



PRESS RELEASE No 81/26

Luxembourg, 4 June 2026

Advocate General's Opinion in Case C-553/24 | Assemblée nationale v Parliament and Council

Advocate General Ćapeta: Action brought by the French National Assembly against EU asylum and migration legislation based on non-compliance with the principle of subsidiarity should be rejected

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) contain legally binding protocols that further clarify how these treaties operate. Protocol No 2 on the application of the principles of subsidiarity and proportionality¹ ensures that EU institutions respect these principles as laid down in Article 5 TEU. The principle of subsidiarity requires that the EU only acts when objectives cannot be sufficiently achieved by the Member States alone. Article 8 of Protocol No 2 gives the Court of Justice of the European Union jurisdiction to review and potentially annul EU legislation that allegedly infringes the principle of subsidiarity. Such cases may be brought by Member States, or be notified by them in accordance with their legal order on behalf of their national parliament or a chamber thereof. The present case marks the first time, since its introduction by the Lisbon Treaty, that Article 8 of Protocol No 2 has been used by a national parliament.

On the basis of Article 8 of Protocol No 2, a minority of members of the National Assembly of the French Republic, one of the chambers of the French Parliament,² seeks the annulment of the EU Regulation on asylum and migration management³ in its entirety, or in the alternative, the annulment of the part which concerns solidarity.⁴

This regulation introduces a mandatory solidarity mechanism to support Member States under migratory pressure. It does this by establishing a relocation regime for persons applying for international protection. The National Assembly challenged this regime as detrimental to the sovereignty, national identity and integrity of the Member States, which are obliged to receive on their territory third-country nationals subject to such relocation measures. The National Assembly, supported by Hungary, argues therefore that this regulation infringes the principle of subsidiarity. It puts forward five claims in support of this position. The Parliament and the Council, supported by Greece, Spain and the Commission, challenge the admissibility of the majority of these claims. They submit that claims supporting an action brought under Article 8 of Protocol No 2 can only relate to the principle of subsidiarity, which some claims by the National Assembly fail to do.

In today's Opinion, **Advocate General Ćapeta recognises the novel character of the present case** and, firstly, assesses the jurisdiction of the Court of Justice to hear it. The Advocate General points out that, while an action brought under Article 8 of Protocol No 2 and a typical action for annulment under Article 263 TFEU share the same object – the annulment of an EU act – the former may be considered a special type (*sui generis*) of annulment action, for which jurisdiction has not been expressly granted to the General Court. Thus, the Advocate General considers that **the Court of Justice does have jurisdiction to rule on an action brought by a national parliament** on the basis of Article 8 of Protocol No 2.

Secondly, **looking at the admissibility** of the case, **the Advocate General invites the Court to distinguish the principle of subsidiarity from other principles related to the division of competences between the European Union and its Member States**, namely the principles of conferral and proportionality. While all three are federal principles which aim at

finding the optimal level of decision-making, in her view, claims brought by a national parliament on the basis of Article 8 of Protocol No 2 are admissible only insofar as they concern the principle of subsidiarity; claims concerning those other two principles are inadmissible. As a result, the Advocate General considers that only the claim alleging that Member States would have been able to manage more effectively than the European Union the problems caused by the mass influx of applicants for international protection is admissible. In contrast, the other claims put forward by the National Assembly – such as those relating to the fact that the European Union was not conferred competence to adopt the regulation, the alleged harmful financial consequences of the mandatory solidarity mechanism, and the usefulness of the relocation regime – do not concern the principle of subsidiarity and thus are inadmissible.

Thirdly, **examining this admissible claim, the Advocate General** emphasises that **harmonisation should not be the goal of any body of legislation**, but rather a possible tool to achieve a proper and distinct goal. In this light, the Court should **request institutions to duly explain their assessment of why action at EU level is necessary**, beyond a mere desire to harmonise. That explanation should not be formulaic, but based on the particularities of each legislative action. Such a 'tailor made' justification would force institutions to meaningfully assess whether the European Union must act in a concrete situation. Moreover, it would allow the Court to decide whether such EU action seems reasonably required.

Advocate General Čápeta concludes that the reasons provided for acting at EU level in this case seem sound and that the National Assembly did not put forward any arguments to invalidate such a finding. Therefore, the **Advocate General proposes to the Court to reject as unfounded the National Assembly's sole claim relating to the principle of subsidiarity**, and to dismiss the action as partly inadmissible and partly unfounded.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

Stay Connected!



¹ [Protocol \(No 2\)](#) on the application of the principles of subsidiarity and proportionality.

² The National Assembly of the French Republic is the lower house of the French Parliament, and comprises 577 deputies, while the upper house is the Senate, with 328 senators.

³ [Regulation \(EU\) 2024/1351](#) of the European Parliament and the Council of 14 May 2024 on asylum and migration management. This regulation is part of the new EU Pact on Migration and Asylum, a package of EU measures reforming the EU asylum and migration legal framework.

⁴ Part IV of the regulation.