



MONTHLY CASE-LAW DIGEST

April 2026

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I. VALUES OF THE UNION

Judgment of the Court of Justice (Full Court) of 21 April 2026, Commission v Hungary (Values of the European Union), C-769/22

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

Failure of a Member State to fulfil obligations – Article 258 TFEU – National legislation introducing restrictions in relation to deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality, with a view to protecting children – Directives 2000/31/EC, 2006/123/EC, 2010/13/EU – Regulation (EU) 2016/679 – Restrictions on sex education – Principle of non-discrimination – Values of the European Union as enshrined in Article 2 TEU – Reliance on a breach of those values in an action for failure to fulfil obligations – Articles 1, 7, 11 and 21 of the Charter of Fundamental Rights of the European Union – Protection of personal data

Hearing an action for failure to fulfil obligations which it upholds in its entirety, the Court of Justice, sitting as the Full Court, finds, for the first time, a separate infringement, by a Member State, of Article 2 TEU,¹ in particular the values of respect for human dignity, equality and respect for human rights, including the rights of persons belonging to minorities.

In 2021, Hungary, through the adoption of ‘Law No LXXIX of 2021 laying down stricter measures in respect of persons convicted of paedophilia and amending certain laws adopted in the interests of the protection of children’, amended its legislation relating to, inter alia, media services and public education. The main reason given for the amending law was the protection of children. The Hungarian legislature, in essence, introduced provisions prohibiting or restricting the making available to minors of media content that promotes or portrays ‘deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality’.²

Taking the view that, by adopting the amending law, Hungary has failed to fulfil its obligations under the provisions of EU law relating to services in the internal market,³ the Charter of Fundamental Rights of the European Union (‘the Charter’),⁴ Article 2 TEU, and Regulation (EU) 2016/679,⁵ the European Commission has brought an action for failure to fulfil obligations before the Court.

Findings of the Court

Before examining the pleas in law alleging infringement of the Charter, Article 2 TEU, and the GDPR, the Court analyses the pleas in law alleging infringement of Directives 2010/13, 2000/31 and 2006/123, as well as Article 56 TFEU, in the light of the Commission’s arguments seeking to establish the existence of direct discrimination prohibited by Article 21(1) of the Charter, and finds that each of

¹ Under that provision, ‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

² The a pedofil bűnelkövetőkkel szembeni szigorúbb fellépésről, valamint a gyermekek védelme érdekében egyes törvények módosításáról szóló 2021. évi LXXIX. törvény (Law No LXXIX of 2021 laying down stricter measures in respect of persons convicted of paedophilia and amending certain laws adopted in the interests of the protection of children) of 15 June 2021 (*Magyar Közlöny* 2021/118) (‘the amending law’).

³ Namely Article 56 TFEU, Article 3(2) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’) (OJ 2000 L 178, p. 1), Articles 16 and 19 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) and Article 9(1)(c)(ii) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1).

⁴ Namely Articles 1, 7, 11 and 21 of the Charter.

⁵ Regulation 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’).



the legislative provisions in question engages in direct discrimination based on sex and sexual orientation, thereby failing to respect the essence of that provision.

The plea in law alleging infringements of Directive 2010/13 (Audiovisual Media Services Directive)

In the first place, the Court examines the provisions of national law obliging media service providers to limit the broadcasting of any programme having as a defining element the promotion or portrayal of deviation from the self-identity corresponding to the sex assigned at birth, of gender reassignment, or of homosexuality to certain hours.⁶ It finds that those provisions do not constitute measures which are appropriate, for the purposes of Article 6a(1) of Directive 2010/13, read in the light of Article 21 of the Charter, to ensure that audiovisual media services provided by media service providers under Hungary's jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them.

It is true that, in the absence of harmonising rules at EU level, the Member States have, when implementing Article 6a(1) of Directive 2010/13, a margin of assessment in defining, in line with the principle of proportionality, the audiovisual media services provided by media service providers under their jurisdiction which are likely to impair the physical, mental or moral development of minors. However, when adopting measures under that provision, the Member States cannot act in breach of, in particular, the prohibition, enshrined in Article 21(1) of the Charter, of any discrimination based on sex or sexual orientation, that prohibition being mandatory as a general principle of EU law.

In the present case, the Court finds that by making only programmes having as a defining element the promotion or portrayal of deviation from the self-identity corresponding to the sex assigned at birth, of gender reassignment, or of homosexuality subject to certain broadcasting hours, to the exclusion of programmes having as a defining element the promotion or portrayal of the gender identity and sexual orientation of cisgender and heterosexual persons, the provisions of the Law on Media Services engage in discrimination which is directly based on sex and sexual orientation, constituting discrimination which is, in principle, prohibited by Article 21(1) of the Charter.

Furthermore, that discrimination cannot be justified either by the promotion of the best interests of the child, under Article 24(2) of the Charter, or by the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions, enshrined in Article 14(3) thereof.

First, the Court holds that, by relying on the premiss that any portrayal or promotion of deviation from the self-identity corresponding to the sex assigned at birth, of gender reassignment, or of homosexuality is such as to be detrimental to the best interests of the child, and by thereby revealing a preference for certain identities and sexual orientations to the detriment of others, which are stigmatised as a result, the provisions of national law concerned are manifestly contrary to the requirements flowing, in a society in which pluralism prevails, from the prohibition of discrimination on the basis of sex or sexual orientation guaranteed by Article 21(1) of the Charter. Accordingly, they undermine the essence of that provision. Under Article 52(1) of the Charter, undermining the essence of a right guaranteed by the Charter cannot be justified under any circumstances.

Moreover, minors may be adequately protected against programmes which are not age-appropriate without there being direct discrimination in that regard based on sex and sexual orientation. The mere fact that content promotes or portrays deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality is not capable, as such, of establishing the potentially harmful nature of such content.

Second, a restriction on the broadcasting, in the public sphere, of content solely characterised by that fact is such as to deprive parents of their freedom of choice concerning the education and teaching of their children.

Moreover, the Court notes that, while Article 4(1) of Directive 2010/13 permits the Member States to lay down more detailed or stricter rules in the fields coordinated by that directive, the provisions of

⁶ Namely Paragraph 9(6) of the a médiaszolgáltatásokról és a tömegkommunikációról szóló 2010. évi CLXXXV. törvény (Law No CLXXXV of 2010 on media services and mass media communications) of 31 December 2010 (*Magyar Közlöny* 2010/202), as amended, read in conjunction with Paragraph 10(1)(d) and Paragraph 32(4a) thereof.



the Law on Media Services under examination cannot be regarded as constituting such rules, given that they do not respect the essence of Article 21(1) of the Charter.

In the second place, the Court finds that, by introducing an obligation for the Médiatanács (Media Council, Hungary) to request the broadcasting Member State under whose jurisdiction the media service provider in question falls to take effective measures and to intervene in order to put an end to the infringements identified by that body,⁷ Hungary has acted in breach of the country-of-origin principle set out in Article 3(1) of Directive 2010/13, relating to the freedom to receive audiovisual media services from other Member States.

The Court holds that the provision of the Law on Media Services which lays down such an obligation is liable to involve a second control of television broadcasts in addition to that which the broadcasting Member State is required to carry out. That second control is, in principle, contrary to Directive 2010/13, because it restricts retransmissions, on Hungarian territory, of audiovisual media services from other Member States within the meaning of Article 3(1) of that directive.

In addition, the derogation from the country-of-origin principle thus introduced by the Law on Media Services cannot be justified under Article 3(2) of Directive 2010/13.⁸ In particular, audiovisual media services cannot give rise to a serious and grave risk of prejudice to public health solely on the ground that they have as a defining element the promotion or portrayal of deviation from the self-identity corresponding to the sex assigned at birth, of gender reassignment, or of homosexuality.

In the third place, the Court finds that Paragraph 8(1a) of the Law on Commercial Advertising⁹ unconditionally excludes advertising that promotes or portrays deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality from being made available to persons under the age of 18. In so far as the prohibition laid down by that provision deprives providers of audiovisual media services falling within its scope of any possibility of making such advertising available to persons under the age of 18, Paragraph 8(1a) of the Law on Commercial Advertising engages in discrimination directly based on sex and sexual orientation. Accordingly, that prohibition is in breach of Article 9(1)(c)(ii) of Directive 2010/13, which implements, in its sphere of application, Article 21(1) of the Charter.

Such discrimination cannot be justified by an objective of protecting minors against advertising containing allegedly harmful content.

The plea in law alleging infringements of Directive 2000/31 ('Directive on electronic commerce')

As a preliminary point, the Court recalls that Directive 2000/31 is based on the application of the principles, enshrined in Article 3 thereof, of control in the originating Member State and of mutual recognition, so that, within the field coordinated by that directive, information society services are regulated solely in the Member State on whose territory the providers of those services are established.

As the Commission is claiming that Hungary has failed to fulfil its obligations under Article 3(2) of Directive 2000/31 by prohibiting the making available to persons under the age of 18 of content¹⁰ or advertising¹¹ that promotes or portrays deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality, the Court examines whether the provisions of national law containing such a prohibition introduce a restriction on the freedom to provide

⁷ In Paragraph 179(2) of the Law on Media Services.

⁸ Article 3(2) of Directive 2010/13 permits the Member States provisionally to derogate from the obligation to ensure freedom of reception of audiovisual media services from other Member States, laid down in Article 3(1) of that directive, where such a service provided by a provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes, inter alia, Article 6a(1) thereof or prejudices or presents a serious and grave risk of prejudice to public health.

⁹ The a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól szóló 2008. évi XLVIII. törvény (Law No XLVIII of 2008 laying down the basic requirements and certain restrictions applicable to commercial advertising activities) of 28 June 2008 (*Magyar Közlöny* 2008/95). Paragraph 8(1a) of that law was introduced by the amending law.

¹⁰ In Paragraph 6/A of the a gyermekek védelméről és a gyámügyi igazgatásról szóló 1997. évi XXXI. törvény (Law No XXXI of 1997 on the protection of children and the administration of guardianship) of 8 May 1997 (*Magyar Közlöny* 1997/39), as amended.

¹¹ In Paragraph 8(1a) of the Law on Commercial Advertising, as amended.



information society services from another Member State for the purposes of Article 3(2) of that directive.

As regards Paragraph 6/A of the Law on the Protection of Children, the Court holds, first, that the services referred to by that provision are included in the concept of 'information society services' within the meaning of Article 2(a) of Directive 2000/31.

Second, the Court specifies that the requirements established by that paragraph of that law, which concern the pursuit of the activity of an information society service, are included in the concept of 'coordinated field' within the meaning of Article 2(h) of that directive.

Third, the Court finds that the prohibition laid down by Paragraph 6/A of the Law on the Protection of Children restricts the freedom to provide information society services from another Member State for the purposes of Article 3(2) of Directive 2000/31, as that prohibition reduces the possibility for service providers established in another Member State to provide services containing content covered by that prohibition to their potential clientele residing in Hungary, and thus renders the activity of offering such services in that Member State less attractive.

As regards Paragraph 8(1a) of the Law on Commercial Advertising, the Court finds, first, that the advertising services referred to in that provision are liable to constitute 'information society services' within the meaning of Article 2(a) of Directive 2000/31, and thus fall within the scope of that directive.

Second, the Court emphasises that the prohibition introduced by that provision of that law is included in the concept of 'coordinated field' within the meaning of Article 2(h) of Directive 2000/31.

