



Monthly Case-Law Digest

September 2026

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I. VALUES OF THE UNION

1. RULE OF LAW – JUDICIAL INDEPENDENCE

Judgment of the Court (Fourth Chamber) of 3 September 2026, Ministerul Finanțelor (Referral to the Înalta Curte), C-606/24

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

Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Effective legal protection – Judicial independence – Tribunal previously established by law – Obligation of the national courts to refer a preliminary point of law to the supreme court – Article 267 TFEU

Hearing a request for a preliminary ruling from the Tribunalul Bucharest (Regional Court, Bucharest), the Court of Justice rules on the compatibility with the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of national legislation laying down an obligation for lower courts ruling on certain matters to stay the proceedings and to refer the case to the supreme court for a decision on a new point of law.

The case arises from a dispute between several persons and the Ministerul Finanțelor (Ministry of Finance, Romania) concerning the recalculation and payment of the salary entitlements of those persons as employees paid from public funds.

In the course of the main proceedings, a new special procedure, introduced by Emergency Order No 62/2024,¹ entered into force. That order is applicable to disputes concerning the establishment or payment of salary entitlements of staff paid from public funds and requires any court hearing a case raising a point of law which has not yet been decided by the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) ('the ÎCCJ') and which is not the subject of an appeal pending in the interests of the law, to stay the proceedings and refer the case to that supreme court, or, as the case may be, to await its decision if another court has already raised the same point of law before the ÎCCJ.

Articles 519 to 521 of the Romanian Code of Civil Procedure² already provide for the possibility for courts adjudicating at last instance to apply to the ÎCCJ for a preliminary decision providing a ruling in principle on a point of law. However, OUG No 62/2024 converts that option into an obligation for all Romanian courts. Taking the view that such an obligation could undermine judicial independence, the referring court referred a question to the Court of Justice for a preliminary ruling.

Findings of the Court

The Court notes, first of all, that the referring court neither calls into question its own independence or impartiality, nor those of the ÎCCJ, nor the compliance of the procedure laid down in Articles 519 to 521 of the Code of Civil Procedure with EU law, since its questions relate solely to the procedure established by OUG No 62/2024.

¹ Ordonanța de urgență a Guvernului nr. 62/2024 privind unele măsuri pentru soluționarea proceselor privind salarizarea personalului plătit din fonduri publice, precum și a proceselor privind prestații de asigurări sociale (Government Emergency Order No 62/2024 laying down measures for resolving proceedings concerning the remuneration of staff paid from public funds, as well as proceedings concerning social security benefits) of 13 June 2024 (*Monitorul Oficial al României*, Part I, No 559 of 14 June 2024; 'OUG No 62/2024'), which entered into force on 14 June 2024.

² Legea nr. 134/2010 privind Codul de procedură civilă (Law No 134/2010 establishing the Code of Civil Procedure) of 1 July 2010, in the version applicable to the dispute in the main proceedings ('the Code of Civil Procedure')



In that regard, the Court finds that, although that procedure is of a special nature, it nevertheless falls within the general framework of Articles 519 to 521 of the Code of Civil Procedure. Thus, the conditions for the admissibility of an application made to the ÎCCJ relate, first, to the existence of a point of law on which that court has not yet ruled and, second, to the need to resolve it in order to resolve the dispute. The obligation to refer laid down in Article 2(1) of OUG No 62/2024 does not therefore arise solely from the abstract existence of a point of law. On the contrary, that obligation is based on an actual verification and finding made by the court concerned, which must state the reasons for its question by setting out its assessment of the novelty of the point of law and the need for it to be resolved. According to the Court, those requirements preclude any automatic link between the existence of a question of law and mandatory referral to the ÎCCJ. The court concerned also retains sole jurisdiction to resolve the dispute by applying the rule of law which is the subject of that question. Consequently, the binding answer given by the ÎCCJ cannot be regarded as interference with the independence of the court seised of the dispute.

Next, the Court recalls that the Member States may, within the limits of EU law, provide for mechanisms to ensure the consistency and unification of the case-law, in particular by conferring on a supreme court exclusive jurisdiction to give a preliminary answer any new question, the answer to which is necessary for the outcome of the pending dispute. Thus, subject to compliance with the requirements arising from the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter, the mandatory suspension of cases before the lower courts, introduced by the Romanian legislature and justified by the prevention of conflicts in case-law in the matter concerned, does not, according to the Court, exceed the limits within which the Member States may exercise their competence in matters of the organisation of justice.

The Court also notes that the prior intervention of the ÎCCJ is circumscribed by objective criteria, relating in particular to the conditions of admissibility of the prior application. The applicable national law clearly defines the jurisdiction of the courts concerned. The lower courts thus retain exclusive jurisdiction to apply the law and to settle the dispute, while the ÎCCJ rules only on the abstract interpretation of the legal rule raised. Moreover, that procedure appears to observe the right of the parties to be heard, since the referral is, *inter alia*, preceded by hearing the parties and does not appear to infringe the principle that proceedings should be carried out swiftly.

Lastly, the Court states that the procedure governed by OUG No 62/2024 is compatible with Article 267 TFEU only if it does not prevent national courts from referring a matter to the Court of Justice where a question of interpretation or validity of EU law arises or restrict their discretion to determine the appropriate time to make a reference to the Court. Thus, even following the decision of the ÎCCJ, the lower courts must remain free to refer questions to the Court of Justice for a preliminary ruling. If those courts consider, in the light of the interpretation given by the Court, that the legal rulings of the ÎCCJ are not consistent with EU law, they cannot be bound by those rulings. Similarly, the full effectiveness of the provisions of EU law at issue means that the ÎCCJ itself must be able, where appropriate, to stay the proceedings in order to refer questions to the Court for a preliminary ruling. Noting in that regard the obligations arising from the principles of interpretation of national law in conformity with EU law and the primacy of EU law for national courts, the Court concludes that the procedure established by OUG No 62/2024 is compatible with the second subparagraph of Article 19(1) TEU, read in the light of Article 47 of the Charter.

2. GENERAL REGIME OF CONDITIONALITY FOR THE PROTECTION OF THE UNION BUDGET

Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Debreceni Egyetem v Council, T-115/23

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

Implementation of the Union budget – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the Union budget – Implementing Decision (EU) 2022/2506 – Measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary – Article 2(2) of Implementing Decision 2022/2506 – Prohibition preventing the Commission from entering into legal commitments with any public interest trust or any entity maintained by such a trust – Competence of the Council – Right to be heard – Legal certainty – Equal treatment – Manifest error of assessment – Article 2 TEU – Proportionality – Article 13 of the Charter of Fundamental Rights – Academic freedom – Articles 165 and 179 TFEU – Freedom to provide services – Article 56 TFEU

Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Semmelweis Egyetem v Council, T-138/23

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

Implementation of the Union budget – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the Union budget – Implementing Decision (EU) 2022/2506 – Measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary – Article 2(2) of Implementing Decision 2022/2506 – Prohibition preventing the Commission from entering into legal commitments with any public interest trust or any entity maintained by such a trust – Obligation to state reasons – Right to be heard – Intensity of judicial review – Proportionality – Error of assessment – Misuse of powers

Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Óbudai Egyetem v Council, T-132/23

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

Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Állatorvostudományi Egyetem v Council, T-133/23

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Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Miskolci Egyetem v Council, T-139/23

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Judgment of the General Court (Intermediate Chamber) of 30 September 2026, Dunaújvárosi Egyetem v Council, T-140/23

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

Implementation of the Union budget – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the Union budget – Implementing Decision (EU) 2022/2506 – Measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary – Article 2(2) of Implementing Decision 2022/2506 – Prohibition preventing the Commission from entering

into legal commitments with any public interest trust or any entity maintained by such a trust – Article 4(1) of Regulation 2020/2092 – Obligation to state reasons – Legal certainty – Legitimate expectations – Rights of the defence – Intensity of judicial review – Proportionality – Right to operate on an undistorted market – Article 16 of the Charter of Fundamental Rights – Principle of equal treatment and non-discrimination – Plea of illegality

Hearing six actions seeking the annulment of Implementing Decision 2022/2506 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary,³ which it dismisses, the General Court clarifies the conditions for the adoption of such measures on the basis of Regulation 2020/2092.⁴

The applicants are six Hungarian universities which have been maintained by public interest trusts since 2021.

In 2022, the Council of the European Union adopted Implementing Decision 2022/2506 by which it, *inter alia*, prohibited the European Commission, when implementing the Union budget, from entering into legal commitments with any public interest trust or any entity maintained by such a trust.⁵

Each of those six universities brought an action seeking to have that prohibition annulled.

The pleas raised in those actions overlap to a large extent, but are not identical, since some of the pleas mentioned below were raised in only some of those actions.

Findings of the General Court

In the first place, as regards the plea alleging that the Council lacked competence to adopt the contested provision, the General Court finds that the Council exercised its exclusive competence to establish and implement the Union budget⁶ and that, even though the European Union has only a supporting competence in the field of education and a shared competence in the field of research, it necessarily has the competence to suspend temporarily the implementation of its budget for education programmes, such as Horizon Europe and Erasmus+, *vis-à-vis* certain Member States, in particular in the event of breach of the principles of the rule of law.

In the second place, concerning the plea alleging breach of the obligation to state reasons, the General Court observes that it is apparent from Implementing Decision 2022/2506⁷ that the alleged infringement of the principles of the rule of law is assessed by the Council from the perspective of the principle of legal certainty, the prohibition of arbitrariness of the executive and the principle of the separation of powers, and is manifested, in the present case, by the existence of possible conflicts of interest.

It also follows from Implementing Decision 2022/2506 that that breach stems from a factual situation and from the regulatory framework in Hungary, which does not prevent top-level officials, including senior political executives, from sitting on boards of public interest asset management foundations. That breach of the principles of the rule of law is exacerbated by the fact that, with effect from 1 November 2022, Hungary reintroduced the possibility for senior political executives to hold other remunerated positions, including on such boards.

³ Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (OJ 2022 L 325, p. 94).

⁴ Article 4(1) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433 I, p. 1).

⁵ Article 2(2) of Implementing Decision 2022/2506 ('the contested provision').

⁶ Article 322(1)(a) TFEU.

⁷ Recitals 11, 43 and 62.

The General Court concludes from this that the Council set out, in a sufficiently detailed and comprehensive manner, the reasons why the contested provision was adopted.

In the third place, as regards the plea alleging infringement of Regulation 2020/2092, the General Court recalls, first of all, that the EU Courts carry out a full review of questions of law, which consists, in particular, in interpreting legal provisions on the basis of objective factors and in verifying whether the conditions for the application of such provisions are satisfied. Concerning the establishment of facts devoid of economic, technical or scientific complexity, the judicial review carried out by the EU Courts is also to be a full review. In the present case, the judicial review to be carried out is not a limited review, since the EU legislature has made the initiation of the procedure at issue subject to criteria of a legal rather than political nature.

With respect to the detection and assessment of breaches of the principles of the rule of law, that assessment must be objective, impartial and fair, compliance with all of those obligations being subject to full judicial review by the EU Courts.

Next, the General Court considers the existence of breaches of the principles of the rule of law.

It states that Regulation 2020/2092 covers both individual breaches of the principles of the rule of law and systemic breaches.

The General Court observes that it follows from Implementing Decision 2022/2506 that the concerns regarding breaches of the principles of the rule of law related to the legal framework applicable to public interest trusts, and not breaches committed on an individual basis by those trusts or by the entities maintained by them, such as the applicants. Since the alleged breaches are systemic in the present case, the General Court takes the view that the Commission and the Council were not required to establish individual breaches of the principles of the rule of law by each entity concerned. Such an interpretation would make it impossible to adopt measures aimed at remedying systemic breaches of the principles of the rule of law.

Consequently, the General Court finds that a systemic breach of the rule of law may lead to the adoption of a measure to protect the Union budget under Regulation 2020/2092, even in the absence of individual breaches of the rule of law by the entities concerned.

The General Court points out that breaches of the principles of the rule of law were established to the requisite legal standard, breaches that are systemic in nature owing to Hungary's systemic inability, failure or unwillingness to prevent decisions taken in breach of the applicable law on conflicts of interest.

In those circumstances, it considers that the finding of a breach of the principles of the rule of law did not require individual breaches to be established.

The General Court also rules on the existence of a genuine and sufficiently direct link between the breach of the principles of the rule of law and its impact on the Union budget.

First, it makes clear that, depending on the deed of foundation of a higher education institution, the public interest trust may wield significant powers over the institution's budgetary, operational and organisational affairs.

Secondly, it points out that the applicants are maintained by public interest trusts and are under the control of their respective boards, the members of which are appointed for an indefinite term by the executive. Those members could thus exercise decisive influence over the entities maintained by those trusts and over direct EU funding received by such entities. There is therefore a genuine and serious risk that decisions on the development of programmes, university training courses and EU-funded research and development projects, as well as the hiring of the staff involved in those projects, may be directly influenced by political considerations.

Accordingly, the General Court finds that, in the absence of the contested provision, such trusts and entities maintained by them could receive resources from the Union budget.

In the present case, the General Court finds that, as regards the Erasmus+ and Horizon Europe programmes, public interest trusts are able to play a role in the disbursement of EU funds to final beneficiaries. There is thus a genuine and systemic risk that political, economic or personal conflicts of interest could interfere with the choice of those beneficiaries.

In the context of the Erasmus+ programme more specifically, there is a risk that conflicts of interest could interfere with the selection of beneficiary students, including with the choice and mutual recognition of eligible courses taken in other Member States, thereby introducing into that selection process considerations going beyond the assessment of academic merit. In view of the pervasiveness of political control and the risk of conflicts of interest, the Council asserted before the General Court that all internal processes, university procedures and governance structures involved in the use of EU funds are susceptible to external influence, which could result in the inappropriate expenditure of EU funds.

The protection of the financial interests of the Union is based on the premiss that its financial resources are not to be used to finance public interest entities of Member States the operating arrangements of which breach the principles of the rule of law.

Therefore, the General Court concludes that the Commission and the Council established to the requisite legal standard a genuine and sufficiently direct link between the alleged breaches of the principles of the rule of law and their impact on the Union budget.

In the fourth place, as regards the plea alleging breach of the principle of proportionality, the General Court rules, first, on the appropriateness of the contested provision. It states, *inter alia*, that the assertion by the university concerned that it has no influence over the alleged breaches of the principles of the rule of law disregards the fact that the purpose of Regulation 2020/2092 is to protect the Union budget and not to penalise, as such, breaches of the principles of the rule of law in a Member State.

Secondly, the General Court rejects as unfounded the applicants' argument that their interests and situation were not taken into consideration before the adoption of Implementing Decision 2022/2506. The fact that those matters were indeed taken into account is apparent, *inter alia*, from the fact that the contested provision is the least disruptive to the programmes already in progress on the date of its taking effect and that it does not affect Hungary's obligations, in particular its obligations towards final recipients or beneficiaries.

Thirdly, the General Court rules on the proportionality of the contested provision. It observes, first of all, that that provision meets the general interest objective of protecting the Union budget. Next, the measure provided for in the contested provision is strictly circumscribed by Regulation 2020/2092, which does not leave a broad discretion to the Council as regards its choice and scope. Lastly, the contested provision is not disproportionate, since its impact on the overall allocation of funds and on the final recipients or beneficiaries, towards whom Hungary is required to fulfil its obligations, is limited.

In the fifth place, concerning the plea alleging infringement of academic freedom, the General Court finds that, in accordance with the case-law of the Court of Justice⁸ and the recommendations and opinions of several international organisations,⁹ in particular the Venice Commission,¹⁰ that freedom, enshrined in the Charter of Fundamental Rights of the European Union,¹¹ incorporates a requirement for higher education institutions to be autonomous vis-à-vis public authorities and, in particular, the executive.

⁸ Judgment of 6 October 2020, *Commission v Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraphs 224 and 225 and the case-law cited.

⁹ Recommendation 1762 (2006) 'Academic freedom and university autonomy', Parliamentary Assembly of the Council of Europe; Recommendation concerning the Status of Higher-education Teaching Personnel, 29th session of the General Conference of the United Nations Educational, Scientific and Cultural Organisation (Unesco), Paris (France), points 18 and 19.

¹⁰ Opinion of 2 July 2021, European Commission for Democracy through Law ('the Venice Commission'), in particular paragraph 33.

¹¹ Article 13, second sentence.

The General Court notes that Implementing Decision 2022/2506 is of a financial nature and does not contain any prohibition or requirement relating to the academic activities of those institutions. Thus, the fact that Member States may, in the event of serious breaches of the principles of the rule of law, be subject to remedial measures does not, in itself, constitute an interference with the fundamental right to academic freedom. A temporary reduction in funding from the Union budget also does not constitute such an interference. A refusal to allocate financial resources to a research and knowledge-dissemination organisation, such as a university or a research institute, or to researchers or research groups does not, in itself, constitute an interference with or a restriction of academic freedom, provided that any decision refusing to grant financial resources is based on scientific considerations or on policy guidelines in the fields of education and research and development drawn up by the legislature, or stems from objectives of general interest clearly laid down by law. The contested provision also contributes to preserving institutions' organisational autonomy by minimising the scope for arbitrary interference by the executive and is thus conducive to ensuring respect for academic freedom and for the principles of the rule of law. Accordingly, it does not interfere with that freedom.

In the sixth place, concerning the plea alleging infringement of the freedom to provide services, the General Court points out that, although the case-law has excluded from the concept of 'services' courses provided by certain public education institutions financed by public funds, the Court of Justice has nevertheless included courses provided by education institutions essentially financed by private funds. Even though a higher education institution financed, wholly or mainly, by public funds may, at the same time, carry out other activities of an economic nature, such as research activities financed by private funds, none of the evidence adduced made it possible to determine whether the institution concerned was essentially financed by private funds. Therefore, Implementing Decision 2022/2506 has a marginal financial impact on that establishment, given the State's obligation to finance the activities of universities. In any event, even if activities of an economic nature and services were involved, or even if there was a restriction on or obstacle to the freedom to provide services, the General Court points out that Implementing Decision 2022/2506 pursues the public interest objective of protecting the Union budget against breaches of the principles of the rule of law and is proportionate to that objective.

In the last place, as regards the plea alleging infringement of Articles 165 and 179 TFEU, the General Court makes clear, in any event, that the fundamental principle of freedom of movement is particularly important in the field of education, scientific research and technological development, in particular in the context of the objective of achieving a European research area in which researchers, scientific knowledge and technology circulate freely. According to the General Court, since the European Union established and finances the Erasmus+ and Horizon Europe programmes, it must ensure not only that the allocation or withdrawal of grants and programmes designed to facilitate the mobility and freedom of movement of the beneficiaries of those programmes does not create an unjustified restriction on the right to cooperate freely across borders and to move and reside in the territory of the Member States, but also that countries in receipt of funds under the Erasmus+ and Horizon Europe programmes respect academic freedom, in order to guarantee scientific and academic excellence.

