EN

COURT OF JUSTICE
OF THE EUROPEAN UNION

MONTHLY CASE-LAW DIGEST
July 2026

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

Judgment of the Court of Justice (Fourth Chamber) of 16 July 2026, Gekus, C-748/23

Reference for a preliminary ruling – Rule of law – Judicial independence – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – National legislation permitting a review of compliance with the requirements of independence and impartiality of a judge sitting in the Sąd Najwyższy (Supreme Court, Poland) – Composition of the panel of judges called upon to review compliance with those requirements – Irregularities in the appointment of a member of the panel – Consequences of such irregularities – Impartiality – Primacy of EU law

Having received a request for a preliminary ruling from the Sąd Najwyższy (Supreme Court, Poland), the Court of Justice clarifies, inter alia, as regards the right to an independent and impartial tribunal previously established by law, the consequences that the legal system of a Member State must draw from the unlawful composition of a panel of judges called upon to hear an application to review compliance with the requirements of independence and impartiality of a judge.

By a judgment delivered in June 2021, a Polish court ordered M. S., an Irish national, to pay an amount of money to C. Limited, an Irish company.

M. S. lodged an appeal in cassation against that judgment before the referring court. A three-judge panel, including Judge JG, was appointed to hear the appeal.

Having doubts as to the circumstances surrounding that judge's appointment, C. Limited filed an application for an independence and impartiality test to be carried out in respect of Judge JG, in accordance with the procedure set out in the Law on the Supreme Court.

Five judges of the referring court were drawn by lot to make up the panel hearing that application, three of whom were appointed on the proposal of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS') in its new composition, including the judge who is the subject of the application for the test.

Examining the admissibility of that application, the referring court, composed of a single judge who is also the President of that five-judge panel, asks the Court how to ensure the compatibility of the independence and impartiality test provided for by the Law on the Supreme Court with the second subparagraph of Article 19(1) TEU and with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

First of all, as regards the procedure for the appointment of judges, the Court notes that, having regard to its implications for the functioning and the legitimacy of the judiciary in a State governed by the rule of law, such a procedure necessarily constitutes an inherent element of the concept of a 'tribunal previously established by law', within the meaning of Article 47 of the Charter. While not every error that may take place during the procedure for the appointment of a judge is of such a nature as to give rise to doubts as to the independence and impartiality of that judge, certain failures in the procedure for the appointment of judges may, in and of themselves, indicate that the judges in question fail to meet the requirements of independence and impartiality. In such cases, a party to the proceedings who raises the question of compliance with those requirements, for example by requesting an independence and impartiality test in respect of a judge sitting on a panel of judges, cannot be required to provide additional evidence, including in relation to the judge's conduct following his or her appointment. The party making such a request should therefore be able to rely on arguments based solely on the circumstances surrounding the appointment of that judge and demonstrating that, on that occasion, an irregularity occurred of such a kind and of such gravity as to give rise to doubts in the minds of individuals as to the impartiality of the judge concerned and his or her independence from the executive or legislative branches. Consequently, the circumstances surrounding the appointment of a judge may, in and of themselves, entail an infringement of the right to an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, if they involve an irregularity of such a nature and gravity as to give rise to a legitimate doubt in the minds of individuals as to the independence or impartiality of that judge.

Next, as regards the composition of the panel of judges called upon to examine an application for an independence and impartiality test in respect of a judge, the Court specifies that the members of that panel cannot be in the same situation as the judge who is the subject of the test. The identical nature of the circumstances surrounding their own appointment as judges and those of the judge who is the subject of the test could raise legitimate doubts in the minds of individuals as to the neutrality of that panel in relation to the interests at stake. Thus, the formation of the referring court called upon to examine the question of the independence and impartiality of a judge of that court must itself meet the requirements of an independent and impartial court previously established by law. In the present case, however, it appears that three of the judges on the panel examining the application for an independence and impartiality test at issue in the main proceedings were appointed in circumstances identical to those surrounding the appointment of the judge who is the subject of the test, involving the KRS in its new composition. Moreover, one of the judges was recused in another case, after the same procedure as the one requested in the main proceedings. Therefore, having regard to the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, it cannot be accepted that the review of compliance with the requirements of independence and impartiality in respect of a judge sitting in a court may be entrusted to a panel of judges of that court comprising one or more judges who, because of the conditions of their appointment, are in the same situation as the judge under review.

Lastly, the Court holds that, by virtue of those same provisions, in the event that the panel of judges called upon to hear an application for an independence and impartiality test in respect of a judge itself infringes the right to a tribunal previously established by law owing to the presence within it of a judge who does not meet the requirements of independence and impartiality, the court in question is required to ensure that such a judge does not take part in the examination of that application. If necessary, it must disapply the national rules determining the composition of that panel so that the application may be examined by a body in accordance with those provisions. The legal system of the Member State concerned must lay down the detailed procedural rules to ensure that such an application is heard by a judicial panel which meets the requirements stemming from the fundamental right to an effective remedy and to a fair trial.

II. INSTITUTIONAL PROVISIONS

1. ACTION TO ESTABLISH NON-CONTRACTUAL LIABILITY OF THE EUROPEAN UNION

Judgment of the Court of Justice (Fifth Chamber) of 16 July 2026, IMG v Commission, C-559/23 P

Link to the full text of the judgment

Appeal – Non-contractual liability – European Anti-Fraud Office (OLAF) investigations – Confidentiality – Non-authorised disclosure of the investigation report to the press – Imputability of the leaks – Article 10(3) of Regulation (EU, Euratom) No 883/2013 – Material and non-material damage – Burden of proof – Limitation period for actions for damages – First paragraph of Article 46 of the Statute of the Court of Justice of the European Union – Confidentiality of legal opinions

Hearing an appeal brought before it, the Court of Justice sets aside the judgment of the General Court in *IMG* v *Commission* [1] on the ground of an error of law concerning the burden of proof borne by the party alleging a failure to comply with the obligation to respect the confidentiality of investigations conducted by the European Anti-Fraud Office (OLAF).

International Management Group (IMG), the appellant, is an entity dedicated to the reconstruction of Bosnia and Herzegovina. As part of its activities, it has concluded a number of agreements with the European Commission, in application of the 'indirect or joint management' method of implementing the EU budget.

In its report of 9 December 2014, OLAF considered that the appellant was not an international organisation within the meaning of the EU Financial Regulations and that it might not have its own legal personality. In 2015, the content of that report was leaked to the press; the Commission was unable to identify the source of that leak.

On 21 December 2020, the appellant brought an action for damages before the General Court, which was dismissed by the judgment under appeal. It then brought an appeal before the Court of Justice.

Findings of the Court

In the first place, the Court finds that the appellant is entitled to bring an appeal against the judgment under appeal. Although the Commission had raised the plea of inadmissibility before the General Court, alleging that the appellant's action was time-barred, the General Court decided to examine the merits of the claims without first ruling on whether the action was time-barred.

In the second place, as regards the removal from the file of the opinion of the Commission's Legal Service of 16 January 2015 annexed to the application, the Court notes, first, that that opinion was not delivered in the context of a legislative procedure and, second, that the appellant has not claimed that its production was justified by an overriding public interest. Therefore, the General Court was right to remove that opinion from the file.

Furthermore, the disclosure of the legal opinion in the press before it was produced before the General Court and the appellant's lack of responsibility for that leak are irrelevant in that regard. The only relevant question is whether the disclosure of such a document has been authorised by the institution concerned or ordered by the Courts of the European Union, which was not the case here. In addition, the appellant cannot rely on a failure to observe the adversarial principle, since the question whether a party is entitled to produce before the Courts of the European Union a legal opinion drafted at the request of an EU institution and disclosed without its authorisation arises prior to the assessment of compliance with that principle. In that context, the Court notes that the General Court weighed the interests of the parties and took account of the fact that the production of the legal opinion by the appellant did not appear to be guided by an overriding public interest.

In the third place, the Court points out that compliance with the obligation to respect the confidentiality of OLAF reports stemming from Article 339 TFEU and Article 10(1) to (3) of Regulation No 883/2013 [2] is of particular importance for the persons subject to the investigations concerned. Disclosure of the allegations concerning them contained in such reports is liable to cause serious harm to their reputation, whilst they cannot challenge such reports before the courts until specific measures have been taken in order to implement the recommendations contained in those reports. The Commission must therefore ensure that its own services do not disclose those reports to the public, ensure that the addressees of those reports are aware of their obligation not to disclose them, and take measures to identify the source in the event of a leak.

Consequently, in the event of a leak of an OLAF report containing allegations damaging to a person, it is not for that person to prove that the leak originated from the Commission, to which OLAF belongs, in order to be able to seek compensation for the damage suffered. Since leaks of confidential

---

1 Judgment of 28 June 2023, *IMG* v *Commission* (T-752/20, EU:T:2023:366; 'the judgment under appeal').

2 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

documents occur in most cases without the general public being able to ascertain the source of the leak, the rules relating to the burden of proof and the taking of evidence must be adapted in those situations. The Commission is in fact best placed to adduce evidence enabling the source of the leak to be identified, with the result that, if it fails to do so, the uncertainty as to the source of the leak must be construed against it and the leak must be regarded as giving rise to its liability.

In the last place, the Court finds that the non-material damage alleged by the appellant as a result of the publication of the OLAF report in the online press on 11 December 2015 materialised when each interested party consulted that report, whilst the material damage alleged materialised at the time when each donor decided to cease supporting the appellant's activities.

Since the appellant's action was brought on 21 December 2020, being more than five years after the date of that publication, it is time-barred in so far as it relates to any damage that materialised before 21 December 2015. However, it is not apparent from the file that that report ceased to be accessible online after its publication, and non-material and material damage may have materialised after that date. Accordingly, the action is not time-barred in so far as it concerns damage which materialised on or after 21 December 2015.

2. PUBLIC PROCUREMENT BY THE INSTITUTIONS OF THE EUROPEAN UNION

Judgment of the General Court (Fifth Chamber, sitting with five Judges) of 1 July 2026, Airbus Defence and Space and Marlink Events v EDA, T-105/24

Link to the full text of the judgment

Public service contracts – Tendering procedure – Provision of satellite communications, equipment and related services – Rejection of a tenderer's bid – Award of the contract to another tenderer – Regulation (EU, Euratom) 2018/1046 – Award criteria – Obligation to state reasons – Obligation to examine tenders in accordance with the criteria set out in the procurement documents – Manifest error of assessment – Equal treatment – Non-contractual liability – Loss of opportunity – Compensation

By this judgment, the General Court rules for the first time on whether it is itself able to characterise an unlawful act as a sufficiently serious breach of a rule of law conferring rights on individuals, even if the applicant has not explicitly addressed that issue in its action.

By a contract notice of 25 March 2023, the European Defence Agency (EDA) launched an open tendering procedure for the award of the contract entitled 'Provision of C, Ku, (civ)Ka, L and UHF Bands Satellite Communications, (mil)Ka & X Bands Equipment and Related Services' ('the contract at issue').

On 12 December 2023, the EDA adopted a decision rejecting the tender submitted by the consortium formed by Airbus Defence and Space SAS and Marlink Events SAS ('the applicants') and awarding the contract to Telespazio France SAS.

By letter of 23 January 2024, the EDA confirmed to the applicants the result of the tendering procedure and refused their earlier request for the disclosure of the scores obtained by each tenderer for the financial sub-criteria and their sub-parts.

By act of 24 January 2024, the signing of the framework agreement between the EDA and Telespazio France was approved.

The applicants brought an action before the Court seeking the annulment of the decisions of 12 December 2023 and of 24 January 2024 and of the letter of 23 January 2024. They also claimed compensation for damage suffered as a result of those acts.

Findings of the Court

As a preliminary point, the Court rejects the plea of inadmissibility directed against the application for annulment of the letter of 23 January 2024 and rejects the application for annulment of the decision of 24 January 2024.

In the first place, with regard to the claims for annulment, the Court annuls the decision of 12 December 2023 and the letter of 23 January 2024.

First, in the examination of the first plea in law, the Court finds that, by failing to give a sufficiently detailed justification, in the letter of 23 January 2024, for refusing the applicants' request for the disclosure of the scores for the financial sub-criteria and their sub-parts, the EDA infringed Article 170(3) of the Financial Regulation of 2018 [3] and thus disregarded the scope of its obligation to state reasons. In that respect, the Court recalls that a contracting authority cannot, in response to a request made pursuant to Article 170(3)(a) of the Financial Regulation of 2018, simply set out general and abstract assertions that the disclosure of the information requested by the unsuccessful tenderer could prejudice the commercial interests of certain economic operators. Rather, the contracting authority is expected to demonstrate specifically and precisely that the disclosure of the requested information would prejudice the commercial interests of tenderers.

Second, in the examination of the second plea in law, the Court rules that the EDA committed a manifest error of assessment and an infringement of Article 167(1) of the Financial Regulation of 2018 by accepting the tender submitted by Telespazio France even though its tender did not comply with several mandatory requirements set out in the Technical Specifications for the contract at issue. In particular, under the Technical Specifications, each tenderer had to provide 'written proof' in its tender that it had contracts with the respective satellite operators allowing it to provide the services described in certain mandatory requirements. The Court considers in that regard that each tenderer had to produce in its tender, as 'written proof', either a copy of the relevant parts of the contracts actually concluded or, at the very least, a certificate from the satellite operator concerned, which was not the case for Telespazio France. Moreover, the Court considers that the EDA infringed Article 151 of the Financial Regulation of 2018 by permitting Telespazio France to supplement its tender substantively, by asking it, in two requests for clarification, to produce the written proof that was not, according to the EDA, included in its tender, which it was not authorised to do.

Third, in the examination of the third plea in law, the Court rules that the EDA made two manifest errors of assessment in the evaluation of the tender submitted by Telespazio France in respect of an optional requirement contained in the Technical Specifications for the contract at issue.

In the second place, with regard to the claims for compensation, the Court orders the European Union, represented by the EDA, to pay compensation for the damage suffered by the applicants in relation to the loss of an opportunity for the consortium formed by those two companies to be awarded the contract at issue and determines the amount of compensation for each of the two applicants.

In particular, with regard to the question whether the Court is able to characterise, of its own motion, an unlawful act as a sufficiently serious breach of rules of law intended to confer rights on individuals, the Court holds that the legal characterisation of the facts falls to the EU judicature. Where the relevant matters of fact and of law are apparent from the case file and have been debated between the parties in adversarial proceedings, as in the present case, the Court may itself make the characterisation of an unlawful act found as constituting a sufficiently serious breach of a rule of law conferring rights on individuals, even if the applicant has not explicitly addressed that issue in its action.

---

3 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1), as amended by Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council of 6 December 2022 (OJ 2022 L 319, p. 1) ('the Financial Regulation of 2018').

In that regard, the Court considers that the manifest error of assessment and the infringement of Article 167(1) and Article 151 of the Financial Regulation of 2018 which have been found constitute sufficiently serious breaches of rules of law intended to confer rights on individuals.

In the light of those findings and the real and certain damage resulting directly from the breaches committed, the Court concludes that the conditions for compensating the applicants for the loss of opportunity are met.

Lastly, in order to determine the amount of compensation to be awarded to each of the two applicants, the Court states that it is first necessary to calculate the net profit margin which each applicant could have realised if the consortium had been awarded the contract. To that end, an estimate of the value of the purchases which the EDA would have made from the consortium, if it had been awarded the contract at issue, should be multiplied by an estimate of the proportion of those purchases for each applicant and by an estimate of the net profit margin for each applicant. That amount should then be multiplied by an estimate of the probability of the applicants being awarded the contract at issue.

Judgment of the General Court (Third Chamber, sitting with five Judges) of 1 July 2026, Alhares for Security Services and Occupational Safety v EUBAM Libya, T-493/24

Public service contracts – Negotiated procedure without prior publication of a contract notice – Private security services – Decision not to include the applicant among the pre-selected operators – Point (c) of the second subparagraph of point 11.1 and point 39.2 of Annex I to Regulation (EU, Euratom) 2018/1046 – Equal treatment – Principle of non-discrimination

Hearing an action for annulment, which it dismisses, the General Court rules, for the first time, on the conditions which must be met, in the presence of a crisis, for a contracting authority to be able to use a negotiated procedure without prior publication of a contract notice.

By decision of 17 July 2024, the European Commission recognised, for the purposes of the application of flexible procurement procedures provided for by the financial regulation, [4] that a crisis existed in Libya.

On the basis of that recognition of a crisis, in August 2024, the European Union Integrated Border Management Assistance Mission in Libya ('the Mission') launched a negotiated procedure without prior publication of a contract notice with a view to concluding a contract for private security services in Tripoli (Libya).

Only six pre-selected companies were invited to tender. Alhares for Security Services and Occupational Safety, a company incorporated under Libyan law specialising in private security activities, was not invited to participate in the procedure.

After seeking and failing to obtain authorisation to participate, that company brought an action for annulment against the Mission decisions excluding it from participation and against the procurement procedure as a whole.

Findings of the Court

As regards the decision to use the negotiated procedure without prior publication, the Court observes, first of all, that point (c) of the second subparagraph of point 11.1 of Annex I to the financial regulation authorises the use of a negotiated procedure, irrespective of amount, where, in essence, six cumulative conditions are met: the negotiated procedure must be 'strictly necessary' (1); there must be 'extreme urgency' (2) that is 'brought about by' (3) 'unforeseeable events' (4). The extreme

---

4 Point (c) of the second subparagraph of point 11.1 and point 39.2 of Annex I to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the financial regulation').

urgency must make it ‘impossible to comply with the time limits’ of general law ‘laid down in points 24, 26 and 41’ of that annex to the financial regulation (5) and the ‘justification of such extreme urgency’ must not be attributable to the contracting authority (6).

Next, the Court, carrying out a literal interpretation of the applicable provisions, observes that it is clear from the very wording of point 39.2 of Annex I to the financial regulation that the assimilation of ‘extreme urgency’ and ‘operations carried out in a crisis’ effected by that provision must be read as covering the second, third and fourth conditions of point (c) of the second subparagraph of point 11.1 of that annex, namely extreme urgency brought about by unforeseeable events.

Furthermore, the Court holds that that literal interpretation is supported by a contextual interpretation of point 39.2 of that annex. When point 39.2 of that annex refers, for the purposes of point (c) of the second subparagraph of point 11.1 of the annex, to a ‘crisis’ situation, it is referring to a concept that the legislature itself has defined, in Article 2(21) of the financial regulation. Under that provision, a crisis is ‘a situation of immediate or imminent danger threatening to escalate into an armed conflict or to destabilise a country or its neighbourhood’ or situations ‘caused’, inter alia, by ‘man-made cris[es] such as wars and other conflicts’ or other comparable extraordinary circumstances. The Court considers that such a situation necessarily implies the existence of unforeseeable events, as well as a causal link between those events and the state of urgency in which they result. On that basis, the Court concludes that the concept of ‘crisis’ covers both the extreme urgency and the unforeseeability of events, as well as the causal link, required by point (c) of the second subparagraph of point 11.1 of Annex I to the financial regulation.

