reduced VAT rate of 7% and transactions at the standard VAT rate of 19%, D requested in 2018 that all the supplies provided in the context of short-term accommodation be taxed at that reduced rate as a single supply, a request which the Finanzamt F (Tax Office F, Germany) rejected.

In Case C-411/24, D GmbH, a company incorporated under German law, operated two hotels with car parks and local wi-fi networks in 2011. One of those two hotels also had a gym and wellness facilities. Those amenities and facilities could be used by hotel guests at no extra cost.

D GmbH declared those supplies as supplies ancillary to short-term accommodation which were to be subject to the reduced VAT rate of 7%. However, Finanzamt A (Tax Office A, Germany) issued a decision in which it found that those transactions constituted transactions subject to VAT at the standard VAT rate of 19%.

Following the dismissal of their respective actions against the decisions of the tax offices concerned at first instance, the applicants in the main proceedings each brought an appeal on a point of law before the referring court.

That court held that, apart from the provision of the optional breakfast, which constituted an independent supply, the making available of parking spaces, a gym and wellness facilities as well as access to the hotel's wi-fi network and the provision of an included breakfast ('the supplies at issue in the main proceedings') constituted supplies ancillary to the provision of short-term accommodation, since the total price paid by guests did not vary according to whether or not they were used by them. Nevertheless, since those services were not directly used for the short-term accommodation, under national law, they had to be separated from the principal supply, namely short-term accommodation, and, consequently, the reduced rate of VAT could not be applied to them.

However, the referring court has doubts as to the compatibility of such legislation with Article 98(1) and (2) of Directive 2006/112,<sup>28</sup> read in conjunction with Annex III, point (12), to that directive.

In those circumstances, it decided to stay the proceedings and to refer questions to the Court for a preliminary ruling.

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<sup>27</sup> Point (11) of Paragraph 12(2) of the Umsatzsteuergesetz (Law on Turnover Tax) of 21 February 2005 (BGBl. 2005 I, p. 386), in the version applicable to the facts in the main proceedings, provides: '2. The rate of tax shall be reduced to 7% in respect of the following transactions: ... (11) the renting of living and sleeping spaces offered by a trader for the short-term accommodation of third parties, and the short-term renting of camping pitches. The first sentence shall not apply to supplies that are not directly used for the rental, even if the remuneration for those supplies is covered by the consideration for that rental.'

<sup>28</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

### *Findings of the Court*

As a derogation from the principle laid down in Article 96 of the VAT Directive, according to which each Member State is to apply a standard rate of VAT that is the same for the supply of goods and for the supply of services, Article 98(1) and (2) of that directive gives Member States the option of applying one or two reduced rates of VAT to supplies of goods and services in the categories set out in Annex III to that directive.

In that regard, it is settled case-law that Member States have the possibility of limiting the application of the reduced rate of VAT to concrete and specific aspects of those categories.

However, the exercise of the possibility afforded to Member States to apply selectively the reduced rate of VAT is subject to the twofold condition, first, that they isolate, for the purposes of the application of that reduced rate, only concrete and specific aspects of the category of supply at issue and, secondly, that they comply with the principle of fiscal neutrality.

As regards the first condition, it is necessary to determine whether the short-term accommodation supplies benefiting from the reduced rate of VAT under national law are identifiable, as such, separately from other supplies coming within the category set out in point (12) of Annex III to the VAT Directive, on the basis of objective, clear and precise criteria.

In the present case, national legislation provides that the reduced rate of VAT is to apply to the renting of living quarters and bedrooms as well as to the short-term renting of camping pitches, with the exception of supplies that are not directly used for the rental, even if the remuneration for those supplies is covered by the consideration for that rental.

In addition, the supplies directly linked to short-term accommodation are identified by that legislation, which also provides a non-exhaustive list of the supplies that are not eligible for the reduced rate of VAT.

Thus, subject to the verifications to be carried out by the referring court, that information is such as to make it possible to identify with certainty the accommodation supplies subject to the reduced rate of VAT, and to distinguish them from the other supplies in the category at issue, with the result that the first condition is satisfied.

The Court held, in essence, that that conclusion is not called into question by the fact that the supplies at issue in the main proceedings, the price of which is included in the flat-rate overall price of the short-term accommodation, are likely, from the point of view of the average consumer, to be regarded as being ancillary to that accommodation.

As regards the second condition, relating to compliance with the principle of fiscal neutrality, the Court recalls that that principle precludes treating similar goods or supplies of services, which are thus in competition with each other, differently for VAT purposes.

According to settled case-law, goods or services are similar where they have similar characteristics and meet the same needs from the point of view of consumers, with the result that they are interchangeable from their point of view.

Where they are interchangeable, the application of the standard rate of VAT to the supplies at issue in the main proceedings would not infringe the principle of fiscal neutrality, to the extent that those supplies, provided independently by another economic operator, are also subject to the standard VAT rate.

In that regard, in so far as, according to the referring court, the national legislation makes it possible to separate from short-term accommodation supplies that are not directly used for that accommodation and to apply to them the same rate as the one that applies to the same supplies provided in the immediate vicinity by an economic operator, such legislation does not appear to be incompatible with the principle of fiscal neutrality.

In the light of those factors, the Court finds that the national legislation at issue in the main proceedings is compatible with Article 98(1) and (2) of the VAT Directive, read in conjunction with point (12) of Annex III to that directive.

## XI. APPROXIMATION OF LAWS

### 1. MEDICINAL PRODUCTS FOR HUMAN USE

**Judgment of the Court of Justice (Fourth Chamber) of 19 March 2026, Almirall, C-589/24**

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

Reference for a preliminary ruling – Medicinal products for human use – Directive 2001/83/EC – Scope – Article 2(1) – Medicinal products prepared industrially or manufactured by a method involving an industrial process – Article 3(2) – Medicinal products prepared in a pharmacy in accordance with the prescriptions of a pharmacopoeia and intended to be supplied directly to the patients served by the pharmacy in question – Exclusion from the directive’s scope – National regulation subjecting the latter medicinal products to an authorisation requirement on the basis of a numerical criterion

Ruling on a request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), the Court of Justice rules on the scope of Directive 2001/83<sup>29</sup> and states that, once the conditions for excluding a medicinal product from that scope are satisfied, the legal situation concerned is governed solely by the applicable national law.

Almirall is an international pharmaceutical company which produces and distributes the medicinal product Skilarence, used for the treatment of psoriasis and for which it has a marketing authorisation and a manufacturing authorisation, issued in accordance with the Netherlands law transposing Directive 2001/83.<sup>30</sup> Infinity, a dispensing pharmacy established in the Netherlands, prepared at its premises and supplied to its customers the medicinal product Psorinovo, also intended for the treatment of psoriasis and containing the same active substance as Skilarence. Following the takeover of Infinity by Pharmaline, the latter took over the former’s business. Neither of those two dispensing pharmacies had authorisations to market and manufacture Psorinovo.

Being of the view that the volume of Psorinovo thus prepared and supplied by Infinity, and subsequently Pharmaline, did not comply with the condition regarding the quantitative limits for supplying a medicinal product without the corresponding authorisations, provided for by Netherlands legislation, Almirall brought proceedings against them before the Netherlands courts. That legislation provides, in particular, that pharmacies are exempt from the requirement to hold authorisations for the preparation and supply of medicinal products when those operations are carried out ‘on a small scale’, that is to say, when those products are dispensed in pharmacies by or on behalf of a pharmacist, where the number of different patients to whom the medicinal product in question is supplied each month does not exceed 50 in the case of long-term use.<sup>31</sup>

Against that background, the referring court asked the Court whether Article 3(2) of Directive 2001/83 must be interpreted as meaning that that directive does not apply when a medicinal product satisfies the conditions laid down by that provision, with the result that Member States are free to make the manufacture or supply of such a medicinal product subject to the obligation to obtain an authorisation under national law. In addition, it asked whether the second subparagraph of

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<sup>29</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 (OJ 2007 L 324, p. 121).

<sup>30</sup> In accordance with Articles 18 and 40 of the Geneesmiddelenwet (Law on medicinal products) of 8 February 2007 (Stb. 2007, No 93), as amended by the Law of 7 November 2011 (Stb. 2011, No 572).

<sup>31</sup> Clarifications provided by the minister van Medische Zorg en Sport (Netherlands Minister for Medical Care and Sport) in his letter of 8 April 2019 to the Tweede Kamer der Staten-Generaal (Netherlands House of Representatives).

Article 40(2) of Directive 2001/83, containing the expression 'retail supply', which, in the Dutch-language version, can also be understood as referring to the supply of medicinal products in small quantities, is relevant to the interpretation of Article 3(2) of that directive.