Third, the Court specifies that Paragraph 8(1a) of the Law on Commercial Advertising restricts the freedom to provide information society services from another Member State, inasmuch as that provision renders the exercise of the freedom to provide services less attractive.

The restrictions established by the provisions under examination cannot be regarded as necessary, for the purposes of Article 3(4)(a)(i) of Directive 2000/31, to ensure that the legitimate objective of protecting minors is achieved, in so far as those provisions engage in discrimination directly based on sex and sexual orientation and thus do not respect the essence of Article 21(1) of the Charter.

The plea in law alleging infringements of Directive 2006/123, as well as Article 56 TFEU, as regards the existence of restrictions on the freedom to provide services

(a) The existence of restrictions

Regarding, in the first place, Paragraph 6/A of the Law on the Protection of Children, the Court notes, first of all, that the fact that that provision constitutes a rule applicable to 'information society services' as defined in Directive 2000/31 does not exclude the application of the requirements stemming from Directive 2006/123 and the requirement stemming from Article 56 TFEU. Indeed, in view of the wide range of persons to whom that paragraph of that law applies, the prohibition on making available the content referred to in that paragraph could concern the provision of services other than information society services. Having regard to Article 4(1) of Directive 2006/123, according to which the concept of 'service' includes any self-employed economic activity, normally provided for remuneration, as referred to in Article 57 TFEU, such services could consist in, inter alia, daytime childcare activities.

The Court observes, next, that those services are not excluded from the scope of Directive 2006/123 under Article 2(2)(j) thereof, according to which that directive does not apply to, inter alia, social services relating to childcare. Hungary has not demonstrated that all the services and specific measures falling within the scope of the Law on the Protection of Children are provided by the State, by a charity recognised as such by the State or by a private service provider mandated by the State.

Lastly, the Court holds that the prohibition set out in Paragraph 6/A of that law not only reduces the possibility for service providers established in another Member State to provide services containing content covered by that provision to their potential clientele residing in Hungary, but also renders the receipt of those services less attractive for the recipients of services falling within the scope of that paragraph. Accordingly, the prohibition set out in that provision constitutes a requirement which is such as to restrict the free movement of services for the purposes of Directive 2006/123.

Regarding, in the second place, Paragraph 8(1a) of the Law on Commercial Advertising, the Court also finds that, in view of the particularly broad scope of the prohibition set out in that provision, that prohibition may concern advertising carried out other than via an audiovisual media service or by electronic means. Thus, the advertising services referred to by that provision of that law are capable of being included in the concept of 'service' within the meaning of Article 4(1) of that directive.

In addition, those advertising services which are not audiovisual or carried out by electronic means cannot be covered by the exceptions provided for by Directive 2006/123.

In that context, the Court notes that the prohibition set out in Paragraph 8(1a) of the Law on Commercial Advertising constitutes a requirement restricting the freedom to provide services for the purposes of Directive 2006/123, because that provision limits the possibility, for persons providing advertising services, to promote those services in Hungary where the advertising which they offer, which includes the content referred to in that paragraph, could be seen or heard by a minor.

In the third place, the Court examines Paragraph 9(12) of the Law on Public Education,¹² which provides that activities organised for students and concerning sexual culture, sexual life, sexual orientation, and sexual development must not have the aim of promoting deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality.

The Court emphasises, first of all, that that provision appears to be applicable to educational services which, when provided for remuneration outside the public education system, or within that system but by external service providers, are included in the concept of 'service' within the meaning of Article 4(1) of Directive 2006/123.

Furthermore, educational services usually provided to students are not covered by the exception provided for in Article 2(2)(j) of that directive.

Lastly, the Court holds that Paragraph 9(12) of the Law on Public Education constitutes a requirement liable to restrict the free movement of services guaranteed by Articles 16 and 19 of Directive 2006/123 where those services, which concern activities organised for students and concerning sexual culture, sexual life, sexual orientation, and sexual development, are provided for remuneration outside the public education system, or within that system but by external service providers. Thus, that provision of that law must be regarded as rendering the exercise of that freedom less attractive.

(b) The lack of justification for the restrictions

The Court holds that the objective relied on by Hungary, namely the objective of ensuring the healthy physical, mental, emotional and moral development of minors, cannot justify the restrictions stated. Indeed, a Member State cannot rely on an interpretation of Article 16(3) of Directive 2006/123¹³ that would be in breach of the prohibition, enshrined in Article 21(1) of the Charter, of any discrimination based on sex or sexual orientation.

As the provisions under examination engage in discrimination directly based on sex and sexual orientation, undermining the essence of Article 21(1) of the Charter, the requirements established by those provisions cannot be justified in view of Article 16(3) of Directive 2006/123, interpreted in the light of Article 21(1) of the Charter.

The plea in law alleging infringements of Articles 1, 7, 11 and 21 of the Charter

By this plea in law, the Commission argues that Hungary has failed to fulfil its obligations under Articles 1, 7, 11 and 21 of the Charter, given that the legislative provisions introduced by the amending law,¹⁴ in respect of which it has been established that they are contrary to one or other of the directives examined previously, restrict access by persons under the age of 18 to media content or

¹² The a nemzeti köznevelésről szóló 2011. évi CXCV. törvény (Law No CXCV of 2011 on national public education) of 29 December 2011 (*Magyar Közlöny* 2011/162).

¹³ That provision states, in essence, that the Member State to which the provider moves may impose requirements with regard to the provision of a service activity, where they are justified for, inter alia, reasons of public policy and public security and where they respect the principle of proportionality.

¹⁴ 'the provisions at issue'.



commercial communications which promote or portray deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality.

In the first place, the Court upholds that plea at the outset inasmuch as it concerns an infringement of Article 21(1) of the Charter.

In the second place, the Court finds that the prohibition on making certain content available to minors, laid down by the provisions at issue, constitutes a particularly serious limitation of the right of non-cisgender persons – including transgender persons – or non-heterosexual persons to respect for private and family life, as enshrined in Article 7 of the Charter.

In that regard, the Court recalls that Article 7 of the Charter protects a person's gender identity and sexual orientation as a constituent element and one of the most intimate aspects of that person's private life. Thus, that provision encompasses the right of each person to establish details of his or her identity as an individual human being, which includes the right of transgender persons to personal development and physical and moral integrity, as well as to respect for, and recognition of, their sexual orientation and gender identity. To that end, Article 7 of the Charter imposes on Member States negative obligations, to protect non-cisgender or non-heterosexual persons against arbitrary interference by public authorities, and positive obligations, which entail the establishment of effective and accessible procedures guaranteeing effective respect for the right of those persons to gender identity. In view of the particular importance of that right, Member States have only limited discretion in this area.

In the present case, the Court holds that the provisions at issue, inasmuch as they restrict minors' access to content or commercial communications that promote or portray deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality, fall within the scope of the concept of 'private life', as referred to in Article 7 of the Charter. Those provisions concern the development of a person's individual gender identity.

The Court holds that such a restriction is offensive and stigmatising with regard to the members of society that are concerned by those provisions.

First, non-cisgender or non-heterosexual persons are regarded as detrimental to the physical, mental and moral development of minors solely on the basis of their gender identity or sexual orientation.

Second, the restricting of the content or commercial communications referred to by the provisions at issue not only marginalises non-cisgender or non-heterosexual persons, but also reinforces the stigmatising way in which the gender identity or sexual orientation of such persons is perceived in the public sphere.

Third, the fact that a legislative act states that it is laying down 'stricter measures in respect of persons convicted of paedophilia', while providing that minors must be protected from portrayals of deviation from the self-identity corresponding to the sex assigned at birth, of gender reassignment, or of homosexuality, is such as to amplify the offensive and stigmatising effect of the provisions at issue, or even to encourage the development of hateful conduct towards non-cisgender or non-heterosexual persons, given that such persons could thereby be associated with persons convicted of paedophilia.

Fourth, those provisions reveal a preference for certain categories of personal identities, gender identities, relationships, or families, over others, contributing to the stigmatisation of identities, relationships or families which are not included in those categories.

In the third place, the Court holds that the prohibition on making the content or advertising referred to by the provisions at issue available to minors constitutes particularly serious interference with the freedom of expression and information guaranteed by Article 11 of the Charter.

The Court finds, first, that the provisions at issue limit, for providers of media services, advertising services and educational services, the right to impart 'information' guaranteed under Article 11 of the Charter and, by extension, pluralism of the media in the production and programming of information in the European Union.

Second, the provisions at issue also have the effect of restricting the right of everyone to receive information promoting or portraying deviation from the self-identity corresponding to the sex assigned at birth, gender reassignment, or homosexuality. Accordingly, they limit the freedom of

expression and information not only with regard to minors, but also with regard to members of the general public wishing to receive such content or such commercial advertising, as well as with regard to service providers disseminating that content in the form of advertising, communications of public interest or messages promoting awareness broadcast in the public sphere.

Those interferences with Articles 7 and 11 of the Charter cannot be justified by the objectives relied on by Hungary, namely (i) the best interests of the child, guaranteed by Article 24(2) of the Charter, and (ii) the protection of the right of parents to ensure the education of their children in conformity with their religious, philosophical and pedagogical convictions, as enshrined in Article 14(3) thereof.

In the fourth place, the Court also holds that the prohibition on making the content or advertising referred to by the provisions at issue available to minors violates the human dignity of non-cisgender persons – including transgender persons – or non-heterosexual persons, which is protected by Article 1 of the Charter.

As the dignity of the human person is part of the substance of the rights laid down in the Charter, none of those rights may be used to harm the dignity of another person. It must therefore be respected, even where a right is restricted.

In the present case, the Court finds that the result of the provisions at issue is the stigmatisation and marginalisation of non-cisgender or non-heterosexual persons, who constitute a minority group of persons, solely on the basis of their gender identity or sexual orientation. In addition, it follows from the title of the amending law, combined with the stigmatising and marginalising effect of the provisions at issue, that Hungary has made an association between the fact of not being cisgender or not being heterosexual, on the one hand, and being convicted of paedophilia, on the other. Such an association violates the human dignity of the persons concerned, for the purposes of Article 1 of the Charter.

That association and that stigmatisation entail a group of persons forming an integral part of a society in which pluralism prevails being treated as a threat to that society meriting special legal treatment, which results in such persons' social 'invisibility' being established, maintained, or reinforced, in breach of Article 1 of the Charter.

The plea in law alleging infringement of Article 2 TEU

Regarding the plea in law concerning infringement of Article 2 TEU, the Court recalls that that provision is not a mere statement of policy guidelines or intentions, but contains values which are an integral part of the very identity of the Union as a common legal order, and which require the Member States to maintain and promote them. The fact that those values are given concrete expression in other principles and provisions of EU law comprising more specific legally binding obligations for the Member States cannot call into question the legally binding nature of those values for the Member States.

Such an interpretation of that article follows not only from the wording thereof, but also from its context and its origins.

First, regarding the wording of Article 2 TEU, that article delimits the founding values of the Union which the Member States, bound by those values as a result of their belonging to the Union, mutually undertake to respect, maintain and promote.

Second, regarding the context surrounding that article, the general scheme of the EU Treaty also speaks in favour of the values enshrined in that article being of such binding nature. Article 49 TEU implies, *inter alia*, that respect for the values listed in Article 2 TEU is a prerequisite for the accession to the European Union of any European State applying to become a member of the European Union, thereby bringing together States which have freely and voluntarily subscribed to those values and are continually committed to promoting them.

Third, the preparatory work for Article 2 TEU confirms that interpretation, the concept of 'values' having been introduced by the Lisbon Treaty, reproducing the drafting used by the Convention on the Future of Europe, according to which the fundamental European values 'must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction'.