Lastly, the Court holds that a purposive interpretation of point 39.2 corroborates its analysis in the light of the objectives of the common foreign and security policy (‘CFSP’), of which the common security and defence policy (‘CSDP’) forms part. It observes that swiftness of action is a structural feature of the legal framework of the CFSP and the CSDP. That framework is a specific area of action generally characterised by a need to be responsive and flexible, particularly where the existence of a crisis has been established. The law of public procurement that is applicable to actions taken under the CSDP necessarily follows the same logic. Point 39.2 of Annex I to the financial regulation thus strikes a balance between, on the one hand, the characteristic rigour of EU public procurement law, both in terms of respect for the principle of competition and in terms of derogations being strictly circumscribed, and, on the other hand, the need for responsiveness inherent to the CFSP and CSDP. By assimilating ‘operations carried out in a crisis’ to a situation of ‘extreme urgency’, that provision functions specifically to establish the requisite balance between budgetary discipline and operational effectiveness.

Thus, the interpretation of point 39.2 of Annex I to the financial regulation, in the light of the concept of ‘crisis’, as defined in Article 2(21) of that regulation, leads to the conclusion that the phrase ‘operations carried out in a crisis’ encompasses all the components of extreme urgency, including the two additional conditions relating to the unforeseeability of the event and to the existence of a causal link, as provided for in point (c) of the second subparagraph of point 11.1 of Annex I to that regulation.

In the light of that interpretation, the Court holds that the Mission was validly entitled to use the negotiated procedure without prior publication.

III. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (Fifth Chamber) of 9 July 2026, Legal Newsdesk Sweden, C-199/24

[Link to the full text of the judgment]

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Scope – Making information relating to criminal convictions available to the public online in return for remuneration – Reconciling the right to protection of personal data with the right to freedom of expression and information – Article 79 – Right to an effective judicial remedy – Scope – Article 85 – Concept of processing of personal data carried out for 'journalistic purposes'

Ruling on a request for a preliminary ruling from the Attunda tingsrätt (District Court, Attunda, Sweden), the Court of Justice makes clear the scope of Article 85 of the GDPR [5] in the context of an activity making available to the public on the internet, in return for payment, information relating to criminal convictions. It thus interprets the concept of processing of personal data carried out for 'journalistic purposes' and rules on the possibility for Member States to provide for derogations from the GDPR in respect of data processing carried out for purposes other than journalistic purposes.

Legal Newsdesk Sweden is a company which manages a database allowing, inter alia, searches to be carried out on individuals and undertakings that have been the subject of criminal proceedings in Sweden.

ND, the applicant, was convicted of a criminal offence and the judgment concerning him was published by Legal Newsdesk Sweden on its database. He requested that that company erase his personal data, which was not done immediately, but later on the basis of that company's internal policy on data storage.

Hearing an application brought by ND for damages in respect of infringement of the GDPR, the referring court observes that, under Swedish law, in such a situation that regulation is not applicable, the right to the protection of personal data being guaranteed, inter alia, by the Constitutional Law on freedom of the press and the Constitutional Law on freedom of expression. That court seeks to ascertain whether the concept of processing of personal data for 'journalistic purposes' covers making available to the public on the internet, in return for payment, public documents relating to criminal convictions and which have not been adapted or edited in any way. That court also asks whether the Member States may, under Article 85(1) of the GDPR, provide for derogations from that regulation in respect of processing of personal data for purposes other than journalistic purposes.

Findings of the Court

Ruling, in the first place, on the scope of Article 85(1) of the GDPR, the Court observes that that provision merely states that Member States are by law to reconcile the right to protection of personal data with the right to freedom of expression and information, without providing that that reconciliation may result in the adoption of exemptions or derogations from that regulation. However, that provision must be read in the light of Article 85(2) of the GDPR, under which, for processing carried out for journalistic purposes or the purposes of academic artistic or literary expression, Member States shall provide for exemptions or derogations from certain chapters of that regulation [6] if they are necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information. Thus, although Article 85(1) of the GDPR establishes a

---

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

6 In the present case, from Chapters II to VII and Chapter IX of the GDPR.

general rule requiring Member States to reconcile those rights, including in respect of processing for journalistic purposes and the purposes of academic, artistic or literary expression, the special rule set out in paragraph 2 of that article, according to which they are to provide for exemptions or derogations from various chapters of that regulation if that is necessary to allow that reconciliation, only applies to those specific purposes. Accordingly, the Court concludes that Member States cannot adopt, on the basis of Article 85(1) of the GDPR, legislative measures derogating from certain chapters of that regulation in respect of the processing of personal data for purposes other than journalistic purposes or the purposes of academic, artistic or literary expression, on the ground that those measures are necessary to reconcile the right to protection of personal data with the right to freedom of expression and information.

In the second place, the Court rules that the concept of processing of personal data for 'journalistic purposes', provided for under Article 85 of the GDPR, covers the making available to the public on the internet, in return for payment, public documents relating to criminal convictions, provided that that processing has as its purpose the disclosure to the public of information, opinions or ideas in compliance with the ethical rules and codes of conduct of the profession of journalist, after editing or adaptation, or at least in accordance with an editorial policy, and after verification of the factual allegations concerned.

In order to take account of the importance of the right to freedom of expression and information [7] in every democratic society, the concept of 'journalistic purposes' used in Article 85(2) of the GDPR must be interpreted broadly. Thus, neither the fact that an activity in the course of which data processing is carried out is exercised on the internet, in return for payment, nor the fact that that processing concerns criminal convictions is such as to preclude that processing from being carried out for 'journalistic purposes'. Processing for such purposes may cover not only the various processing operations necessary in order to publish information, opinions or ideas, but also those which are related to personal data contained in the information which was ultimately not accepted following the selection of the information gathered in connection with the journalistic work.

However, the broad interpretation of the concept of 'journalistic purposes' cannot cover all forms of expression but must be understood in a way that takes account of what differentiates, from the point of view of the manner in which they are created, journalistic expression from other forms of expression, and it must be conducted in the light of the case-law of the European Court of Human Rights. According to that case-law, the disclosure to the public of information, opinions or ideas presupposes the editing or adaptation of the information or, at the very least, disclosure carried out in accordance with editorial decisions. In addition, that disclosure is subject to compliance with the ethical rules and codes of conduct of the profession of journalist and presupposes verification of the factual allegations concerned, in such a way as to ensure they are reliable.

In the present case, subject to verification which is a matter for the referring court, an activity consisting in making available to the public on the internet, in return for payment, public documents relating to criminal convictions, does not appear to require editing or adaptation work and does not appear to be subject to the ethical rules and codes of conduct of the profession of journalist or to be conducted in accordance with an editorial policy.

Judgment of the Court of Justice (Grand Chamber) of 14 July 2026, NADA Austria and Others, C-474/24

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 2 – Material scope – Articles 5 and 6 – Principles relating to processing and the lawfulness of processing – Article 9 – Concept of 'data concerning health' – Article 10 – Concept of 'personal data relating to criminal convictions and offences' – Combating doping in

7 Article 11 of the Charter of Fundamental Rights of the European Union.

sport – Online publication of the name of a person who has infringed anti-doping rules, the length of time for which that person is banned from participating in sporting events and the reasons for that ban – Balancing of interests – Proportionality – Article 77 – Right to lodge a complaint with a supervisory authority where such publication is imminent

Hearing a request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Austria), the Court of Justice, sitting as the Grand Chamber, rules on the relationship between, on the one hand, national anti-doping rules providing for the publication, including athletes' names, on the websites of national anti-doping bodies of sanctions imposed on professional athletes, and, on the other, the requirements arising from the GDPR. [8]

Several athletes, sanctioned for infringing the national anti-doping rules, challenged the refusal by the Nationale Anti-Doping Agentur Austria GmbH (NADA Austria) and the Österreichische Anti-Doping Rechtskommission (ÖADR) (Austrian Anti-Doping Legal Committee; 'the ÖADR') to erase data concerning them. Pursuant to those rules, those bodies, in particular, published on the internet the names of the athletes sanctioned, the sports discipline practised by them, the infringements committed, the sanction imposed on those athletes, and the start and end dates of that sanction ('the data at issue in the main proceedings').

Findings of the Court

In the first place, the Court considers that the publication of the data at issue in the main proceedings on the websites of the national anti-doping bodies does not constitute processing that is excluded from the material scope of the GDPR under Article 2(2)(a) thereof. The processing of personal data carried out in the course of an activity which falls within the competence of the Member States does not exclude it from the scope of the GDPR, provided that that activity is not intended to safeguard national security and that it cannot be classified in the same category, [9] which is not the case here.

In the second place, the Court rules on the concept of 'data concerning health', within the meaning of Article 9(1) of the GDPR. The Court holds in that regard that data relating to persons who have been sanctioned for infringing national anti-doping rules are not, in principle, covered by that concept, unless reference is made to the name or category of the prohibited substance or method concerned by the infringement and that reference, combined with other information concerning the data subject, is capable of revealing, even indirectly, by means of an intellectual operation involving collation or deduction, information relating to the past, current or future physical or mental health status of that person.

In the third place, the Court examines whether legislation such as that at issue in the main proceedings is compatible with the requirements stemming from Articles 5 and 6 of the GDPR. [10]

In that regard, the Court notes, in particular, that legislation intended to combat doping in sport pursues an objective of public interest. Moreover, the pursuit of that objective may be ensured by the disclosure to the general public of data such as those at issue in the main proceedings. First, that disclosure is such as to deter athletes from infringing the anti-doping rules and thus to prevent doping in sport by making infringements that have been committed known to the general public and by informing the sponsors of the athlete in question. Second, it contributes to preventing the circumvention of those rules and thus to ensuring the effectiveness of the sanctions by preventing, through the provision of information to organisers of competitions and potential employers of the athlete concerned, that athlete from participating in competitions from which he or she must be excluded.

---

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

9 See, to that effect, judgment of 30 April 2025, *Inspektorat kam Visshia sadeben savet* (C-313/23, C-316/23 and C-332/23, EU:C:2025:303, paragraph 104).

10 More specifically, the Court is asked about Article 5(1)(a) and (c) and the second subparagraph of Article 6(3) of the GDPR.

As regards whether the obligation to publish at issue is necessary, the Court points out that no measure less restrictive of the right to respect for private life and the right to the protection of the personal data of the data subjects is such as to achieve that objective as effectively as publication, including athletes' names.

The Court nevertheless recalls that, in order to assess whether the processing at issue in the main proceedings is proportionate, it is necessary also to measure the seriousness of the interference with the fundamental rights to respect for private life and to the protection of personal data that that publication involves – taking account in particular of any sensitivity of those data and of the number of persons having access to them – and to determine whether the importance of the objective of general interest pursued is proportionate to that seriousness.

As regards the processing at issue carried out, in particular, by NADA Austria, which publishes on its website the identity of the athlete concerned without, however, referring to the substance at issue, the Court finds that such publication nevertheless entails a serious interference with the fundamental rights to respect for private life and to the protection of personal data, since it can provoke social disapproval and the stigmatisation of the data subject. Furthermore, the fact that such a publication is freely accessible to a potentially unlimited number of persons and the possibility that that information can be reproduced on other websites and thus remain accessible even after the publication on the website on which it was initially published has been erased constitute circumstances capable of aggravating the consequences for those fundamental rights.

In view of the seriousness of that interference, it cannot be ruled out that there are, outside the exceptions provided for by the national legislation at issue in the main proceedings that concern recreational athletes, particularly vulnerable persons and whistleblowers, specific circumstances in the light of which publication of the data at issue may prove to be incompatible with the requirement that a proper balance be struck between the different interests involved.

Accordingly, as regards the fight against doping in sport, although the GDPR [11] does not require an individual balancing exercise to be carried out in all cases, it nevertheless requires that, where the national legislation does not ensure, in itself, observance of the principle of proportionality in each individual case, the controllers must take due account of the circumstances of the case and carry out such an individual balancing exercise before publishing the data at issue on the internet. As part of that balancing exercise, they must take into account the seriousness of the infringement committed and the status of the data subject, inter alia whether that person is a high-profile athlete who is well-known, since such athletes have a special responsibility.

In the fourth place, the Court considers that the offences and sanctions linked to the fight against doping are not covered by processing of personal data relating to criminal offences. [12] Those sanctions are directed only at athletes, and, in the same way as disciplinary sanctions, their purpose is to ensure compliance with the rules of conduct specific to that group.

In the last place, the Court finds that, under the GDPR, [13] a complaint lodged with a supervisory authority intended to prevent the publication on the internet of personal data relating to an infringement of the anti-doping rules is admissible where, on the date on which that complaint is lodged, there are specific indications that that publication is imminent or will take place in the near future.

---

11 Article 5(1)(a) and (c) and the second subparagraph of Article 6(3) of the GDPR.

12 For the purposes of Article 10 of the GDPR.

13 Article 77 of the GDPR.

IV. FREEDOM OF MOVEMENT: FREE MOVEMENT OF WORKERS AND FREEDOM TO PROVIDE SERVICES

Judgment of the Court of Justice (Fifth Chamber) of 16 July 2026, FIGC and CONI, C-424/24 and C-425/24

Link to the full text of the judgment

References for a preliminary ruling – Disciplinary sanctions in the area of sport – Temporary prohibition on the pursuit of certain professional activities, imposed by a national sports association on two directors of a professional football club – Infringement consisting in making or approving false financial and accounting statements – Internal market – Articles 45 and 56 TFEU – Obstacle to the freedom of movement for workers and the freedom to provide services – Whether justified – Legitimate objective in the public interest – Proper conduct of sporting competitions – Observance of the principle of proportionality – Determination of sanctions – Existence of transparent, objective, non-discriminatory, proportionate and verifiable criteria – Second subparagraph of Article 19(1) TEU – Effective judicial protection – Article 47 of the Charter of Fundamental Rights of the European Union – Right to an effective remedy – Whether there is effective judicial review – National legislation allowing the court having jurisdiction over the indirect review of the lawfulness of those sanctions to award compensation to the persons subject to sanctions but not to annul or suspend those sanctions

Hearing a request for a preliminary ruling made by the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), the Court of Justice rules on the compatibility of, on the one hand, a Europe-wide temporary prohibition on the pursuit of professional activities within a sports association with, on the other, the respect for the freedom of movement for workers and the freedom to provide services ('the freedoms of movement concerned'). The Court of Justice further specifies the requirements which the dispute resolution bodies established by such associations must meet in order to constitute genuine 'courts or tribunals' within the meaning of EU law and to ensure the judicial protection of persons on whom those associations impose sanctions.

A sanction was imposed on ZD and MI each, two former directors of the Italian professional football club Juventus Football Club SpA, by the Corte federale d'appello presso la Federazione Italiana Giuoco Calcio (Federal Court of Appeal at the Italian Football Federation ('the FIGC')) ('the Federal Court of Appeal'), prohibiting them from carrying on professional activities within the FIGC for 24 months owing to false financial and accounting statements. That sanction was accompanied by a request for extension to the Union of European Football Associations (UEFA) and the Fédération internationale de football association (FIFA), and was subsequently extended globally by the FIFA Disciplinary Committee.

Since their appeal against the decision of the Federal Court of Appeal was dismissed by the Collegio di garanzia dello sport presso il Comitato Olimpico Nazionale Italiano (Sports Guarantee Board at the Italian National Olympic Committee (CONI)), the applicants brought an action before the referring court and sought the annulment of the sanction imposed.

Findings of the Court

In the first place, the Court recalls that respect for the fundamental freedoms of movement enshrined by Articles 45 and 56 TFEU is binding also on national or international sports associations where they adopt rules relating to paid work or the performance of services by professional or semi-professional players and by other categories of persons carrying on economic activities linked to sport, such as directors, as well as, more broadly, rules which have a direct impact on that work or the provision of services. [14] The legal personality, be it public or private, of such associations or the recognition under

---

[14] Judgments of 21 December 2023, *European Superleague Company* (C-333/21, EU:C:2023:1011, paragraph 85 and the case-law cited), and of 4 October 2024, *FIFA* (C-650/22, EU:C:2024:824, paragraph 77).

national law of their legal autonomy is irrelevant, since they cannot restrict the exercise of those freedoms.

Although the adoption by those associations of rules organising collectively the paid work and the performance of services by the persons concerned, and of provisions providing for the imposition of sanctions in the event of infringement of those rules, cannot, in itself, be regarded as contrary to Articles 45 and 56 TFEU, the imposition of a sanction on an individual is liable, depending on its nature and scope, to impede the freedoms of movement concerned. That is so in the case of sanctions such as the temporary prohibitions on the pursuit of certain professional activities, liable to be applied in all of the Member States.

In the second place, as regards whether there is any objective justification for the obstacle to the freedoms of movement concerned, the Court considers that rules seeking to ensure, by means of disciplinary sanctions, compliance with the financial and accounting standards applicable to football clubs and the accuracy and fairness of the financial and accounting statements made or approved by the directors of those clubs pursue an objective in the public interest that consists of ensuring the proper conduct of sporting competitions, which depends, inter alia, on maintaining a certain sporting and financial balance and on preserving a certain equality of opportunity between the participating clubs. That balance would risk being disrupted or destroyed if those directors were to engage with impunity in reprehensible accounting and financial conduct that relates in particular to player exchange transactions, which has a direct impact on the composition of the teams.

Therefore, it is for the referring court to ascertain, first, whether the determination of individual sanctions is subject to transparent, objective and non-discriminatory criteria, ensuring that account is taken of the relevant circumstances of each specific case, and, in particular, of the nature, duration and gravity of the infringement found. Furthermore, the body responsible for applying those criteria must have a certain discretion, the use of which must itself be amenable to effective judicial review by a national court.

As regards, second, the requirement that those individual sanctions be subject to judicial review, which is an integral part of effective judicial protection, [15] the Court recalls that that requirement means that the national court must have jurisdiction to consider all questions of fact and of law of the dispute, and must be able to review the merits of a sanction in the light of EU law, in particular the conditions for its imposition, the reasons for it and its determination. In addition, that court must be able not only to find that there has been an infringement of EU law, while being able to draw all the conclusions therefrom so as to bring that infringement to an end, but also to order interim measures.