#### *Findings of the Court*

The Court points out that the application of Article 3(2) of Directive 2001/83, which provides for cases in which that directive does not apply, requires only that the conditions expressly laid down in that provision, which are cumulative and exhaustive, be satisfied. According to those conditions, the medicinal products in question must be prepared 'in a pharmacy', 'in accordance with the prescriptions of a pharmacopoeia' and 'intended to be supplied directly to the patients served by the pharmacy in question'. Thus, the Court considers that the expression 'retail supply' found in the second subparagraph of Article 40(2) of that directive is irrelevant for the purposes of interpreting Article 3(2) of that directive, since the former provision lays down the conditions under which certain processes concerning medicinal products coming within the scope of that directive are exempt from the requirement to hold a manufacturing authorisation. Indeed, as the respective objectives and fields of application of Article 3(2) and the second subparagraph of Article 40(2) of Directive 2001/83 are different, the latter article is in no way intended to supplement the conditions laid down in the former.

The Court concludes that, where a medicinal product satisfies all the conditions laid down in Article 3(2) of Directive 2001/83, it does not come within the scope of that directive. As a result, where the Member States lay down, in their national law, an authorisation requirement for the manufacture or placing on the market of such a medicinal product, such a requirement, and the conditions for the grant of such authorisations, come within the competencies retained by the Member States, without being governed by Directive 2001/83, and therefore do not have to be assessed in the light of that directive. Indeed, such national legislation is in a situation that is different from that in which an act of the European Union gives the Member States the freedom to choose between various methods of implementation or grants them a margin of discretion which is an integral part of the regime established by that act, and is also different from the situation in which such an act authorises the adoption, by the Member States, of specific measures intended to contribute to the achievement of the objective of that act or derogatory measures.

Furthermore, the Court states that the level of harmonisation effected by Directive 2001/83 has no effect on the margin of discretion which the Member States have when adopting legislation concerning medicinal products that come within the scope of Article 3(2) of that directive, or on the interpretation thereof.

In the light of those considerations, the Court concludes that Article 3(2) of Directive 2001/83 must be interpreted as meaning that legislation which provides that the preparation of medicinal products in a pharmacy in accordance with the prescriptions of a pharmacopoeia and intended to be supplied directly to the patients served by the pharmacy in question is subject to a national authorisation requirement in cases where that preparation does not satisfy the condition that the medicinal products concerned must be intended for retail supply or supply in small quantities, that condition being expressed, in practice, in the form of a specific numerical criterion, does not come within the scope of that directive.

## 2. FINANCIAL SERVICES

### **Judgment of the Court of Justice (Fourth Chamber) of 19 March 2026, *Finansinspektionen*, C-363/24**

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

Reference for a preliminary ruling – Regulation (EU) No 596/2014 – Market abuse – Article 7(1) – Concept of 'inside information' – Article 7(2) – Information of a 'precise nature' – Email containing information relating to the inclusion of a person in an insider list – No statement of the reasons that led to that inclusion – Correct assessment of the circumstances – Correct information – Necessity

Further to a request for a preliminary ruling from the Högsta domstolen (Supreme Court, Sweden), the Court of Justice rules on the concept of information of a 'precise nature' within the meaning of Article 7(1) and (2) of Regulation No 596/2014<sup>32</sup> for the purposes of determining whether information constitutes 'inside' information within the meaning of those provisions.

The company Varvtre, which was owned by BAK, who was also the Chief Executive Officer and main shareholder of the company Starbreeze, had a depository loan agreement with the bank Carnegie. On account of a fall in the price of Starbreeze's shares, Varvtre became over-indebted, to which Carnegie responded by initiating a procedure for the sale of those shares.

The next day, the head of communications at Starbreeze sent an email to Carnegie, stating that BAK had been included in Starbreeze's insider list and could no longer sell shares. That email did not contain any information as to the reasons for that inclusion and, according to Carnegie, there was no information which related directly or indirectly to Starbreeze and which constituted inside information, as the information relating to the resignation of the Chief Financial Officer did not constitute such information. Upon receipt of that email, Carnegie suspended the sale of Starbreeze's shares, before resuming it a few hours later.

Taking the view that, by receiving that email, Carnegie had had access to inside information, the Financial Supervisory Authority brought an action against Carnegie, requesting that the bank be ordered to pay a fine for having infringed the prohibition against insider dealing.

The referring court, seeking to ascertain whether the information in the email was sufficiently precise to constitute inside information, decided to refer questions to the Court for a preliminary ruling.

#### *Findings of the Court*

First, the Court notes that, in order to qualify as 'inside information', information must be precise, must not have been made public, must relate, directly or indirectly to one or more financial instruments or their issuers, and must be information which, if it were made public, would likely have a significant effect on the prices of the financial instruments concerned.

Moreover, information is to be deemed to be of a 'precise nature' if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, and it is sufficiently precise to enable a conclusion to be drawn as to the possible effect of that set of circumstances on the prices of the financial instruments concerned.

The Court states that, in order to ascertain whether the second condition is satisfied, it is necessary to establish, on the basis of an assessment of the specific facts of each case, whether that information enables a conclusion to be drawn as to the possible effect of the circumstances or event to which it refers on the prices of the financial instruments concerned.

The Court finds that the inclusion in an insider list of persons who have access to inside information comes within the obligation issuers of financial instruments have under Article 18 of Regulation No 596/2014 and, therefore, within the internal organisation of the issuer concerned, under the supervision of the competent authority.

Consequently, a communication stating that such a person has been included in the insider list does not, in principle, per se have an effect on the prices of the financial instruments concerned, thereby constituting 'inside information'.

However, the Court does not rule out prima facie the possibility that such a communication may, because of other elements attached thereto – in particular, the statement that that person is prevented from selling shares in that issuer – be considered to be sufficiently precise, inasmuch as it discloses or indirectly implies the existence of an underlying event which may have an effect on the prices of the financial instruments concerned.

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<sup>32</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014 L 173, p. 1).

To that end, it should be ascertained whether, in view of all the circumstances of a given case, the communication of such information is capable of enabling the recipient thereof to profit therefrom, directly or indirectly, in order to buy or sell shares, thereby placing himself or herself in a more favourable position vis-à-vis other investors.

Information relating to the mere fact that a person has been placed on the insider list of a company is, in principle, neutral in relation to the question whether it would be appropriate for an investor to buy rather than sell shares in that company. The addition of information concerning a sales prohibition on that person relating to shares in that company necessarily implies that that person has knowledge of an event having adverse implications for the interests of that company and capable of influencing the decisions of an investor aware of that fact.

It is true that, under Article 9(3) of Regulation No 596/2014, the mere fact of possessing inside information does not mean that that information has been used for engaging in insider dealing, where a transaction is carried out in the discharge of an obligation that has become due in good faith and not to circumvent the prohibition against insider dealing.

Nevertheless, Article 9(6) thereof provides that an infringement of the prohibition against insider dealing may still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned.

The Court concludes that a communication from an issuer to the effect that a person has been included in an insider list and is prevented from selling shares in that issuer, without giving reasons for the person's inclusion, is capable of constituting information which is 'of a precise nature', provided that it can be established that a reasonable investor would be likely to use that communication as part of the basis of his or her investment decisions, with the result that the party in possession of that information obtains an advantage, to the detriment of those who do not have that information, by placing himself or herself in a more favourable position vis-à-vis other investors to trade in financial instruments.

## **XII. SOCIAL POLICY: EQUAL TREATMENT IN EMPLOYMENT AND SOCIAL SECURITY**

### **Judgment of the Court of Justice (Grand Chamber) of 17 March 2026, *Katholische Schwangerschaftsberatung*, C-258/24**

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

Reference for a preliminary ruling – Social policy – Directive 2000/78/EC – Equal treatment in employment and occupation – Occupational activities within churches and other organisations the ethos of which is based on religion or belief – Association providing counselling on pregnancy to pregnant women – Occupational requirements – Acting in good faith and with loyalty to the ethos of the church or organisation – Difference of treatment on grounds of religion or belief – Dismissal of a worker on the ground of her leaving the Catholic church

Ruling on a request for a preliminary ruling from the Bundesarbeitsgericht (Federal Labour Court, Germany), the Court, sitting as the Grand Chamber, confirms its case-law concerning the interpretation of Article 4 of Directive 2000/78,<sup>33</sup> while further clarifying the conditions in which

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<sup>33</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

churches and religious organisations may derogate from the principle of equal treatment in employment and occupation.

In 2006, JB was engaged as an employee by a catholic association counselling on pregnancy ('the Association'), in which she was entrusted with pregnancy counselling. That Association requires all its employees to comply with the regulations of the Catholic Church under which any counselling on pregnancy has the objective of protecting the life of the unborn child and thus must be delivered on the basis of encouraging the pregnant woman to continue her pregnancy and to accept her child.