II. FUNDAMENTAL RIGHTS: RIGHT TO VOTE AND STAND AS A CANDIDATE IN EUROPEAN PARLIAMENT ELECTIONS

Judgment of the Court (First Chamber) of 17 September 2026, Erakond Eestimaa Rohelised, C-438/24

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

Reference for a preliminary ruling – Article 17(1), Article 39 and Article 52(1) of the Charter of Fundamental Rights of the European Union – Democratic principle – Right to stand as a candidate at elections to the European Parliament – Limitation on the exercise of that right – Act concerning the election of the Members of the European Parliament by direct universal suffrage – Conditions of eligibility – Requirement to pay an electoral deposit – Presentation of ‘non-serious or frivolous’ nominations for registration – Objective of discouragement – Representativeness of the electorate – Proportionality of the amount of that deposit having regard to the objectives pursued

In response to a request for a preliminary ruling from the Riigikohus (Supreme Court, Estonia), the Court of Justice rules on the issue of whether Article 17(1) and Article 39(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’) preclude a national measure requiring the payment of a deposit to stand as a candidate in elections to the European Parliament.

The Erakond Eestimaa Rohelised (Estonian Green Party; ‘the EER’) submitted to the Vabariigi Valimiskomisjon (Electoral Commission of the Republic of Estonia; ‘the Electoral Commission’) an application to register a list of nine nominated candidates at the elections to the European Parliament held in June 2024. Since the EER paid the deposit provided for under Estonian law in respect of two candidates only, the Electoral Commission rejected the application for registration so far as it concerned the other seven candidates on that list.

The referring court, ruling on an electoral petition against that rejection decision, expresses doubts as regards the proportionality of the national legislation at issue in the main proceedings, under which the registration of a nomination in elections to the European Parliament is subject to payment of a deposit amounting to five times the minimum monthly wage in force, refundable on condition that the independent candidate or the list of candidates of a party has attained the threshold of five percent of the votes cast in those elections.

In that context, it referred a question for a preliminary ruling to the Court of Justice concerning the compatibility of that legislation with Article 17(1) and Article 39(2) of the Charter.

Findings of the Court

Having ruled out the applicability of Article 17(1) of the Charter to the present dispute, inasmuch as the requirement to lodge a deposit at issue cannot be regarded as constituting a deprivation of possessions or as a regulation of the use of property within the meaning of that provision, the Court examines whether that requirement, which constitutes a limitation on the exercise of the right to stand as a candidate in elections to the European Parliament, complies with the principles of direct suffrage in a free and secret ballot, enshrined in Article 39(2) of the Charter, read in conjunction with the principle of representative democracy which acts as a framework for such elections, as expressed in Article 10 TEU. The Court observes that the latter principle gives concrete expression to democracy as a value, which is, under Article 2 TEU, one of the values on which the European Union is founded.

Recalling that Article 10(3) TEU underscores, as regards elections to the European Parliament, the link between the principle of representative democracy within the European Union and the right to vote and to stand as a candidate in those elections, the Court states that the Member States are bound, under Article 39(2) of the Charter, read in conjunction with Article 14(3) TEU, to ensure that the election of members of the European Parliament is by direct universal suffrage and in a free and secret ballot in order to ensure the representativity of the members of the European Parliament.

In accordance with Article 52(1) of the Charter, limitations may be imposed on the exercise of rights such as those set forth in Article 39 of the Charter, as long as the limitations are provided for by law,

respect the essence of those rights and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised as legitimate by the European Union.

In the present case, the first two conditions are met inasmuch as, first, the requirement to lodge a deposit is provided for under national legislation and, secondly, the exercise of the right to stand as a candidate is not rendered impossible by that requirement, but merely rendered subject to a financial condition.

The same applies as regards the legitimacy of the objectives of general interest relied upon to justify the limitation of the right to stand as a candidate. The objective of discouraging the submission of 'non-serious or frivolous' nominations for registration, which seeks to ensure representative democracy by preventing nominations for registration from persons who do not have the intention of becoming a member of the European Parliament, constitutes a legitimate objective, in the same way as, in principle, the objective seeking to reduce the number of 'lost votes', which do not contribute to the election of a member of the European Parliament, in order to obtain an institution which is more representative of the electorate.

So far as concerns observance of the principle of proportionality, the Court takes the view, in the first place, that the requirement to lodge a deposit is appropriate for the purposes of meeting those objectives, since it is such as to discourage non-serious nominations for registration by encouraging candidates to question their motivation and by casting light on their capacity to conduct a credible campaign.

In the second place, the Court examines whether such a requirement goes beyond what is necessary to achieve those objectives. In that regard, the amount of the deposit in respect of each candidate was, at the date of the initiation of the main proceedings, approximately 2.2 times higher than the Estonian average gross monthly wage and approximately 2.6 times higher than the Estonian median gross monthly wage, which may be a significant financial burden for an EU citizen wishing to stand as a candidate.

The Court also observes, first, that the payment of such a high deposit is not required for registration of a nomination in elections to the national Parliament, even though the objective consisting in discouraging 'non-serious or frivolous nominations' is also pursued in respect of such elections. If such a difference was not warranted by the different voting systems used in those elections, which it is for the referring court to determine, the higher amount of the deposit for the purposes of elections to the European Parliament therefore cannot be regarded as proportional in the light of that objective.

Secondly, since the national legislation restricts the capacity of political parties to generate revenue to fund their activities, the high amount of the deposit may exhaust a significant part of the annual budget of some candidates or parties. Those candidates or parties must bear simultaneously the campaign expenses and the risk of losing that sum if they do not obtain the threshold of five percent of votes cast, which may render it difficult in practice for candidates or parties with low revenues to stand for election.

In the light of the foregoing, the Court concludes that a deposit of an amount such as that provided for by the legislation at issue in the main proceedings, and the arrangements for the refund of that deposit provided for by that legislation, exceed the limits of that which is necessary to achieve the objectives pursued by the legislation at issue in the main proceedings, which is therefore contrary to Article 39(2) of the Charter, read in conjunction with the principle of representative democracy, as expressed in Article 10 TEU.

III. EU LAW AND NATIONAL LAW: LIABILITY OF A MEMBER STATE FOR LOSS OR DAMAGE CAUSED TO INDIVIDUALS BY THE INFRINGEMENT OF EU LAW

Judgment of the Court (Grand Chamber) of 8 September 2026, Statul Român – Ministerul Finanțelor Publice and Curtea de Apel București, C-163/24

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

Reference for a preliminary ruling – Agriculture – Common agricultural policy – Direct support schemes – Regulation (EC) No 1782/2003 – Article 20(1) – Identification system for agricultural parcels – Effective administration and control – Regulation (EC) No 796/2004 – Article 68 – Obligation on the farmer correctly to declare the areas and identify the parcel used and its boundaries – Reductions and exclusions in cases of overdeclaration – Exceptions – Concept of ‘factually correct information’ – State liability for loss or damage caused to individuals by the infringement of EU law – Infringement attributable to a national court ruling at last instance – No provision intended to confer rights on individuals

The Court of Justice, sitting as the Grand Chamber, provides clarification as regards the concept of a rule of law intended to confer rights on individuals and as regards the rules governing State liability resulting from a breach of EU law attributable to a court ruling at last instance.

BX, a Romanian farmer, was excluded from receiving area-related aid for having vastly overdeclared the size of his agricultural areas. In support of an action for annulment of that decision, BX argued, unsuccessfully, that that overdeclaration was a result of the inaccuracy of the maps made available by the competent national authority, and that, accordingly, no exclusion from the aid should have been applied to him.

Ruling at last instance, the Curtea de Apel București (Court of Appeal, Bucharest) dismissed BX’s appeal as unfounded and refused to make a reference to the Court of Justice for a preliminary ruling.

BX then brought an action for liability of the State for the infringement of EU law by the Court of Appeal, Bucharest. He argued that that court had acted in breach of, in particular, Article 20 of Regulation No 1782/2003¹² and Article 68 of Regulation No 796/2004,¹³ as well as the third paragraph of Article 267 TFEU, owing to the failure to provide reasons for its refusal to make a reference to the Court of Justice for a preliminary ruling. That action having been dismissed, BX brought an appeal before the Court of Appeal, Bucharest, which is the referring court.

Findings of the Court

In the first place, the Court recalls that, in order for the liability of the State to be triggered for loss or damage caused to individuals by infringements of EU law attributable to that State, three cumulative conditions must be met, namely the rule of EU law breached must be intended to confer rights on the individuals concerned, the breach of that rule must be sufficiently serious, and there must be a direct causal link between that breach and the loss or damage sustained by those individuals.

Regarding the condition that the rule breached must be intended to confer rights on individuals, those rights arise not only where they are expressly granted by provisions of EU law, but also because

¹² Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1), as amended by Council Regulation (EC) No 1009/2008 of 9 October 2008 (OJ 2008 L 276, p. 1).

¹³ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18), as amended by Commission Regulation (EC) No 381/2007 of 4 April 2007 (OJ 2007 L 95, p. 8).

of positive or negative obligations which such provisions impose in a clearly defined manner, whether on individuals or on the Member States or institutions of the European Union. The failure by a Member State to comply with such obligations is liable to alter the legal situation which those provisions are intended to establish for the individuals concerned by hindering the exercise, by those individuals, of the rights which are implicitly conferred on them under the provisions in question and on which they are deemed to be able to rely before the national courts.

By contrast, a provision of EU law which merely pursues a general objective of protecting the public interest is not intended to confer rights on individuals.

In this instance, there is nothing to permit the consideration that Article 20(1) of Regulation No 1782/2003 is of a dual nature inasmuch as, in addition to its institutional dimension intended to protect the financial interests of the Union, it is also intended to confer rights on individuals. Indeed, that provision does not enshrine any right of access, for farmers seeking aid, to the information contained in the identification system for agricultural parcels.

In the second place, the Court rules that the concept of ‘factually correct information’ referred to in Article 68(1) of Regulation No 796/2004 covers both the correct declaration of areas by the farmer and the correct identification by that farmer of the parcel used and its boundaries.

In the third place, the Court recalls that the full effectiveness of the rules of EU law would be called into question and the protection of the rights conferred on individuals by those rules would be weakened if individuals were precluded from being able, under certain conditions, to obtain redress for the loss or damage caused to them by a breach of EU law attributable to a decision of a national court ruling at last instance.

Nevertheless, in view of the specific nature of the judicial function and the legitimate requirements of legal certainty, the liability of a Member State resulting from such a breach cannot be triggered except in the exceptional case where the court has manifestly acted in breach of the applicable law.

In order to determine whether that condition is satisfied, account must be taken of, inter alia, the degree of clarity and precision of the rule breached, the extent of the discretion that the breached rule leaves the national or EU authorities, whether the breach and the loss or damage caused were intentional or involuntary and whether any error of law was excusable or inexcusable, as well as any non-compliance by the court in question with its obligation to make a reference for a preliminary ruling. In any event, a breach of EU law will be sufficiently serious if there has been a manifest breach of the case-law of the Court in the matter.

Although non-compliance with the obligation to make a reference for a preliminary ruling may be likely to lead to a finding that an infringement of EU law by a court against whose decisions there is no remedy is manifest, it is not, in itself, sufficient for a finding that there has been a sufficiently serious breach of a rule of EU law which is intended to confer rights on individuals.

The system of cooperation between the Court of Justice and the national courts does not constitute a means of redress available to the parties to a case pending before a national court or tribunal, and the mere fact that such a party contends that the dispute gives rise to a question concerning the interpretation of EU law does not mean that the court or tribunal concerned is compelled to consider that such a question has been raised within the meaning of Article 267 TFEU. Accordingly, in order for there to be a finding of a sufficiently serious breach of EU law triggering the liability of a Member State, non-compliance with the obligation to make a reference for a preliminary ruling must be accompanied by breach of another rule of EU law conferring rights on individuals. That is not the situation in this instance, given that (i) Article 20(1) of Regulation No 1782/2003 is not intended to confer rights on individuals, and (ii) a farmer cannot validly rely on Article 68(1) of Regulation No 796/2004 in circumstances such as those of the dispute in the main proceedings.

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

Reference for a preliminary ruling – Directives 77/187/EEC and 2001/23/EC – Transfers of undertakings – Safeguarding of employees’ rights – Article 1(1) and Article 3(1) – Obligation to make a request for a preliminary ruling under the third paragraph of Article 267 TFEU – Member State liability for damage caused to individuals by breaches of EU law attributable to that Member State – Breaches attributable to a national court or tribunal against whose decisions there is no judicial remedy under national law – Taking into consideration the case-law of the Court extant at the time of delivery of the decision of that national court or tribunal which allegedly caused that harm

Ruling on a request for a preliminary ruling from the Supremo Tribunal de Justiça (Supreme Court, Portugal), the Court of Justice clarifies the conditions for a Member State to incur liability on account of a decision of a court adjudicating at last instance.

The appellants in the main proceedings, who are former employees of the airline Air Atlantis S. A. (AIA), collectively made redundant following the winding up of that company, brought a challenge against their redundancy, arguing that Transportes Aéreos Portugueses S. A. (TAP) had taken over part of AIA’s assets and pursued the charter flight activity, with the result that there had been a transfer of a business.

By judgment of 25 February 2009, the referring court found that no transfer of an undertaking had taken place and that it was not necessary to make a reference to the Court of Justice for a preliminary ruling, in the light of the latter’s settled case-law regarding transfers of business. Taking the view that that judgment was vitiated by errors of interpretation of the concept of ‘transfer of a business’ within the meaning of Directives 77/187¹⁴ and 2001/23,¹⁵ and that that court had infringed its obligation to make a reference for a preliminary ruling, the appellants in the main proceedings brought an action seeking to establish the liability of the Portuguese State. Ruling on a request for a preliminary ruling, the Court held, in its judgment of 9 September 2015,¹⁶ that the facts of the case in point made it possible to establish a transfer of a business and that the referring court was required to make a reference to it seeking the interpretation of that concept.

Since the lower courts found that the judgment of 25 February 2009 did not breach EU law sufficiently seriously, the appellants in the main proceedings again brought an appeal before the Supremo Tribunal de Justiça (Supreme Court). The latter asks the Court of Justice whether the conclusion that the Court reached in its judgment of 9 September 2015 could be based solely on the case-law predating the judgment of 25 February 2009, and whether that judgment constituted a sufficiently serious breach of EU law.

Findings of the Court

As a preliminary point, the Court recalls that the principle of State liability for breaches of EU law also applies where the breach stems from a decision of a national court adjudicating at last instance.

¹⁴ Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26).

¹⁵ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).

¹⁶ Judgment of 9 September 2015, *Ferreira da Silva e Brito and Others* (C-160/14, EU:C:2015:565).

That liability is subject to three cumulative conditions, namely that the rule of EU law infringed must be intended to confer rights on individuals; the breach of that rule must be sufficiently serious; and there must be a direct causal link between the breach and the loss or damage sustained.

Since the purpose of Directives 77/187 and 2001/23 is to safeguard employees' rights in the event of transfers of undertakings, the first condition is met.

As regards the requirement of a sufficiently serious breach of EU law, having regard to the specific nature of the judicial function and the requirements of legal certainty, the Court recalled that State liability for a breach of EU law by a decision of a national court ruling at last instance can be incurred only in the exceptional case where the court has manifestly infringed EU law. The assessment thereof must take account of all the factors, inter alia, the degree of clarity of the rule infringed, the scope of the room for assessment for national authorities, whether the error was excusable or inexcusable, the position of the EU institutions, and non-compliance with the obligation to make a reference for a preliminary ruling. The Court makes clear that those criteria are not cumulative and are to be assessed in the light of the case-law as it stood at the date of the decision concerned. Similarly, the infringement of the third paragraph of Article 267 TFEU alone does not suffice to support a finding of a sufficiently serious infringement of EU law, but must be accompanied by a breach of another rule of EU law which confers rights on individuals.

In any event, a breach of EU law is sufficiently serious where the decision concerned was made in manifest breach of the relevant case-law of the Court. It is, in principle, for the national courts to apply the criteria for establishing the liability of Member States for damage caused to individuals by breaches of EU law, in accordance with the guidelines laid down by the Court.

In the present case, three factors are decisive in finding whether the judgment of 25 February 2009 constitutes a sufficiently serious breach of EU law.

In the first place, prior to that judgment, the Court had already developed, in its case-law, a methodology for assessing the existence of a transfer of an undertaking. That methodology required that a distinction be made between sectors where the activity is essentially based on manpower and those which require a significant amount of equipment. Since air transport belongs to that second category, the taking over of equipment essential to operations is decisive in assessing the existence of a transfer.

However, the referring court failed to follow that methodology, relying instead in its analysis on the retention, by the entity transferred, of its organisational autonomy, whereas no such condition is apparent in either the directives or the case-law of the Court of Justice. It also gave priority to economic objectives instead of objectively assessing whether the entity retains its identity, as indicated inter alia by the fact that its operation is actually continued or resumed. Those errors constitute evidence of a sufficiently serious breach of EU law.

In the second place, the referring court failed to comply with the obligation to make a reference for a preliminary ruling under the third paragraph of Article 267 TFEU. While a court ruling at last instance may, in certain cases, refrain from making a reference to the Court, it may not do so by relying on an interpretation which departs from the case-law of the Court of Justice without making a reference for a preliminary ruling.

In the third place, when the referring court gave its ruling, a case pending before the Court of Justice in which the Advocate General had given his Opinion a few months before raised precisely the question of the retention by the entity transferred of its organisational autonomy. The Court observes that that factor is such as to reduce the likelihood that the incorrect interpretation of EU law by that court will be found to be excusable.

The Court infers that it is for the referring court to determine, in the light of those three factors, whether, in its judgment of 25 February 2009, it breached EU law sufficiently seriously and to ascertain whether there is a direct causal link between that breach and the harm which is claimed to have been suffered.

Finally, the Court rules that the rights safeguarded by Directives 77/187 and 2001/23 are mandatory and can neither be waived nor restricted, even with the consent of the employee. It infers that those directives preclude national legislation which equates the receipt, by an employee, of the statutory

compensation due following a collective redundancy to acceptance, on the part of that employee, of his or her dismissal, and thus deprives him or her of the possibility of challenging that dismissal and demanding that his or her rights be safeguarded.