In the last place, as regards the identification of the national court having jurisdiction to review the sanctions imposed by sports associations, the Court recalls that the 'external' aspect of the independence of the courts seeks, inter alia, to protect judges from interventions, pressure or influence, whether direct or indirect, which may originate from external sources, such as sports associations in the present case. As the Court has previously held, in order for professional bodies, including those governed by private law, to be regarded as 'courts or tribunals' within the meaning of EU law, they must meet the requirements laid down by the relevant case-law, such as being previously established by law as regards their existence, composition and organisation and exercising a review of the acts, measures or behaviour coming within their jurisdiction.

In the present case, the Court notes that the referring court should be able to exercise effective judicial review of the sanctions imposed by the sports associations only in the event that none of the bodies involved in the various 'instances of national sports justice' meets the cumulative requirements arising from the second subparagraph of Article 19(1) TEU. Were it to transpire that, at the very least, the sports judicial body that gives a decision at last instance meets those requirements and can therefore be classified as a 'court or tribunal' within the meaning of EU law, then there would already be a remedy ensuring effective judicial protection for individuals. [16]

---

15 In accordance with the second subparagraph of Article 19(1) TEU.

16 In accordance with the second subparagraph of Article 19(1) TEU.

As regards the requirement to be previously established by law, the Court considers that the mere reference in national legislation to the fact that the persons concerned are 'required, in accordance with the provisions of the statutes and regulations of [the CONI] and of the sports federations, to bring such matters before the sports judicial bodies', does not permit the inference that the composition, organisation and judicial function of those bodies and the procedural guarantees before them are provided for by law. The Court finds that it is for the referring court to determine whether those various aspects are provided for by a law other than the national legislation referred to, while stating that it cannot be ruled out that arrangements emanating from a national sports association may be regarded as a law in certain situations, in particular where they are approved by a law, in the appropriate circumstances.

V. JUDICIAL COOPERATION IN CRIMINAL MATTERS: COMBATING TERRORISM

Judgment of the Court of Justice (Grand Chamber) of 16 July 2026, Associació Catalana de Víctimes d'Organitzacions Terroristes (ACVOT), C-666/24

Link to the full text of the judgment

Reference for a preliminary ruling – Combating terrorism – Article 83(1) TFEU – Directive (EU) 2017/541 – Article 3 – Terrorist offences – Article 4 – Offences relating to a terrorist group – Article 15(1) – Obligation to provide for effective, proportionate and dissuasive criminal penalties – Effectiveness – Principle of legal certainty – Principle of equal treatment and non-discrimination – Primacy of EU law – Principle of sincere cooperation – National amnesty law which provides for the extinction of criminal liability – Acts which have not intentionally caused serious breaches of human rights

Ruling on a request for a preliminary ruling from the Audiencia Nacional (National High Court, Spain), the Court of Justice, sitting as the Grand Chamber, rules on the compatibility of a national amnesty law concerning criminal offences related to terrorism with Directive 2017/541, [17] read in the light of the principles of primacy and sincere cooperation, legal certainty, equal treatment and non-discrimination.

The case arises from criminal proceedings brought against 12 individuals charged, inter alia, with membership of a terrorist organisation during the period from October 2017 to November 2019.

On 11 June 2024, after the entry into force of the amnesty law, [18] applicable to certain acts committed between 1 November 2011 and 13 November 2023 in the context of the movement for Catalan independence, the accused lodged a request for amnesty.

However, the referring court, which must rule on that request, has doubts as to whether the application of the amnesty is compatible with EU law. It observes, in particular, that Directive 2017/541 requires that the offences at issue in the main proceedings, which fall within the concept of 'participating in the activities of a terrorist group', be punishable by effective, proportionate and dissuasive criminal penalties. However, the application of an amnesty has the effect of exempting from any criminal liability persons accused of having committed such offences. Moreover, the LOA provides that acts which, on account of their aim, may be classified as terrorism in accordance with

---

17 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ 2017 L 88, p. 6).

18 Ley Orgánica 1/2024 de amnistía para la normalización institucional, política y social en Cataluña (Organic Law No 1/2024 on amnesty for institutional, political and social normalisation in Catalonia) of 10 June 2024 (BOE No 141, of 11 June 2024, p. 67764; 'the LOA').

Directive 2017/541 and have also intentionally caused serious breaches of human rights, are excluded from the application of the amnesty. That law is thus based on the premiss that certain terrorist acts seriously infringe human rights and cannot be subject to amnesties, while others do not give rise to such infringements and may be subject to amnesties. However, such a distinction is not contained in Directive 2017/541. In that context, the referring court asked the Court of Justice, in essence, whether the conditions by which the LOA excludes from its scope offences under Directive 2017/541 and determines the conditions of application of the amnesty comply with that directive and with the principles of EU law referred to above.

Findings of the Court

Taking the view that an amnesty law such as the LOA entails a limitation of the application of the penalties provided for under Article 15 of Directive 2017/541, the Court ascertains, in the first place, whether that law is not such as to compromise the effectiveness of that directive.

Following an analysis of the provisions of that law, it finds that the extinction of liability provided for by the LOA, adopted with a view to reducing institutional and political tensions and to facilitate a scenario for reconciliation and whose specific purpose is defined in line with such objectives, is not such as to compromise the effectiveness of Directive 2017/541. The Court bases that conclusion, in particular, on the specific nature of an amnesty law. Thus, in the absence of any reference to that particular mechanism for the extinction of criminal liability in Directive 2017/541, the minimum rules which it establishes, in accordance with Article 1 thereof, concerning the definition of criminal offences and sanctions in the area of terrorist offences, offences related to a terrorist group and offences related to terrorist activities, do not have the effect of excluding, in principle, recourse to amnesties by the Member States pursuant to that directive.

In the second place, the Court examines the compatibility of such a law with the general principles of EU law.

First, as regards compliance with the requirements arising from the principle of legal certainty, the Court takes the view that the abstract definition of acts falling within the scope of the exclusion from amnesty provided for in Article 2(c) of the LOA and in particular the fact that that law does not specify in detail either the exact nature of all the acts nor does it set a threshold of seriousness to be attached to them does not undermine the requirements of the principle of legal certainty, where the courts having jurisdiction are capable of determining, in the light of Directive 2017/541, the terrorist offences excluded from the amnesty. Indeed, neither the provisions governing the scope of the LOA, set out in Article 1 thereof, nor those providing for exclusions from that scope, including, in particular, Article 2(c) of that law, appear to contain elements capable of giving rise to difficulties in their interpretation for the courts having jurisdiction or in their foreseeability for subjects of the law. Second, as regards compliance with the principles of equal treatment and non-discrimination enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, the Court recalls that the principle of non-discrimination, which constitutes a specific expression of the principle of equal treatment, requires that comparable situations must not be treated differently and that the requirement for situations to be comparable must be assessed in the light of all the elements that characterise those situations and, in particular, in the light of the subject matter and purpose of the act that makes the distinction in question.

However, according to the Court, in the context of an amnesty such as the LOA, which has the specific aim of promoting political reconciliation in the sole context of a particular political movement, the offences committed in that context and those committed in other contexts cannot be regarded as comparable situations.

Third, as regards the principles of primacy and sincere cooperation, the Court notes that, in so far as the adoption of an amnesty law such as the LOA does not undermine the effectiveness of Directive 2017/541, read in the light of the principles referred to above, such adoption cannot breach either the principle of primacy, by virtue of which all Member State bodies must give full effect to the various EU provisions, or the principle of sincere cooperation, enshrined in Article 4(3) TEU, which requires the Member States to refrain from any measure which could jeopardise the attainment of the European Union's objectives.

In the light of the foregoing, the Court holds that Directive 2017/541, read in the light of the principles of primacy and sincere cooperation, legal certainty, equal treatment and non-discrimination, do not preclude a national amnesty law which, in order to reduce institutional and political tensions and to facilitate a scenario for reconciliation, provides for the extinction of criminal liability of any person who has committed, within a defined period and in the context of the pursuit of independence of part of the national territory of a Member State, acts covered by that directive which did not intentionally cause serious breaches of human rights, the exact nature or degree of seriousness of which is not specified by that law, where the courts having jurisdiction are in a position to determine the terrorist offences excluded from the amnesty.

VI. JUDICIAL COOPERATION IN CIVIL MATTERS: REGULATION 2020/1783 ON THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

Judgment of the Court of Justice (Grand Chamber) of 16 July 2026, Aucrinde, C-196/24

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation between the courts of Member States in civil or commercial matters – Regulation (EU) 2020/1783 – Article 12(2) – Request made to the requested court for the execution of a measure of inquiry adopted by the requesting court – Grounds for refusal to execute such a request – Rule of substantive law of the requested Member State – Taking of the evidence considered to be contrary to the fundamental principles of the law of the requested Member State – Exhumation of a body for the purpose of establishing parentage – Post-mortem genetic testing – Articles 1 and 7 of the Charter of Fundamental Rights of the European Union – Right to respect for human dignity – Right to know one's genetic origins

Hearing a request for a preliminary ruling from the Tribunal judiciaire de Chambéry (Court of Chambéry, France), the Court of Justice, sitting as the Grand Chamber, rules on the interpretation of Article 12(2) of Regulation 2020/1783, [19] read in the light of Articles 1 and 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), in the context of a case relating to the possibility for a requested court to rely on a rule of substantive law of its Member State in order to refuse to execute a request to take evidence transmitted by a court of another Member State.

The Tribunale di Genova (District Court, Genoa, Italy) was seised of an action seeking a declaration that xx is the illegitimate son of aa, buried in France. The legitimate children of aa objected to the drawing up of an expert's report by a haematologist to establish parentage. They requested that genetic testing be carried out on the body of their deceased father at the place where his remains are buried. In that context, the Tribunale di Genova (District Court, Genoa), as the requesting court, transmitted a request under Regulation 2020/1783 to the referring court, as the requested court, seeking the execution of a measure of inquiry, namely the exhumation of the body of the putative father, together with the collection of a sample of deoxyribonucleic acid (DNA).

The referring court raises the issue of whether it may oppose, on grounds other than those provided for in Article 16 of Regulation 2020/1783, the execution of such a request.

---

[19] Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (OJ 2020 L 405, p. 1).

Findings of the Court

In the first place, the Court recalls that Regulation 2020/1783 is applicable only if the court of a Member State decides to take evidence according to one of the methods provided for by that regulation. The scope *ratione materiae* of that regulation is limited to two methods of taking evidence, namely, on the one hand, the taking of evidence by the requested court following a request from the requesting court of another Member State and, on the other hand, the taking of evidence by the requesting court directly in another Member State.

In that regard, the Court observes that Regulation 2020/1783 establishes a judicial cooperation mechanism which is strictly limited to the procedural aspects of the taking of evidence in judicial proceedings with cross-border effects. That regulation thus does not seek to harmonise the law of evidence between the different Member States but to improve the effectiveness and speed of those judicial proceedings by simplifying and streamlining the mechanisms for cooperation between the courts of those States in relation to the taking of evidence in civil or commercial matters.

Accordingly, the division of jurisdiction and of responsibilities between the requesting court and the requested court, under that regulation, is based on a clear distinction between the aspects falling within the scope of the substantive law applicable to a dispute and the procedural rules governing the taking of evidence.

First, only the requesting court, which knows all the facts of that dispute, is able to assess, having regard to the applicable substantive law, what evidence is required. Thus, it is the sole court authorised to decide on which means of evidence it considers relevant and to adopt to that effect the measure of inquiry which it requests be executed in another Member State. Secondly, and by contrast, the detailed procedural arrangements for gathering that evidence are governed by the law of the Member State of the requesting court.

In the second place, the Court observes that the EU legislature intended to require the requested court to execute swiftly the requested measure of inquiry. Pursuant to Article 12(2) of Regulation 2020/1783, the requested court is to execute that request 'in accordance with its national law'. That reference to 'national law' must be understood as referring to the detailed procedural rules established by the law of the Member State of the requested court. It follows therefrom that that provision applies only to the detailed procedural rules for the execution of measures of inquiry, so that only those detailed rules are governed, in principle, by the law of the requested Member State.

In addition, Article 16 of Regulation 2020/1783 lists exhaustively the grounds on which indirect execution of a measure of inquiry may be refused. Since those grounds must be construed as exceptions, they must be interpreted strictly. In those circumstances, an interpretation of Article 12(2) of that regulation which involved adding a ground for refusal not provided for in Article 16 thereof would be such as to call into question the effectiveness of the system of judicial cooperation established by that regulation. Consequently, the power of the requested court to refuse to execute such a measure is restricted solely to the grounds for refusal set out in Article 16 of that regulation, without, in particular, grounds derived from the substantive law of the Member State of the requested court, including grounds derived from fundamental principles of the law of that Member State, being capable of justifying a refusal to execute the measure of inquiry concerned.

In the present case, it is for the requesting court to assess, in the light of the substantive law of its Member State, the circumstances in which it is possible to adopt the measure of inquiry with a view to the taking of evidence located in another Member State. Those circumstances must thus be assessed not by the referring court, in the light of French law, but by the requesting court in the light of the substantive Italian law.

In the third place, the Court states that the application of Regulation 2020/1783 constitutes an implementation of EU law for the purposes of Article 51(1) of the Charter. In that regard, it is for the requesting court alone to verify that the measure of inquiry it orders in judicial proceedings pending before it is consistent with the fundamental rights guaranteed by the Charter.

In the present case, as regards the questions of the referring court concerning the respect for the right to human dignity enshrined in Article 1 of the Charter, it is not apparent in any way from the file before the Court of Justice that, when weighing up the competing interests in the case in the main proceedings, the requesting court failed to give proper consideration to that right. Likewise, no fact gives grounds for assuming that the situation is an exceptional case, recognised in the Court's case-law, in which the requested court would be justified in verifying whether the requesting court in fact complied with the fundamental rights guaranteed by the Charter.

Thus, the Court interprets Article 12(2) of Regulation 2020/1783, read in the light of Articles 1 and 7 of the Charter, as not allowing a requested court to refuse to execute a request for a measure of inquiry seeking the taking of evidence, consisting of a genetic sample collected after exhumation of the body of a putative parent, that request having been transmitted pursuant to that regulation by the requesting court before which proceedings concerning parentage have been brought, by justifying that refusal on the ground that a rule of substantive law of the Member State of the requested court prohibits the taking of such evidence.

VII. COMPETITION

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

Judgment of the Court of Justice (Fifth Chamber) of 9 July 2026, ROGON and Others, C-428/23

[Link to the full text of the judgment]

Reference for a preliminary ruling – Internal market – Competition – Professional football – Article 101(1) TFEU – Prohibition of agreements, decisions and concerted practices – Regulations of a national football federation – Purchase of services from third parties outside that federation – Activity of the players' agents – Restriction of competition by object or by effect – Exception to the prohibition in Article 101(1) TFEU – Scope – Objectives pursued by those regulations – Whether justified – Conditions – Pursuit of legitimate objectives in the public interest – Necessity – Proportionality

Ruling on a request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court of Justice specifies the conditions under which the regulations of a sports federation, which are addressed to its members and which govern the use of the services of third-party undertakings, may escape the prohibition on agreements, decisions and concerted practices laid down in Article 101 TFEU, on the ground that it pursues a legitimate objective in the public interest.

The Deutscher Fußball-Bund eV (German Football Federation; 'the DFB') brings together 27 German football associations, including the Deutsche Fußball Liga eV (German Football League; 'the DFL'), which organises sporting competitions in the two highest professional leagues, namely the Bundesliga and the second German league.

In 2015, the DFB adopted regulations, addressed to clubs and players, which govern the use of the services of agents for the conclusion of contracts for professional players and transfer agreements, and in particular lay down obligations relating to the registration and remuneration of those agents.

Two consultancy firms for professional football players active in Germany brought an action before the German courts for injunctive relief against certain obligations laid down in those regulations, relying, inter alia, on the prohibition of unlawful restrictive practices. Having been successful only in part, they brought an appeal against the judgment at first instance.

Hearing an appeal on a point of law against the judgment delivered on appeal, the referring court is inclined to the view that the provisions of the regulations at issue do not apply directly to players' agents, but restrict competition between undertakings established in different Member States.

Unsure whether those rules can be regarded as pursuing a legitimate objective in the public interest enabling them to benefit, in accordance with the case-law of the Court, from an exception to the application of Article 101 TFEU, the referring court referred two questions for a preliminary ruling.

Findings of the Court

The Court rules, in the first place, on the question whether that exception may apply to regulations adopted by a sports federation which, whilst being addressed to its members, govern the use of the services of third-party undertakings not belonging to that federation.

It begins by noting that the prohibition laid down in Article 101(1) TFEU may apply to the regulations at issue. They constitute a decision by an association of undertakings which has an impact on the economic activity carried out by the members of the DFB, namely football clubs, since, in particular, their profitability is such as to be influenced by the cost of the services provided by the agents. Moreover, those regulations are liable to affect trade between Member States, because they primarily affect the national market for the recruitment of players, in which providers established in other Member States may be involved. Lastly, it cannot be ruled out that those regulations have as their object or effect the prevention, restriction or distortion of competition, which it is for the referring court to determine.

However, the Court recalls that, according to the case-law, [20] a decision by an association of undertakings which does not have as its actual object the restriction or distortion of competition may escape the prohibition laid down in Article 101(1) TFEU if it satisfies three conditions. Thus, an examination of the economic and legal context of that decision must lead to the conclusion, first, that it is justified by the pursuit of one or more legitimate objectives in the public interest which are not in themselves anticompetitive, second, that the means employed are genuinely necessary to attain those objectives and, third, that the anticompetitive effect inherent in those means does not go beyond what is necessary.

As regards the first of those conditions, the Court states that the regulations at issue must not be regarded as unrelated to the public interest objective relating to the integrity of sporting competitions solely because they produce some of their effects not only with regard to the members of that federation, but also with regard to third-party undertakings, namely the players’ agents. Indeed, in the professional and semi-professional football sector, different categories of economic operators, such as clubs, national federations, players and agents, must interact and, to a certain extent, cooperate in order to ensure the viability of the sector and its attractiveness to supporters and spectators.

Second, the Court examines whether the three conditions referred to above must be assessed in the light of each of the provisions of the regulations at issue, or whether it is appropriate to take account of criteria relating to the degree of connection between those various provisions and the organisation and pursuit of the sports activity of the federation.

On that point, it finds that, in a situation where the provisions of those regulations pursue different objectives or produce distinct effects, it is necessary to carry out an independent examination of the proportionality of those various provisions, or even of a set of provisions pursuing a distinct objective or producing a distinct effect. Conversely, in certain situations, it would be artificial to split up a set of provisions, either because they are indissociable or because some of them are ancillary to others.