In addition, regarding Hungary's argument that a failure to fulfil such obligations under Article 2 TEU cannot be the subject of an action for a finding that there has been a failure to fulfil obligations under Article 258 TFEU, the Court finds that it cannot be held that those values are incapable of being protected by the European Union except under the procedure provided for in Article 7 TEU.¹⁵

Where there is no derogation from the rule of general jurisdiction which Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed, the Court retains jurisdiction to review, in the context of an action for failure to fulfil obligations under Article 258 TFEU, whether the Member States have complied with their obligations under Article 2 TEU.

The Court specifies however that, in the context of an action for failure to fulfil obligations, only manifest and particularly serious breaches of one or more values common to the Member States may give rise to a finding that there has been a failure by a Member State to fulfil legally binding obligations under Article 2 TEU, such breaches being incompatible with the very identity of the Union as a common legal order of a society in which pluralism prevails. The breach of several fundamental rights guaranteed by the Charter which give concrete expression to the values enshrined in Article 2 TEU may be an indication that there has been a failure to respect those values.

In this instance, the amending law results in the stigmatisation and marginalisation of non-cisgender or non-heterosexual persons, solely on the ground of their gender identity or sexual orientation. Those consequences are intensified by the fact that that law also makes an association between the fact of not being cisgender or not being heterosexual, on the one hand, and being convicted of paedophilia, on the other, suggesting that non-cisgender or non-heterosexual persons constitute a fundamental threat to Hungarian and European society. Therefore, that law is in breach, in a way that is both manifest and particularly serious, of the rights of non-cisgender or non-heterosexual persons, as well as the values of respect for human dignity, equality and respect for human rights, including the rights of persons belonging to minorities, as referred to in Article 2 TEU, with the result that it is contrary to the very identity of the Union as a common legal order in a society in which pluralism prevails.

Given that Article 4(2) TEU protects only a view of the national identities referred to therein which is consistent with the values enshrined in Article 2 TEU, Hungary cannot validly rely on its national identity as justification for adopting that law. Although the Union is required to respect the national identities of the Member States, in accordance with Article 4(2) TEU, with the result that those States enjoy a certain margin of assessment in implementing the values referred to in Article 2 TEU and the principles of EU law giving concrete expression to those values, it in no way follows from this that the obligations resulting from Article 2 TEU may vary from one Member State to another.

The plea in law alleging infringements of Article 10 of the GDPR¹⁶ and Article 8(2) of the Charter¹⁷

Lastly, the Court examines the provisions of the Law on the Criminal Records System¹⁸ which state that the criminal records body is to make available electronically, to any authorised person, the registered data of persons who have committed offences abusing the sexual freedom or sexual morality of children, where such access is necessary for the purposes of protecting children and preventing such offences.

¹⁵ That procedure, *inter alia*, permits the Council, on a reasoned proposal by one third of the Member States, by the Parliament or by the Commission, to determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2 TEU.

¹⁶ Pursuant to that article, the processing of data relating to criminal convictions and offences may not be carried out except under the control of official authority, unless the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects.

¹⁷ Article 8(2) of the Charter specifies that personal data must, *inter alia*, be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

¹⁸ Paragraph 67(1)(d) of the a bűnügyi nyilvántartási rendszerről, az Európai Unió tagállamainak bíróságai által magyar állampolgárokkal szemben hozott ítéletek nyilvántartásáról, valamint a bűnügyi és rendészeti biometrikus adatok nyilvántartásáról szóló 2009. évi XLVII. törvény (Law No XLVII of 2009 on the criminal records system, the registration of judgments handed down by the courts of the Member States of the European Union against Hungarian citizens, and the registration of biometric data in criminal and law enforcement matters) of 19 June 2009 (*Magyar Közlöny* 2009/83), read in conjunction with Paragraph 75/B(3)(b) thereof.

The Court recalls that the GDPR does not, in principle, preclude personal data from being made available to the authorised person where such making available is necessary for the performance of a task carried out in the public interest or in the exercise of official authority for the purposes of point (e) of the first subparagraph of Article 6(1) of that regulation, provided that the legislation authorising that making available provides for appropriate safeguards for the rights and freedoms of data subjects within the meaning of Article 10 thereof.

In this instance, the Court finds, first, that the concept of ‘authorised person’ referred to in Paragraph 67(1)(d) of the Law on the Criminal Records System is not sufficiently strictly defined. The processing of personal data relating to criminal convictions and offences, under Article 10 of the GDPR, must be foreseeable.

Second, the substantive conditions for access to those data also cannot be considered to be sufficiently precise, in so far as Paragraph 75/B(3)(b) of the Law on the Criminal Records System entrusts the assessment of the need for, and the proportionality of, such access to the person requesting access alone, rather than to the competent authority controlling access to criminal records. Such self-declaration on the part of the person requesting access is manifestly not capable of limiting the interference with the fundamental rights of the persons concerned to respect for private life and to the protection of personal data caused by the disclosure of those data to what is strictly necessary.

In those circumstances, given that they do not provide for appropriate safeguards for the rights and freedoms of data subjects for the purposes of Article 10 of the GDPR, the provisions of the Law on the Criminal Records System under examination cannot justify the processing of personal data appearing in the criminal record of the persons concerned on the ground that it is necessary for the performance of a task carried out in the public interest. Those provisions are therefore in breach of Article 10 of the GDPR, as well as Article 8(2) of the Charter.

II. FREEDOM OF MOVEMENT: FREEDOM TO PROVIDE SERVICES

Judgment of the Court of Justice (Fifth Chamber) of 16 April 2026, European Lotto and Betting and Deutsche Lotto- und Sportwetten, C-440/23

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

Reference for a preliminary ruling – Article 56 TFEU – Freedom to provide services – Holder of a licence issued by a Member State authorising the organisation of online games of chance – Legislation of another Member State making the organisation of online games of chance subject to authorisation – Overriding reasons in the public interest – Online slot machines – Secondary lotteries – Recovery of lost stakes – Abuse of law

Hearing a request for a preliminary ruling from the Prim’Awla tal-Qorti Ċivili (First Hall of the Civil Court, Malta), the Court of Justice rules on the compatibility with Article 56 TFEU of national legislation providing for a general prohibition on online games of chance.

The assignee of a claim held by a consumer who has his habitual residence in Germany brought an action before the referring court against two companies established in Malta, seeking to recover the stakes lost in online slot machine games and betting on the results of lottery draws. To that end, he claims that those companies, holding only a Maltese licence, provided those gambling services to the player illegally, since they are prohibited in Germany. That illegality, he maintains, rendered the contract concluded between the defendants in the main proceedings and that player null and void.

The defendants in the main proceedings contend that, in breach of their freedom to provide services guaranteed by Article 56 TFEU, they were prevented from obtaining authorisation to offer services involving slot machines and secondary lotteries in Germany. It was the prohibition thus imposed which was unlawful and not the offer of the services at issue.

In those circumstances, the referring court decided to stay the proceedings and to refer questions to the Court of Justice for a preliminary ruling.

Findings of the Court

In its examination of admissibility, the Court notes, first, that the player has his habitual residence in Germany, the country to which the defendants in the main proceedings directed their offer of online games of chance. Under Article 6(1) of the Rome I Regulation,¹⁹ it is therefore German law which governs the contract concluded between that player and those companies.

That finding cannot be affected by the fact that that player subsequently assigned his claim or that the general terms and conditions applicable to that contract referred to Maltese law.

In any event, in order to determine whether the subject matter of the contract at issue in the main proceedings was illegal, regard should be had to the prohibitions laid down by the law of the country in which that contract had to be performed, namely, in the present case, German law.

Secondly, the Court finds that it does not appear that the issue to be resolved by the referring court is hypothetical or that the dispute in the main proceedings is artificial.

In its examination of the substance, the Court states that, where national courts are called upon to apply the legislation on games of chance of another Member State, they must make use of all procedural tools available to them and, where appropriate, the procedure provided for by Article 267 TFEU. Where there are questions intended to enable a national court to determine whether such legislation is compatible with EU law, the Court may provide the criteria for the interpretation of EU law which will enable the national court to resolve the legal issue before it.

In the present case, the Court considers, first of all, that Article 56 TFEU does not preclude national legislation imposing a prohibition on the online organisation of casino games, where its objective is to steer the natural gambling instinct of the population into orderly and supervised channels and to counteract the development and spread of unauthorised gambling on parallel markets.

The fact that certain types of online games of chance are not covered by that prohibition does not affect the ability of that legislation to attain the objective pursued. In particular, sports betting differs substantially from other online games of chance in so far as, first, by its very nature, it is aimed at a more limited circle of players and, second, its frequency depends on the frequency of the sporting events to which it relates. By contrast, online casino games, the potential frequency of access to which is in principle unlimited, are liable to attract all sections of the public and especially a particularly young audience.

Furthermore, even if two Member States pursue, within their respective legislation on games of chance, similar or even identical objectives, first, the level of protection sought by each of them and the means of achieving it are likely to differ and, second, the difficulties in assessing the professional qualities and integrity of operators established in the first Member State by the authorities of the second Member State cannot necessarily be regarded as having been ruled out.

The Court goes on to state that the adoption, after the facts at issue, of a decision to replace that prohibition with a system of prior approval and the introduction of a transitional period during which gambling offers likely to be compliant with the future legislation would be accepted subject to compliance with certain requirements, cannot affect the legal consequences which the prohibition at issue should be recognised as having. First, such an exceptional transitional regime appears intended to ensure that the transition from the regime at issue in the main proceedings to a more liberal regime is carried out under the best possible conditions of legal certainty. Second, the applicability of

¹⁹ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; 'the Rome I Regulation').

such a transitional regime can, in the case of a gaming provider such as the defendants in the main proceedings, only be hypothetical.

Lastly, the nullity of a contract such as that concluded between the player and the defendants in the main proceedings, the cause of which is illegal under that legislation, cannot constitute a separate restriction on the freedom to provide services, requiring a separate assessment of its legality, but is the consequence of the illegality of that contract. In the present case, while it cannot be ruled out that the player was able to make use of the services offered while being fully aware of a prohibition such as that applicable to the present dispute and of its possible consequences, the question of a possible abuse of rights by that player can be decided only on the basis of the applicable national law.

III. BORDER CHECKS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Fifth Chamber) of 16 April 2026, Danané and Others, C-50/24 to C-56/24

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

References for a preliminary ruling – Border controls, asylum and immigration – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Application for international protection – Article 43 – Border procedure – Classification of a procedure conducted in a place of detention located geographically in the territory of a Member State, but treated by national law as a place at the border – Right to enter the territory of that Member State after a period of four weeks – Article 31(7) – Priority examination of an application for international protection – Directive 2013/33/EU – Standards for the reception of applicants for international protection – Article 8 – Detention in the same place on the basis of two different decisions

Ruling on a reference for a preliminary ruling from the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium), the Court of Justice clarifies the scope of the procedure for examining applications for international protection made at the border or in a transit zone, provided for in Article 43 of Directive 2013/32,²⁰ and the consequences of the expiry of the four-week period within which such a procedure must be conducted.

Between September and October 2023, a number of third-country nationals submitted applications for international protection upon their arrival at Brussels Airport (Belgium). After being detained in facilities treated by the national legislation as places ‘at the border’ and on the expiry of that four-week period, they were authorised to enter Belgian territory, while being kept in detention in the same places, classified on that occasion as ‘places in the territory’.