In 2019, the Association dismissed JB on the ground that she had, in 2013, left the Catholic Church, since, under the applicable Canon law, leaving the Catholic Church is regarded as a serious breach of the duty of loyalty. However, at the date of that dismissal, the Association also employed non-Catholic employees as pregnancy counsellors, who were not subject to the same loyalty requirement and who were therefore not at risk of dismissal on the same ground.

Since the courts at first instance and on appeal upheld JB's action seeking to have her dismissal found unfair, the Association brought an appeal on a point of law against the judgment of the appellate court before the referring court.

Taking the view that JB's dismissal on account of her departure from the Catholic Church constitutes a difference of treatment directly based on religion in comparison with, in particular, the employees of the Association who have never been members of that church and who have left other religious communities, the referring court raises the issue of whether that difference of treatment may be justified under the national legislation transposing Article 4 of Directive 2000/78.

#### *Findings of the Court*

Article 4(2) of Directive 2000/78 sets out the criteria to be taken into consideration to ensure a fair balance between, on the one hand, the right of autonomy of churches and other private or public organisations whose ethos is based on religion or belief, as recognised in Article 10 of the Charter of Fundamental Rights of the European Union ('the Charter'), and, on the other hand, the right, enshrined in Article 21 of the Charter, of workers not to be discriminated against on grounds of religion or belief, inter alia so far as concerns employment and working conditions, including dismissal conditions, in situations where those rights may clash.

That article thus provides that, in the case of occupational activities within those churches and other organisations, a difference of treatment based on a person's religion or belief does not constitute discrimination where, by reason of the nature of those activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the ethos of the church or organisation.

The latter may therefore require their employees to act in good faith and with loyalty to their ethos, subject however to the criteria set out in Article 4(2) of Directive 2000/78.

Although it is ultimately for the referring court to assess those criteria, the Court of Justice nevertheless provides it with some guidelines.

First, the Court recalls that the lawfulness of a difference of treatment on grounds of religion or belief depends on the objectively verifiable existence of a direct link between the occupational requirement imposed by the employer on account of its ethos and the activity concerned.

In the present case, the Court notes that, subject to verification by the referring court, the existence of such a direct link has not been objectively established by the Association.

Secondly, the occupational requirement imposed on JB not to leave the Catholic Church on pain of dismissal does not appear to be genuine for the purposes of the exercise of her occupational activity. Positions like that filled by JB have been allocated to employees who are not members of the Catholic Church, which is inclined to demonstrate that the Association itself regards it as sufficient that its pregnancy counsellors undertake to comply with its regulations on protection of the life of the child.

Thirdly, as regards the legitimate nature of the occupational requirement at issue, the Court notes that the mere departure from the Catholic Church is not a sufficient basis on which to assume that that departure is accompanied by a distancing from or refusal of the precepts and fundamental values of that church. In the present case, the grounds stated by JB for leaving the Catholic Church

were the collection of an additional church levy to which she is subject because her husband is non-Catholic and high-earning. By that departure, she neither distanced herself from nor rejected the precepts and fundamental values of the Catholic Church. Moreover, it is not apparent that she is no longer willing to honour those regulations, with which she undertook to comply in her employment contract.

Fourthly and lastly, in a situation such as that at issue in the main proceedings, it is for the Association to establish whether the alleged risk of undermining its ethos or its right of autonomy is probable and substantial, so that the imposition of such a requirement is in fact necessary and proportionate. However, JB's mere departure from the Catholic Church does not suffice, in the absence of any other action seeking to disseminate openly and in an inappropriate manner the information about that departure, to establish that she is acting in a manner antagonistic to that church.

Even if that departure could be regarded as disloyal conduct towards that church, it does not necessarily follow that it also constitutes disloyal conduct towards the organisation that employs her, provided that the employee continues to respect that organisation's ethos in her work, which seems to be the situation in the present case.

Finally, a difference of treatment such as that at issue in the main proceedings cannot be justified on the basis of Article 4(1) of Directive 2000/78. The requirement at issue does not appear to be objectively dictated by the nature of the activities at issue of a pregnancy counsellor or the conditions under which those activities are exercised.

Having regard to those factors, the Court concludes that Article 4 of Directive 2000/78, read in the light of Articles 10 and 21 of the Charter, precludes a private organisation the ethos of which is based on a religion from being able to require of an employee who is a member of a certain church practising that religion not to leave that church during the employment relationship, on pain of dismissal or, in order to continue the employment relationship, to rejoin that church after having left it, even though that organisation employs other persons to carry out the same duties as those of the employee in question, without requiring that those persons be members of that church, and that employee does not openly act in a manner that is antagonistic to the church concerned.

### **XIII. CONSUMER PROTECTION: RIGHT OF WITHDRAWAL FROM DISTANCE CONTRACTS**

#### **Judgment of the Court of Justice (Fifth Chamber) of 5 March 2026, Eisenberger Gerüstbau, C-564/24**

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

Reference for a preliminary ruling – Consumer protection – Directive 2011/83/EU – Distance contract concluded between a consumer and a trader – Concept of 'consumer' – Contact established between the consumer and the trader by another trader commissioned by the consumer – Article 2(7) – Right of withdrawal of the consumer – Article 9(1) – Abuse of rights

Ruling on a request for a preliminary ruling from the Kammergericht Berlin (Higher Regional Court, Berlin, Germany), the Court of Justice clarifies the scope of the concept of 'distance contract', as provided for in Directive 2011/83,<sup>34</sup> in the context of a contract concluded between a consumer and a

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<sup>34</sup> See Article 2(7) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

trader, during the negotiation and conclusion of which that consumer was represented by a third-party trader. Furthermore, the Court rules on the conditions under which a trader may assert that the exercise by a consumer of his or her right of withdrawal, after the contract has been performed and where that consumer did not receive the information provided for in Directive 2011/83 in that regard, is abusive.

Eisenberger Gerüstbau, the appellant in the main proceedings ('the appellant'), is an undertaking governed by German law that provides scaffolding for rental. JK, the owner of a plot of land in Berlin on which a multi-storey block of flats is built, decided to add new floors to that building for personal residential purposes.

In order to do so, JK commissioned an architect to plan and oversee the works, who was entrusted with obtaining offers from specialised undertakings and drawing up draft contracts. As part of those tasks, that architect sent the appellant specifications for the making available and erection of scaffolding, which the appellant accepted and signed. Next, the architect drew up a draft contract ('the contract at issue') and sent it, by email, to the appellant and JK; both signed it without making any amendments. The contract at issue contained no indication of JK's right of withdrawal.

On 1 January 2021, the appellant sent JK, by email, an offer that was supplementary to the contract at issue relating to additional services ('addendum'), which JK signed and returned to the appellant by email. In January 2021, the appellant began to erect the scaffolding and made it available to JK for use in the planned works.

By letter of 7 December 2021, JK informed the appellant that she was revoking her declarations of intent to conclude the contract at issue and the addendum; in addition, she claimed reimbursement of the progress payments previously made. In December 2021, all the construction works envisaged by JK were completed. At JK's request, the scaffolding was dismantled on 20 December 2021.

The appellant brought an action against JK before a court of first instance, seeking payment of the outstanding remuneration owed to it under the contract at issue. That court dismissed the action and upheld in its entirety JK's claim for reimbursement of the progress payments previously made under that contract. Hearing the appeal brought against that judgment, the referring court considers that the contract at issue is not covered by the concept of 'distance contract' provided for in Article 2(7) of Directive 2011/83, given that JK had recourse to an architect, who is a trader, in order to prepare the contract at issue. Furthermore, that court notes also that the consumer does not enjoy a right of withdrawal from a contract where a trader acting as a negotiating agent defines the subject of performance and contacts the trader, who is the other party to the contract with the consumer, only in order to clarify certain terms and conditions of the contract.

#### *Findings of the Court*

In the first place, the Court finds that the assistance provided to a consumer before and at the time of the conclusion of a contract between him or herself and a trader, by another trader of that consumer's choice, who took the initiative to establish the contact between the consumer and the first trader and who influenced key parts of the content of that contract, is not relevant for the purpose of categorising that contract as a 'distance contract' within the meaning of Article 2(7) of Directive 2011/83.

The Court recalls, as a preliminary point, the three cumulative conditions that a contract must satisfy in order to be categorised as a 'distance contract', that is to say, first, that it must be concluded between a consumer and a trader, second, that it must be concluded under an organised distance sales or service-provision scheme, and third, that the contractual relationship between the parties must be established with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

Taking the view, on the basis of the information provided by the referring court, that the third of those conditions is satisfied, the Court examines, as a first step, whether a person such as JK must be categorised as a 'consumer' as regards the contract at issue. Thus, in the light of the objective nature of that concept, which is distinct from the concrete knowledge the person in question may have or from the information that person actually has, the Court states that the assistance provided to a consumer by a trader, in the present case an architect, in the context of the negotiation and conclusion of a contract between that consumer and another trader is not such as to call into

question the weaker position of that consumer vis-à-vis that other trader. That is the case even though the trader who assisted that consumer took the initiative to establish the contact between that consumer and the other trader and influenced the content of that contract. Furthermore, the assistance provided by a trader is not such as to call into question the status as consumer and does not confer on the contract concerned a trade purpose.