IV. PROCEEDINGS OF THE EUROPEAN UNION: APPEAL

Judgment of the Court (First Chamber) of 10 September 2026, ECCA v Commission, C-773/23 P

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

Appeal – Plant protection products – Active substances – Regulation (EC) No 1107/2009 – Article 4 – Approval criteria for active substances – Implementing Regulation (EU) 2020/17 – Non-renewal of approval of the active substance ‘chlorpyrifos-methyl’ – Admissibility – Second paragraph of Article 56 of the Statute of the Court of Justice of the European Union – Standing to bring proceedings – Condition that the applicant must be directly affected by the judgment against which it is appealing – Appeal brought by an intervener at first instance

In dismissing the appeal brought by the European Crop Care Association (‘ECCA’) against the General Court’s judgment in the case *Ascenza Agro and Industrias Afrasa v Commission*,¹⁷ the Court of Justice clarifies the conditions for the admissibility of appeals brought by non-privileged interveners, and more specifically the condition of being directly affected, where such a party is a representative association.

ECCA, an association representing the European plant protection industry, intervened before the General Court in support of an action for annulment, brought inter alia by one of its members, of Implementing Regulation 2020/17¹⁸ concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl. Following the dismissal of that action, ECCA brought an appeal, supported by its member Ascenza Agro SA, one of the parties to the action for annulment.

However, the European Commission contested the admissibility of that appeal on the ground that ECCA, as an intervener, was not directly affected by the judgment under appeal and accordingly did not have standing to bring an appeal.

Findings of the Court

In the first place, the Court of Justice notes that, according to the second sentence of the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union, interveners other than the Member States and the institutions of the Union may bring an appeal only where the decision of the General Court directly affects them, a fact which it is for the intervener to establish in detail.

¹⁷ Judgment of the General Court of 4 October 2023, *Ascenza Agro and Industrias Afrasa v Commission* (T-77/20, EU:T:2023:602).

¹⁸ Commission Implementing Regulation (EU) 2020/17 of 10 January 2020 concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl, in accordance with Regulation (EC) No 107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2020 L 7, p. 11).

However, it is not sufficient to demonstrate an interest in the result of the dispute and to have been granted leave to intervene in the case at first instance in order to be entitled to bring an appeal. It is apparent from the case-law of the Court of Justice that an intervener is directly affected where the decision of the General Court which it seeks to have set aside brings about a detrimental change in its legal position or adversely affects its interests, on account of necessary measures which it is required to take in order to comply with that decision.

Thus, an intervener at first instance can be regarded as directly affected by the judgment which it seeks to have set aside only where that judgment produces, in itself, binding effects on that intervener's own legal situation. Any binding effects produced by that judgment with regard to the legal situation of the main party supported at first instance by the intervener are irrelevant in that regard.

In the present case, ECCA has failed to demonstrate that the judgment under appeal significantly and immediately affects its interests. Indeed, the arguments put forward by ECCA merely provide a list of the various operations and services that it carries out for its members in the context of its duties under its statutes, without stating what measures it would be compelled to adopt in order to comply with the judgment under appeal or how those measures could bring about a detrimental change in its legal position or adversely affect its own interests.

In the second place, the Court of Justice considers that it is not necessary to examine whether the criteria established in the context of actions for annulment under the fourth paragraph of Article 263 TFEU brought by a representative association against an act which is not addressed to it may, by analogy, be applicable in the present case.

In that regard, the Court notes that an action for annulment is admissible only if the legal person bringing it has standing to bring proceedings. Such standing may be recognised in two situations: first, where the act in question is of direct and individual concern to that person and, second, where the regulatory act is of direct concern to it and does not entail implementing measures.

In the present case, in so far as it has not established that it is itself directly affected by the judgment under appeal, ECCA does not fulfil those criteria and therefore does not come within either of those two situations. Moreover, contrary to the requirements arising from the relevant case-law, ECCA merely submitted a document attesting that Ascenza Agro, which was one of the parties to the action for annulment, was one of its members, without specifying whether, by bringing the appeal, it was acting on behalf of Ascenza Agro.

In view of the foregoing, the Court dismisses the appeal as inadmissible.

V. PROTECTION OF PERSONAL DATA

Judgment of the Court (First Chamber) of 3 September 2026, Jautiva, C-798/24

[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 5 – Principles relating to processing of personal data – Article 6 – Lawfulness of processing – Company law – Directive (EU) 2017/1132 – Article 14 – Documents and particulars to be disclosed – Concept of ‘persons who take part in the administration, supervision or control of a company’ – Making available to the public personal data relating to the shareholders of public limited liability companies – Minority shareholders

Hearing a request for a preliminary ruling from the Satversmes tiesa (Constitutional Court, Latvia), the Court of Justice interprets Directive 2017/1132¹⁹ and the GDPR²⁰ in the context of making available to the public personal data relating to the shareholders of public limited liability companies.

Under Latvian law, certain information relating to the shareholders of public limited liability companies is to be made available to the public, online and with no restrictions on bulk downloading, including by any unidentified user. Where such a shareholder is a natural person, that information is to include the surname, first name, personal identification number or, in the absence of such a number, the date of birth, the number and date of issue of an identity document, the country and issuing authority, and the address at which the shareholder may be contacted. In addition, and irrespective of whether the shareholder is a natural person, that information is also to include the shareholder's email address, where the shareholder has requested that it be used by the company in which it holds shares in order to communicate with them, the category, number and nominal value of their shares, and the number of votes attaching to the shares.

According to the referring court, making that information available to the public pursues three objectives: (i) to ensure a transparent business environment so as to protect the interests of third parties; (ii) to prevent money laundering and the financing of terrorism and the proliferation of weapons of mass destruction; and (iii) to provide the information necessary for the implementation of national, international and EU sanctions.

Seventeen natural persons, who are minority shareholders in a public limited liability company, brought an action before that court challenging the compatibility of the national legislation with the right to respect for privacy and the protection of personal data, as guaranteed by the Latvian Constitution.

The referring court asked the Court, in essence, whether disclosure of the data concerned is required under Directive 2017/1132 and whether national legislation providing for such disclosure is compatible with the GDPR, read in the light of the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

In the first place, the Court considers that Article 14(d) of Directive 2017/1132, which provides that Member States are to take the measures required to ensure compulsory disclosure by the companies referred to in the relevant provisions of that directive of at least the documents and particulars relating to the appointment, termination of office and particulars of the persons who, as a body constituted pursuant to law or as members of any such body, are authorised to represent the company in dealings with third parties and in legal proceedings, or who take part in the administration, supervision or control of the company, does not require the disclosure of information relating to all the shareholders of those companies, including the minority shareholders.

As regards the wording of that provision, the Court points out that the provision does not expressly refer either to shareholders or to the general meeting of shareholders. Furthermore, the shareholders of a company are neither appointed nor removed from office. Their status derives solely from their participation in the company's capital and is distinct from that of the persons appointed to sit on the company's administrative and management bodies and to represent the company in its dealings with third parties.

¹⁹ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ 2017 L 169, p. 46), as amended by Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 (OJ 2019 L 186, p. 80).

²⁰ 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 (General Data Protection Regulation) (OJ 2016 L 119, p. 1; 'the GDPR').



As regards the context of that provision, the Court finds in particular that, in several provisions of Directive 2017/1132, a terminological distinction is drawn between the administrative and management bodies, on the one hand, and the general meeting of shareholders, on the other. The Court notes that the decision-making powers of the latter are not of the same nature as the powers exercised by the company's administrative and management bodies and that, consequently, neither the acts of the general meeting nor those of its members can be regarded as constituting 'taking part' within the meaning of Article 14(d) of Directive 2017/1132.

Lastly, as regards the objectives pursued by that directive, the Court notes that the disclosure of data relating to all the shareholders of public limited liability companies and, in particular, to their minority shareholders does not appear to serve any useful purpose in the light of the objective of protecting the interests of third parties and legal certainty, and cannot therefore be justified by that objective. Since minority shareholders are not, in principle, authorised to represent a public limited liability company or to bind it vis-à-vis third parties, or to perform management and supervisory functions, unlike members of the administrative and management bodies of such a company, the data relating to all those shareholders appear to be irrelevant to those third parties.

In the second place, relying on its case-law arising, inter alia, from the judgment in *Luxembourg Business Registers*,²¹ the Court rules, in essence, that Articles 5 and 6 of the GDPR, which set out the principles relating to the processing of personal data and the conditions for lawful processing, respectively, read in the light of Articles 7 and 8 of the Charter, must be interpreted as precluding national legislation which requires personal data relating to all shareholders, including minority shareholders, of public limited liability companies to be made available to the public in order to achieve objectives such as those indicated by the referring court, where access to such data is not subject to any conditions, such as demonstrating a legitimate interest.

The Court recalls that the fundamental rights to respect for privacy and the protection of personal data, guaranteed in Articles 7 and 8 of the Charter, are not absolute rights, but must be considered in relation to their function in society and be weighed against other fundamental rights. Limitations may therefore be imposed, so long as they are provided for by law, respect the essence of the fundamental rights and observe the principle of proportionality. The proportionality of the measures which result in interference with the rights guaranteed in Articles 7 and 8 of the Charter requires compliance with the requirements of appropriateness and of necessity and also with that of the proportionate nature of those measures in relation to the objective pursued.

In that regard, the Court finds that, in the present case, although it is provided for by law and does not undermine the essence of the rights guaranteed by Articles 7 and 8 of the Charter, the making available to the public of the data concerned nevertheless constitutes, in any event, a serious interference with those rights. In view of their nature, those data may enable a profile to be drawn up concerning, inter alia, a shareholder's state of wealth and the economic sectors and undertakings in which he or she invests. In addition, they are accessible to a potentially unlimited number of persons, with the result that their processing is liable to enable those data to be freely accessed also by persons who, for reasons unrelated to the objective pursued by making those data available, seek to find out about, inter alia, the material and financial situation of such a shareholder. That possibility is all the easier when those data can be consulted on the internet. Furthermore, the potential consequences for the data subjects resulting from possible abuse of their data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated and that, in the event of such successive processing, it becomes increasingly difficult, or even illusory, for those data subjects to defend themselves effectively against abuse.

²¹ Judgment of 22 November 2022, *Luxembourg Business Registers*, C-37/20 and C-601/20, EU:C:2022:912.

That said, the Court notes that the objectives pursued by the national legislation concerned may be classified as objectives of general interest recognised by the European Union.

However, as regards the objective of ensuring a transparent business environment in order to protect the interests of third parties, which appears to correspond, in essence, to the objective pursued by the coordination of national provisions provided for in Article 14(d) of Directive 2017/1132, the Court considers that the disclosure of data relating to shareholders does not appear to serve any useful purpose in the light of that objective. Thus, the national legislation does not appear to be either appropriate or necessary to attain it.

As regards the other two objectives, namely to prevent money laundering and the financing of terrorism and proliferation of weapons of mass destruction, and to provide the information necessary for the implementation of national, international and EU sanctions, the Court finds that the national legislation concerned does not appear to be either necessary or proportionate in relation to those objectives.

It observes, in particular, that, as regards the shareholders, including minority shareholders, of companies, it does not appear to be strictly necessary for their data to be accessible to any person without that person having to demonstrate a legitimate interest, since less prejudicial means are available, such as restricting access to persons who are able to demonstrate such an interest, combined, as regards the objective relating to the implementation of sanctions, with restricting the disclosure requirement solely to data relating to persons included on sanctions lists.

The Court also observes that the national legislation at issue is not accompanied by sufficient safeguards to protect data subjects effectively against the risk of abuse, since their data are accessible on the internet and may be downloaded in bulk, including by any unidentified user.

VI. JUDICIAL COOPERATION IN CRIMINAL MATTERS

1. CONFISCATION OF CRIME-RELATED PROCEEDS, INSTRUMENTALITIES AND PROPERTY

Judgment of the Court (Fourth Chamber) of 10 September 2026, Latranov, C-655/24

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

Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2005/212/JHA – Confiscation of crime-related proceeds, instrumentalities and property – Article 2 – Substantive scope – Traffic offence punishable by a custodial sentence of more than one year – Driving a motor vehicle under the influence of alcohol – Directive 2014/42/EU – Freezing and confiscation of instrumentalities and proceeds of crime in the European Union – Directive (EU) 2024/1260 – Asset recovery and confiscation – Article 33 – Transposition period – Applicability *ratione temporis*

In a request for a preliminary ruling from the Rayonen sad – Veliki Preslav (District Court, Veliki Preslav, Bulgaria), the Court of Justice rules on the scope of Framework Decision 2005/212²² and

²² Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49), as amended by Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 (OJ 2014 L 127, p. 39, and corrigendum OJ 2014 L 138, p. 114).

clarifies the scope of the concept of ‘criminal offence’ within the meaning of Article 2(1) of that framework decision.

By a judgment which became final on 15 August 2024, EZ, a Bulgarian national, was found guilty of driving a motor vehicle under the influence of alcohol and was sentenced to a suspended custodial sentence of one year, ordered to pay a fine and banned from driving.

The referring court, before which the question of the confiscation of a sum equivalent to the full value of the vehicle at issue, provided for by the national legislation, was brought, asks, inter alia, whether such a traffic offence falls within the scope of Directive 2024/1260,²³ the Charter of Fundamental Rights of the European Union (‘the Charter’) or Framework Decision 2005/212.

Findings of the Court

In the first place, in so far as the referring court makes reference, inter alia, to Directive 2024/1260, which replaces, inter alia, Framework Decision 2005/212, the Court verifies whether the dispute in the main proceedings falls within the temporal scope of that framework decision. In that regard, the Court notes that, although the traffic offence at issue took place after the entry into force of that directive, it occurred before the expiry of the deadline for its transposition on 23 November 2026, and Bulgaria had not yet transposed that directive. It follows that Directive 2024/1260 is not applicable, *ratione temporis*, to the legal situation in the main proceedings.

Accordingly, the Court then goes on to examine whether Framework Decision 2005/212 and the Charter apply to a traffic offence which consists of driving a motor vehicle under the influence of alcohol and which is punishable by a custodial sentence of more than one year.

In the first place, the Court analyses the material scope of Framework Decision 2005/212. To that end, it determines whether a traffic offence, such as that at issue in the main proceedings, constitutes a ‘criminal offence’ within the meaning of Article 2(1) of that framework decision. The Court recalls that that provision requires each Member State to take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds, while noting that the concept of a ‘criminal offence’ is not defined by that framework decision.

In order to clarify the scope of Article 2(1) of Framework Decision 2005/212, the Court examines its context, purpose and legislative history.

As regards, in the first place, the context in which that provision occurs, the Court states that it is apparent from the preamble to Framework Decision 2005/212, that it primarily concerns combating organised crime. Furthermore, the Court points out, as regards Directive 2014/42,²⁴ by which certain provisions of that framework decision were replaced, that Article 3 of that directive reproduces, in essence, the list of legal instruments set out in Article 3(1) of that framework decision, while expanding it to other instruments, and concerns serious offences which, directly or indirectly, form part of organised crime or another area of crime which may have a cross-border dimension. Driving a motor vehicle under the influence of alcohol or narcotics does not constitute, in principle, such an offence.

Next, as regards the purpose of Framework Decision 2005/212, the Court observes that it is apparent from recitals 1 and 7 to 10 that that framework decision was adopted to prevent and combat organised crime effectively, by focussing on cross-border cooperation in respect of tracing, freezing,

²³ Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJ L, 2024/1260).

²⁴ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39, and corrigendum OJ 2014 L 138, p. 114).

seizing and confiscating the proceeds from crime and by ensuring that each Member State has effective rules governing confiscation.

Thus, it follows that, since a traffic offence, such as that at issue in the main proceedings, does not form part of organised crime nor an area of crime which may have a cross-border dimension or be of a serious nature, it does not constitute a 'criminal offence' within the meaning of Article 2(1) of Framework Decision 2005/212 and does not fall within the material scope of that framework decision.

Lastly, the Court finds that that interpretation is supported by the legislative history of that framework decision. The explanatory note of the initiative of the Kingdom of Denmark for a draft framework decision refers, inter alia, to the conclusions of European Council meetings concerning, in essence, combating organised crime. That note thus states that there is a need to adopt a horizontal instrument to determine unambiguously the obligations incumbent upon the Member States concerning confiscation, confirming that the objective of that initiative specifically seeks to combat organised crime.

In the second place, as regards the applicability of the Charter, the Court recalls that, pursuant to Article 51(1), the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Since the traffic offence at issue in the main proceedings does not fall within the material scope of Framework Decision 2005/212, the confiscation of the vehicle for the prevention of such an offence is not governed by EU law and the Charter does not apply in the present case.

2. EUROPEAN PUBLIC PROSECUTOR'S OFFICE

Judgment of the Court (Fourth Chamber) of 10 September 2026, YS v Council and Commission, C-507/24 P

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

Appeal – Law governing the institutions – Enhanced cooperation on the establishment of the European Public Prosecutor's Office – Regulation (EU) 2017/1939 – Article 16 – Appointment of European Prosecutors – Appointment of one of the candidates nominated by the Hellenic Republic – Rules applicable to the appointment of European Prosecutors – Action for annulment – Plea alleging that the proposal for appointment from the Member State concerned is unlawful – Lack of jurisdiction of the General Court

Hearing an appeal which it dismisses, the Court rules for the first time on the division of powers between the national authorities and the EU institutions when appointing the European Prosecutors under Article 16 of Regulation 2017/1939.²⁵

In the context of the national procedure for the nomination of candidates for the post of European Prosecutor of the EPPO, the Anotato Dikastiko Symvoulío Politikis kai Poinikis Dikaïosynis (Supreme Council of Civil and Criminal Justice, Greece) ('the SCCCJ') rejected the appellant's application, who was a judge of a court of appeal at the time, as inadmissible. Since he was not a public prosecutor, he did not fulfil the condition laid down by Greek law in the context of that procedure. By the same decision, the SCCCJ nominated three other candidates for that post.

²⁵ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ 2017 L 283, p. 1).

After having received the reasoned opinion of the selection panel,²⁶ the Council of the European Union appointed five European Prosecutors of the EPPO from among the candidates submitted by the Member States, including the Prosecutor nominated by the Hellenic Republic.²⁷

The appellant then brought an action before the General Court for the annulment of the Council decision and an action for failure to act against the Commission. However, the General Court held those actions to be inadmissible on the ground, *inter alia*, that it was for the national courts to review the alleged unlawfulness of the SCCJ's decision. The appellant brought an appeal against that decision of the General Court before the Court of Justice.

Findings of the Court

At the outset, the Court recalls that an act of a national authority that is part of a decision-making process of the European Union does not fall within the exclusive jurisdiction of the EU Courts for the purposes of Article 263 TFEU where that national act is a necessary stage of a procedure for adopting an EU act in which the EU institutions have only a limited or no discretion, with the result that that national act is binding on those institutions.