The Court also states that the degree of connection between the various provisions of those regulations and the organisation and pursuit of the activity in question or the corporate purpose of the federation which adopted them is not decisive when determining whether those three conditions must be examined having regard to each of the provisions of those regulations or to a set of provisions, or even the regulations as a whole laying down those provisions.

[20] Judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 183 and the case-law cited, and of 30 April 2026, *CD Tondela and Others*, C-133/24, EU:C:2026:361, paragraph 91.

2. ABUSE OF DOMINANT POSITION (ARTICLE 102 TFEU)

Judgment of the Court of Justice (Second Chamber) of 2 July 2026, Google and Alphabet v Commission, C‑738/22 P

Link to the full text of the judgment

Appeal – Competition – Abuse of dominant position – Market for online general search services – Market for the licensing of smart mobile operating systems – Market for online app stores for the Android mobile operating system – Decision finding an infringement of Article 102 TFEU and Article 54 of the EEA Agreement – Contractual restrictions – Tying – Exclusionary effects – Relevance of context – Counterfactual scenario – As-efficient competitor – Payments subject to exclusive pre-installation – Obstruction of the development and distribution of Android forks – Single and continuous infringement – Fine – Unlimited jurisdiction

The Court of Justice dismisses the appeal brought by Google LLC and Alphabet Inc. against the judgment by which the General Court annulled in part the decision of the European Commission imposing on them a fine of almost EUR 4.343 billion for abuse of a dominant position on the markets for online general search services. In so doing, it provides clarification regarding the assessment of the capability of conduct to produce exclusionary effects for the purpose of characterising that conduct as an abuse of a dominant position, within the meaning of Article 102 TFEU, and regarding the exercise of the General Court's unlimited jurisdiction.

Google is an undertaking in the information and communications technology sector specialising in internet-related products and services. It owns the Android operating system, which was installed on approximately 80% of smart mobile devices used in Europe in July 2018.

It also owns applications ('apps') and services which original equipment manufacturers ('OEMs') and mobile network operators ('MNOs') can install on devices sold to end users, provided that OEMs and MNOs first enter into agreements with Google.

Having received a number of complaints regarding some of Google's business practices in the mobile internet, the Commission initiated a procedure against Google in relation to Android in April 2015.

By decision of 18 July 2018, [21] the Commission fined Google almost EUR 4.343 billion for a single and continuous infringement of Article 102 TFEU involving the following anticompetitive contractual restrictions:

– two sets of restrictions contained in the Mobile Application Distribution Agreements ('MADAs') under which Google required OEMs to pre-install its general search app (Google Search) and browser app (Chrome) in order for them to be able to obtain a licence to use its app store (Play Store);

– restrictions contained in the anti-fragmentation agreements under which OEMs that wished to pre-install Google apps could not sell devices running versions of Android that were not approved by Google;

– restrictions contained in the revenue share agreements ('RSAs') under which Google granted OEMs and MNOs a percentage of its advertising revenue, provided that they had agreed not to pre-install a competing general search service on any device within an agreed portfolio ('portfolio-based RSAs').

Google and Alphabet challenged that decision before the General Court, which annulled the decision at issue in relation to portfolio-based RSAs. It found, however, that the single and continuous

[21] Commission Decision C(2018) 4761 final of 18 July 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.40099 – Google Android).

infringement still applied in relation to the other restrictions. In the context of its unlimited jurisdiction, it decided to reduce the fine to EUR 4.125 billion.

Findings of the Court

In support of their appeal, Google and Alphabet criticise the General Court in particular for upholding the conclusion of the decision at issue that the practices at issue constitute an abuse of a dominant position, despite the Commission's failure to establish that the pre-installation conditions laid down by the MADAs were capable of foreclosing as-efficient competitors.

In that regard, the Court of Justice begins by recalling that, in order to demonstrate that an exclusionary practice is abusive, a competition authority must show that, first, that practice relied on the use of means other than those which come within the scope of competition on the merits and, second, that it was capable of producing exclusionary effects.

As regards proof of the use of means other than those of competition on the merits, it is, admittedly, settled case-law that the competition authority may use an analysis of the capability of a hypothetical as-efficient but non-dominant competitor to replicate that conduct (as-efficient competitor test; 'the AEC test').

However, certain behaviours represent, in principle, means that deviate from competition on the merits, without there being any need for such an analysis. That is the case in particular for tying that consists in offering a certain 'tying' product only with another 'tied' product. Indeed, an undertaking in a dominant position in the market for the tying product may harm consumers through a practice of tying by foreclosing the market for the tied product and, indirectly, the tying market.

As regards proof that the practice at issue was capable of producing exclusionary effects, it is for the competition authority to demonstrate that the conduct concerned has the actual or potential effect of restricting competition by excluding hypothetical rival undertakings from the market or markets concerned or by hindering their growth on those markets.

In that context, the Commission does not have a systematic obligation to examine the efficiency of actual or hypothetical competitors of the dominant undertaking. Indeed, although that analysis may prove to be relevant to pricing and non-pricing practices alike, depending on the circumstances, there are situations in which it is not possible, nor does it make sense, to base the examination of the exclusionary effects on that analysis. That is particularly so where the structure of the market, involving, for example, an ecosystem characterised by significant barriers and network effects, and the conduct at issue make the entry, maintenance or even emergence of an as-efficient competitor practically impossible.

The Court adds that it is for the competition authority to demonstrate, on the basis of specific, tangible points of analysis and evidence, that the conduct concerned is capable of having exclusionary effects. That demonstration, which may be based on different analytical templates depending on the type of conduct at issue, must nevertheless always be made in the light of all the relevant factual circumstances.

In the present case, the Court of Justice notes that the General Court held that the Commission had not merely found that the pre-installation conditions laid down by the MADAs represented tying that was capable of restricting competition, but that it had been careful to set out specifically in the decision at issue the various factors which, in its view, made it possible to establish that the alleged exclusionary effects were real.

The General Court also observed that the Commission had concluded that the conduct at issue had had the effect, inter alia, of making it harder for competing search services to gain search queries and the revenues and data needed to improve their services, that it had increased barriers to entry by shielding Google from competition from other search services and that it had reduced the incentives for innovation.

In that context, the General Court was not required to verify whether the Commission had indeed demonstrated the exclusionary effects of the MADA pre-installation conditions by reference to hypothetical as-efficient competitors. Indeed, the relevant markets in the present case fall within the digital economy, where variables such as innovation, access to data, multi-sidedness, user behaviour or network effects play a decisive part in that those markets, structured in this way, are characterised by high barriers to entry and complex interactions that influence and determine each other.

The Court of Justice notes that it is precisely in such situations that it is not possible, nor does it make sense, to base the analysis of exclusionary effects on the AEC test. In such circumstances, conduct that does not fall within the scope of competition on the merits is capable of making the entry, maintenance or even emergence of an as-efficient competitor practically impossible. This applies all the more where the conduct at issue does not lend itself to a quantitative, price-based analysis.

In the light of those considerations, the Court of Justice finds that the General Court cannot be criticised for having failed to invalidate the decision at issue on the ground that the Commission had failed to apply the AEC test in order to assess the effects of the pre-installation conditions laid down by the MADAs.

The Court of Justice rejects, moreover, the pleas that the General Court infringed the rights of the defence, the presumption of innocence and the principle *ne ultra petita* when setting the amount of the fine in the exercise of its unlimited jurisdiction.

In that regard, the Court of Justice recalls that, when exercising that jurisdiction, the General Court is empowered to substitute its own appraisal for that of the Commission and, consequently, to cancel, reduce or increase the fine imposed. It is, however, bound by certain requirements, including the obligation to state reasons, the principle of equal treatment and respect for the rights of the defence.

With regard to the latter, the Court of Justice underlines the fact that proceedings before the Courts of the European Union are *inter partes,* including those in which they exercise their unlimited jurisdiction. Thus, in that context, the General Court may indeed take all the factual circumstances into account, but the *inter partes* principle nevertheless means that the parties are to have the opportunity to express their views as regards the setting of the fine. In addition, the General Court cannot apply any factor, circumstance or criterion which those parties could not have foreseen would be taken into account.

In the present case, the Court of Justice rules that the General Court did not infringe the appellants' rights of defence by considering that it was necessary to take particular account, in assessing the amount of the fine, of the intensity of the anticompetitive conduct over time, which resulted in three distinct periods being identified, the second of which was described as crucial.

Indeed, while the General Court was bound to examine all complaints based on issues of law or of fact which seek to show that the amount of the fine is not commensurate with the gravity or duration of the infringement, it cannot be required to invite the parties to comment on the variation of the fine that is specifically envisaged or on the precise parameters which it intends, from that aspect, to apply.

As regards the principle *ne ultra petita*, the Court of Justice recalls that the exercise of powers of unlimited jurisdiction does not amount to a review of the Court's own motion. Therefore, with the exception of pleas involving matters of public policy which the Courts are required to raise of their own motion, it is for the applicant to raise pleas in law against the measure of EU law being challenged and to adduce evidence in support of those pleas. As it is, in the present case, the General Court reduced the amount of the fine in response to the appellants' claim for cancellation or reduction of that amount, and therefore it did not breach the principle *ne ultra petita*.

Having rejected all the other arguments and grounds of appeal put forward by the appellants, the Court of Justice dismisses the appeal in its entirety.

3. AGREEMENTS, DECISIONS AND CONCERTED PRACTICES AND ABUSE OF DOMINANT POSITION (ARTICLES 101 AND 102 TFEU)

Judgment of the Court of Justice (Fifth Chamber) of 16 July 2026, RRC Sports, C-209/23

Reference for a preliminary ruling – Internal market – Competition – Professional football – Fédération internationale de Football Association (FIFA) Football Agent Regulations – Rules on agents' remuneration, agent licences, multiple representation, making an approach and the communication of certain information to FIFA, other agents, clubs and players – Article 101(1) TFEU – Prohibition of agreements, decisions and concerted practices – Agreements between undertakings, decisions by associations of undertakings and concerted practices – Restrictions on competition – Concepts of anticompetitive 'object' and 'effect' – Exception to the prohibition laid down in Article 101(1) TFEU – Conditions – Exemption under Article 101(3) TFEU – Conditions – Concept of 'efficiency gains' – Article 102 TFEU – Abuse of dominant position – Justification – Conditions – Article 56 TFEU – Obstacle to the freedom to provide services – Objectives – Proportionality – Protection of personal data – Regulation (EU) 2016/679 – Point (f) of the first subparagraph of Article 6(1) – Lawfulness of processing

Hearing a request for a preliminary ruling from the Landgericht Mainz (Regional Court, Mainz, Germany), the Court sets out the conditions under which certain rules governing the activity of sports agents laid down by a sports federation may be categorised as an anticompetitive agreement within the meaning of Article 101 TFEU or abuse of a dominant position within the meaning of Article 102 TFEU and examines the compatibility of those rules with the freedom to provide services guaranteed by Article 56 TFEU and also with the GDPR. [22]

The Fédération internationale de football association (FIFA) is an umbrella organisation which brings together many international and national football federations. In accordance with its statutes, member associations are required to undertake to comply with the rules laid down by that federation and to recognise the decisions adopted by it.

In 2022, FIFA adopted the FIFA Football Agent Regulations ('the FFAR'), which lay down the framework conditions applicable to persons providing agent services under the international transfer system for players and coaches established by that federation. In particular, those regulations set out the conditions under which such persons may offer and provide intermediary services in relation to players, coaches, clubs and single-entity leagues, and obtain remuneration for those services.

The applicants, a football players' agent and RRC Sport, a company established in Germany which itself operates as a players' agent, brought an action for an injunction before the referring court seeking inter alia an order prohibiting FIFA from implementing several provisions of the FFAR on the ground that they infringe Articles 56, 101 and 102 TFEU and the GDPR.

Findings of the Court

In the first place, the Court finds that Article 101(1) TFEU is applicable to the FFAR.

The FFAR, as well as the rules contained therein, may be regarded as constituting a decision by an association of undertakings capable of affecting trade between Member States, since the rules laid down therein are binding on clubs, single-entity leagues, players, coaches and players' agents operating in the Member States whenever there is a representation agreement with an international dimension or an activity relating to an international transfer or international trade. Moreover, the possibility cannot be ruled out that some of the rules highlighted by the referring court may constitute restrictions of competition either by object or by effect, which it is for that court to determine.

Nevertheless, according to the case-law of the Court, [23] certain anticompetitive conduct, which inherently has the effect of restricting competition, may fall outside the scope of the prohibition laid down in Article 101(1) TFEU, provided that it is justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature, the means used are genuinely necessary to achieve those objectives and the inherent anticompetitive effect of those means does not go beyond what is necessary.

---

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

[23] Judgments of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, and of 30 April 2026, *CD Tondela and Others*, C-133/24, EU:C:2026:36.

As regards the first of those conditions, an objective of a purely economic nature cannot constitute an overriding reason in the public interest capable of justifying an obstacle to a fundamental freedom guaranteed by the TFEU, and nor may it be relied on with reference to that case-law. That said, the fact that a set of rules may be compelled by one or more reasons of an economic nature does not preclude it from being justified if it appears that, through those reasons, that set of rules ultimately pursues one or more legitimate objectives in the public interest of a non-economic nature, the existence of which must be proven by the party relying thereon and verified by the competent national court.

Thus, it is for the referring court to determine whether the FFAR do in fact pursue the legitimate objectives in the public interest relied on by FIFA, such as setting minimum professional and ethical standards, protecting clients and players, or enhancing contractual stability between clubs, players and coaches.

As regards conduct having an anticompetitive object, such conduct may, like conduct which has an inherent effect of restricting competition, be exempted under Article 101(3) TFEU. In that context, it is for FIFA to demonstrate that the adoption of the FFAR satisfies four cumulative conditions. Thus, those regulations must, with a sufficient degree of probability, make it possible to achieve efficiency gains, whilst reserving for the users an equitable share of the profits generated by those gains and without imposing restrictions which are not indispensable for the achievement of those gains and without eliminating all effective competition for a substantial part of the products or services concerned.

As regards the first of those conditions, the fact that the rules at issue restrict the opportunities for agents to take advantage of certain market anomalies could imply the existence of efficiency gains on the market for agents' services with a view to the international transfer of professional players or coaches from one entity to another or on the employment market of players or coaches. The correction of a market failure is, in principle, capable of generating such economic efficiency gains, which it is nevertheless for the referring court to ascertain.

In the second place, the Court examines whether the adoption of the FFAR may be categorised, inter alia, as an exclusionary abuse or an exploitative abuse under Article 102 TFEU.

The existence of potential exclusionary abuse turns on an assessment of whether, first, the conduct in question departs from competition on the merits and, second, that conduct may produce actual or potential effects capable of restricting competition, by excluding equally efficient competing undertakings from the market(s) concerned or by hindering their growth on those markets, although the latter may be either the dominated markets or related or neighbouring markets, where that conduct is liable to produce its actual or potential effects.

In the present case, if FIFA were to use its powers, in particular its regulatory powers, in order to limit, steer or regulate the growth of competition on the market for agents' services in accordance with its own interests or the economic or competitive interests of single-entity leagues and clubs that are members of the national federations affiliated to it, such conduct could be classified as exclusionary abuse, even if it occurs on related or neighbouring markets to the one in which FIFA carries on its own economic activities.

Thus, it is for the referring court to carry out a detailed, comprehensive and overall analysis of the conduct in question, which presupposes an examination of the nature, content and actual or potential effects, on the markets concerned, of the rules adopted by such an association with a view to regulating, controlling or sanctioning the various aspects of the economic activities concerned.

As to the existence of potential exploitative abuse, this may be established where an undertaking unduly takes advantage of its dominant position on a market to the detriment of its customers or suppliers and, ultimately, consumers, by imposing on them commercial conditions, relating to pricing or otherwise, which would not have been applied if there had been normal and therefore sufficiently effective competition.

In the present case, even though the agents do not supply any goods or services to FIFA, the FFAR obliges them, in order to operate on the market for agents' services with a view to the international transfer of professional players or coaches, to pay annual fees to that federation in order to renew their licence, as well as fees to sit the examination required in order to obtain that licence.

Moreover, that market is intrinsically linked to the employment market of players or coaches, two markets on which single-entity leagues and clubs which are members of national football associations operate, which are themselves grouped together within FIFA and subject to its regulatory and control powers and the power to impose sanctions. Thus, agents are both subject to FIFA's powers and dependent, for the pursuit of their activities, on commercial partners indirectly affiliated to FIFA, which exposes them to possible exploitative abuse by FIFA.

That said, in order to establish potential exploitative abuse, it is necessary to demonstrate that the undertaking in a dominant position has, in its own interest, imposed on its customers, suppliers or other commercial partners, conditions for the pursuit of their activity which have no objective economic, technical or legal justification. Thus, the existence of such an abuse could be established by demonstrating that a reasonably efficient sports federation, in a comparable situation, would have been led to adopt rules different from those at issue, which, while suitable for attaining the objectives pursued, would have been significantly less harmful to the agents' own interests.

In the third place, the Court examines whether the rules contained in the FFAR constitute an obstacle to the freedom to provide services enshrined in Article 56 TFEU.

In that regard, the Court notes that the rules restricting multiple representation, those which make obtaining an agent licence subject to the condition that the agents have not been the subject of any of the criminal or disciplinary measures referred to in the FFAR and the rules prohibiting agents from approaching a potential client and entering into an agreement with him or her outside certain periods have made it difficult for agents established in certain Member States, where that profession was not regulated or was subject to less stringent rules, to engage in an activity abroad.

Although the first two categories of rules appear to be justified by the pursuit of certain legitimate objectives in the public interest, the Court finds that, as regards the third category of rules, FIFA has justified them on the basis of the need to ensure contractual stability between players' agents and their clients.

The pursuit of such an objective, which is different from that of ensuring the continuity of contracts between players and clubs in the interest of the proper conduct of sporting competitions, appears to be of a purely economic nature and, therefore, not capable of justifying an obstacle to the freedom to provide services. It is, in any event, for the referring court to determine whether, having regard to any other objectives put forward by FIFA, such rules may nevertheless be regarded as justified by a legitimate objective in the public interest which is not of a purely economic nature and as pursuing such an objective in compliance with the requirements resulting from the principle of proportionality.

By contrast, the rules governing the remuneration of agents and coaches, as well as those requiring the collection of information on a digital platform, cannot be regarded as restrictions, since the effect of such rules on the willingness of agents to provide their services in another Member State is too uncertain and indirect.

In the fourth and last place, the Court examines the compatibility with Article 6(1)(f) of the GDPR of the rules in the FFAR which require FIFA to make available information relating to all agents and the clients whom they represent, in particular any sanctions imposed on them.