As a second step, in the event that the referring court considers that JK must be categorised as a consumer, the Court examines whether the contract at issue must be regarded as having been concluded under an organised distance sales or service-provision scheme, within the meaning of Article 2(7) of Directive 2011/83. The Court notes that it is apparent from the facts set out by the referring court that that contract was concluded on the basis of a draft contract prepared under the sole responsibility of JK, specifying the precise services with which she wished to entrust the appellant, and that that draft contract was sent to the appellant, by email, which signed it without making any amendments. Therefore, even assuming that the appellant had an organised distance sales or service-provision scheme, it does not appear that the contract at issue was concluded by means of such a scheme, which it is, however, for the referring court to ascertain.

In the second place, the Court considers that where the parties to a contract that cannot be categorised as a 'distance contract' conclude, using exclusively means of distance communication, an addendum to that contract regarding additional services that are of secondary importance in relation to the services under that contract, that addendum constitutes a 'distance contract', as long as the conditions laid down in Article 2(7) of Directive 2011/83 are satisfied.

In the last place, the Court examines the conditions under which a trader may assert that a consumer has exercised his or her right of withdrawal, provided for in Article 9(1) of Directive 2011/83, in an abusive manner. Thus, the Court rules that, where a consumer has withdrawn from a distance contract at the end of the withdrawal period as extended in accordance with Article 10(1) of that directive and at a time when the services which are the subject of that contract and which are non-recoverable have already been provided, the trader may legitimately claim that the consumer, on account of that consumer's own conduct, has exercised the right of withdrawal in an abusive manner. That is the case if it is apparent from all the circumstances, first, that the exercise by the consumer of his or her right of withdrawal is not in line with the objectives pursued by that directive of ensuring that consumers are informed and secure in transactions with traders, and second, that the consumer seeks, by his or her conduct, to obtain an advantage in an abusive manner to the detriment of the trader.

The Court recalls, first of all, that proof of an abusive practice requires both an objective and a subjective element. As regards the existence of objective evidence of an abusive practice, Directive 2011/83 seeks to provide a high level of consumer protection by ensuring that consumers are informed and secure in transactions with traders and therefore confers on those consumers a number of rights in relation to, *inter alia*, distance contracts, including the right of withdrawal. In particular, Article 9 of that directive is intended to enable a consumer to withdraw from an agreement that has been concluded but proves to be unsuitable to his or her needs in the course of the cooling-off period during which the right of withdrawal may be exercised. In that context, the aim of Article 10(1) of that directive is to ensure that consumers receive the information on the conditions, time limit and procedures for exercising the right of withdrawal and to penalise traders who fail to provide them with that information.

Thus, the Court recalls that it is true that, as regards the right of withdrawal provided for in Directive 2008/48,<sup>35</sup> where the trader has not provided the information listed in Article 10 of that directive and the consumer decides to withdraw from the credit agreement after the 14-day period following its conclusion, that trader cannot complain that the consumer has abusively exercised his or her right of withdrawal, even if a considerable length of time has elapsed between conclusion of that agreement and withdrawal by the consumer. For similar reasons, the Court considers that the mere exercise, by the consumer, of his or her right of withdrawal towards the end of the withdrawal period as extended

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<sup>35</sup> See Article 14(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

pursuant to Article 10(1) of Directive 2011/83 is not sufficient, in itself, to serve as objective evidence of an abusive practice.

However, in the present case, not only did the consumer exercise her right of withdrawal towards the end of the period extended in that manner by 12 months from the end of the initial withdrawal period, but the contract was concluded on the basis of a draft prepared under the sole responsibility of the consumer by an agent of her choice, in accordance with the information provided by the latter as regards the precise services expected from the trader, which that trader then signed without making any amendments. In such a situation, it does not appear inconceivable that the exercise by the consumer of her right of withdrawal is not in line with the objectives of Directive 2011/83. Those circumstances militate in favour of a finding that there is objective evidence of an abusive practice on the part of JK. If that finding is made, which it is for the referring court to do, that court must also ascertain whether a subjective factor exists in relation to the consumer, which is, despite the doubts expressed by that court, a necessary condition for establishing an abusive practice. In that regard, factors indicating that the time of exercise of that right was expressly decided by the consumer for the sole purpose of being able to obtain the full benefit of the service that was entirely or almost entirely provided by the trader, while avoiding having to provide, by way of consideration, any remuneration for that service, may be relevant.

#### XIV. ENVIRONMENT: TAXONOMY

##### **Judgment of the General Court (Sixth Chamber, sitting with five Judges) of 18 March 2026, Robin Wood and Others v Commission, T-575/22**

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

Environment – Aarhus Convention – Rejection of a request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Delegated Regulation (EU) 2021/2139 – Forest management – Activities relating to the production of fuels and bioenergy from forest biomass – Taxonomy – Requirements for technical screening criteria – Article 19 of Regulation (EU) 2020/852 – Substantial contribution to climate change mitigation and adaptation – Significant harm to environmental objectives

The General Court upholds the decision of the European Commission to reject a request for internal review of Delegated Regulation 2021/2139<sup>36</sup> supplementing Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment.<sup>37</sup>

The Taxonomy Regulation establishes a unified classification system in order to harmonise, at EU level, the criteria for determining whether an economic activity qualifies as environmentally sustainable in the light of various environmental objectives, such as climate change mitigation and adaptation.<sup>38</sup>

In that context, the Commission adopted the Delegated Regulation to supplement the Taxonomy Regulation by establishing technical screening criteria for determining the conditions under which

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<sup>36</sup> Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1; 'the Delegated Regulation').

<sup>37</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, (OJ 2020 L 198, p. 13; 'the Taxonomy Regulation').

<sup>38</sup> Articles 9 and 10 of the Taxonomy Regulation.

certain economic activities contribute substantially to the environmental objectives pursued by that delegated regulation.

The applicants, Robin Wood – Gewaltfreie Aktionsgemeinschaft für Natur und Umwelt eV and other persons, submitted to the Commission, pursuant to the Aarhus Regulation,<sup>39</sup> a request for internal review of the Delegated Regulation. They took the view that some of the technical screening criteria established by that regulation in relation to forest and bioenergy economic activities infringed the Taxonomy Regulation and certain Treaty requirements.

The Commission rejected the request for internal review by decision of 6 July 2022 ('the contested decision'), which is the subject of the present action.

### *Findings of the Court*

In support of their action, the applicants argued, inter alia, that the Commission's response to their request for internal review was vitiated by errors of law in relation to the compliance of the forest management technical screening criteria with the principle of 'do no significant harm' to the objective of climate change mitigation provided for in Article 17(1)(a) of the Taxonomy Regulation. To that end, they submitted that that provision requires that forest stocks and sinks be maintained at least at their current levels.

The Court notes that Article 17(1)(a) of the Taxonomy Regulation does not contain that requirement, with the result that the technical screening criteria need not contain a specific reference to the need to avoid destruction of forest carbon sinks. It adds that that provision already regulates the scenario of the removal of existing carbon forest sinks, as it could be regarded as causing significant harm to climate change mitigation.

According to the applicants, the Commission also erred in referring, in the contested decision, to the forest sustainability criteria laid down in Article 29(6) of the RED II Directive,<sup>40</sup> without however providing a convincing justification for not specifying the time period for recovery of the carbon lost as a result of clear-cutting.

However, the Court notes that the Taxonomy Regulation and, in particular, Article 17(1)(a) thereof, does not require a level of detail to the point of encompassing the fixing of time periods for recovery of the carbon lost as a result of clear-cutting. It adds that, under a direct application of Article 29(6) of the RED II Directive, clear-cutting is not an economic activity liable to be considered 'environmentally sustainable', with the result that the reference to that provision on the contested decision is not incorrect.

The Court further dismisses as ineffective the applicants' argument to the effect that the Operational Guidance Regulation<sup>41</sup> is of no use in the context of establishing the technical screening criteria in question, since it could not impose more stringent requirements than those found in other acts of primary or secondary EU legislation.

The applicants further argue that the Commission found, incorrectly, referring to the RED II Directive and the LULUCF Regulation,<sup>42</sup> that the 'greenhouse gas emission savings' criteria were adequate to ensure the contribution of forest bioenergy activities to climate change mitigation in accordance with Article 10(1)(a) of the Taxonomy Regulation.

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<sup>39</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1) ('the Aarhus Regulation').

<sup>40</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82; 'the RED II Directive').