Since their applications for international protection were subsequently rejected, those nationals brought actions before the referring court. Having doubts as to the compatibility of the dual classification of the same place of detention in that context with Article 43 of Directive 2013/32, which authorises Member States to provide for specific procedures for examining applications for international protection made at their borders or in their transit zones, that court decided to stay the proceedings and to refer the matter to the Court of Justice for a preliminary ruling.

²⁰ 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).

Findings of the Court

Following a literal, contextual and teleological interpretation of Article 43 of Directive 2013/32, the Court holds, first of all, that a procedure for examining an application for international protection made at the border or in a transit zone by an applicant who, for the duration of that procedure, is detained in a place in the territory of the Member State concerned which is not geographically located at the border of that State, but which is treated by the national legislation as a place at that border, falls within the scope of that article.

Neither the wording of Article 43 of Directive 2013/32 nor its context supports the conclusion that Member States are not authorised to detain such an applicant in a place which is not geographically located at their border. Moreover, nor does the objective pursued by that provision, which is to enable Member States to conduct an initial screening of the applications for international protection before formally authorising entry to their territory only to third-country nationals whose applications are not rejected on that occasion, require that that examination should take place at the borders of those Member States.

On the other hand, the compulsory detention of applicants for international protection at the border or in a transit zone could prove excessively difficult, if not impossible, depending on the geographical and infrastructural specificities of the Member States, and, in some cases, impact compliance with the guarantees offered to them by Directives 2013/32 and 2013/33²¹ and, in general, respect for their fundamental rights.

Next, the Court makes it clear that the examination of an application for international protection no longer falls within the scope of the border procedures provided for in Article 43 of Directive 2013/32 after the expiry of the four-week time limit for those procedures, but within the scope of the other provisions of that directive. That directive does not preclude an applicant who is detained in a centre treated as a place at the border during a border procedure from being kept there at the end of the four-week period.

However, the Member State concerned must ensure that that applicant is informed, at the latest when the decision keeping him or her in detention is adopted, of the change in his or her legal situation, and, where appropriate, that he or she is to be provided with a document attesting to his or her status as an applicant or his or her right to remain in the territory of that State during the examination of his or her application, or an equivalent document, within the meaning of Article 6(1) and (2) of Directive 2013/33.

Lastly, the Court adds that such continued detention and the change in the legal classification of the place of detention have no bearing, as such, on the competence of the authority responsible for examining the application for international protection, it being understood that, since the expiry of the four-week period laid down in Article 43(2) of Directive 2013/32 has the effect of lifting the material and temporal limitations of that competence resulting from Article 43, the responsible authority regains its ordinary jurisdiction.

In that context, that authority may continue, as a matter of priority, the examination of an application for international protection initiated as part of the border procedure, including where the applicant remains in detention in order to establish the elements on which his or her application is based and which could not be obtained without that continued detention, in particular where there is a risk that the applicant will abscond. That authority may base its decision on the investigative acts carried out as part of the border procedure, subject to compliance with the basic principles and guarantees set out in Chapter II of Directive 2013/32 and, as regards that continued detention, with all the requirements laid down in Articles 8 and 9 of Directive 2013/33.

²¹ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

IV. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Judgment of the Court of Justice (Fifth Chamber) of 16 April 2026, Mincu Pătrașcu Brâncuși v EPPO, C-328/24 P

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

Appeal – Institutional law – Regulation (EU) 2017/1939 – European Public Prosecutor's Office (EPPO) – Article 42(1) – Procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties – Judicial review carried out by national courts – Plea of illegality – Admissibility – Exclusive jurisdiction of the Court of Justice of the European Union to review the legality of EU acts – Article 86(2) and (3) TFEU – Exercise of the functions of prosecutor in the national courts – Power of the EU legislature to determine the rules applicable to the judicial review of procedural acts of the EPPO – Derogation not authorised in Article 263 TFEU – None – Article 47 of the Charter of Fundamental Rights of the European Union – Right to effective judicial protection – Infringement – None – Lack of jurisdiction of the General Court

Hearing an appeal, which it dismisses, the Court of Justice clarifies the relationship between the judicial system established by the Treaties and Article 42(1) of Regulation 2017/1939,²² under which procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties are subject to review by the competent national courts.

Following an investigation by the EPPO, a permanent chamber of the EPPO decided to bring the appellant before a Romanian criminal court. He brought an action for annulment of that decision before the General Court, together with a plea of illegality directed against Article 42 of Regulation 2017/1939. The General Court held that it lacked jurisdiction, on the ground that the judicial review of procedural acts of the EPPO is a matter for the national courts.

Findings of the Court

The Court of Justice holds that the General Court erred in law in finding that it lacked jurisdiction to hear and determine the action, brought against a procedural act of the EPPO, within the meaning of Article 42(1) of Regulation 2017/1939, without examining whether primary EU law precluded such a finding.

Since jurisdiction is a matter of public policy which must, where appropriate, be raised of its own motion, the General Court cannot declare that it has no jurisdiction to hear and determine an action without first examining the merits of all the arguments relied on before it, which seek specifically to establish its jurisdiction in that regard. More specifically, the settled case-law according to which the inadmissibility of the main action leads to the inadmissibility of the plea of illegality raised in support of that action cannot authorise the General Court to declare that it has no jurisdiction to examine, in the light of primary EU law, the validity of a provision of secondary law, on the ground that it lacks jurisdiction to hear and determine the main action, where, specifically, it relies on that provision in order to conclude that it lacks jurisdiction. Thus, it follows from the case-law that, where a plea of illegality is raised before the General Court in respect of a provision of secondary law which removes from all judicial review the decision of an EU body challenged before it, on the ground that that provision is incompatible with Article 263 TFEU, it must ascertain whether that plea of illegality is well founded and, if appropriate, declare that it has jurisdiction to review the legality of that decision on the basis of Article 263 TFEU, in order to ensure effective judicial review.

²² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1).

However, the Court holds that, by conferring on national courts the power to carry out judicial review of procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties, the EU legislature did not undermine its powers provided for in Article 19 TEU and Article 263 TFEU.

In that regard, the Court notes that the division of jurisdiction between the national courts and the EU Courts in Article 42 of Regulation 2017/1939 in no way constitutes an unauthorised derogation from the exclusive jurisdiction of the EU Courts to review the legality of acts of bodies, offices or agencies of the European Union, on the basis of Article 263 TFEU. By subjecting to judicial review by national courts only procedural acts of the EPPO intended to produce legal effects vis-à-vis third parties, with the exception of decisions to dismiss the case, and by providing for the jurisdiction of the Court in other cases, the EU legislature did not exceed the power conferred on it by Article 86(3) TFEU to lay down the 'rules applicable to the judicial review of procedural measures' of the EPPO.

In addition, having regard to the particular nature of the tasks conferred by the TFEU on the EPPO and the scope of the powers conferred by that Treaty on the EU legislature to determine the institutional and procedural framework within which the EPPO performs its tasks, the expression 'rules applicable to the judicial review of the procedural measures [of the EPPO]' must be interpreted as meaning that it may include not only the establishment of the specific conditions and detailed rules governing actions against those procedural measures, but also, where appropriate, of specific rules of jurisdiction.

Within this institutional and procedural framework, the legal effects that procedural acts of the EPPO produce vis-à-vis third parties are, to a large extent, determined by national law. In addition, procedural acts of the EPPO constitute a step in criminal proceedings, whose outcome falls exclusively within the jurisdiction of the national courts, which have discretion to assess the evidence. In those circumstances, the jurisdiction of national courts to carry out such a judicial review does not constitute an unauthorised derogation from Article 263 TFEU. Moreover, the general scheme of Article 42 of that regulation confirms that division of powers.

Furthermore, the Court recalls that Article 47 of the Charter of Fundamental Rights of the European Union cannot establish jurisdiction for the Courts of the European Union where the Treaties exclude it, or change the system of judicial review laid down by them, in particular the rules relating to the admissibility of direct actions. In any event, Article 42(1) of Regulation 2017/1939 respects the right to effective judicial protection.

First, interpreted in the light of Article 41 of Regulation 2017/1939 and its recitals, the judicial review of procedural acts intended to produce legal effects vis-à-vis third parties ensures that the EPPO observes fundamental rights. In addition, effective remedies must be guaranteed by the Member States.

Secondly, since its first paragraph must be read in the light of its general scheme, Article 42 is fully consistent with the complete system of legal remedies and procedures designed to ensure judicial review of the legality of EU acts. In particular, it is linked to paragraph 2, under which the preliminary ruling mechanism is applicable to the judicial review of procedural acts of the EPPO, thereby ensuring that the Court is able to examine any question concerning the interpretation or validity of the EPPO's procedural acts challenged before the competent national court and concerning the regulation at issue.

V. COMPETITION: RULES APPLICABLE TO UNDERTAKINGS

Judgment of the General Court (First Chamber, sitting with five Judges) of 22 April 2026, Red Bull and Others v Commission, T-682/24

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

Competition – Agreements, decisions and concerted practices – Abuse of dominant position – Energy drinks sector – Inspection ordered by the Commission – Article 20(4) of Regulation No 1/2003 – Inspection continued at the Commission’s premises – Commission refusal to reimburse part of the costs resulting from that inspection – Concept of ‘additional costs incurred solely as a result of the continuation of an inspection on the Commission’s premises’

The Court dismisses the action for annulment brought by Red Bull GmbH and two of its subsidiaries against the decision of the European Commission²³ refusing to reimburse the lawyers’ fees which those undertakings consider they had to bear as a result of a competition inspection being continued at the Commission’s premises in Brussels (Belgium). In that context, the General Court interprets the concept of ‘additional costs’ incurred exclusively as a result of that continuation and clarifies the conditions under which lawyers’ fees invoiced for services provided at the Commission’s premises fall within that concept.

By decision of 8 March 2023, the Commission ordered the applicants to submit to an inspection, as provided for in Article 20(4) of Regulation No 1/2003,²⁴ which took place from 20 to 24 March 2023 at the applicants’ premises.

At the closing meeting, the Commission informed the applicants that the inspection would be continued at its premises in Brussels, in order to examine the documents copied and the additional data to be provided subsequently by them.

Following that second phase, which took place from 14 to 20 June 2023 and from 29 August to 29 September 2023, the Commission informed the applicants that they could submit a reasoned request for reimbursement of the additional costs incurred by that inspection having been continued at the Commission’s premises in Brussels.

On 25 April 2024, the applicants made a request to the Commission to reimburse those additional costs, including the entirety of their lawyers’ fees related to the continuation of the inspection in Brussels. By the contested decision, the Commission agreed to reimburse all the costs claimed, with the exception of lawyers’ fees, stating that it could cover only the costs incurred exclusively by the inspection having been moved to its premises, and not the costs which would have been incurred in any event if the inspection had taken place at the undertaking’s premises.

Findings of the Court

In the first place, the Court observes that the Commission did not err in law in refusing to reimburse to the applicants the entirety of the lawyers’ fees which they incurred for the services provided in connection with the inspection carried out at the Commission’s premises in Brussels.

In that regard, the General Court recalls that it is apparent from the case-law of the Court of Justice²⁵ that, where an inspection is continued at the Commission’s premises in Brussels, the Commission is required to reimburse the ‘additional costs’ incurred solely as a result of that continuation, where the undertaking concerned presents to it a duly reasoned request to that effect.

²³ Commission Decision of 23 October 2024 (Case AT.40819) (‘the contested decision’).

²⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1).