In that regard, the Court recalls that, in accordance with that provision, the processing of personal data is lawful provided that the controller or a third party is pursuing a legitimate interest, processing is necessary for the purposes of the legitimate interest pursued and the interests or fundamental rights and freedoms of the data subjects do not override the legitimate interest of the controller or a third party in their processing.

After finding that the first two conditions appear to be satisfied, which it is, however, for the referring court to verify, the Court examines the third condition.

It considers that, although the disclosure and publication of sanctions imposed on agents and clients may expose the data subject to a certain form of exclusion, that processing may nevertheless be regarded as constituting an element of the sanction itself, intended to restore confidence in the markets concerned and facilitate the pursuit, by persons who may have suffered harm, of their right to compensation. Such an objective may be regarded as serving interests that outweigh those of the agents who have breached the FFAR, provided that the rules the breach of which led to a sanction are not contrary to EU law.

Thus, such processing may, in certain situations, constitute a proper balance between the legitimate interest pursued and the interests, fundamental rights and freedoms of the data subjects, in particular where sanctions of a certain severity are imposed. However, that is not the case where the FFAR imposes an obligation to disclose any sanction imposed on agents and clients, irrespective of its severity.

4. STATE AID

Judgment of the Court of Justice (Fourth Chamber) of 9 July 2026, Commission v Germany (Aid for cogeneration), C-242/24 P

Link to the full text of the judgment

Appeal – State aid – Combined heat and power generation sector – Reform of the arrangements for support for cogeneration – Decision of the European Commission declaring the aid compatible with the internal market – Concept of 'State aid' – Measures granted through State resources – Condition relating to the existence of a compulsory surcharge

Hearing an appeal, the Court of Justice upholds the judgment of the General Court [24] annulling the decision of the European Commission [25] which classified as State aid the measures adopted by the Federal Republic of Germany in support of the production of electricity by combined heat and power plants ('CHP plants'). In so doing, the Court of Justice confirms the General Court's interpretation of the concept of 'State resources' within the meaning of Article 107 TFEU.

Between 2019 and 2021, the Federal Republic of Germany notified the Commission of legislative amendments providing, inter alia, for measures of financial support for the operators of CHP plants and other installations associated with the cogeneration of heat and power ('the CHP operators').

In the decision at issue, the Commission concluded that those measures constituted State aid within the meaning of Article 107(1) TFEU but were nevertheless compatible with the internal market under Article 107(3)(c) TFEU. In support of its classification of the notified measures as State aid, the Commission considered, in particular, that those measures were granted through State resources.

Hearing an action for annulment brought by Germany challenging that finding, the General Court annulled the Commission's decision. The latter then brought an appeal against that judgment.

Findings of the Court

In accordance with settled case-law, two alternative criteria can establish that funds by means of which a tariff advantage is granted constitute 'State resources' within the meaning of Article 107(1) TFEU, namely that the funds derive from a levy or other compulsory surcharges under national legislation and are managed and apportioned in accordance with that legislation, or that the funds constantly remain under public control, and therefore available to the competent national authorities. The Commission had merely applied the first criterion in the decision at issue.

The General Court held that the obligation, under the notified measures, on the network operators that consisted of paying financial support to the CHP operators is not sufficient, in itself, to establish

24 Judgment of 24 January 2024, *Germany* v *Commission* (T-409/21, EU:T:2024:34).

25 Commission Decision C(2021) 3918 final of 3 June 2021 concerning State aid SA.56826 (2020/N) – Germany – 2020 reform of support for cogeneration and State aid SA.53308 (2019/N) – Germany – Change of support to existing CHP plants (Paragraph 13 of the Gesetz zur Neuregelung des Kraft-Wärme-Kopplungsgesetzes (Law reforming the Law on Combined Heat and Power Generation) of 21 December 2015 (BGBl. 2015 I, p. 2498; 'the KWKG 2016')) ('the decision at issue').

the existence of a levy or of another compulsory surcharge, since that circumstance makes it possible to establish only that the funds have been allocated in accordance with the law.

In that regard, the Court of Justice notes that it follows from the findings made by the General Court that the distribution network operators, which are private entities, while being required to pay the financial support to the CHP operators, are indeed entitled to pass on, to their end customers, the financial burden resulting from that financial support, but are not legally obliged to do so.

In the absence of any compulsory passing on, to end customers, of the financial burden corresponding to the additional charge payable by the network operators to the CHP operators, it cannot be found that the funds financing that additional charge come from a levy or from another compulsory surcharge and that they therefore constitute State resources within the meaning of Article 107(1) TFEU.

In those circumstances, the General Court did not err in law in finding that the Commission had not demonstrated that the CHP support measures involved the commitment of 'State resources' in accordance with the first criterion referred to above.

Contrary to the Commission's contention, the General Court also did not disregard the case-law arising from the judgment in *PreussenElektra*. [26]

On that point, the Court of Justice confirms the General Court's finding that it follows from that judgment not that only a price regulation imposed by the legislation of a Member State cannot be classified as State aid, but only that the imposition, on private electricity supply undertakings, of the obligation to purchase at fixed minimum prices electricity produced from renewable energy sources does not constitute State aid where that obligation does not entail any direct or indirect transfer of State resources to undertakings producing that type of electricity.

As the General Court held, in order to exclude the application of that case-law to the present case, the Commission should therefore have established that the advantage granted to the CHP operators by the network operators, which are private entities, was not financed through their own financial resources. Since the Commission has not succeeded in demonstrating, on the basis of one of the alternative criteria referred to above, that the advantage at issue had been financed through State resources, the General Court was fully entitled to conclude that the network operators had granted that financial support through their own financial resources.

In that context, the Court of Justice also rejects the Commission's complaint that it is necessary to interpret the *PreussenElektra* case-law restrictively.

In that regard, the Court points out that, in the judgment in *PreussenElektra*, it did not introduce any exception, as the Commission maintained, but merely interpreted Article 107(1) TFEU and, in particular, the requirement that classification as 'State aid' presupposes, inter alia, that there is an intervention by the State or 'through State resources'.

As regards the Commission's argument that that interpretation allows a Member State which imposes payment obligations on private economic operators to promote any industrial sector or any particular undertaking, the Court recalls that the distinction drawn in Article 107(1) TFEU between 'aid granted by a Member State' and aid granted 'through State resources' does not mean that all advantages granted by a State, whether financed through State resources or not, constitute aid. That distinction is intended merely to bring within the definition of aid the advantages which are granted directly by the State and those granted by a public or private body designated or established by that State with a view to managing the aid.

Since the single ground of appeal has not been upheld, the Court dismisses the appeal in its entirety.

---

[26] Judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160).

5. RULES APPLICABLE TO UNDERTAKINGS

Judgment of the Court of Justice (Grand Chamber) of 16 July 2026, Imagens Médicas Integradas and Others, C-258/23 to C-260/23

Link to the full text of the judgment

References for a preliminary ruling – Competition – Agreements, decisions and concerted practices – Abuse of a dominant position – Articles 101 and 102 TFEU – Implementation by the national competition authorities – Decision of a national competition authority ordering an inspection – Search of the premises of the undertakings concerned – Seizure of business records resulting from email communications – Warrant issued by the Public Prosecutor's Office – Articles 7 and 8 of the Charter of Fundamental Rights of the European Union – Right to respect for private life and communications – Right to the protection of personal data – Procedural requirements – No prior authorisation by a court

Ruling on a request for a preliminary ruling, the Court of Justice sets out the conditions under which a national competition authority may seize, without prior authorisation issued by a court, business emails during an inspection at the premises of undertakings suspected of having committed infringements of the competition rules, having regard to the rights of the persons concerned to respect for private life and to the protection of personal data guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter').

In investigations to determine the existence of anticompetitive practices, the Portuguese competition authority considered it necessary to carry out inspections at the premises of undertakings suspected of having infringed Articles 101 and 102 TFEU.

In accordance with national legislation, the competition authority requested prior authorisation from the Portuguese Public Prosecutor's Office, which empowered it to seize all documents relating to anticompetitive practices and to examine and copy the information contained therein.

During those inspections, the competition authority examined emails from the employees of the undertakings concerned and seized computer files considered relevant for the purposes of its investigations.

The undertakings concerned challenged the legality of the inspections before the court having jurisdiction, [27] and that court has doubts as to whether those seizures comply with the right to respect for private life and communications guaranteed by Article 7 of the Charter. It therefore made a reference to the Court of Justice for a preliminary ruling in order to determine, in essence, whether a competition authority must obtain prior authorisation, not from an authority such as the Public Prosecutor's Office but from a court, to carry out an inspection leading to the seizure of business records resulting from communications by email of the employees of the undertakings concerned.

Findings of the Court

In the first place, the Court holds that business emails exchanged between employees and managers of an undertaking via the undertaking's messaging service fall within the concept of 'communications' within the meaning of Article 7 of the Charter.

In that regard, it recalls that that article contains rights corresponding to those guaranteed by Article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is apparent from the case-law of the European Court of Human Rights that communications from business premises may be understood in the concepts of 'private … life' and 'correspondence' referred to in Article 8 of that convention. Accordingly, seizures of emails made during inspections at the premises of a commercial company constitute a limitation on the exercise of the corresponding right enshrined in Article 7 of the Charter.

[27] Tribunal da Concorrência, Regulação e Supervisão (Competition, Regulation and Supervision Court, Portugal).

The Court also states that the classification of an email as 'related to the business', in view of its form or content, does not deprive it of the protection which Article 7 of the Charter guarantees for communications. That protection also extends to personal data generated by the traffic of those emails.

In the second place, the Court examines the conditions under which a national competition authority may seize emails exchanged between the employees and managers of an undertaking, as part of an inspection carried out at the professional or business premises of undertakings suspected of having committed infringements of Article 101 or Article 102 TFEU. It considers that Article 7 of the Charter, together with Article 8 thereof, enshrining the right to the protection of personal data, which is closely linked to the right to respect for private and family life, do not preclude such seizure from being carried out without prior authorisation issued by a court, provided that certain conditions are satisfied.

In that regard, it observes that Article 52(1) of the Charter allows limitations on the exercise of the rights enshrined in the Charter, provided that those limitations are provided for by law, respect the essence of those rights, genuinely meet objectives of general interest recognised by the European Union and comply with the principle of proportionality.

The Court considers that the first of those conditions appears to be satisfied in the present case, since the measures at issue in the main proceedings are based on Portuguese competition law. [28]

As regards the second condition, such a seizure respects the essence of the rights enshrined in Articles 7 and 8 of the Charter, in so far as it does not, as a general rule, entail either the unlimited gathering of personal data or generalised access to such data. Furthermore, those data cannot be used for purposes other than identifying anticompetitive behaviour.

As regards the third condition, the Court notes that the investigative powers of the national competition authorities, including inspections and seizures of communications and other documents and media, are intended to enable those authorities to fulfil their task of ensuring undistorted competition in the internal market, which is an objective of general interest recognised by the European Union.

As regards the fourth condition, relating to compliance with the principle of proportionality, the Court considers, first, that the seizures at issue meet the requirement of necessity. Indeed, no other means which are as effective and less prejudicial to the rights to respect for communications and to the protection of personal data present themselves as a satisfactory alternative to the seizures at issue for the prosecution and detection of anticompetitive practices.

Second, the limitation at issue is proportionate, particularly since the seizure of business correspondence by a national competition authority is generally subject to procedural safeguards intended to ensure the security, integrity and confidentiality of such data. Furthermore, the provisions of EU law concerning the implementation of the competition rules do not require a court to grant prior authorisation to an inspection carried out at business premises.

Having thus concluded that Articles 7 and 8 of the Charter do not, in principle, preclude legislation such as that at issue in the main proceedings, the Court points out, nevertheless, that such legislation must lay down a strict legal framework for the powers of the competition authority and adequate and sufficient safeguards against abuse and arbitrariness, such as, inter alia, effective *ex post* judicial review of the measures at issue. That review must provide the data subjects with appropriate redress, which also allows the admissibility of the evidence gathered to be assessed.

Lastly, the Court notes that it cannot be ruled out that the media on which the emails at issue were stored and to which the inspectors were able to gain access included mobile telephones, computers or other computer storage media belonging to the managers and employees of the undertakings under investigation. Since such devices may be used simultaneously for private purposes and for

---

[28] Lei n.o 19/2012 que aprova o novo regime da concorrência, revogando as Leis n.os 18/2003, de 11 de junho, e 39/2006, de 25 de agosto, e procede à segunda alteração à Lei n.o 2/99, de 13 de janeiro (Law No 19/2012 establishing the new rules on competition, and repealing Law No 18/2003 of 11 June 2003 and Law No 39/2006 of 25 August 2006, and amending for the second time Law No 2/99 of 13 January 1999), of 8 May 2012 (*Diário da República*, Series I, No 89/2012, of 8 May 2012).

professional or business purposes, access to retained data in those devices may give rise to a serious, or even particularly serious, interference with the fundamental rights at issue, since that set of data is liable to allow very precise conclusions to be drawn concerning the private life of the data subject. If that is the case, access to those data must be subject to prior review by a court or independent administrative body which must have all the powers and provide all the guarantees necessary to reconcile the various legitimate interests and rights at issue.

VIII. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (First Chamber) of 1 July 2026, Attilah v EUIPO – Bella Tawziaa II and Groupe Bellakhdar (4011 B552), T-654/24

Link to the full text of the judgment

EU trade mark – Invalidity proceedings – EU figurative mark 4011 B552 – Absolute ground for invalidity – Bad faith – Article 52(1)(b) of Regulation (EC) No 207/2009

Hearing an action for annulment, which it dismisses, the General Court clarifies the scope of the concept of 'bad faith' within the meaning of Article 52(1)(b) of Regulation No 207/2009. [29] That clarification falls within the specific context of an application for a declaration of invalidity of a contested mark brought by the legal person under whose name that mark was filed and registered.

In 2012, Mr Driss El Hakmaoui Attilah, the applicant, founded the company Grand Lion 4011, subsequently renamed Bella Tawziaa II, and then initiated discussions with Groupe Bellakhdar, one of the interveners, in order to establish a partnership.

On 21 March 2013, the applicant filed, on behalf of Bella Tawziaa II, of which he was the director, an application for registration of an EU trade mark in respect of the figurative sign 4011 B552 [30] with the European Union Intellectual Property Office (EUIPO).

In 2022, the interveners filed an application for a declaration of invalidity of that mark, [31] based, inter alia, on bad faith on the part of the applicant and supported by four earlier rights, which the Cancellation Division upheld.

The applicant filed a notice of appeal against that decision before the Board of Appeal of EUIPO, which, however, dismissed that action, upholding the decision of the Cancellation Division. Relying on the existence of a close business relationship between the applicant and the interveners at the time of filing the application for registration, and on the similarity between the contested mark and the earlier rights for similar or identical goods, it concluded that the applicant was acting in bad faith at the time of the application for registration and that he had an unfair intention in that he was, in fact, seeking to free-ride on the earlier rights.

---

29 Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

30 The goods covered by the mark were in Class 30 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

31 On the basis of Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1). In view of the date of filing of the application for registration of the contested mark, Article 52(1)(b) of Regulation No 207/2009 applies in the present case.

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

Findings of the Court

In the first place, after having recalled the case-law relating to the absolute ground for invalidity referred to in Article 52(1)(b) of Regulation No 207/2009, the Court notes, as did the Board of Appeal of EUIPO, that there was a commercial relationship between the parties at the time of filing the application for registration of the contested mark.

It states that the applicant founded his company in 2012 under the name Grand Lion 4011 and then initiated discussions with a person connected to Groupe Bellakhdar with the intention of establishing a partnership between the two companies. In that context, the name of the applicant's company was changed to Bella Tawziaa II in September 2012, and its capital was increased with the entry of that person connected to Groupe Bellakhdar as a partner alongside the applicant in October 2012.

Therefore, the Court considers that the existence of such a commercial relationship between the parties at the time of filing the application for registration of the contested mark, namely 21 March 2013, indicates that the applicant was aware of the use of the earlier rights at that time.

In the second place, the Court examines whether there was an unfair intention on the part of the applicant. First of all, it rules on the applicant's argument that the EU legislature did not in any circumstances intend to refer to a situation in which the legal person which has filed an application for registration of a trade mark may then bring proceedings for a declaration of invalidity of that mark.

In that regard, it held that the fact that the legal person in whose name the mark was filed subsequently becomes an applicant for a declaration of invalidity is not such as to preclude the application of Article 52(1)(b) of Regulation No 207/2009, since that provision is intended to protect the public interest and may be relied on by any natural or legal person. Since the concept of 'bad faith' referred to in that provision was not defined by the EU legislature, there is nothing to prevent that concept from applying where it is apparent from relevant and consistent evidence that the proprietor of the contested mark acted with an unfair intention during the filing.

Thus, the fact that the applicant filed that mark in the name of a company of which he was then the principal director and that that company, under another director and after his departure, subsequently filed an application for a declaration of invalidity of the mark has no bearing on the applicant's intention at the time of filing the application for registration.

Next, the Court notes that it is possible to take into account facts subsequent to the application for registration of the contested mark, which may be capable of confirming the applicant's dishonest intention on that date.

The Court states that a certain degree of reputation or renown of the earlier rights existed in Morocco for tea products, since the evidence adduced by the interveners shows, inter alia, that two of those earlier rights were used mainly in that country between 2012 and 2017. If the interveners were not required to establish such a reputation in Morocco, that reputation may be taken into consideration for the purposes of assessing bad faith.

Moreover, it notes that, after the date of filing the application, the applicant, first, appointed his sister as the sole director after transferring his shares to her, and then she granted him a general power of attorney under which he acted as an authorised representative. Second, he obtained the registration in his favour of the assignment of three EU trade marks of which that company was the proprietor. Third, he assigned those marks to a third party and requested the complete assignment to him of the contested mark. Consequently, those facts subsequent to the application for registration demonstrate, according to the General Court, that the applicant filed the contested mark with the aim of appropriating it thereafter.

Lastly, the Court points out that the marks at issue are similar because of the concept of the lion which they have in common. In the light of the applicant's knowledge of the earlier rights, that resemblance cannot be simply a mere coincidence. Although the applicant was free to market other goods, that did not give him the authority to apply for marks containing elements likely to be associated with the earlier marks. He could have applied for registration of a trade mark associated with or representing another animal.

In the light of the foregoing, the Court holds that the Board of Appeal was correct to conclude that the applicant was acting in bad faith when he filed the application for registration of the contested mark and, therefore, to dismiss the action.