<sup>41</sup> Commission Implementing Regulation (EU) 2022/2448 of 13 December 2022 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of [the RED II] Directive (OJ 2022 L 320, p. 4).

<sup>42</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1; 'the LULUCF Regulation').

On that point, the Court notes that that provision refers to the RED II Directive, Article 29(7) of which refers to 'the LULUCF criteria'. Those criteria are essentially linked to the parameters referred to in the LULUCF Regulation, which defines the Member States' commitments in the land use, land-use change and forestry sector. Moreover, the Taxonomy Regulation requires the Commission, during the establishment of the technical screening criteria, to take into account 'any relevant existing Union legislation'. Hence the Commission cannot be criticised for having stated, in the contested decision, that it took into account the provisions of the RED II Directive and the LULUCF Regulation.

Furthermore, contrary to what the applicants claim, the Commission did not state or imply that the accounting of forest biogenic emissions under the LULUCF Regulation is a substitute for emissions reduction. What is apparent from the contested decision is that the use of forest biomass contributes to emission reduction where certain criteria are met, which is, moreover, the premiss formulated by the legislature itself in the RED II Directive.

The Court also rejects the applicants' argument to the effect that the Commission ought to have explained how emissions from the harvesting and burning of forest biomass are supposed to be 'compensated' under the LULUCF Regulation.

In that regard, it observes that the RED II Directive is based on the principle that, if the conditions laid down for that purpose are satisfied, the biomass, which has been turned into fuel, may be categorised as renewable energy. That is also a premiss established by the legislature from which the Commission may not depart as it sees fit. Moreover, the LULUCF Regulation requires the Member States to maintain their natural carbon sinks. Thus, in so far as the emissions compensation scheme, at which the applicants' argument is directed, results from the LULUCF Regulation, the Commission was not required to explain that compensation.

Similarly, the applicants are incorrect in arguing that the Commission could not rely on the LULUCF criteria, since the LULUCF Regulation does not include all biomass carbon emissions in the accounting, but only changes in forest carbon sinks in relation to a baseline that relies on a projection of forest carbon sink levels based on historical harvesting levels. Although the relevant technical screening criteria had exceeded the parameters laid down in the RED II Directive and the LULUCF Regulation, inter alia by including in the accounting emissions arising from the burning of forest biomass in the energy sector, that could have led to double accounting of greenhouse gas emissions.

Lastly, the Court rejects the applicants' argument to the effect that, in essence, the emissions included in the accounting under the LULUCF Regulation cannot be included in a sufficiently targeted manner to determine the extent to which biomass harvesting is responsible for over-exploitation. It notes in that regard that, under that regulation, the forest reference level for the Member States is based on the assumption that the ratio between solid and energy use of forest biomass, as observed between 2000 and 2009, remains constant. That assumption, which ensures that the increase in harvests for bioenergy use is included in the accounting as a debit in the LULUCF sector, is sufficiently targeted.

The Court further holds that the Commission did not err in dismissing the applicants' argument to the effect that the Delegated Regulation infringes Article 2 of the United Nations Framework Convention on Climate Change ('the UNFCCC') and Article 2(1) of the Paris Agreement on Climate Change, approved on 12 December 2015 ('the Paris Agreement'). In order to do so, it examines whether those provisions have direct effect.

In that regard, it recalls that, under Article 216(2) TFEU, international agreements concluded by the European Union are binding upon its institutions and consequently prevail over its own legal acts. However, the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise.

The Court states that those conditions under which the provisions of an international agreement concluded by the European Union may be relied on also hold true in the context of a request for internal review under the Aarhus Regulation, which is a prerequisite procedural stage which may provide a basis, as the case may be, for a subsequent action brought before the EU Courts.

In the present case, provisions relied on of the UNFCCC and of the Paris Agreement do not appear, as regards their content, to be unconditional and sufficiently precise to have direct effect or, therefore, to be relied on by the applicants.

Next, the Court examines whether those provisions come within one of the two exceptions as developed in the case-law of the Court of Justice, enabling the EU Courts to review the lawfulness of an EU act in the light of an international agreement, even where there is no direct effect. Under the first exception, it is necessary to be able to deduce from the specific provision of EU law contested that it seeks to implement, in the EU legal order, a particular obligation stemming from the World Trade Organization (WTO) agreements. The second exception presupposes, in essence, that that provision refers directly and explicitly to the specific provisions of the international agreement in question.

In the present case, however, the applicants have not identified a specific provision of the Delegated Regulation specifically aimed at implementing, in the legal order of the European Union, a specific obligation resulting from Article 2 of the UNFCCC or Article 2(1) of the Paris Agreement. Moreover, those latter provisions merely set out objectives and general rules, but without defining any specific means and leaving broad discretion to the parties, including the European Union, to define the detailed rules for their implementation.

The Court adds that nor does the Taxonomy Regulation refer to the UNFCCC and that only one recital thereof contains an explicit reference to a specific provision of that agreement. That recital is not part of the actual provisions of the Taxonomy Regulation and thus has no binding effect on its own. It follows that neither of the two abovementioned exceptions is applicable in the present case.

Lastly, the Court finds that the case-law relied on by the applicants,<sup>43</sup> according to which the fact that an international agreement contains provisions which do not have direct effect, does not preclude review by the courts of compliance with the obligations incumbent on the European Union as a party to that agreement, was an isolated case and was not followed in the subsequent case-law of the EU Courts. Thus, the Commission was correct in finding, in the contested decision, that the lawfulness of the Delegated Regulation could not be examined in the light of the provisions of international law relied on by the applicants.

The Court, having rejected all of the applicants' arguments, dismisses the action in its entirety.

## **XV. COMMON COMMERCIAL POLICY: ANTI-DUMPING**

**Judgment of the General Court (Eighth Chamber, sitting with five Judges) of 4 March 2026,  
Çolakoğlu Metalurji v Commission, T-379/23**

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

Dumping – Imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye – Extension to those imports of the definitive anti-dumping duty imposed on certain hot rolled stainless steel sheets and coils originating in Indonesia – Implementing Regulation (EU) 2023/825 – Circumvention – Concept of 'assembly operation' – Concept of 'completion operation' – Article 13(2) of Regulation (EU) 2016/1036 – Error of law

The General Court annuls Implementing Regulation 2023/825 of the European Commission extending the anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils ('SSHR'),

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<sup>43</sup> Judgment of 9 October 2001, *Netherlands v Parliament and Council* (C-377/98, EU:C:2001:523, paragraph 54).

originating in Indonesia, to imports of SSHR consigned from Türkiye.<sup>44</sup> At the same time, the Court rules on the question whether a processing operation of a single input into a finished product may constitute an ‘assembly or completion operation’ and accordingly a ‘practice, process or work’ by which the anti-dumping measures in force are circumvented, within the meaning of Article 13(1) of the basic anti-dumping regulation.<sup>45</sup>

In 2020, the Commission adopted Implementing Regulation 2020/1408<sup>46</sup> imposing a definitive anti-dumping duty on imports of certain SSHR originating in Indonesia, the People’s Republic of China and Taiwan.

In 2022, following a complaint lodged by Eurofer, European Steel Association, AISBL, the Commission initiated an investigation into the possible circumvention of those anti-dumping measures by imports of SSHR originating in Indonesia consigned from Türkiye, whether declared as originating in Türkiye or not. Following its investigation, the Commission adopted the contested implementing regulation.

By its action, the applicant, Çolakoğlu Metalurji AŞ, a Turkish exporting producer of SSHR, seeks the annulment of the contested regulation in so far as it concerns the applicant. It disputes, in essence, the classification of ‘assembly operation’ attributed to the manufacturing process of SSHR in Türkiye.

### *Findings of the Court*

The Court states that, in order to determine the existence of circumvention, the third subparagraph of Article 13(1) of the basic anti-dumping regulation requires, (i) a change in the pattern of trade between a third country and the European Union or between individual companies in the country subject to measures and the European Union, (ii) that that change stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, (iii) evidence of harm to EU industry or that the remedial effects of the anti-dumping duty are being undermined in terms of the prices and/or quantities of the like product and, (iv) evidence of dumping in relation to the normal values previously established for the like product. Under the fourth subparagraph of that provision, the assembly operations in the European Union or in a third country are one of the practices, processes or works capable of constituting circumvention.

In the contested regulation, the Commission considered that all the conditions laid down in the third subparagraph of Article 13(1) were satisfied. As regards the second condition, the Commission considered that the processing of stainless steel slabs into SSHR carried out in Türkiye constituted a ‘completion operation’ which falls within the concept of ‘assembly operations’ within the meaning of Article 13(2) of the basic anti-dumping regulation. That provision specifies the conditions under which an assembly operation is to be regarded as circumventing the measures in force and refers, in point (b) of that provision, to ‘completion operations’.