²⁵ Judgment of 16 July 2020, *Nexans France and Nexans v Commission* (C-606/18 P, EU:C:2020:571, paragraph 90).

In order to classify certain costs as 'additional costs', two criteria must be met.

First, those costs must be additional to the earlier detailed and factual costs incurred in respect of the inspection at the premises of the undertaking concerned. In that regard, proof is not required that the costs incurred are disproportionate or excessive, but solely that such costs are additional to the costs which would have been incurred if the inspection had continued at the premises of the undertaking concerned.

Second, an exclusive causal link is required between (i) the costs referred to and (ii) the inspection being continued at the Commission's premises. It follows that the costs which would in any event have been incurred had the inspection continued at the premises of the undertaking concerned are excluded.

In the present case, since the applicants chose to be assisted by lawyers during the inspection carried out at their premises, the fact that that inspection continued at the Commission's premises does not alter the costs relating to lawyers' fees. It follows that there is, in principle, no exclusive causal link between those fees and the continuation of that inspection at the Commission's premises.

Accordingly, the Commission's interpretation of the concept of 'additional costs' which, in principle, excludes lawyers' fees charged for the services carried out in connection with an inspection being continued at the Commission's premises, on the ground that those costs would also have been incurred if the inspection had continued at the applicants' premises, is neither unfounded nor contrary to the case-law of the Court of Justice.

That interpretation also cannot be regarded as restrictive, since the Commission did not categorically rule out the possibility that certain lawyers' fees could be regarded as 'additional costs'. It merely requires the undertaking concerned to demonstrate that the lawyers' services covered by the fees for which it seeks reimbursement would not have been necessary if the inspection had continued at its premises, which is not unreasonable.

In the second place, the Commission also made no error of assessment when it found to be implausible the applicants' argument that, if the inspection had continued at their own premises, they could have organised themselves so as to be able to ensure full internal oversight of the inspection without incurring legal fees.

First of all, that scenario of full internal oversight of the inspection is not how the inspection at the applicants' premises unfolded, where they were continuously assisted by lawyers.

Next, while the applicants maintain that their employees would have been able independently to oversee the inspection if it had continued at their premises, they provide no explanation whatsoever for why they did not rely on those employees actually to oversee the inspection at the Commission's premises in Brussels, whether in person or remotely, in particular on the basis of a rota.

Lastly, the applicants themselves admitted on a number of occasions that they would have called upon lawyers, at least from time to time, if the inspection had continued at their premises.

The Court adds that the applicants' claim related solely to reimbursement in full of the lawyers' fees claimed, since the applicant never attempted to demonstrate that only certain fees could be reimbursed.

In the light of all those considerations and after having rejected the other pleas in the action, the Court dismisses the action in its entirety.

VI. FISCAL PROVISIONS: TAXABLE AMOUNT FOR VAT

Judgment of the General Court (Second Chamber, sitting with five Judges) of 22 April 2026, Mokoryte, T-233/25

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

Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Taxable amount – Reduction in case of cancellation, refusal, non-payment or reduction of the price – Article 90(1) of Directive 2006/112/EC – Acquisition by a subcontractor of a claim held by a contractor against the developer – Irrecoverable claim – Right of the subcontractor to benefit from the reduction in the taxable amount

Hearing a request for a preliminary ruling from the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), the General Court rules that Article 90(1) of the VAT Directive²⁶ precludes a subcontractor, having acquired by assignment the claim which a contractor had against a developer, from adjusting the taxable amount for VAT in the event of non-payment of that claim by that developer.

In 2007, a developer concluded a works contract for a business centre project in Romania with a contractor, which, in that context, entrusted the performance of construction works to Mokoryte (‘the subcontractor’). Following the declaration of insolvency of the developer, the contractor assigned to the subcontractor, in settlement of part of its debts to the latter, the claim which it had against the developer. At the end of the bankruptcy proceedings of the developer, the assigned claim had not been settled.

The subcontractor then issued cancellation invoices to the developer in order to cancel the invoices issued by the contractor to the developer for the performance of the works provided for in the works contract. Moreover, since the national legislation provides for the possibility of adjusting the taxable amount for VAT purposes on account of non-payment of the price of services supplied as a result of the beneficiary’s insolvency, the subcontractor reduced the collected VAT declared in its VAT return and requested a refund of it. In the course of a tax inspection, the tax authority nevertheless considered that that reduction was unjustified, on the ground that the beneficiary of its services was not the developer but the contractor.

That refusal gave rise to a dispute before the Romanian courts, in which the referring court asks whether the adjustment of the taxable amount provided for by Article 90(1) of the VAT Directive, in the event of non-payment of a claim, may be made only by the taxable person liable to pay VAT who supplied the goods or services which gave rise to that claim or whether that adjustment may also be made by a third party taxable person to whom the taxable person liable to pay VAT has assigned that claim.

Findings of the Court

The Court notes that the right to reduce the taxable amount for VAT purposes, which is the consideration actually received, is closely linked to the status of person liable for payment of VAT for the taxable transaction in respect of which that consideration is due, the person liable for payment of VAT being the taxable person who carried out the taxable transaction.

In the present case, as regards the commercial relationship between the subcontractor and the contractor, the assignment to the subcontractor of the contractor’s claim against the developer constitutes in itself remuneration, with the result that the consideration due in the context of the relationship between the subcontractor and the contractor must be regarded as having been settled. There is therefore no ‘non-payment’ capable of constituting a basis for a reduction in the taxable amount for the subcontractor assignee.

²⁶ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

By contrast, as regards the transaction between the contractor and the developer, there is a definitive non-payment on account of the closure of the developer's insolvency proceedings without the developer having discharged the debt arising from the works contract concluded with the contractor.

In the context of that second transaction, the supplier of the services for which the developer was required to pay a price is and remains the contractor. The contractor had the status of taxable person at the time when the services were supplied, the date on which the tax became chargeable, and remained liable for the VAT due, even after the assignment of the civil law claim to the subcontractor.

In that regard, the Court notes that the status of person liable for payment of VAT is acquired under the relevant tax provisions of the VAT Directive, which does not provide for the possibility of transferring that status by an agreement governed by private law, such as an assignment of a claim. In addition, the VAT Directive determines the taxable person entitled to a reduction in the taxable amount for VAT purposes, irrespective of the national rules that may govern assignments of debts under civil law.

Moreover, the right to an adjustment of the taxable amount must be regarded as a related or ancillary right to the tax debt and to the right to claim a refund of the VAT duly paid, for the taxable person who is the person liable for payment.

Consequently, a subcontractor assignee cannot be identified as the taxable person entitled, as regards the assigned claim, to a reduction of the taxable amount for VAT purposes under Article 90(1) of the VAT Directive, since that right belongs only to the assigning contractor.

VII. APPROXIMATION OF LAWS

1. COPYRIGHT

Judgment of the Court of Justice (Grand Chamber) of 14 April 2026, Pelham (Concept of 'pastiche'), C-590/23

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

Reference for a preliminary ruling – Copyright and related rights – Directive 2001/29/EC – Information society – Harmonisation of certain aspects of copyright and related rights – Article 2 – Reproduction right – Article 5 – Exceptions and limitations – Article 5(3)(k) – Concept of 'pastiche' – Use 'for the purpose of' pastiche – Reproduction of parts of a phonogram (sampling) – Fundamental rights – Charter of Fundamental Rights of the European Union – Article 11 – Freedom of expression – Article 13 – Freedom of the arts – Article 17 – Right to property

Ruling on a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court, sitting as the Grand Chamber, interprets for the first time the concept of 'pastiche' within the meaning of Article 5(3)(k) of Directive 2001/29,²⁷ which is one of the exceptions to the reproduction and distribution rights, and, in so doing, rules on the degree of freedom enjoyed by artists with regard to existing cultural heritage protected by copyright and related rights.

CG and RL were members of the band 'Kraftwerk', which published, in 1977, a phonogram containing the song 'Metall auf Metall'. CG and YN, who is RL's successor in title, submit that the company Pelham and the composers of the song 'Nur mir' electronically copied (sampled) approximately two seconds

²⁷ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

of a rhythm sequence from the song 'Metall auf Metall' and used that sample in a continuous loop in the song 'Nur mir'.

The dispute between those parties has continued for 20 years and has been the subject of a previous reference to the Court for a preliminary ruling, on which the Court has already ruled.²⁸

This time, being uncertain as regards the essential characteristics of the concept of 'pastiche' and as regards the assessment of intention to use the existing work for the purpose of pastiche, the referring court decided to stay the proceedings and to make a reference to the Court of Justice for a preliminary ruling.

Findings of the Court

As regards, in the first place, the characteristics of the concept of 'pastiche', the Court finds, first of all, that that concept is not defined in Directive 2001/29 and that it is not devoid of ambiguity. Consequently, the Court bases its assessment on a contextual and teleological interpretation of that concept.

As regards, next, the context in which the concept of 'pastiche' occurs, the Court notes that, under Article 5(3)(k) of Directive 2001/29, the author's exclusive right over a protected work or subject matter, such as a rhythm sequence, may²⁹ be subject to an exception where that work or subject matter is used for the purpose of caricature, parody or pastiche. The grouping of the concept of 'pastiche' together with the concepts of 'caricature' and 'parody' leads the Court to find that those concepts have certain common essential characteristics, that is to say, in particular, that of evoking an existing work while being noticeably different from it. Nevertheless, the Court considers that an interpretation of one or more of those concepts as legally redundant is to be avoided, in order to ensure the effectiveness of those exceptions.

That means, first, that the concept of 'pastiche' cannot be required to cover expressions of humour or mockery, otherwise that would confer on that concept a scope that is identical to that of 'parody' or 'caricature'. Second, an interpretation of the concept of 'pastiche' covering every creation that evokes an existing work and is noticeably different from it must also be rejected, so as not to render redundant the other two exceptions listed in Article 5(3)(k) of Directive 2001/29. Moreover, nothing in the context in which that provision or, more generally, Article 5 of that directive, occurs indicates that the exception for 'pastiche' was designed to have a catch-all nature covering every form of creative use of copyright-protected material.

As regards, lastly, the purpose of the exception for 'pastiche', the Court considers that the interpretation of that exception must strike, in particular in the electronic environment, a fair balance between the fundamental rights at issue, namely, on the one hand, the right to intellectual property, and, on the other, the freedom of expression and artistic freedom of users of copyright-protected subject matter as well as the public interest. Thus, the concept of 'pastiche' cannot be interpreted strictly, but must be interpreted in full conformity with the exercise of those fundamental freedoms.

The Court infers from that that the exception for 'pastiche' does not have a catch-all nature (*Auffangtatbestand*), but covers creations which evoke one or more existing works, while being noticeably different from them, in order to engage with those works in a form of artistic or creative dialogue that is recognisable as such. The Court states that, in so far as only the use of elements of a work which, individually or in combination, are protected by copyright may require the authorisation of the rightholder, the exception for 'pastiche' must, to a certain extent, allow the use of such protected elements, otherwise it would be ineffective. The Court adds that the artistic or creative dialogue with the work or works may take different forms, in particular the form of stylistic imitation, of tribute, or of humorous or critical engagement.

²⁸ Judgment of the Court of 29 July 2019, *Pelham and Others* (C-476/17, EU:C:2019:624).

²⁹ That exception is optional under Directive 2001/29. In that regard, it must be noted that that exception for 'pastiche' has been made mandatory by Article 17 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92).