In such cases, it falls to the national courts to rule on any irregularities that may vitiate such a national act and, where appropriate to make a reference to the Court for a preliminary ruling, on the same terms as those on which they review any definitive national act which is capable of adversely affecting third parties. In the light of the principle of effective judicial protection, those courts must also regard an action brought for that purpose as admissible even if the national rules of procedure do not so provide.

In the present case, the Court observes that the adoption of the Council decision appointing the European Prosecutors takes place at the end of a composite administrative procedure, based on a division of competences between the European Union and the Member States.

The first stage of that procedure consists of the nomination, by the Member States concerned, of three candidates for the position of European Prosecutor. Those Member States have an exclusive power, which is binding on the Council, to propose candidates, to the effect that neither that institution, nor, indeed, the selection panel may select or appoint other candidates, or take a position on the reasons which led the Member State to reject certain applications. Neither the selection panel nor the Council is therefore entitled to substitute their own assessment for that of the national authorities.

Accordingly, the discretion enjoyed by the Council in the context of the second stage of that procedure is limited solely to verifying the applications proposed by the Member State concerned in the light of the conditions required to perform the duties of European Prosecutor. Consequently, the act nominating candidates for appointment to the EPPO, taken by the competent national authority, is therefore binding on the Council and determines the terms of its decision, in the sense that that decision cannot relate to applications other than those submitted to it in that act.

In that connection, the Court emphasises that, first, the assessments made by the selection panel may concern only the candidates proposed by the Member States and cannot in any event relate to the reasons why other candidates were not proposed by those Member States. Second, even where the selection panel considers that one or more of those candidates must be rejected on the ground that they do not fulfil the criteria laid down in Article 16(1) of Regulation 2017/1939, it falls exclusively to the Member State concerned to propose new candidates.

²⁶ The selection panel is comprised of 12 persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence. One of the persons chosen is proposed by the European Parliament in accordance with Article 14(3) of Regulation 2017/1939.

²⁷ Council Decision (EU) 2023/1335 of 27 June 2023 appointing the European Prosecutors of the European Public Prosecutor's Office (OJ 2023 L 166, p. 116; 'the decision at issue').

Therefore, although the Council and the selection panel have a certain discretion in assessing and comparing the merits of candidates for the position of European Prosecutor of a Member State, they have no discretion to intervene in the first stage of the procedure for the appointment of the European Prosecutors.

In the light of the foregoing, the Court of Justice finds that the General Court was right to hold that it did not fall to it to examine the complaint alleging that the SCCCJ's decision rejecting the appellant's application was unlawful, review of which is a matter for the national courts.

VII. COMPETITION: CONCENTRATIONS

Judgment of the General Court (Tenth Chamber, sitting with five Judges) of 9 September 2026, Booking Holdings v Commission, T-1139/23

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

Competition – Concentrations – Market for online travel agencies in the hotel sector – Decision declaring the concentration incompatible with the internal market and the EEA Agreement – Guidelines on the assessment of non-horizontal mergers – Counterfactual scenario – Significant impediment to effective competition – Efficiencies

The General Court upholds the decision of the European Commission declaring incompatible with the internal market the proposed merger between Booking Holdings Inc and Etraveli Group AB. In so doing, it clarifies the circumstances in which the strengthening of a dominant position may give rise to a significant impediment to effective competition.

The applicant, Booking Holdings, and the intervener, Flugo Group Holdings AB, which operates under the trade name Etraveli Group, are online travel agencies (OTAs), that is to say, online retailers which resell to consumers one or more types of travel service, which are supplied by travel service providers.

The applicant is mainly active as a hotel OTA, while the intervener operates as a flight OTA. In 2019, the applicant launched its flight offering by concluding a first commercial affiliated agreement with the intervener. In 2021, those two companies deepened their cooperation by signing a second agreement, which was amended again in 2023.

In 2022, the applicant and the intervener notified to the Commission a concentration whereby the applicant would acquire sole control, as referred to in the regulation on the control of concentrations between undertakings,²⁸ of most of the intervener's business activities ('the concentration').

By decision of 25 September 2023,²⁹ the Commission declared the concentration incompatible with the internal market on the ground that it would significantly impede effective competition in a

²⁸ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the EC Merger Regulation') (OJ 2004 L 24, p. 1).

²⁹ European Commission Decision C(2023) 6376 final of 25 September 2023 declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement (Case M.10615 – Booking Holdings/Etraveli Group), as found in Annex A1 to the application ('the contested decision').

substantial part of the internal market, by strengthening the applicant's dominant position on the hotel OTA market.

By its action, Booking Holdings, supported by the intervener, seeks the annulment of the contested decision.

Findings of the Court

In support of the action, the applicant and the intervener submit, first, that the Commission departed from the guidelines on non-horizontal mergers³⁰ in favour of a markedly lower standard, second, that it made a number of errors when identifying the counterfactual scenario, third, that the contested decision does not meet the standard of proof necessary to demonstrate a significant impediment to effective competition and, fourth, that the Commission incorrectly dismissed the efficiencies which the transaction would bring about.

First, the Court notes that, under the guidelines, non-horizontal mergers involve undertakings which, essentially, do not have a pre-existing competitive relationship, with the result that they do not result in the loss of direct competition between the merging firms in the same market. In the present case, while they overlap on the flight OTA market, the activities of the applicant and of the intervener are largely complementary, such that the relationship between the parties is primarily non-horizontal in nature.

According to the applicant and the intervener, the Commission ought, in accordance with the guidelines, to have assessed possible anticompetitive foreclosure and, in particular, the ability and incentive of the merging undertakings to foreclose their rivals and any resulting anticompetitive effects.

In that regard, the Court recalls that, while the Commission is bound by the notices which it issues in the area of merger control, it is not required to undertake an examination in every case of all the factors which are referred to therein. Rather, its competitive analysis must be based on an overall assessment of the foreseeable impact of the merger, with the guidelines referred to above laying down a general framework for the assessment of non-horizontal mergers.

In the present case, the Court observes that the test used in the contested decision is comparable to that used in the guidelines and is consistent with the definition of 'foreclosure' laid down therein. In its decision, the Commission states that the transaction would be likely to increase barriers to entry and expansion on the hotel OTA market, thus limiting potential and existing rival hotel OTAs' access to potential hotel customers and therefore limiting their ability to access that market, to expand in it and to compete in that market.

Furthermore, according to the applicant and the intervener, the Commission acted in breach of the guidelines in finding a significant impediment to effective competition by concluding that the transaction would lead to a significant impediment to effective competition on the basis of a novel and unsubstantiated reverse leveraging theory in which the merged entity would use its position on the flight OTA market, on which it does not have market power, to strengthen its dominant position on the hotel OTA market.

However, the Court considers that the guidelines do not preclude a theory of harm from being based on a reverse leveraging effect, given that, when they were adopted in 2008, the Commission did not already have experience of such concerns. Moreover, an approach which enables the Commission to rely solely on leveraging which would strengthen a non-dominant position, and not an already dominant position, would be liable to undermine the effectiveness of merger control.

³⁰ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008 C 265, p. 6) ('the guidelines').

Lastly, the applicant and the intervener maintained that the Commission failed to have due regard to the guidelines by classifying pro-competitive advantages and competition on the merits, namely an increase in its ability to cross-sell hotel rooms to flight customers by offering them the convenience of a one-stop shop, as being anticompetitive.

In that regard, the General Court observes that it is true that the cross-selling envisaged by the applicant does not involve any commercial pressure on customers, but rather leaves them, following the purchase of a flight, the choice whether also to book a hotel room via the applicant. Such cross-selling differs from tying or bundling, which are referred to in the guidelines as classic situations which may give rise to competition concerns in the context of a conglomerate merger.

However, the concept of competition on the merits, developed in the case-law relating to Articles 101 and 102 TFEU, does not play a similar role in the context of merger control. The implementation of a concentration cannot be regarded as a form of competition on the merits. In addition, the EC Merger Regulation seeks to establish effective control of all concentrations in terms of their effects on the structure of competition, regardless of whether or not the merged entity engages in abusive behaviour.

Second, the Court finds that, contrary to the applicant's allegations, the contested decision does not indicate that, absent the merger, the applicant would withdraw from the flight OTA market. Rather it is apparent from the contested decision that the counterfactual scenario relied on by the Commission takes account of some degree of cooperation between the applicant and the intervener in relation to flights. In addition, both in its written pleadings and at the hearing, the Commission, in essence, confirmed that it was likely that the applicant would maintain a flight offering on its platform in all scenarios.

In addition, the Court considers that the difference between the counterfactual scenario put forward by the applicant and the intervener and that put forward by the Commission is negligible, in that each of those scenarios leads to an increase in the applicant's share of the hotel OTA market of the same order of magnitude, with the result that the choice between one of the two scenarios has no bearing on the outcome of the present action.

Therefore, the arguments raised by the applicant and the intervener relating to the counterfactual scenario are ineffective.

Third, the Court makes an assessment which seeks to determine whether all the relevant evidence used in the contested decision is sufficient to demonstrate the existence of a significant impediment to effective competition.

The Court begins by rejecting the applicant's argument that the Commission applied an incorrect legal standard by relying solely on qualitative elements in order to conclude that there was such an impediment, even though the concentration would result in only a minimal increment in the applicant's share of the hotel OTA market.

It notes in that regard that, in merger control, in the light of the principle of the unfettered evaluation of evidence, the Commission may take as a basis qualitative elements, whether or not they are supported by quantitative elements, provided that the evidence adduced is sufficiently cogent and consistent, that it contains all the relevant evidence which must be taken into consideration, and that it is capable of substantiating the conclusions drawn from it.

Next the Court holds that the evidence provided by the Commission supports the conclusion that the applicant's dominant position on the hotel OTA market would be strengthened. Indeed, it has been established that the applicant has such a position on that market, which is characterised by high barriers to entry and expansion, on account of significant network effects as well as customer loyalty and inertia, such that entry or expansion capable of effectively constraining the applicant was not likely.

Moreover, the transaction was part of the 'connected trip' strategy, that is to say, the offer of a range of travel services, of which flights are an essential part, with the aim of acquiring customers and making them more loyal. It thereby enables the applicant to optimise and grow its flight business in the fastest and most efficient way by acquiring its preferred flight solution, which would result in growth of its hotel business as a result of cross-sales of hotel rooms from flights.

However, the finding of a strengthening of a dominant position does not automatically lead to the conclusion that there is a significant impediment to effective competition. The Court therefore reviews whether the evidence relied on by the Commission in the contested decision substantiates that conclusion and in particular whether such an impediment resulting from the transaction is significant.

In that context, it finds (i) that the Commission's analysis of the increment in the applicant's share of the hotel OTA market post-transaction is vitiated by a number of errors, with the result that it cannot be ruled out that that increment would be limited to a few tenths of a per cent, and (ii) that it has not been established that the growth which the applicant could achieve, post-transaction, would lead hotels to transfer an additional part of their hotel room inventory to the applicant's platform or to terminate their commercial relationship with other hotel OTAs, or that such growth would enable the applicant to increase the commissions received from hotels.

However, the Court observes that, in the contested decision, the Commission relied on the fact that the concentration would make the applicant's dominant position on the hotel OTA market less contestable. However, the EC Merger Regulation does not preclude the Commission from relying on a theory of harm in which it does not allege that the concentration at issue would necessarily reduce the already low level of competition on the relevant market, but considers that the concentration would sustain that level of competition, to the benefit of the parties to the concentration and to the detriment of existing and potential competitors and consumers.

In that regard, the contested decision sets out two circumstances demonstrating that the strengthening of the applicant's dominant position is likely significantly to impede effective competition.

First, since the hotel OTA market is characterised by strong network effects and a significant gap between the dominant leader and its main competitors, even a relatively small increase, in quantitative terms, in the market share of the dominant undertaking would be capable of strengthening the existing network effects.

Second, the increment in the applicant's market share would be achieved through growth in one of the few channels for acquiring hotel customers which the applicant does not yet dominate, namely flights, thereby creating a travel ecosystem which would be difficult for other OTAs to replicate, since the applicant would be the leader on both the hotel OTA market and the flight OTA market. That growth would, moreover, affect a number of OTAs which play a sufficiently important role in the competitive process on the hotel OTA market for the impact on their competitiveness to have a negative influence on the dynamics of competition.

The Court adds that, since the intervener is regarded as a leading flight OTA, the concentration would enable the applicant to accelerate the growth already achieved on the flight OTA market by means of the commercial affiliated agreement concluded with the applicant, which would benefit its hotel business, both by cross-sales of hotel rooms and by increased loyalty and inertia of its hotel customers.

Having completed its overall assessment, the Court concludes, in view of the Commission's discretion with regard to economic matters, that it has proved, to the requisite legal standard, that the concentration would give rise to a significant impediment to effective competition.

Fourth, considering that the Commission was justified in dismissing the efficiencies which, according to the applicant, the transaction would bring about, because the harm to hotels and hotel customers caused by the transaction could not be offset by the benefits allegedly conferred by the transaction on air passengers, the Court rejects all of the applicant's pleas and, consequently, dismisses the action in its entirety.

VIII. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the Court (Grand Chamber) of 8 September 2026, Inter IKEA Systems, C-298/23

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

Reference for a preliminary ruling – Trade marks – Regulation (EU) 2017/1001 – Article 9(2)(c) – Directive (EU) 2015/2436 – Article 10(2)(c) – Article 10(6) – Rights conferred by a trade mark – Concept of ‘use in the course of trade, in relation to goods or services, of a sign’ – Concept of ‘due cause’ – Charter of Fundamental Rights of the European Union – Striking of a balance between fundamental rights – Article 11 of the Charter of Fundamental Rights – Freedom of expression – Article 17 of that Charter – Right to property – Right of the proprietor of a trade mark with a reputation to prevent use by a third party of a sign identical with, or similar to, a trade mark – Use of such a sign by the third party in the context of a political campaign

Ruling on a request for a preliminary ruling from the *Nederlandstalige Ondernemingsrechtbank Brussel* (Brussels Business Court (Dutch-speaking), Belgium), the Court of Justice, sitting in its Grand Chamber formation, rules on how the rights of the proprietor of a trade mark with a reputation protected by Article 17(2) of the Charter of Fundamental Rights of the European Union (‘the Charter’) are to be reconciled with the freedom of expression of a third party enshrined in Article 11 of the Charter.

In 2022, the Belgian political party *Vlaams Belang* presented a political plan, which reproduced signs corresponding to IKEA’s Benelux and EU trade marks. The proprietor of those marks, Inter IKEA, then brought an action for infringement of those trade marks before the referring court.

The referring court has doubts as to whether such use was lawful and therefore asks the Court of Justice, in particular, whether freedom of expression may constitute due cause for using a sign identical or similar to a trade mark with a reputation within the meaning of Article 9(2)(c) of Regulation 2017/1001³¹ and Article 10(2)(c) and (6) of Directive 2015/2436.³²

Findings of the Court

As a preliminary point, the Court points out that, unlike use by a third party governed by Article 10(2)(c) of Directive 2015/2436 and Article 9(2)(c) of Regulation 2017/1001, use by a third party within the meaning of Article 10(6) of Directive 2015/2436 may occur in the course of trade or outside the course of trade, but does not relate to goods or services. Since the referring court has not provided any clarification as to whether the use was occurring within the course of trade or not, the Court examines both situations.

In the first place, in the event that the use in question in the main proceedings occurred in the course of trade and in relation to goods or services, the Court notes, first of all, that, although neither Regulation 2017/1001 nor Directive 2015/2436 specify that freedom of expression may constitute ‘due cause’ for the use of an identical or similar trade mark with a reputation, it is made clear that that regulation and that directive must be applied in such a way as to ensure full respect for fundamental

³¹ 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).

³² Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336, p. 1).

rights and freedoms.³³ Accordingly, the freedom of expression of a third party may, in principle, constitute due cause within the meaning of Article 9(2)(c) of Regulation 2017/1001 and Article 10(2)(c) of Directive 2015/2436.

Next, the Court finds that the mere reliance by a third party on his or her freedom of expression is not sufficient to establish 'due cause' and emphasises that that third party must set out the specific grounds for using it in connection with the exercise of his or her freedom of expression and demonstrate that those grounds take precedence over the rights and interests of the proprietor of the trade mark.

Lastly, the Court states that it is for the national court to strike a balance between, on the one hand, the right to property of the proprietor of the trade mark with a reputation and, on the other hand, the third party's right to freedom of expression, taking into account all the relevant circumstances of the case in the main proceedings.

First, the national court must examine the intention of the third party and ascertain whether the use in question is driven by that third party's objective of exercising his or her freedom of expression in good faith. That is the case where such a sign is used to convey an idea or opinion relating to the trade mark with a reputation, the proprietor of that trade mark, his or her commercial practices, his or her goods or his or her services, where the purpose of such use is to start or fuel a debate in the public interest, or where it is necessary for other reasons, such as the linguistic meaning of an element of the trade mark or the fact that it has become a public cultural reference or part of everyday language, for the exercise of that freedom in the given context.

Second, it must analyse whether the use in question contributes to a public interest debate and whether it occurs in a strictly commercial context.

Third, it must take into consideration the consequences which that use may entail for the proprietor of the trade mark with a reputation in order to assess whether it is proportionate. Relevant criteria in that regard include the intensity, extent and methods of that use, the scale of that trade mark's reputation, the degree of similarity between the sign used and that trade mark, and the fact that that use may give the impression that the proprietor of that trade mark agrees with the political message conveyed, or even supports it in some way.

In the second place, in the event that the use in question in the main proceedings comes within the scope of Article 10(6) of Directive 2015/2436, the Court points out that the possibility of protection provided for in that provision is defined by reference to the concept of 'due cause', which must be interpreted in the same way as the concept referred to in Article 10(2)(c) of that directive. When carrying out that interpretation, the national court must also strike a balance between the fundamental rights in the light of the circumstances referred to above.

However, the result of that striking of a balance need not necessarily be the same as the outcome of the weighting carried out in the context of Article 9(2)(c) of Regulation 2017/1001 and Article 10(2)(c) of Directive 2015/2436, since the exercise of freedom of expression based on the use by a third party of a sign that is outside of the commercial sphere benefits from broader protection.

Accordingly, the Court holds that, where a third party uses a sign identical with, or similar to, a trade mark with a reputation, that third party's freedom of expression may constitute due cause provided that it is found to take precedence, in the context of an assessment that strikes a balance between the rights at issue, over the exclusive rights of the proprietor of that trade mark. It is for the national court, when striking that balance, to take account of all the relevant circumstances of the individual case.