In that context, the Court determines whether that classification is consistent with Article 13 of the basic anti-dumping regulation.

At the outset, the Court notes that the ordinary meaning of ‘assembly’ consists in the action of assembling several parts to form an object. The manufacturing of SSHR is carried out in only one production stage, consisting in heating and then hot rolling the stainless steel slabs. Accordingly, the process of processing the stainless steel slabs into SSHR does not constitute assembly for the purposes of the definition set out above.

However, in so far as the Commission classified that processing as a ‘completion operation’, falling within the concept of ‘assembly operation’ within the meaning of Article 13(2) of the basic anti-

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<sup>44</sup> Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not (OJ 2023 L 103, p. 12; ‘the contested regulation’).

<sup>45</sup> Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; ‘the basic anti-dumping regulation’).

<sup>46</sup> Commission Implementing Regulation (EU) 2020/1408 of 6 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People’s Republic of China and Taiwan (OJ 2020 L 325, p. 26).

dumping regulation, the Court carries out a literal, contextual, teleological and historical analysis of that provision, in order to determine whether the concept of ‘completion operation’ must include, as the Commission contends, processing operations of a single input into a finished product which do not involve any assembly, such as the processing of stainless steel slabs into SSHR in the present case, or, as the applicant suggests, only operations which involve a form of assembly of several parts.

In that regard, the Court finds that the basic anti-dumping regulation does not define that concept.

As regards the context, the Court has already held that the ‘completion operations’ are included in the ‘assembly operations’ and form a type of assembly operation.<sup>47</sup> Accordingly, the ‘completion operations’ cannot include processing operations of a single input into a finished product which do not involve any assembly, because such operations cannot have a scope which goes beyond that of the assembly operations to which they belong.

That finding is supported by the remainder of the wording of Article 13(2), by the teleological interpretation of that article and by its historical interpretation.

First, under Article 13(2)(b), in order for an assembly operation to be regarded as circumventing the anti-dumping measures in force, first, the ‘parts’ from the country subject to measures must constitute 60% or more of the total value of the ‘parts of the assembled product’ and, second, in essence, the value added to the ‘parts brought in’ during the assembly or completion operation must be less than 25% of the manufacturing cost. The use of the word ‘parts’ in the plural, in conjunction with the words ‘assembled product’, in the singular, supports the interpretation that that provision refers to operations in the course of which several parts are assembled to form a single object.

In addition, the 60% value of parts test loses its effectiveness as regards the processing of a single input, since the lack of assembly of several parts makes it unnecessary to calculate the proportion of parts from the country subject to measures in relation to the total value of the parts of the product concerned.

Second, the need to ensure the effectiveness of the anti-dumping measures in force cannot justify a broad interpretation of the concept of ‘completion operation’. Even assuming that the provisions on circumvention were to prove insufficient in order to review certain operations capable of having a significant impact on the effectiveness of the anti-dumping measures, the clear wording of Article 13 of the basic anti-dumping regulation, within the meaning of which assembly operations consist in assembling several parts to form an object, cannot, in principle, be called into question by a teleological interpretation of the concept of ‘completion operation’, which falls within the concept of ‘assembly operation’, at the risk of expanding the scope of that concept, which it is for the EU legislature alone to decide. Such a teleological interpretation cannot be *contra legem*.

In addition, the broad discretion left to the EU institutions in order to define circumvention allows the Commission to examine to what extent the processing in a third country of a single input from a country concerned by the anti-dumping measures in force, in order to form a product identical or similar to that subject to those measures, may constitute circumvention, even though such a practice does not correspond to ‘completion operations’, provided that the other conditions required by the third subparagraph of Article 13(1) of the basic anti-dumping regulation are satisfied.

Third, by examining, in a historical interpretation, the various amendments made to Article 13 of the basic anti-dumping regulation, the Court finds that it is not apparent from the legislative history of that provision that ‘completion operations’, which fall within the concept of ‘assembly operation’, can cover processing operations of a single input into a finished product which do not involve assembly.

In the light of those considerations, the Court concludes that the Commission’s argument that the abovementioned ‘completion operations’ can cover such processing operations is not supported by a literal, contextual, teleological or historical interpretation of Article 13(2) of the basic anti-dumping regulation.

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<sup>47</sup> Judgment of 4 December 2024, *PGTEX Morocco v Commission*, T-245/22, EU:T:2024:879; and judgment of 4 December 2024, *PGTEX Morocco v Commission*, T-246/22, EU:T:2024:880.

Thus, the processing of stainless steel slabs into SSHR, corresponding to the processing of a single input into a finished product which did not involve any assembly, does not constitute a 'completion operation' which falls within the concept of 'assembly operation' within the meaning of that provision.

It follows that the second condition required by the third subparagraph of Article 13(1) of the basic anti-dumping regulation for a finding of circumvention of the anti-dumping measures in force is not satisfied. Therefore, the Court annuls the contested regulation in so far as it concerns the applicant.

## XVI. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

### Judgment of the Court of Justice (First Chamber) of 12 March 2026, EM System, C-84/24

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

Reference for a preliminary ruling – Common foreign and security policy – Regulation (EC) No 765/2006 – Restrictive measures in view of the situation in Belarus – Article 2(1) – Annex I – List of persons, entities and bodies subject to restrictive measures – Inclusion of the name of the shareholder of a company on that list – 50% stake in the capital of that company held by that shareholder – Freezing of the funds of the company, which is not included on the list – Control by a person or entity included on the list of a legal person not included on the list – Criteria for assessment – Right to effective judicial protection – Rights of the defence

In its response to a request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), the Court of Justice clarifies the scope of the freezing of funds and economic resources owned, held or controlled by persons or entities subject to restrictive measures taken in view of the situation in Belarus, within the meaning of Article 2(1) of Regulation No 765/2006.<sup>48</sup>

In 2020, two Lithuanian banking institutions froze the assets held in the bank accounts of the company EM SYSTEM UAB ('EM System'), on the ground that one of its two shareholders, which holds a 50% stake in that company, had been included on the list of persons, entities or bodies subject to restrictive measures.<sup>49</sup>

After the actions brought by EM System challenging the freezing of the assets held in its accounts were dismissed at first instance and on appeal, the company brought an appeal before the referring court, claiming that its funds were not in fact controlled by the shareholder included on the list at issue.

Having doubts in particular as to the criteria to be taken into account in order to determine whether a legal person or entity is owned or controlled by another person or entity, within the meaning of Article 2(1) of Regulation No 765/2006, that court decided to stay the proceedings and to refer the matter to the Court of Justice for a preliminary ruling.

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<sup>48</sup> Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus (OJ 2006 L 134, p. 1), as amended by Regulation (EU) No 1014/2012 of 6 November 2012 (OJ 2012 L 307, p. 1).

<sup>49</sup> Annex I to Regulation No 765/2006, as amended by Council Implementing Regulation (EU) 2020/2129 of 17 December 2020 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2020 L 426 I, p. 1).

## *Findings of the Court*

As a preliminary point, the Court recalls that Article 2(1) of Regulation No 765/2006 provides that all funds and economic resources belonging to, or owned, held or controlled by, the natural or legal persons, entities and bodies included on the list in Annex I to that regulation are to be frozen.

Following a literal and contextual interpretation of Article 2(1) of Regulation No 765/2006, the Court finds, in the first place, that the freezing of funds under that provision applies not only to persons and entities included on the list in Annex I to that regulation, but also to persons and entities not mentioned by name on that list, provided that their funds and economic resources are owned, held or controlled by a person, entity or body included on that list.

That interpretation is supported by the objective pursued by the restrictive measures taken in view of the situation in Belarus, namely to increase pressure on the Lukashenko regime and force it to change its behaviour.

In order to achieve that objective, it is necessary that those measures are applied to as wide a range of persons, groups or entities as possible in order to prevent them from being circumvented. Thus, the concepts of 'held' and 'controlled' within the meaning of Article 2(1) of Regulation No 765/2006 must be interpreted broadly, taking into account both direct and indirect ways of influencing the use of funds and economic resources of a person, entity or body linked to a person included on the list.

It is also necessary to guarantee the surprise effect and the speed with which those measures are imposed, so as to prevent weaknesses – which would deprive those measures of their effectiveness – from being easily exploited. In order to avoid the risk of the assets of the person concerned by the restrictive measures disappearing if there is a delay in implementing them, it is essential to ensure that all parties responsible for implementing Regulation No 765/2006 are able to decide to freeze the funds and economic resources targeted by those measures as quickly as possible.

Against that background, the reliance on presumptions regarding the internal decision-making structure of the legal persons concerned and on clear criteria to establish that a legal person or entity is owned or controlled by a person included on the list in Annex I to Regulation No 765/2006 facilitates the identification of the funds or economic resources to be frozen, which contributes to making the development of complex circumvention mechanisms more difficult, to preventing the outflow of funds and, consequently, to ensuring the effective implementation of restrictive measures.