In the second place, as regards the manner in which the intention to use a protected work or subject matter ‘for the purpose of pastiche’ must be assessed, the Court considers that, in order to ensure legal certainty, that assessment must be objective, since the ‘pastiche’ nature must be recognisable for persons who are familiar with the existing work from which the characteristic elements protected by copyright have been borrowed. Thus, in order for use to be ‘for the purpose’ of pastiche, within the meaning of Article 5(3)(k) of Directive 2001/29, it is sufficient that the ‘pastiche’ nature be recognisable for a person who is familiar with the existing work from which such elements have been borrowed.

2. FINANCIAL SERVICES

Judgment of the Court of Justice (Fourth Chamber) of 16 April 2026, Brännelius, C-229/24

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

Reference for a preliminary ruling – Approximation of laws – Single market for financial services – Regulation (EU) No 596/2014 – Market abuse – Insider dealing – Article 7(1)(a) – Concept of ‘inside information’ – Criteria – Public information – Article 17 – Public disclosure of inside information by an issuer – Decision of a contracting authority not to award a public contract to a tenderer – Early sale of shares of that tenderer – Implementing Regulation (EU) 2016/1055 – Article 2 – Means for public disclosure of inside information

Hearing a request for a preliminary ruling from the Högsta domstolen (Supreme Court, Sweden), the Court of Justice rules on the interpretation of the concept of ‘inside information’ within the meaning of Article 7(1)(a) of Regulation No 596/2014³⁰ and on the means for public disclosure of such information within the meaning of Article 17 of that regulation and Article 2(1) of Implementing Regulation 2016/1055.³¹

Following a call for tenders launched by a Swedish municipal undertaking, that undertaking sent the decision to award the contract to the recipients concerned, including the unsuccessful tenderer, Hybricon Bus Systems AB (‘Hybricon’). TK and OP, two shareholders in that company, received the information from one of its officers and placed orders to sell their shares in that company. In so doing, they limited their losses before the drop in the share price of those shares, which occurred after Hybricon issued a press release announcing that it had been unsuccessful in the tendering procedure in question.

In those circumstances, the referring court seeks to ascertain at what point in time the information in the decision to award the contract must be considered to have been made public and, accordingly, no longer constitute ‘inside information’ within the meaning of Article 7(1)(a) of Regulation No 596/2014.

Findings of the Court

First of all, the Court notes that the definition of ‘inside information’ within the meaning of Article 7(1)(a) of Regulation No 596/2014 comprises four essential elements. First, the information must be of a precise nature. Secondly, the information must not have been made public. Thirdly, it must relate, directly or indirectly, to one or more financial instruments or their issuers. Fourthly, it must be information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments concerned or on the prices of related derivative financial instruments.

³⁰ 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).

³¹ Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (OJ 2016 L 173, p. 47).



Next, as regards the second element, namely that the information 'has not been made public', the Court states that it is an autonomous concept under EU law. In the absence of any guidance in the wording of Article 7 of Regulation No 596/2014 as to the manner in which information must be made public, account should be taken of the context of which Article 7 of that regulation forms part, in particular Article 17 thereof, under which the EU legislature intended to confer a key role on the issuer in the public disclosure of inside information. Thus, such disclosure must take place as quickly as possible and without undue delay and, moreover, must comply with specific reliability requirements and be accessible easily and in a complete and non-discriminatory manner, by all investors and other operators on the markets concerned.

As regards the requirement of swiftness in the dissemination of such information, it is only in exceptional circumstances and subject to compliance with strict conditions that the public disclosure of inside information may be delayed in order to preserve the stability of the financial system. However, if the confidentiality of that inside information is no longer ensured, the public disclosure must take place promptly and without undue delay.

As regards the requirements of reliability and easy and complete access to inside information by all investors and other market operators concerned, the Court observes that the objective of Regulation No 596/2014 is to protect the integrity of EU financial markets and to enhance investor confidence in those markets. It states that the issuer of a financial instrument, by virtue of his or her very position, which necessarily implies direct knowledge of the advantages and risks associated with the financial instrument concerned, is best placed to determine whether information bears the hallmarks of 'inside information', and to ensure the prompt dissemination of precise, complete and correct information relating to that financial instrument.

Lastly, the Court emphasises that Article 17 of Regulation No 596/2014 must be interpreted in the light of the provisions of Implementing Regulation 2016/1055, which specifies the arrangements for application thereof. Under Article 2(1) of that implementing regulation, in addition to the direct communication to the public of the inside information concerned by the issuer, such information may be disseminated through a third party appointed for that purpose by the issuer. Thus, the possibility cannot be ruled out that the disclosure of inside information by third parties qualified on account of their relationship with the issuer and by media may satisfy the requirements for the non-discriminatory, wide and free of charge dissemination of such information.

Moreover, the fact that, under Swedish law, the information contained in the decision to award the contract in question was accessible to the public is not tantamount to that information having been made public within the meaning of Article 7(1)(a) of Regulation No 596/2014. A distinction should be drawn between, on the one hand, information which is accessible to the public and made available to a person individually further to a request to that effect and in compliance with a specific procedure provided for that purpose and, on the other hand, information which has been made public and disseminated simultaneously to an unlimited and indeterminate circle of persons in a non-discriminatory manner.

The Court accordingly concludes that information is considered to have been made public and thereby to have ceased being 'inside information' when public disclosure thereof has taken place in the manner and in compliance with the requirements laid down in Article 17 of Regulation No 596/2014 and Article 2(1) of Implementing Regulation 2016/1055.

3. TOBACCO PRODUCTS

Judgment of the Court of Justice (Grand Chamber) of 21 April 2026, Nederlandse Voedsel- en Warenautoriteit and Others, C-155/24

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

Reference for a preliminary ruling – Approximation of laws – Manufacture, presentation and sale of tobacco products and related products – Directive 2014/40/EU – Article 3(1) – Maximum emission levels for tar, nicotine and carbon monoxide – Article 4(1) – Measurement methods – Measurement of emission levels on the basis of the ISO standards referred to in Article 4(1) – Standards not published in the *Official Journal of the European Union* – Enforceability of those ISO standards – Article 2 TEU – Value of the rule of law – Requirement of free access to such standards

Ruling on a request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Supreme Administrative Court for Trade and Industry, Netherlands), the Court of Justice clarifies the scope of its judgment in *Stichting Rookpreventie Jeugd and Others*³² and, more specifically, whether the ISO standards establishing measurement methods referred to in Article 4(1) of Directive 2014/40 are enforceable against individuals.³³

In 2018, the Stichting Rookpreventie Jeugd (Youth Smoking Prevention Foundation, Netherlands; ‘the Foundation’) requested the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority; ‘the NVWA’) to ensure that filtered cigarettes in the Netherlands complied with the maximum emission levels for tar, nicotine and carbon monoxide laid down in Directive 2014/40.

An administrative objection was filed against the NVWA’s decision refusing that request, followed by an action brought before the Rechtbank Rotterdam (District Court, Rotterdam, Netherlands). After making a reference to the Court for a preliminary ruling and further to the Court’s judgment in that regard,³⁴ the Rechtbank Rotterdam (District Court, Rotterdam) ordered the NVWA to adopt a new decision with a view to making an order.

Hearing an appeal, the referring court enquires in particular whether the ISO standards set out in Article 4(1) of Directive 2014/40 are enforceable against individuals, such as the Foundation, who have had access to the content of the official and authentic version of those standards, even though they were not published in the *Official Journal of the European Union*.

Findings of the Court

First of all, the Court finds that, in compliance with the principle of the rule of law set out in Article 2 TEU, access to the content of ISO standards made mandatory in the EU legal order must be general, effective, without charge and non-discriminatory. The guarantee of such access is essential in order to enable an individual, such as the Foundation, which relies on an interest protected by an EU act making those standards mandatory, to acquaint itself with those standards and to have the competent authorities check whether they have been observed. Such access can be distinguished from the question of the enforceability of ISO standards made mandatory in the EU legal order, which concerns the conditions under which such standards are binding on individuals, such as undertakings, which are subject to them.

³² Judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others* (C-160/20, EU:C:2022:101).

³³ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

³⁴ Judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others* (C-160/20, EU:C:2022:101).

That guarantee of access means, *inter alia*, that there is an overriding public interest in the disclosure of those standards in the context of a request for access to documents made by such an individual under Regulation No 1049/2001,³⁵ which must prevail over the intellectual property rights of the standardisation body concerned.

Thus, in so far as the EU legislature imposes obligations in relation to standards of that kind and seeks to protect the interests of individuals, it is for the European Union to bear the costs associated with creating access to the official and authentic version of those standards.

Secondly, the Court observes that, in the present case, all the parties to the main proceedings had access to the content of the official and authentic version of the ISO standards set out in Article 4(1) of Directive 2014/40, with the result that they were able to rely on those standards before the courts with jurisdiction. Consequently, an individual, such as the Foundation, who has had such access, cannot rely on other measurement methods in order to have a court make a declaration of non-compliance as regards the emission levels of substances in cigarettes manufactured or placed on the market in the Member States.

In the light of the foregoing, the Court rules that individuals who have had access to the content of the official and authentic version of the ISO standards referred to in Article 4(1) of Directive 2014/40 cannot rely on the fact that those standards were not published in the *Official Journal of the European Union* in order to have the emission levels of certain substances measured using methods other than those provided for in those standards, standards that must be freely accessible under a system of access which is general, effective, without charge and non-discriminatory.

VIII. SOCIAL POLICY: PROTECTION OF FIXED-TERM WORKERS

Judgment of the Court of Justice (Grand Chamber) of 14 April 2026, Obadal, C-418/24

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

Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Fixed-term employment contracts in the public sector – Clause 5 – Measures to prevent and penalise the abuse of successive fixed-term employment contracts or relationships – Conversion of successive fixed-term contracts into a contract of indefinite duration – National legislation not permitting such conversion, but laying down other measures to prevent and penalise such abuse – Effective, dissuasive and proportionate penalty measures

Ruling on a request for a preliminary ruling from the Tribunal Supremo (Supreme Court, Spain), the Court of Justice confirms that clause 5 of the framework agreement on fixed-term work³⁶ precludes national legislation, as interpreted by national case-law, which penalises the abuse of successive fixed-term contracts by converting them into a 'non-permanent employment relationship of indefinite duration', since the effect of such a measure is to perpetuate the insecurity of the worker. It also makes clear that capped flat-rate compensation paid upon termination of that relationship, an ambiguous, abstract and unforeseeable system of rules governing administrative liability and the

³⁵ 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).

³⁶ Framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement'), annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

organisation of a selection procedure do not constitute appropriate measures to prevent and penalise such abuse.

TJ has performed childcare duties at a public educational establishment under the responsibility of the Autonomous Community of Madrid (Spain) as a member of the contract staff since 2 March 2016, on the basis of six successive fixed-term contracts, the last of which was signed on 8 September 2017.

On 19 July 2021, she brought an action before the Juzgado de lo Social nº 13 de Madrid (Social Court No 13, Madrid, Spain) seeking to have her employment relationship declared permanent or, in the alternative, non-permanent but of indefinite duration. That court upheld her action in part, classifying her employment relationship as a 'non-permanent employment relationship of indefinite duration' because the relationship had continued for more than three years without the employer having filled the post in accordance with Spanish law.

After TJ's appeal challenging that decision was dismissed, she brought an appeal before the referring court, claiming that her employment relationship should be classified as a 'permanent employment relationship'. The referring court asks the Court whether national measures to penalise the abuse of successive fixed-term contracts, such as those provided for in Spanish law, are compatible with clause 5 of the framework agreement.