³³ Recital 21 of Regulation 2017/1001 and recital 27 of Directive 2015/2436.



The Court states that, in the present case, it does not appear that the use in question in the main proceedings can therefore be classified as having due cause, within the meaning of Article 9(2)(c) of Regulation 2017/1001 and Article 10(2)(c) of Directive 2015/2436, or of Article 10(6) of that directive; that is, however, for the referring court to verify in the light of all the relevant circumstances of the case.

Judgment of the General Court (Eighth Chamber) of 9 September 2026, Unipreus v EUIPO – Wallapop (wallapop), T-551/24

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

EU trade mark – Opposition proceedings – Application for EU figurative mark WALLAPOP – Earlier national figurative marks WALA W – Relative ground for refusal – No likelihood of confusion – Article 8(1)(b) of Regulation (EC) No 207/2009 – Relevant point in time for assessing the existence of an earlier trade mark

By its judgment, the General Court applies for the first time the considerations set out in the judgment in *EUIPO v Nowhere*³⁴ relating to the impact, on the outcome of opposition proceedings, of the disappearance with *ex nunc* effect of the earlier right relied on in support of such opposition during the proceedings before the European Union Intellectual Property Office (EUIPO).

On 18 September 2014, Wallapop, SL, the intervener, filed an application for registration of an EU trade mark with EUIPO in respect of the figurative sign WALLAPOP, against which Unipreus SL, the applicant, filed a notice of opposition on the basis of three earlier Spanish marks.³⁵ The Opposition Division upheld the opposition in part.

Following appeals by both parties, the Board of Appeal dismissed the applicant's opposition. However, that decision was annulled in part by the General Court, which found that the Board of Appeal had erred in finding that the services at issue were dissimilar.³⁶

The case was subsequently remitted to the Board of Appeal of EUIPO. On 30 March 2021, the applicant requested that the proceedings before the Board of Appeal be stayed until the national administrative proceedings that it had initiated concerning the expiry of the registrations of its earlier marks had been closed.

By decision of 26 August 2024 ('the contested decision'), the Board of Appeal, in the light of the national judicial decisions of 2023 and 2024, which had become final, dismissed the opposition, finding that it had become devoid of purpose because the earlier national marks on which it was based had lost their validity in the course of the proceedings.

It was in that context that an application for annulment and alteration of the contested decision was brought before the General Court.

Findings of the Court

In the first place, the General Court recalls that the Opposition Division and the Board of Appeal must take account of changes in circumstances that occur between the filing of the opposition and the decision ruling on it and must therefore be aware of the earlier mark's term of protection.

³⁴ Judgment of 5 February 2026, *EUIPO v Nowhere*, C-337/22 P, EU:C:2026:71.

³⁵ Based on Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

³⁶ Judgment of 3 October 2018, *Unipreus v EUIPO – Wallapop (wallapop)*, T-186/17, EU:T:2018:640.

In the present case, the General Court finds that the expiry of the registrations of the earlier marks on which the opposition was based constitutes a new fact subsequent to the delivery of the General Court's judgment. Consequently, the Board of Appeal was required, in order to adopt a new decision, to take that new fact into consideration.

In the second place, in order to ascertain whether that new fact was capable of affecting the meaning of the decision to be taken by the Board of Appeal, the General Court notes that the Board of Appeal, in the contested decision, found that the earlier mark relied on in support of the opposition had to be valid not only at the time of publication of the application for registration of the contested mark, but also at the time of the Board of Appeal's decision.

In that regard, the General Court states that the Court of Justice has held, with regard to Article 8(4) of Regulation No 207/2009, that the existence of a relative ground for refusal relied on in support of an opposition to the registration of a trade mark must be assessed not only on the date of filing of that registration, but also on the date on which EUIPO gives a final decision on the opposition.³⁷ The General Court therefore considers whether the Board of Appeal was correct to apply that finding to an opposition based on Article 8(1)(b) of that regulation.

First, the General Court states that it follows from the wording of that provision that, although the date of filing of the application for registration of the contested mark is relevant for the purpose of assessing whether the earlier registered marks predate that filing, the existence of those marks until the date on which a decision is given on the opposition is required in order for that opposition to be upheld.

Secondly, in the light of the context of which Article 8(1)(b) forms part, the General Court notes that the question relating to the existence of a validly protected earlier right on the date of EUIPO's final decision on the opposition is a preliminary issue that EUIPO must resolve before ascertaining whether the opposing party has proved that that earlier right satisfied the substantive conditions laid down in Article 8(4), and in particular that it conferred on its proprietor the right to prohibit the use of a subsequent trade mark³⁸.

Thirdly, that interpretation is borne out by the objectives of the opposition proceedings. That objective serves the purpose of preventing the registration of EU trade marks liable to conflict with other trade marks by enabling the proprietor of an earlier mark to prevent a sign that is liable to infringe that mark from being registered.

Therefore, the General Court considers that the interpretation according to which EUIPO is not required to take into account the expiry of the protection of the earlier mark in the relevant territory on a date subsequent to that of the filing of the application for registration of the contested mark may lead EUIPO to refuse registration on account of a potential conflict with an earlier mark that is no longer protected. That interpretation is contrary to the general objective of Regulation No 207/2009 of balancing the interests of the proprietor of an earlier mark and those of third parties in having signs capable of designating their goods or services.

Consequently, the General Court concludes that the premiss that the existence of a relative ground for refusal relied on in support of an opposition must be assessed at the date of filing of the application for registration of the contested mark, and the fact that the earlier mark subsequently losing protection does not affect the outcome of the opposition, has no basis either in the wording and context of Article 8(1)(b) of Regulation No 207/2009 or in the objectives of opposition proceedings.

³⁷ Judgment of 5 February 2026, *EUIPO v Nowhere*, C-337/22 P, EU:C:2026:71, paragraphs 107, 112 and 120.

³⁸ Judgment of 5 February 2026, *EUIPO v Nowhere*, C-337/22 P, EU:C:2026:71, paragraphs 107, 109 and 112.

In the light of the foregoing, the General Court holds that the Board of Appeal correctly took into account the fact that the earlier marks had definitively expired in order to conclude that the opposition had become devoid of purpose due to the loss of validity of those marks in the course of the proceedings, and that it was entitled to take that new fact into account without failing to comply with the principle of legal certainty. Accordingly, the General Court dismisses the action in its entirety.

2. MEDICINAL PRODUCTS FOR HUMAN USE

Judgment of the General Court (Fifth Chamber) of 23 September 2026, Advanz Pharma v Commission, T-455/24

[Link to the judgment as published in extract form](#)

Public health – Medicinal products for human use – Orphan medicinal product for human use Ocaliva – obeticholic acid – Revocation of the conditional marketing authorisation – Procedure for review – Procedure initiated without awaiting the outcome of the renewal procedure – Consultation of an ad hoc expert group by the EMA's Committee for Medicinal Products for Human Use – Impartiality of the experts consulted – Declaration of a conflict of interest – Procedural defect – Principle of sound administration – Article 116 of Directive 2001/83/EC, as amended by Directive 2004/27/EC – Manifest errors of assessment – Legitimate expectations – Proportionality – Article 57 of Regulation (EC) No 726/2004 as amended by Regulation (EU) 2019/5

Hearing an action for annulment, which it dismisses, the General Court gives an unprecedented ruling on whether the European Commission could initiate and complete the procedure for review of a conditional marketing authorisation (MA) while a related renewal procedure was ongoing.

A conditional MA was granted in 2016 for the orphan medicinal product for human use Ocaliva,³⁹ the active substance of which is obeticholic acid, indicated for the treatment of patients with primary biliary cholangitis, a liver disease, who do not tolerate or respond well to another active substance.

That conditional MA was renewed annually, subject to the production of clinical studies, the final reports of which were to be submitted by 2023 at the latest.

After becoming the holder of that MA in 2022, the applicant, Advanz Pharma, requested that it be converted into a standard MA.⁴⁰ The Committee for Medicinal Products for Human Use (CHMP) of the European Medicines Agency (EMA) concluded, in an opinion of 12 October 2023, that the clinical benefit of Ocaliva had not been demonstrated and recommended that that application be refused.

On the same day, the Commission initiated a procedure for review of the ongoing conditional MA, asking the CHMP, in particular, whether such an MA should be maintained, varied, suspended or revoked, because the CHMP opinion on the review was to be delivered by June 2024.

In May 2024, the applicant submitted⁴¹ an application for renewal of the conditional MA for Ocaliva ('the renewal procedure').

³⁹ Commission Implementing Decision C(2016) 8685 final of 12 December 2016 granting a conditional MA under Regulation (EC) No 726/2004 for OCALIVA – obeticholic acid ('Ocaliva').

⁴⁰ In accordance with the provisions of Commission Regulation (EC) No 1234/2008 of 24 November 2008 concerning the examination of variations to the terms of MAs for medicinal products for human use and veterinary medicinal products (OJ 2008 L 334, p. 7).

⁴¹ In accordance with Article 6 of Commission Regulation (EC) No 507/2006 of 29 March 2006 on the conditional marketing authorisation for medicinal products for human use falling within the scope of Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ 2006 L 92, p. 6).

On 30 August 2024, on the basis of the opinion delivered by the CHMP in the context of the review procedure, from which it was apparent that the efficacy of the orphan medicinal product had not been established and that the risk-benefit balance was not favourable, the Commission adopted the contested decision revoking the MA,⁴² against which the action for annulment was brought before the General Court.

Findings of the Court

In order to examine the legality of the contested decision, the General Court proceeds, *inter alia*, to a literal, systematic and teleological interpretation of Article 6(4) of Regulation No 507/2006 and Article 20(1) of Regulation No 726/2004,⁴³ which provide, first, that a conditional MA is to remain valid until the Commission has taken a decision, *inter alia*, on the application for its renewal ('the rule of validity') and, secondly, that the Commission is to act 'immediately' when it considers that a measure such as a procedure for review of a conditional MA should be applied in respect of the medicinal product concerned.

The General Court states that the wording of the first provision neither excludes nor expressly allows the Commission to initiate and complete a procedure for review of a conditional MA while a renewal procedure is ongoing.

As regards the wording of the second provision, the Court concludes that the review procedure provided for therein is characterised by the urgent need to act as soon as the conditions laid down have been met. Furthermore, no minimum period is laid down for initiating a procedure for review of a conditional MA, and no guidance is provided on the application of the provision in question to situations where a renewal procedure is ongoing.

With respect to the context of the two provisions, the Court finds that Article 6(4) of Regulation No 507/2006 does not lay down any absolute rule of validity for the conditional MA of a medicinal product, which precludes the possibility of the conditional MA being revoked or varied for other reasons, such as the outcome of a procedure for the review of that conditional MA. In addition, Article 20 of Regulation No 726/2004 remains applicable even where a procedure for renewal of the conditional MA is ongoing.

As regards the objectives of those provisions, the Court considers that the rule of validity ensures that medicinal products are not withdrawn from the market except on public health grounds. Consequently, that rule of validity cannot preclude the withdrawal of a conditional MA on such grounds.

Therefore, the fact that a procedure for renewal of a conditional MA for a medicinal product is ongoing does not prevent the Commission from initiating a procedure for review of the conditional MA concerned and from completing it before the closure of the renewal procedure. Moreover, in order to protect public health, the possibility of triggering a procedure for review cannot depend on the stage of a potential renewal procedure, in a situation where the risk-benefit balance of a medicinal product concerned is not favourable.

Furthermore, that conclusion is not invalidated by any differences that may exist between the review and renewal procedures, since those differences had no bearing on the outcome of the procedures or on the applicant's rights. In that regard, the Court considers that the concept of 'risk-benefit balance' used for those two procedures is the same. Furthermore, it has not found that the difference between the procedures stems from a difference between the criteria to be applied in those two

⁴² Commission Implementing Decision C(2024) 6281 final of 30 August 2024 ('the contested decision') revoking, under Article 20 of Regulation (EC) No 726/2004 of the European Parliament and of the Council, the conditional marketing authorisation granted by Decision C(2016) 8685 final for 'OCALIVA – obeticholic acid', an orphan medicinal product for human use.

⁴³ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended by Regulation (EU) 2019/5 of the European Parliament and of the Council of 11 December 2018 (OJ 2019 L 4, p. 24).

procedures. Lastly, it considers that the applicant has not shown how it was disadvantaged by the differences in the burden of proof in the two procedures.

Having concluded that it has not been demonstrated that the Commission breached the rule of validity by triggering and completing the procedure for review of the conditional MA for Ocaliva, while the procedure for renewal of that conditional MA was ongoing, and that no other plea raised by the applicant can succeed, the General Court dismisses the action in its entirety.

3. REGULATION OF DIGITAL MARKETS (DMA)

Judgment of the General Court (Eighth Chamber, sitting with five Judges) of 2 September 2026, Opera Norway v Commission, T-357/24

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

Digital services – Regulation (EU) 2022/1925 – Designation of gatekeepers – Web browser – Article 3(2) and (5) of Regulation 2022/1925 – Important gateway for business users to reach end users – Presumption – Article 17(3) of Regulation 2022/1925 – Market investigation for designating gatekeepers – Action for annulment – Individual concern – Admissibility – Duty to state reasons – Error of law – Error of assessment – Principle of good administration

Hearing an action for annulment, which it dismisses, the Court rules on several novel questions concerning the designation of a gatekeeper under the DMA.⁴⁴

Following a notification from Microsoft, a company active in the technology sector, the European Commission opened a market investigation⁴⁵ in order to assess whether several core platform services ('CPSS') of that company, in particular the web browser Edge ('Edge'), constituted important gateways for business users to reach end users⁴⁶ ('important gateway'). In the contested decision,⁴⁷ the Commission concluded that Microsoft had indeed met all the thresholds required for 'quantitative designation',⁴⁸ but had succeeded in rebutting the presumptions by demonstrating that it did not satisfy the requirements⁴⁹ for designation as a gatekeeper. The applicant, Opera Norway, which contests that decision, is a software company operating, inter alia, the web browser Opera.

Findings of the Court

As regards the admissibility of the action, the General Court concludes that the applicant has standing to bring proceedings. It recalls in particular that, where the Commission decides not to designate an undertaking as a gatekeeper, the condition that a third-party undertaking must be individually concerned, which it considers to be satisfied in the present case, must be assessed on the basis of a body of consistent evidence or on facts which may relate both to the effect on that undertaking's market position and to its participation in the administrative procedure which preceded the adoption of the contested decision.

⁴⁴ 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 (OJ 2022 L 265, p. 1; 'DMA'), Article 3(4).

⁴⁵ Pursuant to Article 16(1) and Article 17(3) of the DMA.

⁴⁶ Within the meaning of Article 3(1)(b) of the DMA.

⁴⁷ Decision C(2023) 6078 ('the contested decision').

⁴⁸ Pursuant to Article 3(2) of the DMA.

⁴⁹ Pursuant to Article 3(1)(b) of the DMA.

First, the non-designation of Microsoft as a gatekeeper in relation to Edge was liable to have a substantial adverse effect on the applicant's market position. Since the applicant is one of the main suppliers of web browsers in the European Union, Opera would have appeared on the browser choice screen that Microsoft would have had to present to its users, which would have enabled it to reach Edge's end users in an effective manner and to increase its ability to compete with its operator, Microsoft.

Second, the degree of the applicant's participation in the administrative procedure must be assessed taking into account the specific features of the regulatory framework for the designation of gatekeepers established by the DMA. In the light of the specific features and the circumstances of the present case, the applicant's participation in the market investigation, albeit limited, must be taken into account as an additional element forming part of the body of evidence.

As regards the examination of the substance of the action, first, the Court rejects the complaint that the Commission could not take into consideration the low scale of usage of Edge, calculated by reference to the share of the total number of web page views, in order for Microsoft to rebut the presumption that its browser constituted an important gateway.

Among the categories of arguments and evidence that the undertaking providing CPSs may submit in order to rebut the presumption relating to 'quantitative designation', only those deriving from a justification on economic grounds seeking to enter into market definition or to demonstrate efficiencies are explicitly excluded as irrelevant.

In order to be taken into consideration, the arguments and evidence submitted by the undertaking concerned must be 'directly relate[d] to the quantitative criteria'. The Court notes that recital 23 of the DMA expressly mentions, among the elements which directly relate to the quantitative criteria, the importance of the undertaking's CPS considering 'the overall scale of activities of the respective [CPS]'.

Thus, it is open to the Commission to take account of the low scale of usage of a CPS so as to find that that CPS does not constitute an important gateway. It may also compare the scale of usage of such a CPS with that of other CPSs. First of all, the list of elements which may be taken into consideration, listed in recital 23 of the DMA, is not exhaustive, next, an argument based on such a comparison seeks to rebut concretely and specifically the presumption and, lastly, that comparison forms part of the overall assessment of the importance of the CPS of the undertaking concerned, an element expressly mentioned in that recital.

Moreover, comparing Edge's scale of usage with that of other web browsers, on the basis of the share of the total number of web page views, does not mean that the Commission defined the market and that the scale of usage of Edge thus determined corresponds to a share of that market.

Second, the Court rejects the complaint that the contested decision is incorrectly based on Microsoft's alleged lack of control over the relevant architecture of Edge, on the ground that Edge used Blink, an open source software managed by a third party, and not its own browser engine.

First of all, it considers that the statement of reasons for the contested decision is sufficient to assess the link between Microsoft's use of Blink and the Commission's conclusion that Edge is not an important gateway.

Next, since the use of a third-party browser engine is capable of rebutting concretely and specifically the presumption at issue, the Commission was entitled to take into consideration the fact that a web browser was based on such a browser engine when examining the rebuttal of that presumption.

Lastly, the applicant has not demonstrated that the classification as an open source product to which Microsoft could make modifications, which is specific to Blink, was such as to invalidate the finding that Edge's use of that browser engine contributed to the latter not being regarded as an important gateway.

Third, the Court rejects the complaint that the Commission erred in finding that Microsoft's ecosystem did not sufficiently contribute to making Edge an important gateway.

It is true that having a digital platform ecosystem can constitute a relevant factor for the purposes of assessing whether the undertaking concerned is a gatekeeper and whether, more particularly, the CPS at issue is an important gateway. However, each ecosystem must be examined on a case-by-case

basis by the Commission, taking into account the benefits or lack of benefits deriving from the business model at issue, taking into consideration the circumstances in which the relevant [CPS] operates.

The Court finds that the Commission was right to examine whether Edge's integration into Microsoft's ecosystem would necessarily lead to that web browser being regarded as an important gateway and considered, in that regard, that, since the scale of usage of that browser remained low in comparison with that of rival browsers which was considerably higher, Microsoft could not use it as a lever to drive up usage of the other components of its ecosystem.