2. EUROPEAN UNION DESIGNS

Judgment of the General Court (First Chamber) of 1 July 2026, DecoTrend v EUIPO – B.K.Licht (Lampshade), T-40/25

[Link to the full text of the judgment]

EU design – Invalidity proceedings – Registered EU design representing a lampshade – Earlier designs appearing in Swiss and United States patent specifications – Grounds for invalidity – Individual character – Elements of patent specifications containing the earlier designs to be taken into account when assessing the overall impression – Article 6 and Article 25(1)(b) of Regulation (EC) No 6/2002

Hearing an action for annulment, which it dismisses, the Court clarifies which elements of a patent specification, the elements of which have been relied on in support of an application for a declaration of invalidity, may be taken into account in order to call into question the individual character of a contested design within the meaning of Article 6(1)(b) of Regulation No 6/2002. [32]

In 2022, B.K.Licht GmbH & Co. KG, the intervener, filed an application with the European Union Intellectual Property Office (EUIPO) for a declaration of invalidity of an EU design representing a lampshade [33] on the basis of illustrations contained in Swiss and United States patent specifications ('the patent specifications'). The Cancellation Division dismissed that application.

However, the Board of Appeal of EUIPO set aside the decision of the Cancellation Division on the ground that, in its comparison of the overall impression produced by the designs at issue, it had taken into consideration elements present in the patent specifications other than the illustrations relied on by the intervener in its application for a declaration of invalidity. That comparison should have been made solely on the basis of the earlier designs represented in those illustrations. The Board of Appeal then remitted the case to the Cancellation Division to continue the invalidity proceedings.

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

Findings of the Court

First of all, the Court recalls that, where an applicant for a declaration of invalidity intends to base its application on the lack of novelty or, as in the present case, on the lack of individual character of an EU design, it is for that applicant to provide information on, and a reproduction of, the prior designs capable of forming an obstacle to those two conditions, as well as proof of the existence of those designs.

In that regard, it states that, within the meaning of Article 3(a) of Regulation No 6/2002, which defines the concept of 'design', appearance is the decisive factor of a design. It is therefore essential that the adjudicating bodies of EUIPO have an image of the earlier design relied on in support of an application for a declaration of invalidity, in order to see the appearance of the product in which that

---

32 Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1), in the version prior to the entry into force of Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 (OJ L, 2024/2822).

33 In Classes 26-04 and 26-05 of the Locarno Agreement of 8 October 1968 establishing an International Classification for Industrial Designs, as amended.

design is incorporated or applied and, consequently, to assess the novelty and individual character of the contested design.

Therefore, the assessment of that character must be conducted in relation to one or more specific, individualised, determined and identified earlier designs from among all the designs which have been made available to the public previously.

Next, as regards patents, the Court notes that a patent can be obtained for any invention, provided that it is new, involves an inventive step and is susceptible of industrial application. However, in the light of the Convention on the Grant of European Patents, [34] aesthetic creations are not to be regarded as inventions.

Thus, a patent protects an invention, and not the appearance of a product, and the illustrations in patent specifications are presented only as examples and may show different appearances, or even different products, capable of giving concrete expression to the protected invention. It is therefore for the applicant for a declaration of invalidity who refers to a patent specification to identify precisely, among the illustrations in such a specification, the earlier designs on which it relies in support of its application.

In the light of the foregoing, the Court considers that it follows unequivocally from Article 6(1)(b) of Regulation No 6/2002 that a patent or a patent specification, previously made available to the public, cannot be relied on as such to deny the individual character of a registered EU design. Of all the illustrations in a patent specification, only those precisely identified by the applicant for a declaration of invalidity as being the earlier designs on which it intends to rely in support of its application may be taken into account in that regard.

Lastly, in the present case, the Court finds that the intervener stated that only two illustrations included in the patent specifications constituted the earlier designs and, consequently, only the overall impression of those illustrations corresponded to that produced by the contested design. Thus, the intervener did identify precisely the earlier designs on which it relied in support of the application for a declaration of invalidity. The applicant's argument that the intervener relied on the patent specifications as a whole, including the other illustrations and the description of the invention, must therefore be rejected.

Accordingly, the Court holds that the Board of Appeal was correct to find that the assessment of the individual character of the contested design had to be carried out in relation only to the earlier designs represented in the two illustrations in the patent specifications relied on by the intervener in its application for a declaration of invalidity. The other elements included in those specifications containing the earlier designs, namely the written presentation of the invention and the other illustrations contained therein, could not be taken into account.

As the other pleas raised by the applicants have also proved to be unfounded, the Court dismisses the action in its entirety.

34 Article 52(2)(b) of the Convention on the Grant of European Patents, signed in Munich (Germany) on 5 October 1973, and Article 27(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (OJ 1994 L 336, p. 214), constituting Annex 1C to the Agreement establishing the World Trade Organization (WTO), signed in Marrakesh (Morocco) on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

3. REGULATION OF DIGITAL MARKETS (DMA)

Judgment of the General Court (Eighth Chamber, sitting with five Judges) of 8 July 2026, Apple and Apple Distribution International v Commission, T-1079/23, T-1080/23 and T-214/24

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

Actions for annulment – Digital services – Regulation (EU) 2022/1925 – Designation of a gatekeeper – Opening of a market investigation – Closure of a market investigation – Interoperability – Core platform services – Online intermediation service – Software application store – Number-independent interpersonal communications service – Plea of illegality – Act not open to challenge

Hearing three actions for annulment brought by Apple Inc. and Apple Distribution International Ltd (together or separately, 'Apple'), which it dismisses, the General Court provides clarification, inter alia, regarding the designation, as a gatekeeper, of an undertaking providing a number of core platform services ('CPS') within the meaning of the Digital Markets Act. [35]

In July 2023, Apple notified the European Commission that it met the thresholds set out in Article 3(2) of the DMA in respect of its online intermediation service iOS App Store, its operating system iOS, its web browser Safari and its instant messaging service iMessage. As regards the iMessage service, Apple submitted that it could not be classified as a number-independent interpersonal communications service ('NIICS') and, therefore, did not constitute a CPS within the meaning of the DMA. In addition, it presented arguments to demonstrate that, exceptionally, it did not satisfy the requirements under Article 3(1) of the DMA with respect to that service.

By two decisions of 5 September 2023, the Commission opened a market investigation [36] and designated Apple as a gatekeeper in respect of the CPSs iOS App Store, iPhone iOS and Safari. [37] By a decision of 12 February 2024, the Commission closed the market investigation and considered that Apple was not to be designated as a gatekeeper in relation to iMessage, but that that service should be classified as an NIICS. [38]

Apple therefore brought three actions for annulment of those decisions before the General Court.

Findings of the Court

In the first place, as regards the plea of illegality raised by Apple against Article 6(7) of the DMA, the Court notes that the designation decision is based on Article 3 of the DMA and that Article 6(7) of that regulation does not constitute the legal basis of that decision. Moreover, that provision does not form part of the reasoning of the designation decision and therefore has no direct legal connection with it. In addition, the fact that, following the adoption of the designation decision, Apple is required to comply with the obligations laid down in Article 6(7) of the DMA does not follow from the decision itself, but rather from Article 3(10) of the DMA, read in conjunction with Article 6(1) of that regulation. Accordingly, the Court dismisses that plea of illegality as inadmissible.

That conclusion does not undermine Apple's right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union. First, the possibility of raising a plea of illegality is limited to the provisions of an act of general application that constitute the basis of a contested decision or that have a direct legal connection with such a decision. Second, the limitation in question respects the essence of the right to effective judicial protection, since Article 47 of the

---

35 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ 2022 L 265, p. 1; 'the DMA').

36 Commission Decision C(2023) 6077 final of 5 September 2023.

37 Commission Decision C(2023) 6100 final of 5 September 2023 ('the designation decision').

38 Commission Implementing Decision C(2024) 785 final of 12 February 2024.

Charter of Fundamental Rights is not intended to change the system of judicial review laid down by the Treaties. Third, the Court considers that allowing a plea of illegality to be raised in respect of provisions that have no direct legal connection with the designation decision would be liable to undermine the system of legal remedies established by the FEU Treaty. Fourth, it points out that such a restriction does not disproportionately affect the right to an effective remedy, since Apple retains the possibility of raising a plea of illegality in respect of the contested provision in the context of other proceedings.

In the second place, the Court examines the classification of five Apple software application stores [39] as a single CPS. First, it notes that a software application store is a CPS, in that, as an online intermediation service, it allows business users to offer software applications to end users, with a view to facilitating the initiating of direct transactions between them. That classification does not depend either on the device on which that store operates or on the operating system on which the software applications offered within that store run. Second, the Court observes that, contrary to what is stipulated in Section D(2)(b) of the annex to the DMA, Apple does not provide any evidence showing that each of the App Stores is used differently from the other stores by end users or by business users. Consequently, the App Stores may be regarded as a single CPS.

In the last place, as regards the line of argument based on the classification of iMessage as an NIICS in the designation decision, the Court finds, first of all, that Apple has not identified any binding and concrete legal effects, resulting from that decision, which would be capable of bringing about a distinct change in its legal position. Next, the classification of iMessage as an NIICS CPS cannot be regarded as definitively established for the future, given the regular review conducted by the Commission under Article 4(2) of the DMA. Lastly, the competent national authorities, when implementing the powers and responsibilities that they derive from the European Electronic Communications Code [40] in respect of an NIICS, are not bound by any prior classification made by the Commission as part of the implementation of the DMA.

In the light of the foregoing, the Court concludes that the classification of iMessage as an NIICS CPS in the designation decision does not produce binding legal effects capable of affecting Apple's interests and does not bring about a distinct change in its legal position. The same applies to the two Commission decisions opening and closing the market investigation, in so far as they classify iMessage as an NIICS CPS.

IX. ENVIRONMENT: HABITATS DIRECTIVE AND CONSERVATION OF WILD BIRDS

Judgment of the Court of Justice (Fourth Chamber) of 16 July 2026, Knocknamona and Massey, C-27/25 and C-356/25

[Link to the full text of the judgment]

References for a preliminary ruling – Environment – Directive 92/43/EEC – Directive 2009/147/EC – Conservation of natural habitats and of wild fauna and flora – Special protection areas – Appropriate assessment of the implications of a plan or project likely to have an effect on a protected site in view of that site's conservation objectives – Screening – Conservation objectives specific to a special protection area not set

---

39 These are the applications iOS App Store, iPadOS App Store, watchOS App Store, macOS App Store and tvOS App Store (together, 'the App Stores').

40 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36).

Hearing a request for a preliminary ruling, the Court examines whether national authorities may carry out a valid appropriate assessment of the implications of a plan or project for a Natura 2000 site or a valid screening, within the meaning of the Habitats Directive, [41] where the specific conservation objectives have not yet been established for that site.

By decisions of 28 September 2022 and 8 November 2023, An Coimisiún Pleanála (Planning Commission, Ireland; 'the Planning Commission') granted planning permission for amendments to, or the development of, wind farms close to the Blackwater Callows Special Protection Area ('SPA'), designated as such in accordance with the Birds Directive. [42]

At the date of adoption of those decisions, Ireland had not yet set conservation objectives specific to the Blackwater Callows SPA.

After the lawfulness of those two decisions was challenged in legal actions, the Irish courts hearing those actions [43] asked the Court whether Article 6(3) of the Habitats Directive must be interpreted as meaning that, in the absence of conservation objectives specific to the SPA concerned, a national authority can carry out, when examining an application for consent for a plan or project, valid screening or a valid appropriate assessment of the implications of that plan or project for the integrity of that SPA.

Findings of the Court

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a protected site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.

Accordingly, it is apparent from the clear and unambiguous wording of Article 6(3) of the Habitats Directive that the appropriate assessment must be carried out based on the conservation objectives specific to the site concerned. Therefore, a valid appropriate assessment cannot be carried out if those objectives have not been determined.

That interpretation is supported by the legislative context of that provision.

First, the requirement to carry out the appropriate assessment in view of the conservation objectives of the protected site is not purely formal. If it were, such an assessment would not satisfy the requirements laid down by case-law, according to which it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works that are envisaged on the protected site concerned.

Second, the determination, in advance, of conservation objectives that are specific to each protected site is a preliminary stage that is essential for the implementation of the assessment procedure.

The obligations arising under Article 6(3) of that directive are to apply to SPAs as soon as they are classified as such by the Member States under the Birds Directive.

Next, the Court sets out the objectives pursued by that directive, which seek to ensure a favourable conservation status for all the species and habitat types listed in Annexes I and II thereto.

In the absence of conservation objectives which give concrete expression to that general objective vis-à-vis the site concerned, the appropriate assessment is based on an insufficiently precise and complete basis, which has the effect of increasing the risk of plans or projects adversely affecting the integrity of the site concerned being authorised.

---

41 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').

42 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7; 'the Birds Directive').

43 In Case C-27/25, the request for a preliminary ruling was made by the Court of Appeal (Ireland). In Case C-356/25, the referring court is the High Court (Ireland).

The Court concludes that, where conservation objectives specific to the SPA concerned have not been adopted beforehand, a national authority cannot carry out a valid appropriate assessment of the implications of a plan or project for the integrity of that area.

As regards the stage involving the screening of the environmental impact of the plan or project at issue on the protected site, the Court notes that the requirement for an appropriate assessment of the implications of such a plan or project is subject to both of the following two conditions being met: the plan or project in question must not be connected with or necessary to the management of the site concerned, and it must be likely to have a significant effect on the site.

The purpose of the screening phase is to determine whether those conditions are satisfied.

As regards the first condition, the Court holds that the adoption of conservation objectives specific to the protected site is not indispensable for the purpose of knowing whether the plan or project at issue is directly connected with or necessary to the management of the site concerned.

Similarly, for the purposes of examining the second condition, it may be possible to catalogue the protected sites which might be affected by a plan or project without taking into account the conservation objectives specific to each of the protected sites, in particular where the delimitation of the geographical area which the plan or project is likely to affect makes it possible to rule out any risk of certain protected sites being affected with the certainty required in accordance with the precautionary principle, on the basis of objective criteria, such as the distance between that plan or project and the protected sites and the existence or absence of plausible impact pathways.

By contrast, where protected sites are located within that geographical area, the assessment of the probability or risk that that plan or project will have a significant effect on those sites cannot be carried out by those competent national authorities without taking account of the conservation objectives specific to those sites.

X. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the Court of Justice (Fourth Chamber) of 2 July 2026, Traugott Ickeroth, C-67/25

Link to the full text of the judgment

Reference for a preliminary ruling – Common foreign and security policy – Restrictive measures in view of the Russian Federation's actions destabilising the situation in Ukraine – Regulation (EU) No 833/2014 – Article 2f(1) – Concept of 'operator' – Prohibition on broadcasting content by the legal persons, entities or bodies listed in Annex XV to Regulation No 833/2014 – Broadcasting of that content by natural persons on a website generating revenue solely in the form of voluntary contributions

In a reference for a preliminary ruling from the Landgericht Saarbrücken (Regional Court, Saarbrücken, Germany), the Court of Justice gives an interpretation of the concept of 'operator', within the meaning of Article 2f(1) of Regulation No 833/2014, [44] which establishes, in the context of restrictive measures taken in view of the situation in Ukraine, a prohibition for operators to broadcast content by legal persons, entities or bodies listed in Annex XV to that regulation.

[44] Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1), as amended by Council Regulation (EU) 2022/350 of 1 March 2022 (OJ 2022 L 65, p. 1).

The referring court was seised in the context of a criminal investigation against three natural persons suspected of having broadcast, via a website, videos from the channel RT Germany, the broadcasting of which is prohibited under Article 2f(1) of Regulation No 833/2014. The content published on that website was freely accessible, but an appeal for donations encouraged users to support its operation financially.

In those circumstances, the referring court decided to refer a question to the Court of Justice for a preliminary ruling in order to determine whether the prohibition on broadcasting laid down in Article 2f(1) of Regulation No 833/2014 can be relied on against those natural persons as 'operators'.

Findings of the Court

The Court holds, first of all, that a literal interpretation of Article 2f(1) of Regulation No 833/2014 leads to regarding as an 'operator' any natural or legal person responsible for broadcasting or making available the content referred to in that provision, including in the context of a non-remunerated activity or in the operation of a website financed by voluntary contributions from third parties. The EU legislature employed the term 'operator' without pairing it, in the vast majority of the language versions of that provision, with the adjective 'economic'. Moreover, that provision concerns inter alia broadcasting methods based on the internet generally accessible free of charge and which are not necessarily remunerated.

The Frequently Asked Questions on the implementation of Regulation No 833/2014 [45] published by the European Commission's services, which makes the concept of 'operator' subject to the exercise of a 'commercial or professional' activity, does not call that assessment into question since those questions constitute only a working document which is not legally binding and that requirement is not apparent from the wording of Article 2f(1) of Regulation No 833/2014.

Next, in connection with the contextual interpretation, the Court notes that, where the EU legislature intended to limit, in Regulation No 833/2014, the scope of a restrictive measure solely to operators engaged in an activity of an economic nature, it did so explicitly. [46] That is clearly not the case with Article 2f(1).

Lastly, as for the teleological interpretation, the Court considers that an interpretation of that provision to the effect that the prohibition laid down should apply only to natural or legal persons carrying on a commercial activity and pursuing a profit-making objective would deprive that prohibition of its effectiveness and would run counter to the objectives pursued by that prohibition. Indeed, such an interpretation would allow operators who derive no income from their website freely to broadcast the content covered by that provision, thereby actively contributing to disinformation and destabilisation campaigns conducted by media outlets under the control of the leadership of the Russian Federation and thereby threatening public order and security in the European Union.

The Court also points out that the financing of websites through voluntary contributions from third parties hinders, in principle, the ability to trace the origin of the funding and, consequently, any influence being exerted on the content broadcast. Such a method of financing may thus facilitate, directly or indirectly, interference by foreign interests – including third-country interests – in the broadcasting of media content and, therefore, increase the risk that such websites may be used to relay the propaganda campaign which the Russian Federation engages in and which Regulation No 833/2014 seeks to prohibit.

Moreover, the Court specifies that classification as an 'operator', within the meaning of Article 2f(1) of Regulation No 833/2014, does not depend on the scale or the duration of the broadcasting. Neither that provision nor the regulation itself provides that those elements must be taken into account to

---

45 Document entitled 'Consolidated FAQs on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014'.

46 That is the case with Article 3r(4) of Regulation No 833/2014, introduced by Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L, 2024/1745), which, in the vast majority of its language versions, refers to the country of registration of the 'economic operators involved' in the context of the adoption of national due diligence rules relating to the application of the prohibition on transshipment of liquefied natural gas originating in Russia or exported from Russia.

that end. An interpretation to that effect would, in any event, be liable to encourage conduct aimed at circumventing that provision by artificially fragmenting the broadcasting of the content covered by it.