Findings of the Court

As a preliminary point, the Court recalls that clause 5(1) of the framework agreement assigns to the Member States the general objective of preventing abuse arising from the use of successive fixed-term contracts or relationships, while leaving to them the choice as to how to achieve that objective, provided that they do not compromise the practical effect of the framework agreement. While the framework agreement does not impose a general obligation to convert successive fixed-term contracts into contracts of indefinite duration, it requires that, where abuse has occurred, a proportionate, effective and dissuasive measure be applied. Such a measure must make it possible duly to penalise the abuse and to nullify the consequences of the breach of EU law.

As regards the conversion of successive fixed-term contracts into a 'non-permanent employment relationship of indefinite duration', the Court states that the effect of that conversion is that the worker concerned will remain in post until that post has been definitively filled by means of a selection procedure. That employment relationship between the worker and the public administration must be regarded as a fixed-term employment relationship within the meaning of the framework agreement. Thus, the contractual relationship between the interested parties remains temporary in nature and thus perpetuates the insecurity of the worker concerned, whereas the benefit of stable employment is viewed as a major element in the protection of workers. In those circumstances, even though the workers concerned may enjoy rights comparable to those of permanent staff, in particular as regards remuneration or career advancement, the preservation of a temporary relationship does not make it possible duly to penalise the abuse of successive fixed-term contracts or to nullify the consequences of the breach of EU law. Clause 5 of the framework agreement therefore precludes such a measure.

As regards flat-rate compensation, the Court points out that such compensation is paid upon termination of the non-permanent employment relationship of indefinite duration on account of the recruitment of another person following a selection procedure. In addition, the Court observes that that compensation is subject to a double ceiling. While Member States may make provision for flat-rate compensation in order to make good the consequences of such abuse, they must nevertheless ensure adequate compensation for the damage suffered and establish an effective and proportionate penalty. However, capped flat-rate compensation payable upon termination of the employment relationship cannot constitute either proportionate and effective compensation for instances of abuse that exceed a certain duration in terms of years or adequate and full compensation for the damage resulting from such abuse. Therefore, such a measure does not make it possible duly to penalise the abuse of successive fixed-term contracts or to nullify the consequences of the breach of EU law.

As regards the system of rules governing the liability of public administrations, as provided for in Spanish law by Law 20/2021,³⁷ the Court points out that, in order to ensure that the rules intended to prevent abuse arising from the use of successive fixed-term contracts are fully effective, such a system must be based on specific national provisions, be foreseeable and be applicable in practice. A system that is abstract, ambiguous and unforeseeable does not make it possible duly to penalise such abuse, particularly if there are no other effective, dissuasive and proportionate measures enabling the consequences of the breach of EU law to be nullified. Accordingly, such a system does not satisfy the requirements of clause 5 of the framework agreement.

Lastly, as regards the selection procedures introduced by Law 20/2021, the Court states that although those procedures afford workers who have been employed under successive fixed-term contracts an opportunity to access stable employment, they do not make it possible duly to penalise abuse as such. First, if the worker concerned does not participate in such a selection procedure or if his or her application is not successful, the organisation of that procedure does not make it possible either duly to penalise the abuse in respect of that worker or to nullify the consequences of the breach of EU law. Secondly, in the context of the selection procedure, the taking into account of the previous experience of the fixed-term workers concerned and the working time spent by them in performing their duties benefits all fixed-term workers with such experience, including those in respect of whom no such abuse has occurred. Consequently, the taking into account of that experience and working time spent cannot be regarded as intended to penalise such abuse or to nullify the consequences of the ensuing breach of EU law. In those circumstances, such selection procedures cannot be regarded as constituting an appropriate measure, for the purposes of clause 5 of the framework agreement, to prevent and penalise the abuse of successive fixed-term contracts.

IX. ENVIRONMENT: HABITATS DIRECTIVE

Judgment of the Court of Justice (Fifth Chamber) of 16 April 2026, Drumakilla, C-58/24

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

Reference for a preliminary ruling – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 12 – System of strict protection for certain animal species – Article 16 – Decision to grant a derogation in anticipation of a planning permission application for a project covered by Directive 2011/92/EU – Article 11 – Aarhus Convention – Article 9 – Procedural autonomy – Principles of equivalence and effectiveness – Derogation decision classified as an autonomous legal act – Procedural rules providing for a three-month period for seeking the annulment of a derogation licence

Ruling on a request for a preliminary ruling from the High Court (Ireland), the Court of Justice rules on the compatibility with EU law of a national procedural rule imposing a three-month period for bringing an action against a derogation decision granted by the national authorities under Article 16(1) of the Habitats Directive.³⁸

In the dispute in the main proceedings, a group of natural persons is opposing a derogation decision granted by the Irish authorities under Article 16(1) of the Habitats Directive to facilitate the

³⁷ Ley 20/2021, de medidas urgentes para la reducción de la temporalidad en el empleo público (Law 20/2021 on urgent measures to reduce temporary employment in the public sector) of 28 December 2021 (BOE nº 312 of 29 December 2021).

³⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the Habitats Directive').



construction of residential units at the former Carmelite monastery at Delgany (Ireland). That monastery is currently the location home to bats, an animal species strictly protected under Annex IV to the Habitats Directive.

The applicants in the main proceedings did not challenge the validity of the derogation decision at issue within the three-month period prescribed by Irish law. The referring court, entertaining doubts as to whether that derogation is in conformity with the requirements of the Habitats Directive, seeks to ascertain whether EU law precludes the application of such a procedural time limit.

Findings of the Court

The Court begins by noting that neither the EIA Directive³⁹ nor other provisions of EU law specify the detailed procedural rules governing actions against a derogation decision adopted under Article 16(1) of the Habitats Directive or against a development consent decision within the meaning of Article 1(2)(c) of the EIA Directive. In particular, EU law does not specify either the period for bringing proceedings or the starting point of such a period.

Consequently, in the specific scenario where a possible derogation must be adopted prior to consent being given for a project, EU law does not require that those decisions be treated, for the purposes of exercising the right to bring proceedings against them, as a single decision, together with a single period for bringing an action.

Likewise, that law does not require that, where a derogation is granted under Article 16 of the Habitats Directive, which forms part of the development consent procedure for a project for the purposes of Article 1(2)(c) of the EIA Directive, the period for bringing an action must begin to run only from the adoption or publication of such development consent.

So far as concerns, in that connection, observance of the principle of effectiveness, the Court considers that a period for bringing an action of three months from the date of the adoption of a derogation decision under Article 16 of the Habitats Directive or, as the case may be, from the time when the applicant knew, or could reasonably have become aware, of that adoption does not appear to render virtually impossible or excessively difficult the exercise of rights conferred by EU law.

According to the Court, the fact that such a period for bringing proceedings runs, in principle, before the completion of the development consent procedure, referred to in Article 1(2)(c) of the EIA Directive, does not appear to be such as to deprive of their effectiveness the proceedings which may thus be brought.

On the one hand, that circumstance does not preclude the compatibility of a derogation decision adopted under Article 16(1) of the Habitats Directive in the light of all the requirements to which its adoption is subject under that provision from being open to challenge by the public concerned and reviewed by the competent court.

On the other hand, while it is true that the corollary of that circumstance is that such a derogation becomes final upon expiry of the period for bringing proceedings, that same circumstance does not, however, mean that the consent for the project, within the meaning of Article 1(2)(c) of the EIA Directive, cannot be challenged by the public concerned and reviewed by a court in an effective manner, in particular in the light of the possible interaction between the various environmental effects of a project.

The Court nevertheless emphasises that, in order for the period for bringing proceedings to begin to run, it is important that that knowledge, or indeed that possibility of having become aware, relate not only to the operative part but also to the grounds of the decision at issue. Such knowledge or awareness is a precondition for the effectiveness of the right to bring proceedings.

Furthermore, in order for the principle of effectiveness to be observed, it is also important that applicants can reasonably foresee the legal remedies available to them and the time limits applicable to them.

³⁹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1; 'the EIA Directive').

In that regard, in so far as Article 9(5) of the Aarhus Convention⁴⁰ provides that each party to that convention is to ensure that information is provided to the public on access to administrative or judicial review procedures – a requirement implemented, in the specific context of the EIA Directive, in Article 11(5) thereof – that information should state that the bringing of proceedings against a derogation decision under Article 16 of the Habitats Directive must be done within three months of the time when the applicant knew, or could reasonably have become aware, of the adoption of that decision.

However, as is apparent from the wording of Article 9(5) of the Aarhus Convention, and of Article 11(5) of the EIA Directive, the failure to make such information available to the public is not sufficient, in itself, to consider the principle of effectiveness to have been infringed.

X. INTERNATIONAL AGREEMENTS: TRADE AND COOPERATION AGREEMENT WITH THE UNITED KINGDOM – SURRENDER OF A PERSON TO THE UNITED KINGDOM FOR CRIMINAL PROSECUTION

Judgment of the Court of Justice (Third Chamber) of 23 April 2026, Boothnesse, C-528/24

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

Reference for a preliminary ruling – Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part – Surrender of a person to the United Kingdom for the purpose of criminal prosecutions – Article 524(2) – Article 604(c) – Real risk to the protection of fundamental rights – Article 625 – Speciality rule – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy

Giving a preliminary ruling on a reference from the Supreme Court (Ireland), the Court of Justice holds that the risk of an infringement, in the issuing State of an arrest warrant, of the speciality rule provided for in Article 625(2) of the Trade and Cooperation Agreement concluded with the United Kingdom of Great Britain and Northern Ireland (TCA)⁴¹ does not constitute, in itself, a ground for refusing to execute that warrant by the executing judicial authority.

In 2021, LQ, NT and RM, who are the subject of criminal prosecutions in the United Kingdom for fraud that they are alleged to have committed in their capacity as joint owners and directors of a company, were each sentenced to six months' deprivation of liberty for contempt of court after infringing asset-freezing orders that had been imposed on them by an English court in the context of those prosecutions. Such an infringement is not regarded as being of a criminal nature in UK law.

The following year, a judicial authority sitting at Portsmouth Magistrates Court (United Kingdom), issued three arrest warrants on the basis of the TCA, seeking the surrender of those persons, with a view to bringing criminal prosecutions against them for fraud offences.

They were subsequently arrested in Ireland and brought before the High Court (Ireland), which ordered their surrender to the United Kingdom.

⁴⁰ Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

⁴¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ 2021 L 149, p. 10)

They then brought an appeal before the referring court, submitting that such a surrender would expose them to serving a penalty of six months' imprisonment in the United Kingdom for contempt of court, which is an offence that is not the object of the arrest warrants issued against them. Their surrender to that State would therefore involve a breach of the speciality rule, laid down in Article 625(2) of the TCA, which excludes, in principle, prosecutions or the deprivation of liberty for an offence committed prior to that person's surrender other than that for which the requested person was surrendered.

Against that background, the referring court decided to stay the proceedings and to ask the Court of Justice whether, in such circumstances, Article 625 of the TCA requires or permits the executing judicial authority to refuse to execute an arrest warrant issued on the basis of that agreement.

Findings of the Court

In terms of a literal, contextual and teleological interpretation of Article 625 of the TCA, the Court finds that the fact that the person who is the subject of an arrest warrant issued on the basis of that agreement with a view to bringing criminal prosecutions for a criminal offence has been sentenced, in the issuing State, to a penalty involving deprivation of liberty for another offence, which is not the subject of that arrest warrant, does not permit, in itself, the competent judicial authority to refuse to execute that arrest warrant.