Fourth, the Court rejects the complaint that the Commission erred in finding that the grounds of the contested decision were sufficient to rebut the presumption at issue.

Admittedly, during a market investigation carried out under Article 17(3) of the DMA, it is for the undertaking concerned to adduce evidence to show that the CPS does not satisfy the requirements of Article 3(1)(b) of the DMA. However, the Commission must respect the general principle of good administration and, for that purpose, conduct its market investigation diligently and impartially, so that it has at its disposal, when adopting the final decision, the most complete and reliable information possible.

The Commission must therefore play its part, using the means available to it and its investigative powers, in ascertaining the relevant facts and circumstances in order to carry out an appropriate assessment concerning the rebuttal of the presumptions. It is therefore required to take into account not only the information provided by the undertaking concerned and by the participants in the market investigation, but also other information which appears relevant for assessing whether that undertaking has demonstrated that it did not satisfy the requirements laid down in Article 3(1) of the DMA, which the Commission has or could reasonably have had at its disposal. Those elements may coincide with those provided for under the 'qualitative designation'.⁵⁰ However, it is not for the Commission to seek, on its own initiative and in the absence of any evidence to that effect, all the information which might be connected with the case before it.

The Court finds that the Commission did not confine itself to examining Microsoft's arguments, but also took into account other relevant factors. It concludes that the applicant has not established that the Commission did not have sufficient, complete and reliable evidence to support the finding that Microsoft had demonstrated that Edge does not constitute an important gateway.

IX. SOCIAL POLICY: EMPLOYEES INFORMATION ON THE CONDITIONS APPLICABLE TO THE CONTRACT OR EMPLOYMENT RELATIONSHIP

Judgment of the Court (Fifth Chamber) of 24 September 2026, Trenitalia and INPS, C-369/25

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

Reference for a preliminary ruling – Social policy – Employer's obligation to inform employees of the conditions applicable to the contract or employment relationship – Directive 91/533/EEC – Article 8(1) – Defence of rights – Scope of that provision – Protection of the rights conferred by that directive –

⁵⁰ Pursuant to Article 3(8)(a) to (g) of the DMA.

Hearing a reference for a preliminary ruling from the Tribunale di Napoli (District Court, Naples, Italy), the Court of Justice interprets the concept of ‘rights’ for the purposes of Article 8(1) of Directive 91/533,⁵¹ in the context of an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship.

LW, a worker, was placed with the company Trenitalia SpA through a temporary-work agency in May 2003. In 2018, an Italian court found that that work placement had been made in breach of the Italian legislation transposing Directive 2008/104,⁵² and for that reason established that there was an employment relationship between LW and Trenitalia as from May 2003.

LW has brought an action before the referring court seeking payment of social security contributions for the period from May 2003 to December 2015 which were not paid by his employer to the social security institution on the ground that they were time-barred.

In those circumstances, the referring court questions, *inter alia*, whether the concept of ‘rights’, for the purposes of Article 8(1) of Directive 91/533, covers only rights conferred by the directive, such as the right of the employee to receive one of the documents listed in Article 3 thereof, or also rights conferred by the contract or employment relationship of which the employer must inform the employee by means of such a document, under Article 2 of that directive.

Findings of the Court

First of all, the Court recalls the rules for the interpretation of provisions of EU law, namely that it is necessary to consider their wording and the context in which they occur, as well as the objectives pursued by the rules of which they are part.

In the first place, the Court finds that it is apparent from the wording of Article 8(1) of Directive 91/533 that that provision requires Member States to guarantee workers access to the judicial process in order to assert the rights which they derive from the obligations to provide information arising from that directive.

In the second place, interpreting the provision referred to above in the light of the context in which it occurs, the Court emphasises that it is apparent from the title of Directive 91/533 that the directive concerns ‘an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship’, an obligation which, in accordance with the seventh recital of that directive, constitutes a general requirement taking the form of a number of specific obligations incumbent on the employer, which, as a result, confer as many specific rights on the employee.

These include, in particular: the obligation to provide information on the essential aspects of the contract or employment relationship, which must be provided by means of one of the documents and within the time limits referred to in Article 3 of Directive 91/533; the obligation to communicate to expatriate employees, before their departure, other information, in addition to that relating to those essential aspects, connected with their secondment; and the obligation to notify employees of any changes to those essential aspects and that additional information within the time limit and in the manner set out in that directive.

Consequently, the ‘rights’ arising from Directive 91/533, for the purposes of Article 8(1) thereof, must be understood as being the rights which employees derive from the obligations imposed on employers by the articles of that directive; the subject matter of those rights, therefore, consists in

⁵¹ Council Directive 91/533/EEC of 14 October 1991 on an employer’s obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

⁵² Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

nothing other than the information which is to be provided to those employees in respect of certain aspects of their contract or employment relationship and the way in which that information is to be provided.

Conversely, that provision does not cover the rights conferred by the contract or the employment relationship which may be referred to in Article 2(2) of the directive.

In the last place, the Court considers that that interpretation is supported by the objective pursued by Directive 91/533, which, as is apparent from the second and seventh recitals thereof, is to subject employment relationships to formal requirements in order to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market by informing those employees of the essential elements of their contract or employment relationship.

Thus, in accordance with that objective, Directive 91/533 is aimed at establishing a formal obligation of information and transparency.

Admittedly, the pursuit of that objective in turn serves to protect employees against any potential infringement of their rights guaranteed by other instruments of EU or national law, including collective agreements, by making them aware of their rights and obligations vis-à-vis their employer. However, Directive 91/533 does not, in itself, cover the obligation to ensure that those rights are safeguarded.

In the light of the foregoing, the Court concludes that the concept of 'rights', for the purposes of Article 8(1) of Directive 91/533, covers only rights conferred by the directive, such as the right of the employee to receive one of the documents listed in Article 3 thereof. Consequently, rights conferred by the contract or employment relationship of which the employer must, by means of such a document, inform the employee under Article 2 of that directive are not covered by that concept.

X. CONSUMER PROTECTION

1. RIGHT OF WITHDRAWAL FROM OFF-PREMISES CONTRACTS

Judgment of the Court (Fifth Chamber) of 24 September 2026, Gexx aeroSol, C-381/25

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

Reference for a preliminary ruling – Consumer protection – Directive 2011/83/EU – Consumer agreement – Right of withdrawal for off-premises contracts – Article 2(8) – Definition of an off-premises contract – Written offer from the trader – Acceptance of that offer by the consumer in the presence of the trader and away from the business premises of the trader

Hearing a request for a preliminary ruling from the Landgericht Cottbus (Regional Court, Cottbus, Germany), the Courts clarifies the scope of the concept of 'off-premises contract', under Directive 2011/83,⁵³ in the case of an offer sent in advance by a trader, which was accepted by the consumer in the physical presence of the trader but away from the business premises of the trader.

⁵³ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

In April 2022, PL and GQ, two consumers, received an offer sent by Gexx aeroSol concerning the supply and installation of a photovoltaic system, which they signed subsequently at their home in the presence of a representative of that company. In June 2023, having made a payment on account to Gexx aeroSol, PL and GQ notified the company of their withdrawal from the contract at issue, also asking for reimbursement of the payment on account. Hearing an action brought by PL and GQ seeking the reimbursement of that payment on account, the referring court has doubts as to whether such a contract may be classified as an ‘off-premises contract’, under Article 2(8) of Directive 2011/83, since the offer was already available to the consumers and only the acceptance of that offer took place away from the business premises of the trader.

Findings of the Court

At the outset, the Court notes that while the concept of ‘off-premises contract’ is defined in Article 2(8)(a) of Directive 2011/83, that directive provides no definition of the concept of ‘conclusion’ of such a contract. Since no reference made to the national laws as regards the meaning to be given to that latter concept, that concept is an autonomous concept of EU law, the interpretation of which must take into account the wording of Article 2(8)(a) of Directive 2011/83, the context in which it occurs and the objectives pursued by that directive.

First of all, pursuant to Article 2(8)(a) of Directive 2011/83, the only requirement in order to consider that there is an ‘off-premises contract’ is that it was concluded in the simultaneous physical presence of the trader and the consumer, away from the business premises of the trader. According to the usual meaning of the term ‘conclusion’, no contract can be regarded as having been concluded until the offer is accepted by the person to whom it is addressed. However, that provision of Directive 2011/83 does not require that the offer to enter into a contract must also have been made in the simultaneous presence of the trader and the consumer, away from the business premises of the trader.

Next, the Court states that, contrary to the cases in which a contract may be classified as an ‘off-premises contract’ under Article 2(8)(b) and (c) of Directive 2011/83, which lay down the conditions to be satisfied by the offer or the solicitation of the consumer, Article 2(8)(a) of that directive does not lay down such conditions.

Last, the Court recalls that, where the contracts are concluded away from the business premises of the trader, the consumer may be under potential psychological pressure or may be confronted with an element of surprise, irrespective of whether the consumer solicited the trader’s visit, which justifies the existence of a right of withdrawal on the part of the consumer in such circumstances. It is true that the fact that an offer from the trader was already available to the consumer before the conclusion of the contract can eliminate the element of surprise with which the consumer might be confronted. However, since that offer is accepted away from the business premises of the trader, in the simultaneous physical presence of the trader and the consumer at the latter’s home, the fact remains that the consumer risks being put under psychological pressure.

Accordingly, the concept of an ‘off-premises contract’ covers a contract in which the consumer accepts, in the physical presence of the trader and in a place which is not the business premises of the trader, the offer sent to him or her in advance by that trader.

2. CONSUMER INFORMATION ON FOODS

Judgment of the Court (Fifth Chamber) of 17 September 2026, Kyberg Pharma, C-657/24

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

Reference for a preliminary ruling – Consumer protection – Regulation (EC) No 1924/2006 – Nutrition and health claims made on foods – Article 10(2) – Specific conditions applicable to health claims – Mandatory information – Statement indicating the importance of a varied and balanced diet and a healthy lifestyle – Placement – Concepts of ‘labelling’ and ‘advertising’ – Food supplement advertised in the written press

In a reference for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany), the Court clarifies the concept of 'labelling' within the meaning of Article 10(2) of Regulation No 1924/2006⁵⁴ and the detailed rules for communicating to consumers mandatory information provided for by that provision where a health claim is used in written advertising for a food supplement.

Kyberg Pharma markets, in the form of capsules, a food supplement containing, inter alia, glucomannan, the packaging of which includes a statement highlighting the importance of a varied and balanced diet and a healthy lifestyle. In 2020, Kyberg Pharma distributed, in the written press, an advertisement making the claims 'Lose weight the healthy way' and 'Glucomannan helps you lose weight as part of a low-calorie diet'.

Taking the view that those health claims should be accompanied by the mandatory information listed in Article 10(2) of Regulation No 1924/2006, in particular the abovementioned information included in the labelling, a trade association governed by German law which combats unfair competition brought an action to end that practice. Kyberg Pharma, which was unsuccessful at first instance and on appeal, brought an appeal on a point of law (*Revision*) before the referring court.

That court is uncertain as to whether written advertising comes under the concept of 'labelling' within the meaning of Article 10(2) and, if not, whether, where a health claim is made, the information at issue must also be included in that advertising, even if that information is already included in the labelling of the product concerned.

Findings of the Court

In the first place, the Court finds that written advertising to promote a food supplement does not come under the concept of 'labelling' within the meaning of Article 10(2) of Regulation No 1924/2006.

The Court finds that it cannot be inferred from the wording of that provision, which uses three different terms, that is, 'labelling', 'presentation' and 'advertising', that written advertising comes under the concept of 'labelling'. Although the concepts of 'labelling' and 'advertising', within the meaning of Regulation No 1169/2011,⁵⁵ are defined broadly, the fact remains that a distinction is drawn between them. Therefore, advertising, including advertising in written form, cannot be included in the concept of 'labelling' within the meaning of Article 10(2) of Regulation No 1924/2006 without that distinction being rendered ineffective.

The Court further emphasises that the concepts of 'labelling' and 'advertising' have different purposes, as stated in Implementing Decision 2013/63,⁵⁶ under which labelling is concerned with the delivery of the food to the final consumer, while advertising is about the promotion of the supply of food by the food business operator. Thus, labelling has an informative purpose while advertising has a promotional purpose. Although to extend, as a matter of principle, the requirements on labelling to written advertising would be likely to ensure a higher level of consumer protection, such an extension would have the effect of compromising one of the other objectives of Regulation No 1924/2006, namely to ensure the effective functioning of the internal market, and therefore the balance which the EU legislature intended to establish between that objective and that of health protection.

⁵⁴ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9, and corrigendum OJ 2007 L 12, p. 3).

⁵⁵ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

⁵⁶ Commission Implementing Decision 2013/63/EU of 24 January 2013 adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council (OJ 2013 L 22, p. 25).

In the second place, the Court finds that Article 10(2) of Regulation No 1924/2006 must be interpreted as meaning that the mandatory information listed in that provision does not have to be included in written advertising to promote a food supplement if that information is included in the labelling of that supplement.

The Court infers from the use of the conjunction 'or' before the expression 'if no such labelling exists' in that provision that the information listed there must be included primarily on the labelling of the product. It is only in the absence of such labelling that that information must be communicated by other means, such as the presentation and advertising of the product.

In that regard, the Court observes that the French-language version of that provision uses the conjunction 'or' between the words 'presentation' and 'advertising', which could imply some discretion, while other language versions (inter alia, the Spanish-, German-, English- and Lithuanian-language versions) use the conjunction 'and', implying that without labelling, the information must be included both in the presentation and in the advertising of the product concerned. The Court emphasises however that that divergence between the language versions cannot be decisive, given that it concerns only a scenario where there is no labelling stating the information required, which is not the case in the main proceedings. It follows that the obligation to state the mandatory information listed in Article 10(2) of Regulation No 1924/2006 must be considered to have been fulfilled, provided that that information is included in the labelling of the product concerned, with the result that it is not necessary that that information is included in the advertising for that product.

Furthermore, the Court notes that the second subparagraph of point (b) of the third paragraph of point 2.1 of the Annex to Implementing Decision 2013/63 refers to the principle established by Regulation No 1169/2011 that the consumer must always have the mandatory information when making a decision. Where the labelling of the product contains that information, it is by means of that labelling that the consumer has that information when making a decision, the purpose of such labelling being precisely to inform him or her. Consequently, if the EU legislature had intended to require that that information also be included in written advertising, it would have made express provision for that.

The Court adds that, where the mandatory information is included in the labelling of the product concerned, it is not necessary that that information also be included in the written advertising for that product, since the consumer has all the necessary information to make an informed decision in full knowledge of the facts when making the purchase.

Judgment of the Court (Fifth Chamber) of 17 September 2026, Vista-Life Pharma and Vista-Life Pharma Belgium, C-721/24

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

Reference for a preliminary ruling – Consumer protection – Regulation (EC) No 1924/2006 – Nutrition and health claims made on foods – Article 2(2)(5) – Concept of 'health claim' – Food supplement – Statements relating to the frequency of intake and/or the route of administration – Article 14(2) – Reduction of disease risk claims – Applicable conditions – Advertising promoting a food supplement

In a reference for a preliminary ruling from the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), the Court rules on the obligations in respect of labelling and advertising containing health claims in relation to food supplements, in the light of Regulation No 1924/2006.⁵⁷

⁵⁷ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9, and corrigendum OJ 2007 L 12, p. 3), as amended by Regulation (EC) No 109/2008 of the European Parliament and of the Council of 15 January 2008 (OJ 2008 L 39, p. 14) ('Regulation No 1924/2006').



Vista-Life, the appellant in the main proceedings, is a company that markets food supplements.

According to two of its competitors, in one case it used statements in advertisements relating to two food supplements which in their view constituted health claims, and, in a second case, it used a statement relating to a food supplement that should be classified as a reduction of disease risk claim. Consequently, the competitors brought actions for a declaration that Vista-Life had infringed Regulation No 1924/2006 and for those infringements to be brought to an end.

The appellant in the main proceedings appealed before the referring court against the two judgments upholding the actions. The referring court, which joined the two cases, asks the Court of Justice whether the expressions 'particular characteristics' and 'a food category, a food or one of its constituents', within the meaning of Article 2(2)(1) and (5) of that regulation, cover statements relating to the modalities of administering the food and the use of a statement in connection with those claims.

Findings of the Court

In the first place, as regards classification as a 'claim', within the meaning of Article 2(2)(1) of Regulation No 1924/2006, the Court notes that it is necessary only that the message or representation may give the average consumer who is reasonably well-informed and reasonably observant and circumspect the impression that the food has certain particular characteristics. In addition, it observes that the reference to those characteristics is not limited to the intrinsic properties of that food, but also covers the way in which the food is to be consumed, where this is presented as being relevant to the characteristics attributed to that food. Consequently, statements relating to the frequency of intake or the method of administration of a food supplement are capable of attributing particular characteristics to it. However, unlike statements relating to the frequency of intake or to the method of administration of a food supplement, which are limited to providing purely practical information, without any explicit or implicit reference to an effect on health, statements presenting those practical matters as being relevant to the attainment of such an effect constitute a health claim. The Court considers that an interpretation that would exclude those statements from the concept of 'health claim', within the meaning of Article 2(2)(5) of that regulation, would enable economic operators to use such statements, which are liable to suggest an effect on health, without meeting, *inter alia*, the requirement under that regulation that such claims only be authorised after a scientific assessment of the highest possible standard.

In the second place, as regards the statement provided for in Article 14(2) of Regulation No 1924/2006, indicating that the disease to which the claim is referring has multiple risk factors and that altering one of those risk factors may or may not have a beneficial effect on health, the Court notes that the wording of that provision does not require the content of that statement to be reproduced verbatim, whereas other provisions of that regulation do require, in certain circumstances, a specific form of words to be reproduced verbatim.

First of all, the Court points out that consumers must be protected from information that may mislead them by attributing medicinal properties to food that it does not have. Indeed, that statement is intended to make the scope of the reduction of disease risk claim ⁵⁸ clear, by recalling that diet is one of the many factors influencing the onset of certain diseases.

Next, where a reduction of disease risk claim is used in a commercial communication, it is sufficient for that claim to be accompanied by a statement which, without necessarily reproducing verbatim the statement provided for in Article 14(2) of Regulation No 1924/2006, informs consumers in an accurate, clear and easily understandable manner, first, that the disease to which the claim is referring has multiple risk factors and, second, that altering one of those factors may or may not have a beneficial effect on health.

⁵⁸ Within the meaning of Article 2(2)(6) of Regulation No 1924/2006.