XI. BUDGET AND SUBSIDIES OF THE EUROPEAN UNION

1. OWN RESOURCES OF THE EUROPEAN UNION

Judgment of the Court of Justice (Grand Chamber) of 16 July 2026, Sociedad Civil Catalana, C-523/24

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of the financial interests of the Union – Article 325(1) TFEU – Effective judicial protection in matters covered by EU law – Second subparagraph of Article 19(1) TEU – Accounting liability proceedings – Pursuit of the independence of part of the national territory of a Member State – National amnesty law concerning acts giving rise to liability in respect of public funds – Extinction of liability within a maximum period of two months, without examination of the defence submissions and exculpatory evidence and without hearing all the parties to the proceedings – First paragraph of Article 23 of the Statute of the Court of Justice of the European Union – Stay of the main proceedings by a national court which has submitted a request for a preliminary ruling to the Court of Justice under Article 267 TFEU

Hearing a request for a preliminary ruling from the Tribunal de Cuentas (Court of Auditors, Spain), the Court of Justice, sitting as the Grand Chamber, rules on the compatibility of national legislation granting amnesty, inter alia, for acts giving rise to liability in respect of public funds with Article 325 TFEU and Article 19 TEU, and with Article 267 TFEU and the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union.

The Sociedad Civil Catalana, Asociación Cívica y Cultural and the Ministerio Fiscal (Public Prosecutor's Office, Spain) brought before the referring court applications seeking a declaration, in proceedings for the recovery of an unjustified shortfall, that there had been a loss to the public assets of the Generalitat de Cataluña (Regional Government of Catalonia, Spain) and a declaration that 35 former members of the Generalitat's governance bodies are directly liable for that loss in respect of public funds. They seek, in that regard, an order that the defendants pay the Treasury of the Generalitat the amounts determined in accordance with their role in the damage caused to the Treasury.

According to the applicants, the losses resulted from the expenditure incurred, first, for the holding of an illegal referendum on the independence of Catalonia and, second, for the promotion of that independence internationally between 2011 and 2017.

In the course of the main proceedings, the LOA, [47] which provides, inter alia, for the extinction of liability in respect of public funds, entered into force. In so far as the referring court must examine whether the facts at issue in the main proceedings satisfy the conditions laid down by that law, it has doubts as to the compatibility of that law with EU law.

[47] Ley Orgánica 1/2024 de amnistía para la normalización institucional, política y social en Cataluña (Organic Law No 1/2024 on amnesty for institutional, political and social normalisation in Catalonia) of 10 June 2024 (BOE No 141, of 11 June 2024, p. 67764; 'the LOA').

Findings of the Court

Ruling, in the first place, on whether Article 325(1) TFEU must be interpreted as precluding national legislation such as the LOA, the Court states that an adverse effect on the financial interests of the European Union cannot be established on the sole basis of the reduction in gross national income (GNI) which could potentially be the result of the secession of part of a national territory.

Indeed, assuming a reduction in the GNI implies a reduction in the national contribution of the Member State concerned to the Union budget, that would be a corollary to the fact that the territory in question is no longer subject to the Treaties and no longer contributes financially to their implementation or benefits from support measures laid down in those Treaties. Such a reduction cannot therefore be regarded as affecting the financial interests of the Union, within the meaning of that article.

In the light of those considerations, the Court holds that Article 325(1) TFEU does not preclude national legislation which amnesties acts giving rise to liability in respect of public funds, carried out in the context of political activities seeking to culminate in the independence of part of the national territory of a Member State, relating to funds not paid from the Union budget and not intended for that budget, on the ground that that independence would have been likely to lead to a reduction in the European Union's own resources, in terms of the contribution of that Member State based GNI.

In the second place, as regards the obligation of the national courts to adopt a decision extinguishing liability within a maximum period of two months, without examination of the defence submissions and exculpatory evidence and without hearing all the parties to the proceedings, the Court notes that the infringement of the second subparagraph of Article 19(1) TEU presupposes the existence of problems of a systemic nature capable of undermining the proper functioning of the national judicial system by jeopardising the capacity of the Member State in question to provide sufficient remedies to subjects of the law in the fields covered by EU law.

In the assessment of whether such problems are likely to stem from the procedural provisions of the LOA, it is appropriate to take into account the nature of a national amnesty law and the competence of the Member States to adopt and apply such a law. Having regard to that competence, the Member States may in principle determine the conditions, including the procedural conditions, for implementing an amnesty adopted in the general interest. By their very nature, those conditions derogate from the ordinary legal rules, since an amnesty is generally intended to prohibit or terminate procedures and, if a sentence has already been handed down, bring its execution to an end.

Furthermore, the determination of the specific detailed rules for implementing a national amnesty law requires political choices falling under the Member States' own responsibilities and therefore entails a balancing of the divergent interests at issue.

Given the nature of the LOA, its purpose and its scope, limited to the resolution of the political conflict surrounding the Catalan independence process, it is not the case that the procedural rules which it makes provision for could give rise to problems of a systemic nature. Those provisions are not therefore likely to undermine the proper functioning of the national judicial system by jeopardising the capacity of the Member State in question to provide sufficient remedies to subjects of the law in the fields covered by EU law.

Therefore, the Court holds that the second subparagraph of Article 19(1) TEU does not preclude procedural provisions of a national amnesty law which, within the expressly defined scope of that law alone, require national courts to adopt a decision extinguishing liability, entailing the possible application of Article 325 TFEU, within a maximum period of two months, without examination of the defence submissions and exculpatory evidence and without hearing all the parties to the proceedings, where such provisions are not capable of leading to problems of a systemic nature capable of undermining the proper functioning of the national judicial system in the fields covered by EU law.

Lastly, as regards the adoption and maintenance of interim measures by the national court, the Court of Justice states that, where that court considers it necessary, it must be able to adopt or maintain such measures pending delivery of its decision following the answer of the Court of Justice to its request for a preliminary ruling.

In the present case, the Spanish Government argued before the Court that the LOA may be interpreted as meaning that, where a reference for a preliminary ruling is made, the proceedings may be stayed and the interim measures maintained for as long as they are necessary to ensure the effectiveness of the Court's answer.

In the event that such an interpretation were to be impossible, a provision of national law which prevents the procedure laid down in Article 267 TFEU from being implemented must be set aside without the court concerned having to request or await the prior setting aside of that provision by legislative or other constitutional means.

In the light of those considerations, the Court holds that Article 267 TFEU and the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union must be interpreted as precluding provisions of a national amnesty law which require national courts to adopt a decision extinguishing liability in respect of public funds and to lift interim measures ordered at an earlier stage of the procedure within a maximum period of two months, even if the Court of Justice, hearing a request for a preliminary ruling, has not yet given its decision.

2. PAYMENT OF A DEBT INCUMBENT ON THE EUROPEAN UNION

Judgment of the General Court (Third Chamber) of 15 July 2026, Czech Republic v Commission, T-661/24

Link to the full text of the judgment

Non-contractual liability of the European Union – EAGF and EAFRD – Judgment annulling a Commission decision excluding from EU financing certain expenditure incurred by the Member States under the EAGF and EAFRD – Reimbursement by the Commission of the amount unduly received – Commission's refusal to pay interest on the excess amount received – Obligation to pay interest – Compensation at a standard rate for the loss of enjoyment of the amount unduly paid to the Commission – Article 266 TFEU – Sufficiently serious breach of a rule of law intended to confer rights on individuals

Hearing an action for damages, which it dismisses, the General Court gives a ruling on the measures which the Commission must adopt to comply with a judgment, in accordance with the first paragraph of Article 266 TFEU, regarding the payment by that institution of interest connected to an amount paid back to a Member State after a judgment annulled a decision which excluded from EU financing certain expenditure incurred by a number of Member States under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) and imposing on that Member State a financial correction under the latter.

In its Implementing Decision 2018/873 [48] in respect of the Czech Republic, the Commission had decided to apply a flat-rate financial correction ('the financial correction at issue') to a payment made under the EAFRD, on account of expenditure allegedly effected in breach of EU law. The General Court annulled that decision by its judgment in *Czech Republic* v *Commission*, [49] following which the Commission adopted Implementing Decision 2020/859 formally providing for the reimbursement of the amount concerned, but not for the payment of interest on that amount.

By letter of 26 November 2024, the Czech Republic made a request to the Commission seeking that interest be paid to it in respect of the period from 10 August 2018, the implementation date for the

48 Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29).

49 Judgment of 19 December 2019, *Czech Republic* v *Commission* (T-509/18, EU:T:2019:876).

financial correction at issue, to 27 October 2020, the date of reimbursement by the Commission of the amounts which were the subject of that correction ('the period at issue').

Findings of the Court

In the first place, the Court finds that the obligation to pay interest, as established by the case-law, and in particular by the judgment of the Court of Justice in *Commission* v *Deutsche Telekom,* [50] emanated from a context which is different from that of the present case and involved an amount unduly collected by the administration from a person, who was therefore entitled to the payment of interest to compensate for the unavailability of that amount. In the context of shared management, the implementation of the EU budget allocated to the EAFRD and of that EU fund are delegated to the Member States, which cannot therefore be treated in the same way as persons, with the result that the circumstances in the present case are different from the circumstances referred to in the abovementioned judgment. Since the considerations set out in the judgment in *Commission* v *Deutsche Telekom* do not take into account the nature of the relationship between the Member States and the Commission, the specific features of shared management, or the fact that Member States make EU funds available on a delegated basis, they are not directly applicable in the context of the annulment of a decision imposing a financial correction on a Member State.

In the second place, the Court notes that the automatic and unconditional nature of the obligation to pay interest, as established by the judgment in *Commission* v *Deutsche Telekom*, is implicitly, but necessarily, based on the premiss that, following the annulment of a decision imposing a payment on an institution, the addressee of that decision suffer actual and certain damage as a result of the loss of enjoyment of the amount to be reimbursed to it. However, a financial correction such as that at issue forms part of a complex set of financial flows spanning the entire duration of the implementation of the rural development programme. Thus, unlike the situations referred to in the judgment in *Commission* v *Deutsche Telekom*, it is not certain that the annulment of a decision relating to a financial correction automatically entails such a loss of enjoyment by the Member State of the amount concerned.

In that regard, the Court points out, first, that the Member States have access to pre-financed amounts in order to effect EAFRD expenditure with the result that they are not, in principle, required to mobilise their own financial resources to effect that expenditure. Secondly, a financial correction does not necessarily entail that the Member State must make a payment to the Commission by drawing directly from its national resources. The amount of the financial correction is to be deducted from the interim payments or from the payment of the balance made by the Commission as reimbursement of other expenditure incurred by the Member State under the rural development programme. [51]

Therefore, the Court finds that in view of the lack of certainty as to the effect of a financial correction on the national resources of the Member State, it cannot be inferred from the case-law that the Commission is subject to an obligation in principle, which is absolute and unconditional, automatically to pay interest in compliance with a judgment annulling a decision imposing a financial correction under the EAFRD.

In the third place, the Court points out that, in the present case, the amount made available to the Czech Republic by the Commission as pre-financing, reduced by the amount of the financial correction at issue, remained, in principle, available during the period at issue, during which that financial correction was implemented, since the clearance procedure in respect of pre-financing [52] did

---

50 Judgment of 11 June 2024, *Commission* v *Deutsche Telekom*, C-221/22 P, EU:C:2024:488.

51 In accordance with the second subparagraph of Article 34(8) of Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ 2014 L 255, p. 59).

52 Provided for in Article 35(4) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013 L 347, p. 549), and amended by Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ 2021 L 435, p. 187).

not begin until 2023. In addition, no evidence was adduced to demonstrate that the pre-financing was not available or that it was insufficient or to demonstrate that national resources had to be employed to offset the reimbursement of expenditure temporarily declared ineligible as a result of the financial correction at issue.

In those circumstances and notwithstanding the fact that the amounts which were the subject of the financial correction at issue were not recovered from the beneficiaries, it cannot be found that that correction involved an actual mobilisation of the national resources of the Member State concerned or, a fortiori, a loss of enjoyment by that Member State of the amount corresponding to that financial correction.

Therefore, the Court concludes that the payment of interest did not constitute a necessary measure to be taken by the Commission to comply with the judgment of 19 December 2019, *Czech Republic* v *Commission*, in accordance with its obligations under the first paragraph of Article 266 TFEU.

XII. FINANCIAL PROVISIONS: COMBATTING FRAUD

Judgment of the Court of Justice (Grand Chamber) of 16 July 2026, Lin II, C-280/25

Link to the full text of the judgment

Reference for a preliminary ruling – Protection of the financial interests of the European Union – Article 325(1) TFEU – Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests – Article 2(1) – Obligation to counter fraud affecting the financial interests of the Union by taking effective deterrent measures – Obligation to provide for criminal penalties – Serious fraud affecting the financial interests of the Union – Concept – Limitation period for criminal liability – National standard of protection relating to the principle of the retroactive application of the more lenient criminal law (*lex mitior* principle) – Obligation for the courts of a Member State to disapply case-law of the supreme court of that Member State which is not in line with EU law – Application of the judgment of 24 July 2023, *Lin* (C-107/23 PPU, EU:C:2023:606) – Constitutional prohibition on applying *lex tertia* – Limitation period already expired – Foreseeability of the conditions laid down by that judgment – Compatibility of that judgment with Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950

Hearing a request for a preliminary ruling from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) ('the ICCJ'), the Court, sitting as the Grand Chamber, gives a ruling regarding the interpretation of Article 325(1) TFEU [53] and the PFI Convention [54] as concerns the concept of 'serious fraud affecting the financial interests of the Union', as well as the consequences of the judgment in *Lin* [55] in light of a court decision having the authority of *res judicata* and of the national standard of protection relating to the retroactive application of the more lenient criminal law (*lex mitior*). The Court thus provides clarification regarding the way in which Romanian courts are to

53 That provision requires the Member States to counter fraud and any other illegal activities affecting the financial interests of the European Union through effective deterrent measures. As regards the penalties applicable, the Member States must ensure, pursuant to that provision, that cases of serious fraud or other illegal activities affecting the financial interests of the Union are punishable by effective dissuasive criminal penalties.

54 Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995 (OJ 1995 C 316, p. 48) ('the PFI Convention').

55 Judgment of 24 July 2023, *Lin* (C-107/23 PPU, 'the judgment in *Lin*', EU:C:2023:606).

apply the section of the operative part of the judgment in *Lin* in which it held that Article 325 of the FEU Treaty and Article 2(1) of the PFI Convention must be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, enshrined in Decision No 67/2022 of the ICCJ, [56] relating to the application of the *lex mitior* principle ('the national standard of protection').

M.G.D. has been prosecuted for having made available to B.V. 12 tax invoices relating to fictitious purchases. The damage caused to the State budget is 268 536 Romanian lei (RON) (approximately EUR 59 304) and the amount of value added tax (VAT) evaded is RON 163 656 (approximately EUR 36 142). On 21 March 2024, the Curtea de Apel Oradea (Court of Appeal, Oradea, Romania) ordered that the criminal proceedings against M.G.D. be closed on the ground that, pursuant to the national standard of protection of *lex mitior*, as enshrined in Decision No 67/2022, the limitation period for criminal liability for the offence of complicity in continuous tax evasion of which the person concerned was accused had expired. In the appeal on a point of law brought before the ICCJ, which is the referring court, the public prosecutor's office argued that the closure of the proceedings against M.G.D. had been incorrectly ordered, given that, pursuant to the judgment in *Lin*, the Romanian courts were required to disapply that national standard of protection, and that the limitation period could not be regarded as having expired, given that acts had been performed which interrupted that limitation period.

In that context, the referring court questions, first, whether, where there is no provision of national law fixing a minimum amount above which an instance of fraud affecting the financial interests of the Union is to be regarded as serious, an instance of VAT fraud which is in an amount not exceeding EUR 50 000 may be regarded as such. Second, it has questions as to whether the obligation for the Romanian courts, deriving from the judgment in *Lin*, to disapply the national standard of protection is to be maintained.

Findings of the Court

Concerning the first question referred for a preliminary ruling, the Court specifies, first, that it follows from Article 9 of the PFI Convention that any instance of fraud involving an amount exceeding the threshold of EUR 50 000 constitutes an instance of 'serious fraud'. Moreover, Article 2(1) of that convention, which relates to the obligation of the Member States to provide for effective penalties in respect of such instances of fraud, has direct effect. Thus, where they are unable to interpret their national legislation in a manner which is consistent with Article 2 of the PFI Convention, the courts of the Member States are required to disapply any provision of national law which is contrary to EU law. Consequently, to the extent that national law does not clarify the concept of 'serious fraud affecting the financial interests of the Union', those courts must classify as 'serious' an instance of fraud which is in an amount exceeding EUR 50 000 and which affects the financial interests of the Union.

Second, the Court indicates that it follows from the PFI Convention that such a threshold is to be regarded as having been exceeded from the moment that the total amount of the damage caused by the instance of fraud or illegal activity is greater than EUR 50 000, regardless of whether the damage caused to the budget of the Union reaches such an amount. It notes that the PFI Convention permits the Member States not to impose criminal penalties in cases of minor fraud involving a 'total amount' of less than EUR 4 000, which means taking into account the entirety of the damage caused by the instance of fraud for the purpose of determining whether an instance of fraud is 'minor'. It would be inconsistent if the method for calculating the threshold of EUR 50 000 did not permit account to be taken of damage other than that caused to the budget of the Union, when the method for calculating that ceiling of EUR 4 000 requires such other damage to be taken into account.

In addition, the Court emphasises that the criminal authorities of the Member States must be able easily to determine whether an instance of fraud affecting the financial interests of the Union concerns an amount greater than EUR 50 000. However, establishing precisely, at an early stage in a

---

56 Decision No 67 of 25 October 2022, published on 28 November 2022. In that decision, the ICCJ specified that, in Romanian law, the rules relating to the interruption of the limitation period for criminal liability formed part of substantive criminal law and that, consequently, they were subject to the principle of non-retroactivity of criminal law, without prejudice to the principle of the retroactive application of the more lenient criminal law (*lex mitior* principle).

given set of criminal proceedings, the exact amount of the damage suffered by the Union as a result of an instance of fraudulent conduct may prove to be particularly complex, given that there is no easily quantifiable correlation between the amount of VAT evaded and the loss of revenue suffered by the budget of the Union as a result of that instance of fraud.