The relevant criteria include the ability to dispose of or transfer those funds or economic resources and, more generally, the ability to exercise a dominant influence over a legal person, entity or body, in particular by having the right or exercising the power to appoint or remove a majority of the members of its administrative, management or supervisory body. In that regard, a person with a 50% shareholding in a company is, in principle, capable of dictating or preventing certain decisions within that company, or is at least able to ensure that the affairs of that company are conducted in accordance with its wishes. Therefore, it must be presumed that a 50% shareholding in a company makes it possible to control not only that company but also its funds and economic resources.

In the light of the foregoing, the Court holds that assets deposited in the bank accounts of a company which is not included on the list in Annex I to Regulation No 765/2006 but in which a person included on that list has a 50% shareholding must be presumed to be funds held or controlled by that person and, therefore, must be frozen, within the meaning of Article 2(1) of that regulation.

In the second place, it is for the Member States to establish a procedure enabling legal persons, entities and bodies whose funds or economic resources have been frozen, on the ground that those funds or economic resources were presumed to be held or controlled by a person included on the list in Annex I to Regulation No 765/2006, to challenge that measure in proceedings before the national authorities and subsequently, if necessary, before the national courts with jurisdiction, and, where appropriate, to have the measure lifted, a procedure that should also be available to the person included on that list.

The Court takes the view that such a presumption of holding or control will be consistent with the principle of good administration and the right to effective judicial protection only if it is rebuttable and if the legal person, entity or body concerned has been afforded the opportunity to overturn, where appropriate, that presumption by demonstrating that the person included on the list in Annex I to

Regulation No 765/2006 does not actually hold or control its funds or economic resources, as well as the opportunity to secure, as a result, the unfreezing of its funds or economic resources. The person included on that list must also be given such an opportunity to overturn the presumption of holding or control.

### **Judgment of the Court of Justice (Fifth Chamber) of 12 March 2026, SBK Art, C-465/24**

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

Reference for a preliminary ruling – Common foreign and security policy – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – Regulation (EU) No 269/2014 – Concept of ‘freezing of funds’ – Article 1(f) – Exercise by a person subject to restrictive measures of the rights, attached to depositary receipts, to attend, and vote in, a meeting of holders of such instruments

Having received a request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) in the context of a dispute concerning the exercise of attendance and voting rights attached to depositary receipts, the Court rules on the interpretation and scope of the concept of freezing of funds laid down in Article 1(f) of Regulation No 269/2014 concerning restrictive measures in view of the actions of the Russian Federation destabilising the situation in Ukraine.<sup>50</sup>

SBK Art Limited Liability Company, which holds 41.82% of the depositary receipts issued by Fortenova Group STAK Stichting (‘Fortenova’) and is an indirect subsidiary of the Russian bank Sberbank, which is the subject of restrictive measures,<sup>51</sup> was not authorised to attend or vote in the meeting of depositary receipt holders of Fortenova. A new meeting was then convened to be held on 30 August 2022, which SBK Art was again not authorised to attend.

By judgment of 6 September 2022, the judge hearing applications for interim measures of the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) granted the application for interim measures lodged by SBK Art seeking an order allowing it to exercise, during the period up to 31 December 2022, its right to attend, and vote in, meetings. An appeal was brought before the Gerechtshof Amsterdam (Court of Appeal, Amsterdam, Netherlands) which set aside that judgment; next, an appeal on a point of law was brought before the referring court.

#### *Findings of the Court*

The Court examines whether Article 1(f) of Regulation No 269/2014 must be interpreted as meaning that the freezing of funds, within the meaning of that provision, prevents, absolutely, or where relevant, under certain conditions, a person or entity, or a person or entity associated with him, her or it, whose name is included in Annex I to that regulation, from exercising the rights to attend, and vote in, a meeting of depositary receipt holders, rights which that person or entity has by virtue of the depositary receipts he, she or it holds.

As a preliminary point, the Court recalls that, according to Article 1(g)(iii) of Regulation No 269/2014, the concept of ‘funds’ includes, inter alia, stocks and shares, and certificates representing securities, with the result that the depositary receipts at issue in the main proceedings are funds within the meaning of that provision.

‘Freezing of funds’ is, for its part, defined in Article 1(f) of that regulation as meaning ‘preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any

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<sup>50</sup> Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Council Implementing Regulation (EU) 2022/1354 of 4 August 2022 (OJ 2022 L 204 I, p. 1) (‘Regulation No 269/2014’).

<sup>51</sup> See, to that effect, Article 2(1) of Regulation No 269/2014 and the Annex, section ‘Entities’ (No 108), to Council Implementing Regulation (EU) 2022/1270 of 21 July 2022 implementing Regulation (EU) No 269/2014 (OJ 2022 L 193, p. 133).



change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management’.

The Court interprets that provision in the light not only of its wording, but also of its context and the objectives pursued by the rules of which it forms part.

In that regard, the Court finds, in the first place, that the exercise of the rights conferred by certificates representing securities in order for their holders to attend, and vote in, a meeting constitutes an act of use of those certificates. Therefore, the exercise of those rights must be classified as the ‘use of funds’ within the meaning of Article 1(f) of that regulation.

The Court determines, in the second place, whether that provision absolutely prevents the exercise of the rights to attend, and vote in, meetings or whether certain conditions apply.

It notes, first of all, that the exercise of rights to attend, and vote in, a meeting, entails, even if only indirectly, one or more of the consequences for the funds covered by Regulation No 269/2014, such as a change in their volume, amount, location, ownership, possession, character or destination.

Next, the Court considers that an interpretation of Article 1(f) of Regulation No 269/2014, according to which the exercise of the right to attend, and vote in, a meeting is prohibited only depending on the content of the proposals on the agenda of that meeting or the voting intention of the depositary receipt holders, would hinder the objective – pursued by that provision – of limiting as much as possible the transactions that may be carried out with frozen funds. Such an interpretation may indeed facilitate the circumvention of the fund-freezing measures, Article 9(1) of that regulation prohibiting, *inter alia*, the participation, knowingly and intentionally, in activities having such an object or effect. The Court states, in particular, that if that interpretation were to be adopted, there would be a risk that the persons subject to the restrictive measures will be authorised to exercise their rights, notwithstanding the existence of possible consequences for the estimated value of those instruments; this would render the freezing of funds which affected those depositary receipts meaningless. It also points out that the right to vote is exercised freely and that it is impossible to guarantee that the holder of depositary receipts targeted by a fund-freezing measure will vote in the way he or she has previously indicated.

Last, the Court states that restrictive measures, which are temporary and reversible in nature, have, by definition, consequences which affect the right to property, while recalling that the wider objective of maintaining peace and international security provided for in Article 21 TEU and recitals 1 and 3 of Regulation No 269/2014 is such as to justify negative consequences, even of a substantial nature, for the persons concerned. It also recalls, in that regard, the mechanism of possible derogations provided for by Regulation No 269/2014.<sup>52</sup>

Therefore, the Court holds that the freezing of funds laid down in Article 1(f) of Regulation No 269/2014 prevents, absolutely and unconditionally, persons subject to restrictive measures, or a person or entity associated with him, her or it, whose name is included in Annex I to that regulation, from exercising their rights, attached to depositary receipts, to attend a meeting of holders of such certificates and to vote in that meeting.

**Judgment of the Court of Justice (Grand Chamber) of 26 March 2026, Pumpyanskiy and Others v Council, C-696/23 P, C-704/23 P, C-711/23 P, C-35/24 P and C-111/24 P**

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

Appeal – Restrictive measures taken in view of the military aggression against Ukraine – Decision 2014/145/CFSP – Article 1(1)(e) and Article 2(1)(g) – Regulation (EU) No 269/2014 – Article 3(1)(g) – Freezing of funds and economic resources – Concept of ‘leading businesspersons involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation’ – Plea of

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<sup>52</sup> See Articles 2a and 4 to 7 of Regulation No 269/2014.

illegality – Articles 7, 16, 17 and 47 and Article 52(1) of the Charter of Fundamental Rights of the European Union – Right to respect for private and family life, freedom to conduct a business, right to property and right to an effective judicial remedy – Limitations – Principles of legality and proportionality – Principle of equal treatment

The Court of Justice, sitting as the Grand Chamber, dismisses the appeals brought by five businesspersons<sup>53</sup> against the judgments of the General Court concerning each respectively.<sup>54</sup> By those judgments, the General Court had dismissed their actions seeking annulment of the acts<sup>55</sup> by which the Council of the European Union had included or maintained their names on the lists of persons subject to the restrictive measures taken in response to the actions of the Russian Federation undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. On this occasion, the Court rules on the interpretation and legality of the criterion that allows those measures to be imposed on 'leading businesspersons involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation' ('the (g) criterion'). That criterion was established by Decision 2014/145, as amended by Decision 2022/329,<sup>56</sup> and by Regulation No 269/2014, as amended by Regulation 2022/330.<sup>57</sup>

The present judgment is made in the context of a series of restrictive measures adopted by the European Union since 2014 in view of the situation in Ukraine. In 2022, the appellants, four of whom hold Russian nationality (including one who also holds Israeli nationality) and the fifth, Armenian nationality, were made subject to restrictive measures under the (g) criterion, including the freezing of their funds and economic resources in the territory of the European Union.