In the present case, subject to verification by the referring court, the Court considers that, in the case of the claim ‘the solution for controlling cholesterol’, the statement ‘high cholesterol is a risk factor in the development of cardiovascular disease’ is not capable of giving the average consumer, in the manner referred to above, the information required by that provision.

Lastly, the Court concludes that the statement set out in Article 14(2) of Regulation No 1924/2006 referring to the multiplicity of disease risk factors and the likely effect on health of altering them need not be reproduced verbatim in the labelling of the food supplement concerned or, if none, in its presentation or advertising, provided that a statement informs the consumer of those two points in a manner that is accurate, clear and easy to understand.

In the third and last place, as regards the presence of that statement in the written advertising, the Court notes that Regulation No 1924/2006⁵⁹ requires such a statement to be included primarily in the labelling of the product concerned and, only if no such labelling exists, elsewhere, such as in the advertising relating to it. In addition, the Annex to Implementing Decision 2013/63 states that labelling is concerned with the delivery of the food to the final consumer, while advertising is about the promotion of the supply of food.

Where a food has labelling which includes the mandatory information provided for by Regulation No 1924/2006, the purpose of that labelling is to give all that information to the consumer when he or she is making a decision on a purchase. Thus, the Court holds that, provided that that statement is included in the labelling of the product concerned, it is not necessary for that statement also to appear in the written advertising relating to that product, since the consumer concerned has all the necessary information when making the purchase.

XI. ENVIRONMENT : AARHUS CONVENTION

Judgment of the Court (Fifth Chamber) of 24 September 2026, Viaudret, C-151/25

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

Reference for a preliminary ruling – Environment – Aarhus Convention – Article 6 – Public participation in decisions on specific activities – Extension of the duration of the validity of a permit to operate a wind farm – Obligation to organise a public participation phase prior to that extension

Hearing a reference for a preliminary ruling from the Conseil d’État (Council of State, Belgium), the Court rules on the applicability of rules on public participation in decision-making laid down in Article 6 of the Aarhus Convention⁶⁰ to a procedure for the extension of an authorisation to operate a wind farm.

Following a request to extend the duration of the validity of a permit to operate a wind farm in the Région wallonne (Walloon Region, Belgium) the competent national authority extended by 10 years the period of validity of that permit, which had initially been granted for a period of 20 years.

⁵⁹ Article 14(2) of Regulation No 1924/2006.

⁶⁰ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, concluded at Aarhus on 25 June 1998 and approved on behalf of the Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) (‘the Aarhus Convention’).

In accordance with the applicable regional legislation, no public participation phase was organised prior to the adoption of that extension decision.

A person residing close to that wind farm, of the view that such a decision could not be taken without the prior organisation of a public participation phase as provided for by the Aarhus Convention, brought an action before the Council of State for annulment of that extension decision.

According to the Council of State, it is not disputed that the initial decision regarding the operation of the wind farm in question had to be adopted in compliance with the requirements relating to public participation laid down in Article 6 of the Aarhus Convention. However, that court is uncertain as to whether a decision extending by 10 years the authorisation to operate such a wind farm, initially granted for a duration of 20 years, must also be adopted in compliance with those requirements.

The Council of State therefore decided to refer that question to the Court.

Findings of the Court

As the operation of the wind farm in question constitutes, in the present case, an activity listed in Annex I of the Aarhus Convention, the Court recalls that, under Article 6(1) of that convention, a decision authorising such an activity must, in principle, be preceded by a public participation phase in compliance with the requirements laid down in paragraphs 2 to 9 of that article.

Article 6(10) of the Aarhus Convention also provides that the provisions of paragraphs 2 to 9 of that article apply ‘mutatis mutandis, and where appropriate’ where a public authority ‘reconsiders or updates the operating conditions for an activity referred to in paragraph 1 [of that article]’.

Accordingly, a decision to extend the authorisation to operate a wind farm such as that in question may fall within the scope of the requirements relating to public participation laid down in paragraphs 2 to 9 of Article 6 of the Aarhus Convention if that decision entails a ‘reconsideration’ or ‘update’ of the ‘operating conditions for [that] activity’ within the meaning of paragraph 10 of that article.

Observing that the concept of ‘operating conditions for an activity referred to in paragraph 1’ in Article 6(10) of the Aarhus Convention is not defined in that convention or the implementation guide, the Court carries out a literal, contextual and teleological interpretation of that provision.

Regarding the literal interpretation of Article 6(10) of the Aarhus Convention, the Court notes that, in everyday language, the duration for which an activity is authorised constitutes one of the ‘operating conditions for [that] activity’. Consequently, any decision authorising the exercise of that activity beyond the period initially set is equivalent to an ‘update’ of the ‘operating conditions’ of that activity.

The context of which that provision forms part and the objective pursued by the Aarhus Convention confirm that interpretation.

As regards, more specifically, the objective pursued, the Court emphasises that it follows from Article 1 of the Aarhus Convention that Article 6 thereof is intended to contribute to protecting the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

To that end, Article 6(7) of the Aarhus Convention, read in conjunction with paragraph 6 of that article, requires that the public be given the opportunity to submit any comments, information, analyses or opinions that it considers relevant having regard to the proposed activity.

While it is true that, in the case of the renewal of the authorisation of an activity falling, as in the present case, under paragraph 20 of Annex I to the Aarhus Convention, the public had the opportunity to express its views at the time of the initial authorisation of that activity, it must be stated that, over time, both the technologies relevant for the activity concerned and the environment in which that activity is carried out are liable to have changed.

Thus, on expiry of the initially granted authorisation, the question whether the activity concerned may be continued under the conditions provided for by that authorisation, whether those conditions must be updated, or whether the activity must, as the case may be, be discontinued, may arise.

It would therefore run counter to the objective pursued by Article 6 of the Aarhus Convention to allow a decision to renew an authorisation such as that in the main proceedings, which consists of

extending by 10 years an authorisation initially granted for a period of 20 years, to be adopted in all cases without ensuring public participation.

Consequently, where, as in the present case, the applicable national legislation excludes the adoption of such a decision from public participation, it is for the national court to assess whether it is appropriate to apply the provisions of Article 6(2) to (9) of the Aarhus Convention *mutatis mutandis*, taking into account the specific circumstances of each case.

In the light of the foregoing, the Court holds that Article 6(1) and (10) of the Aarhus Convention must be interpreted as precluding national legislation under which any procedure for a decision to extend by 10 years an authorisation for an activity listed in Annex I to that convention, initially granted for a period of 20 years, is excluded from public participation.

Judgment of the General Court (Ninth Chamber, sitting with five Judges) of 2 September 2026, Global Legal Action Network and CAN-Europe v Commission, T-120/24

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

Environment – Regulation (EU) 2018/842 – Annual greenhouse gas emission reductions – Review of annual greenhouse gas emission allocations of the Member States for the period from 2023 to 2030 – Implementing Decision (EU) 2023/1319 – Refusal of the request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Aarhus Convention – Grounds for review of Regulations (EU) 2021/1119 and (EU) 2023/857 setting out the European Union’s greenhouse gas emission reduction targets for 2030 – Implementing power of the Commission – Article 291(2) TFEU – Grounds for review directed against an impact assessment – Legislative proposal

The General Court upholds the decision of the European Commission refusing a request for an internal review of its Implementing Decision 2023/1319 ⁶¹ revising Member States’ annual greenhouse gas emission allocations for the period from 2023 to 2030. In so doing, it finds that such a request cannot call into question the legislative acts implemented by the decision in question.

Regulation 2018/842 ⁶² set out Member States’ minimum contributions towards fulfilling the European Union’s target of reducing its greenhouse gas emissions by 30% below 2005 levels by 2030. Pursuant to that regulation, Implementing Decision 2020/2126 ⁶³ set out the annual greenhouse gas emission allocations of the Member States for the period from 2021 to 2030.

In accordance with the impact assessment accompanying a communication from the Commission of 17 September 2020 ⁶⁴ (‘the impact assessment of 17 September 2020’), the European Climate Law ⁶⁵

⁶¹ Commission Implementing Decision (EU) 2023/1319 of 28 June 2023 amending Implementing Decision (EU) 2020/2126 to revise Member States’ annual emission allocations for the period from 2023 to 2030 (OJ 2023 L 163, p. 9).

⁶² Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26).

⁶³ Commission Implementing Decision (EU) 2020/2126 of 16 December 2020 on setting out the annual emission allocations of the Member States for the period from 2021 to 2030 pursuant to Regulation 2018/842 (OJ 2020 L 426, p. 58).

⁶⁴ Communication COM(2020) 562 final of 17 September 2020 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Stepping up Europe’s 2030 climate ambition: Investing in a climate-neutral future for the benefit of our people’.

⁶⁵ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ 2021 L 243, p. 1).

set a new net greenhouse gas emission reduction target of 55% compared to 1990 levels by 2030 ('the 2030/1990 second target').

Regulation 2018/842 was then amended by Regulation 2023/857⁶⁶ in order to include the European Union's new target of reducing greenhouse gas emissions by 40% below 2005 levels by 2030 ('the 2030/2005 second target') and Implementing Decision 2023/1319 set new annual greenhouse gas emission allocations for Member States for the period from 2023 to 2025.

The applicants, Global Legal Action Network and Climate Action Network Europe, submitted to the Commission, pursuant to Article 10(1) of the Aarhus Regulation,⁶⁷ a request for an internal review of that decision on the grounds of procedural and substantive failures affecting that decision, the 2030/1990 second target and the 2030/2005 second target.

The Commission refused the request for internal review as inadmissible and, in the alternative, as unfounded by decision of 14 December 2023 ('the contested decision').

Findings of the Court

As the applicants allege that the Commission erred in its interpretation of the grounds of their request for internal review, the Court begins by observing that it is required to conduct a full review of whether the contested decision demonstrates a correct understanding of those grounds. That consideration does not affect the wide measure of discretion conferred on the Commission when making complex assessments, which is subject to a review restricted to manifest errors of assessment. In the present case, the Court considers that the Commission did not distort the grounds of the request for review.

As regards, next, the argument that the Commission infringed Article 10(1) of the Aarhus Regulation by rejecting as inadmissible the grounds of the request for internal review relating to the 2030/1990 second target and the 2030/2005 second target, the Court observes that, when adopting Implementing Decision 2023/1319, the Commission exercised implementing powers under Article 291(2) TFEU. Therefore, it could not set the allocations of the Member States on the basis of greenhouse gas emission reduction targets that were different from those established by Regulation 2023/857 and the European Climate Law, which constitute the legislative acts forming the basis of Implementing Decision 2023/1319.

Furthermore, in accordance with that provision of the Aarhus Regulation, a request for internal review of an administrative act is to be submitted to the institution that was competent to adopt it and that has the power to amend it in the event that that act is unlawful.

Since it is not possible, with such a request, to call into question the basic legislation that was adopted by other institutions and which the Commission is required to apply by virtue of its implementing power, the Commission cannot examine the merits of grounds relating to that basic legislation during the internal review of that administrative act without running counter to the principles of institutional balance, of sincere cooperation and of the conferral of powers, but also to the principle of legal certainty.

That finding is all the more compelling since, in accordance with the combined provisions of Article 2(1)(c) and Article 10(1) of the Aarhus Regulation, activities of the institutions are excluded from the scope of that regulation when they exercise legislative powers. In particular, a legislative act cannot be the subject of a request for internal review, which may concern only an 'administrative act'

⁶⁶ Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation 2018/842, and Regulation (EU) 2018/1999 (OJ 2023 L 111, p. 1).

⁶⁷ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies (OJ 2006 L 264, p. 13), as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1) ('the Aarhus Regulation').



that contains provisions that may contravene environmental law within the meaning of Article 2(1)(f) of that regulation.

Similarly, legislative acts are also excluded from the scope of the Aarhus Convention, with which the Aarhus Regulation must be interpreted consistently. Thus, in the context of a request for internal review formally directed at Implementing Decision 2023/1319, which constitutes a non-legislative act, the fact that legislative provisions such as those laying down the two abovementioned targets are contrary to environmental standards cannot be relied on.

It is true that the concept of 'environmental law' within the meaning of Article 2(1)(f) of the Aarhus Regulation must be interpreted broadly and covers any EU act which, irrespective of its legal basis and whether or not it is legislative in nature, contributes to the achievement of the objectives of that policy.

However, that interpretation must remain consistent with the strict delimitation of the Commission's implementing powers and the principles of conferral of powers, of institutional balance, of sincere cooperation and of legal certainty. Consequently, the author of a request for internal review of an implementing act is not entitled to rely on rules of environmental law that, if such a request were granted, would have the effect of derogating from the basic legislation of that implementing act, thereby altering that legislation by supplementing or amending it, including as to its non-essential elements.

As regards the complaints by which the applicants criticise the Commission for having rejected as inadmissible the grounds of their request for internal review directed against the impact assessment of 17 September 2020, the Court holds, first, that no provision of the Aarhus Regulation, read in the light of the Aarhus Convention, precludes legal defects in a preparatory measure, such as that assessment, from being relied on in an action directed against the definitive act for which it represents a preparatory step. Secondly, the Court holds that the applicants could rely on illegalities vitiating Implementing Decision 2023/1319 in the light of provisions other than those of Regulation 2018/842,⁶⁸ without, however, leading the Commission to derogate from the provisions of the European Climate Law and Regulations 2018/842 and 2023/857. The contested decision is thus vitiated by errors of law in respect of Article 2(1)(f) and Article 10 of the Aarhus Regulation, in so far as it states that the applicants could not rely incidentally on the illegality of the impact assessment of 17 September 2020 on the grounds that that act was of a preparatory character, and that Regulation 2018/842 constituted 'the environmental law' for the assessment of the legality of Implementing Decision 2023/1319.

However, those defects cannot lead to the annulment of the contested decision, as the Commission was correct to reject the applicants' claims directed against the abovementioned impact assessment, on account of its substantive link with the European Climate Law and Regulation 2018/842. Since the assessment was submitted by the Commission with a view to incorporating the 2030/1990 second target and the 2030/2005 second target into the EU legal order, it corresponds to a legislative proposal and thus amounts to the Commission acting in a legislative capacity within the meaning of Article 2(1)(c) of the Aarhus Regulation.

Lastly, the Court rejects as ineffective the applicants' arguments challenging the contested decision in so far as it refused the request for review as unfounded, since they are directed against grounds

⁶⁸ Certain provisions of Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ 2013 L 165, p. 13) and Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation No 525/2013 (OJ 2018 L 328, p. 1) and the provisions of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13), applicable by reference to those regulations.

included in that decision for the sake of completeness. The Court therefore dismisses the action in its entirety.

XII. COMMON COMMERCIAL POLICY: ANTI-DUMPING

Judgment of the Court (Fifth Chamber) of 3 September 2026, *Commission v Sinopec Chongqing SVW Chemical and Others*, C-319/24 P

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

Appeal – Dumping – Implementing Regulation (EU) 2020/1336 – Imports of certain polyvinyl alcohols originating in China – Definitive anti-dumping duty – Regulation (EU) 2016/1036 – Article 2(6a) – Construction of the normal value due to significant distortions in the exporting country – Article 2(10) – Fair comparison between the export price and the normal value at the same level of trade – ‘Ex-factory’ level – Adjustments to the export prices or the normal value – Costs incurred after the ex-factory level – Non-refundable value added tax (VAT) – Trader carrying out functions similar to those of an agent working on a commission basis – Burden of proof – Prohibition on imposing an unreasonable burden of proof – Article 18 – Non-cooperation – Impossibility of determining the normal value – Facts available – Decision to use, as facts available, the highest normal values of the other exporting producers that cooperated in the investigation – Margin of discretion of the European Commission

The Court of Justice allows in part the appeal brought by the European Commission against a judgment of the General Court that annulled a regulation imposing definitive anti-dumping duties.⁶⁹ On this occasion, it clarifies the Commission’s margin of discretion in relation to the selection of facts where an interested party does not cooperate. It also rules on the allocation of the burden of proof between the Commission and the interested parties in respect of adjustments aimed at ensuring a fair comparison between the export price and a normal value constructed pursuant to Article 2(6a) of the basic regulation.⁷⁰

Having initially received a complaint lodged by the main producer of polyvinyl alcohols (‘PVA’) in the European Union, the Commission initiated an anti-dumping investigation at the end of which it adopted Implementing Regulation 2020/1336.⁷¹ In that context, a number of undertakings in the Sinopec Group producing or exporting PVA, in particular to the European Union, considered themselves to have been adversely affected by the anti-dumping duties imposed by the Commission. They therefore brought an action before the General Court seeking the annulment of the regulation at issue in so far as it concerned them, and their claims were upheld in part.

Findings of the Court

In the first place, the Court of Justice upholds in part the appeal brought by the Commission.

⁶⁹ Judgment of 21 February 2024, *Sinopec Chongqing SVW Chemical and Others v Commission* (T-762/20, EU:T:2024:113).

⁷⁰ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

⁷¹ Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People’s Republic of China (OJ 2020 L 315, p. 1; ‘the regulation at issue’).

First, the Commission submits that the General Court infringed Article 18(1) of the basic regulation in holding that the Commission had, on account of the non-cooperation of one of the undertakings in the Sinopec Group, applied an irrebuttable presumption that the normal value for each product type manufactured by that undertaking was not below the highest normal value for each corresponding product type manufactured by exporting producers that cooperated in the investigation.

In such a situation, the Commission was entitled to use, as 'facts available', the data relating to the other cooperating exporting producers. In so doing, it did not apply an irrebuttable presumption, but merely drew the appropriate conclusions from the non-cooperation.

It was open to the interested parties, during the administrative procedure, to dispute the factual accuracy of the available facts used by the Commission. Moreover, in the event of non-cooperation on the part of an interested party, the authorities responsible for an anti-dumping investigation are entitled to take into account the procedural circumstances in which information is missing, provided that the purpose of the facts selected is not to penalise that interested party.

Thus, the Commission selected facts available which constituted reasonable replacements for the missing necessary information, without exceeding the limits of the broad discretion that it enjoys.

Second, the General Court erred in law in holding that it was for the Commission to demonstrate that the adjustments to the export price which it intended to make, consisting in deducting certain costs from that price so as to bring it back to the 'ex-works' level of trade, were necessary in order for the comparison of the export price and the normal value to be fair.

In that regard, the Court of Justice recalls that, if a party claims adjustments in order to ensure comparability between the normal value and the export price for the purpose of determining the dumping margin, that party must prove that its claim is justified by demonstrating that the factor in respect of which the adjustment is claimed is such as to affect prices and price comparability.