Third, the Court states that the criteria pursuant to which an instance of fraud affecting the financial interests of the Union is to be classified as 'serious' must be sufficiently clear, precise and foreseeable on the date when the fraud is committed. If only instances of fraud causing damage to the budget of the Union in an amount greater than EUR 50 000 were to be covered by the concept of 'serious fraud', it would often be impossible for the perpetrators of such offences to determine with sufficient precision, on the date of committing those offences, whether they would be risking a stricter penalty pursuant to Article 2(1) of the PFI Convention. The share of the revenue collected each year by a Member State by way of VAT which goes to the budget of the Union varies depending on various criteria, some of which are not foreseeable on the date of collection or evasion of such a tax.

Lastly, when called upon to classify an instance of fraud as 'serious' for the purpose of applying Article 2(1) of the PFI Convention, the Court has taken account of the entirety of the damage caused by the fraud, without identifying what proportion of that damage exclusively affected the budget of the Union. In that context, an attempt to commit serious fraud must also be regarded as an instance of serious fraud, where it can be established that the total amount of the damage that the fraud would have caused would have exceeded EUR 50 000.

Concerning the second question referred for a preliminary ruling, the Court begins by providing, inter alia, clarification regarding the assessment, in the judgment in *Lin*, of the national standard of protection.

Classification of the national standard of protection in the light of Article 49 of the Charter of Fundamental Rights

In the judgment in *Lin*, the Court held that the ICCJ, in Decision No 67/2022, had enshrined a national standard of protection which went beyond the guarantees provided in the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter'). Under that national standard of protection, a rule governing the grounds for interruption of the limitation period for criminal liability may have to be applied retroactively as *lex mitior* where it appears, following an overall assessment of successive legal regimes, that such a rule is more favourable to the defendant. By contrast, unlike that national standard of protection, the *lex mitior* principle, as guaranteed in the last sentence of Article 49(1) of the Charter, is not applicable to a temporal succession of rules governing the method for calculating the limitation period for criminal liability.

The Court emphasises, in addition, that the principle of the supremacy of law, of which Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR') constitutes an essential element, does not require that the courts of a Member State apply retroactively rules relating to the method for calculating limitation periods for criminal liability which are more favourable to the defendant where the *lex mitior* principle, as enshrined in their national law, applies to the temporal succession of such rules. It cannot be argued on the basis of the case-law of the European Court of Human Rights relating to the guarantees provided in Article 7 ECHR that a national standard of protection which goes beyond the guarantees provided in Article 49(1) of the Charter is to be protected under Article 7 ECHR where that national standard of protection is contrary to other provisions of EU law, such as Article 325 TFEU and Article 2(1) of the PFI Convention.

Lastly, the Court recalls that the national courts cannot apply national standards of protection of fundamental rights except in so far as, inter alia, the primacy, unity and effectiveness of EU law are not thereby compromised. That requirement would not be met if it were to be accepted that a national standard of protection which goes beyond the guarantees provided in Article 49(1) of the Charter must be applied by the national courts, regardless of the fact that that standard is in breach of other provisions of EU law.

Assessment of the systemic risk arising from the national standard of protection

First, the Court notes that the national standard of protection leads to an increase in the systemic risk that perpetrators of instances of serious fraud will not be penalised under criminal law and thus to

Article 325(1) TFEU and Article 2(1) of the PFI Convention being deprived of a significant proportion of their effectiveness. Thus, under that standard, the limitation period for the criminal liability of perpetrators of all instances of serious fraud affecting the financial interests of the Union committed between the date of Romania's accession to the Union and 30 May 2022 would not be subject to any grounds for interruption.

Second, the Court notes that, unlike the national standard of protection relating to the precision and foreseeability of the law, which is of specific importance in EU law, Decision No 67/2022 requires a retroactive alteration of the method for calculating the limitation period for criminal liability which was in force on the date when the offence was committed. Such a consequence would reduce the effectiveness of criminal proceedings by making it possible to negate, retroactively, the effects of an interruption of the limitation period which had been legally obtained.

Third, the Court adds that the prohibition, derived from the judgment in *Lin*, on Romanian courts applying the national standard of protection enshrined in Decision No 67/2022 does not affect the requirements of precision and foreseeability regarding criminal law. The judgment in *Lin* in no way has the result that grounds for interruption of the limitation period for criminal liability which were not provided for on the date when instances of serious fraud were committed will be applied.

As a second step, the Court examines several aspects relating to the application of the judgment in *Lin*.

Constitutional principle prohibiting the application of lex tertia *in criminal law*

By point (a) of its second question, the referring court questions whether EU law [57] is to be interpreted as meaning that the Romanian courts are required to disapply the national standard of protection, even though, under a principle of constitutional rank prohibiting the application of *lex tertia*, those courts are forbidden to apply in part successive pieces of criminal legislation by combining some of the provisions of those pieces of legislation, and as prohibiting, by virtue of the protection against discrimination, comparable situations from being treated differently. The Court answers in the affirmative.

First, it emphasises that, in Romanian law, the principle that offences and penalties must be defined by law means that the calculation of the limitation period for an offence must be carried out under the rules applicable on the date when that offence was committed, unless a piece of legislation more favourable to the defendant has entered into force after that date. In that regard, the judgment in *Lin* requires only that the Romanian courts not grant retroactive effect to the rules governing the grounds for interruption of the limitation period which were in force between June 2018 and May 2022. This does not entail an obligation to combine several successive pieces of legislation in order to create, through judicial development of the law, a set of rules governing limitation periods for criminal liability.

Second, the Court explains that the difference in treatment, derived from the judgment in *Lin*, as between the legislation applicable to the limitation period for the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union and the legislation concerning the limitation period applicable to other types of fraud results directly from the limited material scope of Article 325(1) TFEU and Article 2(1) of the PFI Convention. That difference in treatment is justified in light of the objective of protecting the financial interests of the Union. Consequently, it cannot be accepted that, under a national standard of protection prohibiting such a difference in treatment, the Romanian courts would be required to apply Decision No 67/2022 to cases of serious fraud affecting the financial interests of the Union.

Condition relating to the systemic risk of impunity

Concerning point (d) of the second question referred, the Court replies that the same provisions of EU law must be interpreted as meaning that the Romanian courts must disapply the national standard of protection, despite the fact that, in their national law, there are no criteria enabling them to

---

57 In this instance, Article 325(1) TFEU and Article 2(1) of the PFI Convention, read in conjunction with Article 49, Article 52(3) and Article 53 of the Charter.

determine whether the application of that national standard of protection entails a systemic risk of impunity with regard to perpetrators of instances of serious fraud affecting the financial interests of the Union, given that it follows from the judgment in *Lin*, in a manner that is explicit and foreseeable, that that national standard of protection entails such a systemic risk.

First, the Court notes that, unlike in the situation examined in the case giving rise to the judgment in *M.A.S. and M.B.*, [58] the assessment of whether the application of Decision No 67/2022 entails a systemic risk of impunity for perpetrators of instances of serious fraud affecting the financial interests of the Union does not lead to uncertainty in the national legal order which is liable to be in breach of the national standard of protection relating to the requirement that the criminal law applicable must be precise.

Second, by finding that such a systemic risk of impunity exists, the Court did not act in breach of the guarantees derived from the principle of legal certainty. From the moment of the publication of Decision No 67/2022, such a systemic risk of impunity was foreseeable, given that perpetrators of instances of serious fraud affecting the financial interests of the Union were in a position to foresee the incompatibility of that decision with the requirements stemming from EU law.

Application of the judgment in Lin *to offences definitively time-barred under the national standard of protection*

By point (b) of its second question, the referring court asks, in essence, whether the Romanian courts must disapply Decision No 67/2022 when they are called upon to hear and determine criminal proceedings in respect of which the limitation period, if it were to be calculated by taking that decision into account, would have to be regarded as having expired before the date of delivery of the judgment in *Lin*.

Application of the judgment in *Lin* to a case in which a court decision has definitively found that the limitation period for criminal liability has expired

The Court specifies, first, that EU law does not require that a court decision having the authority of *res judicata* by which it has been found, on the basis of a calculation of the limitation period in the light of Decision No 67/2022, that criminal liability has been extinguished must be called into question, unless Romanian law were to provide the possibility to go back on that decision in order to render the situation compatible with EU law. Such a conclusion applies regardless of whether the court decision finding, definitively, that the limitation period has expired was handed down before or after the delivery of the judgment in *Lin*.

Second, the Court emphasises that a court decision cannot be regarded as being final where it may be the subject of an ordinary appeal, which forms part of the normal course of an action. In that regard, it is irrelevant that the proceedings which may be brought within a time limit determined by law and without the need for reliance on exceptional circumstances, as is the case for an appeal in cassation in Romanian law, are regarded, under national law, as being an extraordinary remedy. Thus, as long as the time limit for bringing such proceedings has not expired or a ruling has not been given thereon, that court decision cannot be regarded as being final.

Application of the judgment in *Lin* to criminal proceedings in respect of which expiry of the limitation period has not been found by a final judicial decision

The Court specifies that Article 49(1) of the Charter precludes the possibility that, after the limitation period for the criminal liability of the perpetrator of an offence has expired, that person's liability may be triggered again because of the entry into force of a new provision which extends that period. Indeed, it would be contrary to that article for such an extension to reactivate criminal liability which has been definitively extinguished. That interpretation respects the minimum threshold of protection established under Article 7 ECHR. By contrast, re-establishing criminal liability after the limitation period has expired is incompatible with the fundamental principles of legality and foreseeability enshrined in that article. It follows that, in order not to be in breach of the principle of legal certainty, neither Article 325 TFEU nor Article 2(1) of the PFI Convention may prevent the limitation period for

---

58 Judgment of 5 December 2017, *M.A.S. and M.B.* (C-42/17, 'the judgment in *M.A.S. and M.B.*', EU:C:2017:936).

the criminal liability of perpetrators of instances of serious fraud affecting the financial interests of the Union from being regarded as having expired on the basis of Decision No 67/2022 unless those provisions of EU law constitute a sufficiently clear and foreseeable legal basis to prevent the expiry of such a limitation period.

Regarding the date of the entry into force of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention, those provisions were incorporated into Romanian law on, at the latest, 1 December 2009 and 1 January 2008, respectively. No limitation period relating to such instances of fraud had expired on those dates, even applying such a national standard of protection to the calculation of that limitation period. Moreover, in view of the content of Article 280 EC, from the moment of Romania's accession to the Union, EU law precluded the application of a national standard, such as that enshrined in Decision No 67/2022, to cases of serious fraud affecting the financial interests of the Union.

Regarding the clarity and foreseeability of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention, the Court indicates, first, that from the date of delivery of the judgment in *Lin*, it has been foreseeable that those provisions will require the Romanian courts to disapply Decision No 67/2022. Second, as regards the period predating that delivery, the interpretation set out by the Court in the judgment in *Lin* was foreseeable already before Romania's accession to the Union.

Furthermore, the Court adds that the particular status which, in the judgment in *M.A.S. and M.B.*, the national standard of protection relating to the principle that offences and penalties must be defined by law is recognised as having in respect of the requirements of precision, foreseeability and non-retroactivity regarding criminal law cannot be transposed to the national standard of protection. Thus, that judgment does not permit the courts of the Member States to apply any national standard of protection relating to the method for calculating the limitation period for criminal liability, irrespective of the extent of the potential systemic risk of impunity in respect of instances of serious fraud affecting the financial interests of the Union.

Regarding the principle of legal certainty, the Court emphasises that the development of a consensus in the case-law as regards the way in which successive laws concerning time-barring are to be applied is a process which may evolve over time. Accordingly, that principle does not preclude the existence of uncertainty in the case-law, provided that the applicable law enables it to be reduced. In that context, the preliminary ruling procedure, as provided for in Article 267 TFEU, would have enabled the Romanian courts to avoid such uncertainty if they had made use of their option or abided by their obligation to question the Court as to the exact scope of the requirements stemming from Article 325(1) TFEU and Article 2(1) of the PFI Convention, as interpreted in the judgment in *Lin*. By adopting Decisions No 37/2024 and No 16/2024 [59] without making a reference to the Court beforehand, the ICCJ not only failed to fulfil its obligations under Article 267 TFEU, but also contributed to creating a situation devoid of legal certainty by requiring, in breach of EU law, other Romanian courts to adopt an interpretation of their national law which is manifestly incompatible with the requirements stemming from the judgment in *Lin*.

Consequently, the Court concludes that Article 325(1) TFEU and Article 2(1) of the PFI Convention, as interpreted in the judgment in *Lin*, meet the requirements of Article 49(1) of the Charter, which are at least equivalent to the guarantees derived from Article 7 ECHR.

[59] Decision No 37 of the ICCJ of 17 June 2024 and Decision No 16 of the ICCJ of 16 September 2024.

XIII. JUDGMENT PREVIOUSLY DELIVERED

ENVIRONMENT: TAXONOMY

Judgment of the General Court (First Chamber, sitting with five Judges) of 24 June 2026, Dassault Aviation v Commission, T-77/24

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

Environment – Delegated Regulation (EU) 2023/2485 – Taxonomy – Transitional activities – Exclusion of the activity of manufacturing business aircraft – Manifest error of assessment

In partially annulling Delegated Regulation 2023/2485, [60] the General Court, for the first time, finds that an economic operator has an interest in bringing proceedings against a European Commission delegated regulation which, with a view to supplementing the Taxonomy Regulation, [61] establishes technical screening criteria for the sector of activity to which that operator belongs.

The Taxonomy Regulation establishes a unified classification system in order to harmonise, at EU level, the criteria for determining whether an economic activity qualifies as environmentally sustainable in the light of various environmental objectives. Article 10(2) of that regulation concerns, inter alia, transitional activities, namely those for which there is no technologically and economically feasible low-carbon alternative, but which support the transition to a climate-neutral economy, subject to compliance with certain criteria.

Against that background, the Commission adopted Delegated Regulation 2021/2139 [62] to supplement the Taxonomy Regulation by establishing technical screening criteria for determining the conditions under which certain economic activities contribute substantially to the environmental objectives pursued by that delegated regulation.

Subsequently, Delegated Regulation 2023/2485 amended Delegated Regulation 2021/2139 by adding the manufacture of aircraft to taxonomy-eligible economic activities, that is to say, activities capable of satisfying the technical screening criteria established by that regulation. In that context, the manufacture of aircraft produced for business aviation is considered to be taxonomy-aligned – in other words, regarded as satisfying the relevant technical screening criteria – only in respect of aircraft with zero direct (tailpipe) CO_2 emissions.

By its action, Dassault Aviation, a French group active, inter alia, in the design, manufacture and sale of business aeroplanes, seeks the annulment of the provision of Delegated Regulation 2023/2485 concerning the manufacture of aircraft ('the contested provision').

Findings of the Court

Hearing a plea of inadmissibility raised by the Commission, the Court first examines whether the applicant has a legal interest in obtaining the annulment of the contested provision.

In that regard, the Court observes that the contested provision imposes on the applicant – which does not produce aircraft with zero direct (tailpipe) CO_2 emissions – the obligation to publish in its

---

60 Commission Delegated Regulation (EU) 2023/2485 of 27 June 2023 amending Delegated Regulation (EU) 2021/2139 establishing additional technical screening criteria for determining the conditions under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and for determining whether those activities cause no significant harm to any of the other environmental objectives (OJ L, 2023/2485).

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

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

management report the fact that its activity of manufacturing business aeroplanes, although taxonomy-eligible, is not taxonomy-aligned, that is to say that it is not an economic activity that is environmentally sustainable.

The annulment of the contested provision would make the manufacture of aircraft produced for ‘private or commercial business aviation’ a taxonomy-non-eligible economic activity. That would have the effect of removing the applicant’s obligation to state, in its management report, that its activity of manufacturing business aeroplanes is not taxonomy-aligned.

In addition, the Court finds that there is a sufficiently direct link between the presentation of the applicant’s economic activities as not taxonomy-aligned and the conditions under which it may access funding. The contested provision therefore adversely affects the applicant’s legal position, with the result that it has a legal interest in bringing proceedings in the present case.

As to the substance, the Court finds that the Commission did not fail to fulfil its obligation to state reasons by excluding the activity of manufacturing aircraft intended for private or commercial business aviation from transitional activities within the meaning of Article 10(2) of the Taxonomy Regulation.

It is apparent, in particular, from the explanatory memorandum to Delegated Regulation 2023/2485, read in the light of the working document which accompanied that regulation, that the Commission considered that that activity did not meet the conditions laid down by the Taxonomy Regulation for the establishment of technical screening criteria, given the CO2 footprint per passenger kilometre of the latest generation aircraft produced for private or commercial business aviation compared to that of other means of transport available.

The applicant could not have been unaware of the context in which Delegated Regulation 2023/2485 had been adopted, given its participation in the public consultation procedure concerning the proposed technical screening criteria. It was therefore in a position to understand why that delegated regulation excludes the abovementioned activity from the transitional activities referred to in the Taxonomy Regulation.

However, the Court considers that the Commission made a manifest error of assessment in excluding the manufacture of aircraft produced for private or commercial business aviation from transitional activities within the meaning of Article 10(2) of the Taxonomy Regulation.

First, the Commission could not use the existence of technologically and economically feasible alternatives as a basis for that exclusion on the ground that other available means of transport constituted low-carbon alternatives to the latest generation of business aeroplanes.

The fact – assuming it to be established – that scheduled commercial aeroplanes emit significantly less CO_2 per passenger than the latest generation of business aeroplanes does not, in itself, lead to the conclusion that the transport of passengers by scheduled commercial aircraft is a low-carbon activity. Moreover, trains, buses and private cars cannot constitute an alternative to the latest generation business aeroplanes, since they lack the flexibility and speed of such aeroplanes.

Second, the Commission could not base the abovementioned exclusion on the assertion that the latest generation of business aeroplanes have a significantly higher CO_2 footprint per passenger kilometre than other available means of transport. In fact, for the purposes of Article 10(2) of the Taxonomy Regulation, the Commission was required to take into account the CO_2 emissions of aircraft produced for private or commercial business aviation in relation to the best performance in the passenger air transport sector, and not the rail or road sectors.

Third, the Commission made the manifestly arbitrary decision not to take into account the ability of business aeroplanes to operate with a significant proportion of sustainable aviation fuel, even though it did take that ability into account for other aircraft with a take-off mass of more than 5.7 tonnes.

Fourth, it is apparent from the Commission working document that the Commission had not analysed all the relevant factors for assessing whether the activity of manufacturing aircraft produced for private or commercial business aviation fell within the scope of transitional activities.

In the light of those considerations, the Court annuls Delegated Regulation 2023/2485 in so far as it concerns the manufacture of aircraft.

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 General Court (Seventh Chamber) of 1 July 2026, Veikkaus v EUIPO (FOR BETTER GAMING – VEIKKAUS), T-615/25
- Judgment of the General Court (Eighth Chamber, sitting with five Judges) of 15 July 2026, Beloglazov v Council, T-492/24