First of all, there is nothing in the terms of Article 625(1) of the TCA to indicate that an executing judicial authority is obliged to verify, before ruling on the execution of the arrest warrant, that the authorities of the issuing State comply with the speciality rule set out in that provision, or that it is obliged, or has the power, to refuse to execute it, if there is information which demonstrates that, if that person is surrendered, that rule will not be complied with.

Likewise, the fact that the consent of the executing judicial authority to a derogation from the speciality rule under the conditions provided for by that agreement is, in principle, sought after the surrender of the requested person, is also an indication that compliance with the speciality rule is not intended to be examined by the executing judicial authority prior to the surrender and that it cannot therefore constitute a ground for refusing that surrender.

Next, the provisions of the TCA also do not provide any grounds for refusing to execute the arrest warrant on the basis of a breach of the speciality rule or of other rules of that agreement by the authorities of the issuing State.

Lastly, the efficiency of the surrender mechanism established by the TCA would be impeded if the executing judicial authority were to be called upon to ascertain, prior to ruling on the execution of an arrest warrant issued on the basis of that agreement, whether its provisions relating to that mechanism are, in practice, fully complied with in the issuing State.

That being said, the executing judicial authority cannot order the surrender of the requested person if it considers, following an appropriate examination, that there are valid reasons for believing that there would be a real risk to the protection of that person's fundamental rights if he or she were surrendered to the United Kingdom.

In that regard, although the requirement to comply with the speciality rule does not constitute a fundamental right and that the possible risk of a breach of that rule does not suffice, in itself, to justify a refusal to execute an arrest warrant issued on the basis of the TCA, such a risk may be relevant, alongside other elements, for the purpose of assessing whether there is a real risk to the protection of fundamental rights.

Accordingly, the executing judicial authority must refuse to execute such an arrest warrant in a situation in which the foreseeable infringement of that rule would lead to a real risk of a subsequent breach of the fundamental rights of the requested person, which includes the right to effective judicial protection before a court or tribunal, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. That Article 47 would be infringed *inter alia* if that person did not have, in the issuing State, any legal remedy enabling him or her to invoke an alleged breach of the speciality rule.

XI. JUDGMENTS PREVIOUSLY DELIVERED

1. JUDICIAL COOPERATION IN CIVIL MATTERS: REGULATION NO 650/2012 ON THE CREATION OF A EUROPEAN CERTIFICATE OF SUCCESSION

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

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

Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 650/2012 – Articles 1, 3 and 4 – Scope – Concept of ‘succession’ – Statutory legacy conferred for services provided by a carer for the deceased during the latter’s lifetime – General jurisdiction of a court of a Member State to rule on the succession as a whole

Ruling on a request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria), the Court clarifies the concept of ‘succession’, within the meaning of Article 4 of Regulation No 650/2012,⁴² in the context of an action based on a statutory legacy assigned to a carer, provided for by Austrian law.

SM is the former partner of a deceased person, who was habitually resident in Austria until her death in 2021. The court with jurisdiction in Austria assigned the estate of the deceased to XK, TR and VQ, all three of whom reside in Germany. In the three years preceding the death of his partner, SM provided care to her as a carer. He claims from those persons the payment of a sum of EUR 57 200 on the basis of the statutory legacy conferred on a carer in respect of care provided, which is provided for by Austrian law.

In that context, the referring court asks whether Article 4 of Regulation No 650/2012, in accordance with which the courts of the Member State in which the deceased had his or her habitual residence at the time of death are to have jurisdiction to rule on the succession as a whole, must be interpreted as meaning that the statutory legacy conferred in respect of care provided by a carer, as provided for by Austrian law, is a right that falls within a ‘succession’.

Findings of the Court

As a preliminary point, the Court states that the question referred for a preliminary ruling requires an assessment of whether the measure at issue in the main proceedings falls within the scope of Regulation No 650/2012, as defined in Article 1 thereof. Account must also be taken of Article 3(1)(a) of that regulation, which defines the concept of ‘succession’. Consequently, the question referred, reformulated, involves interpreting Article 4 of that regulation, read in conjunction with Article 1 and Article 3(1)(a) thereof.

First of all, on a literal interpretation, the Court finds that, in accordance with Article 1(1) of Regulation No 650/2012, that regulation applies to ‘succession to the estate of a deceased person’ and that there is nothing permitting a finding that the EU legislature intended to confer different meanings on the concepts of ‘succession to the estate of a deceased person’ and ‘succession’ within the meaning of that regulation. The concept of ‘succession’, within the meaning of Article 3(1)(a) of that regulation is defined broadly to the extent that it covers ‘all forms of transfer of assets, rights and obligations by reason of death’, including measures the main purpose of which concerns the succession to the estate of the deceased person and which take effect upon the death of the deceased person.

⁴² Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ 2012 L 201, p. 107).

The Court points out, next, that that interpretation is not undermined by any element of the context in which Article 4 of Regulation No 650/2012, as well as Article 1 and Article 3(1)(a) thereof, occur.

Lastly, on a teleological interpretation, the Court explains that, first, the regulation is intended, *inter alia*, to help heirs and legatees, other persons close to the deceased and creditors of the succession to assert their rights in the context of a succession with cross-border implications. Secondly, the regulation aims to avoid irreconcilable decisions being given in different Member States. That objective is connected with the principle of a single estate, which is given concrete expression in Article 23(1) of Regulation No 650/2012. That principle likewise underpins the rule established by Article 4 of that regulation, since that article provides for the jurisdiction of the courts of the Member States to rule on 'the succession as a whole'.

The measure at issue in the main proceedings, irrespective of its classification as a 'legacy' under national law, has a close structural connection with the matter of succession, since it is intended to apply only after the death of the person whose estate is being administered, and its regime thus appears inextricably connected with it. In particular, under the Austrian legislation, it applies independently of any testamentary disposition made by the deceased person and, in any event, in addition to a reserved share of the estate and it cannot be withdrawn, unless there is a ground for disinheritance. Moreover, that measure benefits only persons close to the deceased defined as such. The main purpose of that measure therefore concerns the rights of the carer in the context of the succession.

In the light of the foregoing, the Court concludes that a measure such as that at issue in the main proceedings falls within the concept of 'succession' within the meaning of Article 4 of Regulation No 650/2012.

2. CONSUMER PROTECTION: PRODUCT LIABILITY

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

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

Reference for a preliminary ruling – Approximation of laws – Liability for defective products – Directive 85/374/EEC – Article 13 – Relationship with the fault-based liability system – Fault by the producer linked to the defective nature of the product – Article 10 – Starting point of the three-year limitation period in the case of damage consisting in a progressive illness – Concept of 'becoming aware of the damage' – Article 11 – Extinguishment of the rights of the injured person – Validity – Article 47 of the Charter of Fundamental Rights of the European Union – Right of access to a court

Hearing a referral for a preliminary ruling from the cour d'appel de Rouen (Court of Appeal, Rouen, France), the Court of Justice rules on whether the limitation period in respect of the rights conferred on persons who have suffered damage as a result of the defectiveness of a product within the meaning of Directive 85/374⁴³ is compatible with Article 47 of the Charter of Fundamental Rights of the European Union, in the exceptional situation of injured persons suffering from progressive illnesses.

Having been vaccinated in 2003 with a vaccine manufactured by Sanofi Pasteur, LF experienced side effects and in 2008 was diagnosed as suffering from macrophagic myofasciitis. She brought legal proceedings in 2020, seeking compensation for the harm suffered, on the basis of the liability for defective products and fault-based liability of Sanofi Pasteur. That application was dismissed at first

⁴³ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

instance, and subsequently on appeal, on the ground that it was time-barred. The Cour de cassation (Court of Cassation, France) then set aside the judgment of the appeal court.

The case having been referred back to it, the referring court asks the Court of Justice whether a person injured by a defective product is entitled to seek compensation for that damage in reliance on wrongful conduct linked to a lack of safety in respect of that product, on the basis of the general fault-based liability system. It is also uncertain as regards how the starting point of the limitation period laid down in Article 10(1) of Directive 85/374 is to be determined and as to the validity of Article 11 of that directive in the light of the right of access to a court or tribunal within the meaning of Article 47 of the Charter of Fundamental Rights.

Findings of the Court

In the first place, the Court observes that the requisite wrongful conduct in the context of a national system of fault-based liability constitutes a different basis from a product defect within the meaning of Directive 85/374. It is precisely that difference which serves to determine, in accordance with Article 13 of that directive, whether a national liability system can be relied on alongside the liability system laid down by that directive. Accordingly, that provision does not preclude a person injured by a defective product from seeking compensation for that damage from the producer on the basis of the general fault-based liability system, relying on wrongful conduct linked to a lack of safety in respect of that product.

In the second place, the Court holds that the starting point of the three-year limitation period laid down in Article 10(1) of Directive 85/374 is the date on which the claimant became aware, or should reasonably have become aware: of the damage, which has definitively become apparent, linked to the defective product; of the product defect; and of the identity of the producer, rather than the date on which the damage stabilised. Indeed, even in the case of damage consisting in a progressive illness, that approach serves to ensure compliance with the principle of legal certainty in the interests of both the injured person and of the producer.

Last, the Court points out that the 10-year limitation period, on expiry of which the rights conferred on injured persons by Directive 85/374 are extinguished, is expressly referred to in Article 11 of that directive.

Next, the Court notes that the essence itself of the right of access to a court with jurisdiction is not affected by the mechanism put in place by Directive 85/374. Where the damage consists in a progressive illness, the injured person is able to have access to a court with jurisdiction in order to obtain a declaration on the basis of that directive of the damage caused to him or her, within three years from the date on which the damage definitively became apparent, meaning that he or she was aware or should reasonably have become aware of the existence of that damage, irrespective of its subsequent evolution. Furthermore, the fact that the three-year limitation period laid down in Article 10(1) of Directive 85/374 is limited by the ten-year period laid down in Article 11 of that directive does not affect the right of access to a court with jurisdiction, since that latter period is interrupted where the injured person brings proceedings against the producer. Similarly, that directive does not preclude an injured person, after being awarded initial compensation, from applying for additional compensation for the damage caused to him or her in the event that the damage has evolved, it being for the Member States to provide for that possibility.

Finally, the Court notes that the harmonisation of the rules on limitation pursued by Directive 85/374 was intended by the EU legislature in the interests both of the injured person and of the producer.

Furthermore, as regards the specific situation of an injured person suffering from a progressive illness, the Court emphasises that, although such a person may be uncertain as to the evolution of his or her condition, that person is not deprived of access to a court or tribunal, because it is likely that the damage linked to the product defect will become definitively apparent within the period of 10 years laid down in Article 11 of Directive 85/374. Consequently, the principles identified by the

European Court of Human Rights in its judgment in *Howald Moor and Others v. Switzerland* ⁴⁴ cannot be relied on in that respect.

In the light of the foregoing, the Court finds that no factor has been disclosed of such a kind as to affect the validity of Article 11 of Directive 85/374.

Nota bene:

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

- Judgment of the Court of Justice (Fourth Chamber) of 23 April 2026, Casotta, C-24/26
- Judgment of the Court of Justice (Fifth Chamber) of 30 April 2026, CD Tondela and Others, C-133/24
- Judgment of the General Court (Sixth Chamber) of 29 April 2026, Romagnoli Fratelli v OCVV (Melrose), T-573/24

⁴⁴ ECtHR, 11 March 2014, *Howald Moor and Others v. Switzerland* (CE:ECHR:2014:0311JUD005206710, §§ 78 and 79).