The actions for annulment that they had brought against the restrictive measures concerning them having been dismissed by the General Court, the appellants lodged appeals before the Court of Justice. In support of their respective appeals, they allege that the General Court made a number of errors of law, in particular in its interpretation and application of the (g) criterion in relation to them.

### *Findings of the Court*

Interpreting the (g) criterion literally, contextually and teleologically, the Court of Justice, in the first place, confirms the General Court's analysis to the effect that the (g) criterion must be interpreted as meaning that it is the 'economic sectors' that must provide a substantial source of revenue for the Government of the Russian Federation, rather than the leading Businesspersons involved in those sectors.

The ability to impose restrictive measures on all leading businesspersons involved in economic sectors providing a substantial source of revenue to the Russian Government, independently of

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<sup>53</sup> Namely Mr Dmitry Alexandrovich Pumpyanskiy (C-696/23 P), Mr Tigran Khudaverdyan (C-704/23 P), Mr Viktor Filippovich Rashnikov (C-711/23 P), Mr Dmitry Arkadievich Mazepin (C-35/24 P) and Mr German Khan (C-111/24 P).

<sup>54</sup> Judgments of 6 September 2023, *Pumpyanskiy v Council* (T-270/22, EU:T:2023:490), and *Khudaverdyan v Council* (T-335/22, EU:T:2023:500); of 13 September 2023, *Rashnikov v Council* (T-305/22, EU:T:2023:530); of 8 November 2023, *Mazepin v Council* (T-282/22, EU:T:2023:701); and of 29 November 2023, *Khan v Council* (T-333/22, EU:T:2023:758).

<sup>55</sup> That is to say, as regards Mr Pumpyanskiy and Mr Mazepin, Council Decision (CFSP) 2022/397 of 9 March 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 80, p. 31) and Council Implementing Regulation (EU) 2022/396 of 9 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 80, p. 1); as regards Mr Khudaverdyan, Mr Rashnikov and Mr Khan, Council Decision (CFSP) 2022/429 of 15 March 2022 amending Decision 2014/145/CFSP (OJ 2022 L 87 I, p. 44) and Council Implementing Regulation (EU) 2022/427 of 15 March 2022 implementing Regulation (EU) No 269/2014 (OJ 2022 L 87 I, p. 1), Council Decision (CFSP) 2022/1530 of 14 September 2022 amending Decision 2014/145/CFSP (OJ 2022 L 239, p. 149) and Council Implementing Regulation (EU) 2022/1529 of 14 September 2022 implementing Regulation (EU) No 269/2014 (OJ 2022 L 239, p. 1); and, as regards Mr Khudaverdyan and Mr Rashnikov, Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP (OJ 2023 L 75 I, p. 134) and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation (EU) No 269/2014 (OJ 2023 L 75 I, p. 1).

<sup>56</sup> Article 2(1)(g) of Council Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision (CFSP) 2022/329 of 25 February 2022 (OJ 2022 L 50, p. 1).

<sup>57</sup> Article 3(1)(g) of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Council Regulation (EU) 2022/330 of 25 February 2022 (OJ 2022 L 51, p. 1).

whether those persons themselves provide a substantial source of revenue to that government, strengthens the ability of the European Union to exert pressure on that government, in particular by impeding the functioning of the economic sectors that are lucrative for it and thereby diminishing the sources of revenue that those sectors provide for it in order to finance its actions against Ukraine. That must be especially so since, in the context of unprovoked aggression against an independent State, in breach of international law, the economy of the aggressor country becomes or is likely to become a war economy.

In addition, the Court states that the concept of the 'influence' of the Businesspersons covered by the (g) criterion involves demonstrating only that those businesspersons are of significant importance in an economic sector that is lucrative for the Government of the Russian Federation, irrespective of any links that they may have with that government and of whether they are actually important to it or actually able to exert influence over it. That influence must be assessed in the light of the economic context in which those businesspersons operate, according to criteria such as their occupational status or their functions, the importance of their economic activity, the extent of their capital holdings or investments, their functions within the company in which they perform those functions or any other relevant economic criterion.

The Court of Justice holds, in the second place, that the General Court did not err in law in finding that the restrictive measures adopted in respect of the appellants and the resulting interference with fundamental rights are consistent with the principle of proportionality. In that regard, the Court of Justice states that, in order to determine whether the restrictive measures enacted by the European Union or the general rules laid down in an EU act imposing restrictive measures comply with the principle of proportionality, or whether the interference with the rights or freedoms guaranteed by the Charter of Fundamental Rights of the European Union as a result of limitations on those rights or freedoms by an EU act imposing restrictive measures is proportionate, it is necessary to ascertain, first, whether those measures or rules meet an objective of general interest recognised by the European Union; second, whether they are not manifestly inappropriate having regard to that objective, that is to say, whether they are not manifestly unsuitable for achieving it; and, third, whether those measures or, as the case may be, the limitations concerned manifestly exceed what is necessary to achieve that objective.

In the present cases, the Court confirms, first, that the restrictive measures adopted in respect of the appellants are appropriate in order to achieve the legitimate objectives pursued by the Council, consisting in exerting pressure on the Government of the Russian Federation and increasing the costs of its actions to undermine the territorial integrity, sovereignty and independence of Ukraine, and, second, that neither those measures nor the interference with fundamental rights resulting from them manifestly exceed what is necessary to achieve that objective.

In the third place, the Court of Justice holds that nor did the General Court err in law in rejecting the pleas of illegality in respect of the (g) criterion raised at first instance by a number of the appellants. On that point, the Court of Justice recalls that the legality of a criterion serving as the basis for the imposition of restrictive measures can be affected only if that criterion is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue. The Court clarifies that, for such a criterion to be capable of being regarded as appropriate and, therefore, lawful, it must target categories of persons or entities that have, albeit indirectly, an objective link with the third country in question. It makes clear that such a link, which is not necessarily required to involve individual conduct on the part of the persons concerned, must be reflected in the decision in the field of the common foreign and security policy adopting the restrictive measures concerned and, as a result, in the regulation intended to implement that decision.

That is so as regards the (g) criterion, in so far as it makes clear an objective link between, on the one hand, leading businesspersons involved in economic sectors providing substantial revenue to the Government of the Russian Federation, in view of the importance of those sectors for the Russian economy, and, on the other, the objective of the restrictive measures at issue, consisting in increasing the pressure exerted on that third country and the cost of its actions in Ukraine.

As regards, in the fourth place, whether the restrictive measures adopted under the (g) criterion infringe the principle of equal treatment, the Court observes that the criterion in question is not based on the nationality of the persons covered. Although it is true that it is predominantly leading

businesspersons of Russian nationality who are subject to restrictive measures under that criterion, that is the logical outcome of the objective of those measures, which consists in exerting pressure on the Government of the Russian Federation, through persons and entities that have an objective link with that third country, to prompt it to bring an end to its actions of destabilisation and aggression in respect of Ukraine. In those circumstances, the General Court correctly held that the Council had not infringed the principle of equal treatment in adopting and applying that criterion.

Last, the Court of Justice states, in the fifth and final place, that there may conceivably be a difference, as regards the harm to reputation, between a listing based on the (g) criterion and a listing based on the criterion laid down in Article 2(1)(d) of Decision 2014/145, in so far as the latter, unlike the second, covers persons who materially or financially support the Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine. Nevertheless, the Court states that the mere fact that neither the General Court at first instance nor the Court of Justice on appeal ruled on whether the restrictive measures adopted in respect of the person concerned under the (d) criterion are well founded, because the listing under the (g) criterion is sufficient to justify the restrictive measures, does not deprive such persons of the opportunity to bring an action seeking compensation for the harm allegedly suffered as a result of that listing and, therefore, to avail themselves of a right to an effective judicial remedy. The ability to do so is nevertheless subject to the condition that, by their action for damages, the persons concerned are not seeking to obtain the same result as they would have obtained had they been successful in an action for annulment which they failed to commence in due time.

Nota bene:

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

- Judgment of the Court of Justice (Second Chamber) of 26 March 2026, Sanofi Pasteur, C-338/24
- Judgment of the Court of Justice (Fourth Chamber) of 26 March 2026, Isergartler, C-618/24