It was therefore for the Commission to prove that the adjustment which it intended to make was justified, since those costs did not relate to the 'ex-works' level of trade, but to a subsequent level of trade. As the Commission had adduced proof in that respect, and given that a comparison between the normal value and the export price cannot be fair if those prices are compared at different levels of trade, it was not required to demonstrate that the costs at issue were factors affecting prices and price comparability.

Third, the Court of Justice rules that the General Court erred in law in holding that the undertakings in the Sinopec Group had duly substantiated the request that the Commission make adjustments in order to ensure that the comparison of the export price with the normal value was fair, since those undertakings did not substantiate that request during the administrative procedure.

In addition, the Commission did not impose an unreasonable burden of proof on those undertakings by requiring them to substantiate that request further by producing data relating to an unrelated party that were more precise than the data held by the Commission.

Where the Commission constructs the normal value in accordance with Article 2(6a)(a) of the basic regulation, that value is to include, *inter alia*, an undistorted and reasonable amount for the administrative, selling and general costs ('SG&A costs') of an exporting producer established in an appropriate representative country. In that situation, an exporting producer subject to an anti-dumping investigation which intends to request a downward adjustment of the normal value on the ground that certain costs are included in the SG&A costs is entirely dependent on the information provided in that regard by the undertaking in the third country concerned, which is disclosed to the exporting producer by the Commission.

In such a context, the requesting party is required, during the investigation, to adduce, at the very least, *prima facie* evidence that the adjustment claimed by it is well founded, in which case the Commission must make every reasonable effort to provide that party with the information enabling it to duly substantiate its request. However, the undertakings in the Sinopec Group did not adduce such *prima facie* evidence during the investigation.

Fourth, the General Court erred in dismissing two factors relevant for assessing whether an adjustment under Article 2(10)(i) of the basic regulation was justified on the ground that the exporting

company of the Sinopec Group was performing functions similar to those of an agent working on a commission basis.

It erred in holding that the fact that that company was looking for customers and established contact with them was not relevant on the sole ground that looking for customers and establishing contact with them were activities that an independent trader as well as an internal sales department would carry out. That is clearly a relevant factor which may be of some significance for the purpose of demonstrating that the related distributor carries out functions similar to those of an agent working on a commission basis.

Moreover, the General Court erred in law in holding that the trading, by the abovementioned exporting company, of goods made by producers other than the PVA-producing companies of the Sinopec Group was of no relevance for the purposes of such a demonstration. The Court of Justice states that it is true that the probative value of that element may prove to be limited, owing, for example, to the relatively low volume of sales by the exporting company of PVA purchased from unrelated producers. Nonetheless, such an element is, in principle, a relevant and potentially important factor in demonstrating the performance of functions similar to those of an agent working on a commission basis.

In the second place, the Court of Justice dismisses the cross-appeal brought by the undertakings in the Sinopec Group.

First of all, it confirms the General Court's assessment that, while the Commission did rely on the wrong legal basis in making an upward adjustment to the normal value by the amount of the non-refundable VAT on the basis of Article 2(10)(b) of the basic regulation, that error had no decisive effect on the Commission's assessment, since that adjustment could validly be made on the basis of Article 2(10)(k) of that regulation.

In that regard, the Court of Justice observes that, where an adjustment is necessary in order to ensure a fair comparison, and it is established that the differences found affect price comparability, such an error in the classification of the adjustment is purely formal in nature, as the two abovementioned provisions lay down the same condition for application. The Commission's error, as identified by the General Court, therefore has no bearing on the validity of the regulation at issue.

The Court of Justice adds that, where the Commission is entitled to take the view that it is necessary to make an adjustment to the normal value under Article 2(10)(k) of the basic regulation, once it has demonstrated that the differences referred to in that provision affect price comparability, that conclusion cannot be called into question on the ground that it has not demonstrated that customers consistently pay different prices on the domestic market because of differences affecting price comparability. Although the latter circumstance is referred to in that provision, it does not constitute an additional condition for its application.

In the third and last place, the Court of Justice decides to give final judgment in the matter. It annuls the regulation at issue so far as concerns the undertakings in the Sinopec Group on the ground that the elements put forward by the Commission do not demonstrate to the requisite legal standard that the functions performed by the exporting company of that group are similar to those of a trader working on a commission basis, and, accordingly, did not permit the Commission to make an adjustment in that respect.

Judgment of the General Court (Ninth Chamber, sitting with five Judges) of 9 September 2026, Nevinomysskiy Azot and NAK « Azot » v Commission, T-126/21 RENV

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

Dumping – Imports of ammonium nitrate originating in Russia – Definitive anti-dumping duties – Consolidated request for expiry review – Article 11(2), second subparagraph, of Regulation (EU) 2016/1036 – Standard of proof at the initiation of a review – Preliminary stage of the review procedure – Sufficiency of the evidence – Additional information taken into account based on a different dumping calculation method

Hearing a case referred back to it by the Court of Justice after an initial judgment was set aside, the General Court dismisses the action brought against Implementing Regulation 2020/2100⁷² imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia ('the good concerned'). In so doing, it clarifies subject to which limits, during the three months preceding the expiry of the anti-dumping measures, the European Commission may take account of additional information supplementing a request for review of such measures made under Article 11(2) of Regulation 2016/1036.⁷³

In 2018, following an interim review, the Commission maintained the definitive anti-dumping duty imposed on imports of the good concerned by adopting Implementing Regulation 2018/1722.⁷⁴

On 21 June 2019, the Commission received a request for the initiation of an expiry review of those anti-dumping measures, on the basis of Article 11(2) of the basic regulation ('the original request'), lodged by Fertilizers Europe ('the intervener'), an association of European fertiliser manufacturers. On 20 August 2019, Fertilizers Europe provided additional information that was incorporated into a consolidated version of the original request ('the consolidated request').

Taking the view that the consolidated request contained sufficient evidence to justify the initiation of an expiry review, the Commission carried out an investigation, upon completion of which it maintained the measures at issue for a period of five years, by adopting the contested regulation.

Two companies established in Russia which are producers and exporters of the good concerned⁷⁵ brought an action for annulment of that regulation in so far as it applies to them.

By judgment of 5 July 2023,⁷⁶ the General Court annulled the contested regulation, holding inter alia that the Commission had erred in law when it stated that it was irrelevant whether the original request had been supplemented with additional information and that the initiation of the abovementioned review could be warranted on the basis of the consolidated request. The intervener and the Commission each appealed against that judgment.

By judgment of 30 April 2025,⁷⁷ the Court of Justice set aside the initial judgment and referred the case back to the General Court, on the ground that the General Court had erred in law in the interpretation of Article 11(2) of the basic regulation.

Findings of the Court

The General Court begins by examining the criteria relating to the burden of proof applicable to the initiation of an expiry review of anti-dumping measures under the second paragraph of Article 11(2) of the basic regulation.

In that regard, it begins by noting that such a review can be initiated on the initiative of the Commission, or upon a request made by or on behalf of Union producers no later than three months before the expiry of the measures at issue. In the latter scenario, the request must contain sufficient

⁷² Commission Implementing Regulation (EU) 2020/2100 of 15 December 2020 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ 2020 L 425, p. 21; 'the contested regulation').

⁷³ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the basic regulation').

⁷⁴ Commission Implementing Regulation (EU) 2018/1722 of 14 November 2018 amending Implementing Regulation (EU) No 999/2014 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an interim review pursuant to Article 11(3) of the basic regulation (OJ 2018 L 287, p. 3).

⁷⁵ AO Nevinnomysskiy Azot and AO Novomoskovskaya Aktsionernaya Kompaniya NAK 'Azot'.

⁷⁶ Judgment of 5 July 2023, *Nevinnomysskiy Azot and NAK 'Azot' v Commission* (T-126/21, EU:T:2023:376; 'the initial judgment').

⁷⁷ Judgment of 30 April 2025, *Fertilizers Europe and Commission v Nevinnomysskiy Azot and NAK 'Azot'* (C-554/23 P and C-568/23 P, EU:C:2025:291; 'the judgment on appeal').

evidence of a likelihood of continuation or recurrence of dumping and injury if the anti-dumping measures in question were allowed to expire.

However, the Commission's obligations and burden of proof differ, depending on the stage of the review procedure.

During the so-called 'preliminary' stage, following expiry of the legal time limit and preceding the initiation of the review, the Union producers have the burden of proof and the Commission is not required to establish a likelihood of dumping in order to justify the initiation of the review or to carry out such checks, but must only ascertain whether the Union producers provided sufficient evidence in their request for review of the abovementioned likelihood.

By contrast, during the ensuing investigation phase, the Commission has the burden of proving that likelihood. The Commission thus does not act as arbitrator whose remit is limited to making an award solely on the basis of the information and the evidence provided by the parties to the investigation, since it is authorised to request Member States to provide it with information and to carry out all necessary checks and inspections.

Moreover, the standard of proof required during the preliminary phase is lower, quantitatively and qualitatively speaking, than that applicable during the investigation phase. Thus, in order to justify the initiation of an expiry review, the request must contain only sufficient evidence showing that the expiry of the measures would likely result in a continuation or recurrence of dumping and injury.

In the light of those criteria, the General Court holds that the Commission was correct in finding that the initiation of the review could be justified on the basis of the consolidated request, comprising the initial request and the additional information and thus containing all of the evidence provided by the intervener, whether or not that information corroborated the initial request.

Once Union producers submit a request for review, the Commission may gather all the additional information it considers necessary to establish whether there is a need to take the matter further. Therefore, the Commission is under no obligation to check whether that information supplements or corroborates the evidence contained in the original request in order to determine whether the request for review contains sufficient evidence.

The General Court further holds that, during the three months before the date of expiry of the anti-dumping measures, the Commission is also entitled to take account of evidence produced at its request and to collect such evidence if it considers it appropriate, even where it did not expressly request it and without it being obliged to take that evidence into account.

In the present case, the Commission was presumably in the first scenario, as it is apparent from a body of evidence in the file that the additional information was obtained following an exchange between the Commission and the intervener, and it is clear that that information was not lodged spontaneously by the intervener or at its initiative and that, apparently, the Commission deemed it appropriate to collect that information and take it into account.

A fortiori, the Commission was entitled to collect additional information since it is for the General Court to ascertain whether the EU institutions have omitted to take essential aspects into account in order to establish whether the information in the file was examined with all the required diligence so that it can be held that the normal value of the good concerned was determined in an appropriate and reasonable manner. The evidence contained in the additional information mirrors precisely the essential aspects needed for that determination, with the result that it was appropriate to gather it.

Consequently, the Commission did not make a manifest error of assessment in finding that the consolidated request contained sufficient evidence on the basis of the additional information of the fact that expiry of the measures in question would likely lead to the continuation of dumping and that, on that basis, it was entitled to initiate the expiry review.

The General Court dismisses the other arguments put forward by the applicants and, therefore, the action in its entirety.

XIII. COMMON FOREIGN AND SECURITY POLICY

1. RESTRICTIVE MEASURES

Judgment of the Court (Fifth Chamber) of 3 September 2026, Inter Rao Lietuva, C-147/25

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

Reference for a preliminary ruling – Common foreign and security policy – Regulation (EU) No 269/2014 – Article 2(1) – Decision 2014/145/CFSP – Article 2(1) – Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine – National measure providing for the freezing of funds and economic resources belonging to a legal person owing to the existence of links with a person sanctioned by the European Union – Principle of good administration – Right to effective legal protection – Scope of judicial review – Standard of proof of the links with the sanctioned person

Ruling on a request for a preliminary ruling from the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), the Court of Justice clarifies the requirements which EU law imposes on national measures implementing restrictive measures laid down in Decision 2014/145⁷⁸ and Regulation No 269/2014.⁷⁹

In 2022, Inter Rao Lietuva, a company incorporated under Lithuanian law operating in the electricity sector, was included on a national list of ‘persons with links to persons subject to international sanctions’ and its funds were frozen on account of its links to persons to whom EU restrictive measures applied, including the President of the Russian Federation. The existence of those links was inferred from the fact that 51% of Inter Rao Lietuva’s share capital belonged, through a company incorporated under Finnish law, to a Russian undertaking, the main shareholders of which were undertakings indirectly owned by the Russian Federation, which is a presidential federal republic whose Head of State, namely the President, is subject to international sanctions.

Following the dismissal at first instance of its action challenging the competent national authority’s refusal to remove its name from that national list, Inter Rao Lietuva lodged an appeal before the referring court.

Since it was unsure about the requirements arising from the right to be heard in the event of a person’s inclusion on a national list pursuant to EU restrictive measures and about the intensity of the judicial review of such inclusion, in particular as regards the standard of proof to be met by the competent authority, the referring court decided to make a reference to the Court of Justice for a preliminary ruling.

Findings of the Court

As a preliminary point, the Court recalls that Article 2(1) of Decision 2014/145 and Article 2(1) of Regulation No 269/2014 provide for the freezing of funds and economic resources belonging to or owned, held or controlled by the persons, entities or bodies included on the lists annexed to those acts.

⁷⁸ Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 16), as amended by Council Decision (CFSP) 2022/660 of 12 April 2022 (OJ 2022 L 120, p. 11).

⁷⁹ Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2014 L 78, p. 6), as amended by Council Implementing Regulation (EU) 2022/658 of 21 April 2022 (OJ 2022 L 120, p. 1).

Although such freezing does not, in principle, require any national implementing measure, those provisions do not preclude a Member State from including a person on a national list of persons whose funds and economic resources are to be frozen, provided that it is established that those funds or economic resources belong to or are owned, held or controlled by a person, entity or body whose name appears on the lists annexed to those acts.

As regards the right of a person included on such a national list to be heard, the competent national authorities are not required to communicate the grounds for listing or to hear the person concerned prior to his or her initial listing, since such a prior exchange would be liable to undermine the surprise effect and, therefore, the effectiveness of EU restrictive measures. That obligation does exist, however, where that person has already been included on that list pursuant to a previous decision still in force and there is no longer a risk of those restrictive measures being circumvented before their entry into force.

On the matter of judicial review of a person's inclusion on such a national list, the Court states that such review must meet the same requirements of effectiveness as those applicable to the review of the lawfulness of EU restrictive measures. Thus, national courts must verify the statement of reasons for that national measure, that the facts alleged in support of it have been accurately stated and, where appropriate, that there is no manifest error in the assessment of those facts, that national procedural rules have been complied with and that the competent authority which adopted that measure has not misused its powers.

By contrast, it is not for national courts to assess whether there is a threat to the national security of the Member State concerned or whether it is appropriate to adopt the national measure in the light of that threat. It falls to the Council of the European Union to assess, in the light of the criteria laid down in Decision 2014/145 and Regulation No 269/2014, whether a person, entity or body poses a threat to international security and the national security of the Member States and whether it is appropriate to adopt measures freezing funds and economic resources in respect of them. As for national authorities, their role – in the context of the implementation of those measures – is confined to verifying whether the funds or economic resources of persons, entities or bodies whose names do not appear on the lists annexed to those acts belong to or are owned, held or controlled by persons, entities or bodies who are included on those lists.

As regards the standard of proof that must be met in order to demonstrate, in the present case, that Inter Rao Lietuva's funds and economic resources belong to or are owned, held or controlled by the President of the Russian Federation, the referring court must satisfy itself that the competent national authority has established, on an objective and sufficiently solid basis, by direct evidence or by a sufficiently specific, precise and consistent set of indicia, that the President of the Russian Federation is able to influence, specifically and actually, Inter Rao Lietuva's decisions, as the case may be in the absence of any legal ties or links in terms of ownership or equity participation. In that regard, although the 'autocratic and oligarchic' nature of the Russian Federation may be taken into consideration as an aspect of the background against which the evidence is to be evaluated, it does not in itself constitute sufficiently solid evidence capable of proving that that person exerts control over that company.

Nevertheless, the referring court may take account of the fact that a Russian State-owned undertaking is one of the entities which directly or indirectly holds a stake in the capital of Inter Rao Lietuva. However, even if it were shown that that undertaking exerted genuine influence over Inter Rao Lietuva, it must still be demonstrated, on an objective and sufficiently solid basis, that the President of the Russian Federation is able to exert a genuine influence over the decisions of Inter Rao Lietuva, either directly or through that undertaking or undertakings which control it.

In that regard, the referring court may take into account all the information or circumstances relating to the reality and effectiveness of the control, albeit of an informal nature, exerted by the President of the Russian Federation over the Russian undertaking, provided that that information or those circumstances are supported by objective and sufficiently solid evidence. Lastly, in its assessment of the evidence, that court may take into consideration the difficulties faced by the competent national authority in securing objective evidence or information and Inter Rao Lietuva's ability to produce evidence capable of proving its independence.

2. EUROPEAN PEACE FACILITY

Judgment of the General Court (Grand Chamber) of 9 September 2026, Hungary v European Peace Facility and Council, T-457/24

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

Common foreign and security policy – European Peace Facility (EPF) – Decision of the EPF Committee on the allocation to the Ukrainian Armed Forces of the first instalment of the extraordinary revenues from frozen Russian assets – Lack of jurisdiction on the part of the EU judicature

By its judgment, the General Court dismisses the action for annulment brought by Hungary, on the basis of Article 263 TFEU, against the decision of the European Peace Facility (EPF) Committee of 21 June 2024 allocating the first instalment of the extraordinary revenues from frozen Russian assets to military support for Ukraine,⁸⁰ and against the minutes recording the adoption of that decision. The Court states that such a decision is directly related to the political or strategic choices made in the field of the common foreign and security policy (CFSP) and is therefore not subject to review by the EU judicature.

Following the asset-freezing measures adopted in the context of the war in Ukraine, the Council of the European Union adopted, inter alia, Decision (CFSP) 2024/1471, providing for the allocation of the net profits from the extraordinary revenues generated by the frozen Russian assets to military support for the Ukrainian Armed Forces as well as for periodic decisions to be taken by the EPF Committee regarding their actual distribution. Since Hungary had constructively abstained, for the purposes of Article 31(1) TEU, when Decision 2024/1471 was adopted, the EPF Committee found that that Member State could not participate in the vote for the adoption of the contested decision, relating to the allocation of the first instalment of those funds.

Hungary has complained that the EPF thus disregarded the applicable voting rules and thereby failed to observe the principle of equality of the Member States and the principle of the democratic functioning of the European Union.

Findings of the Court

In the first place, the General Court recalls that, in accordance with Article 51 of the Statute of the Court of Justice of the European Union and by way of derogation from the rule laid down in Article 256(1) TFEU, certain categories of action are reserved to the Court of Justice. That applies in particular to the actions referred to in Article 263 TFEU which are brought by a Member State and are directed against certain acts of the Council.

In the present case, the contested decision was adopted by the EPF Committee and not by the Council. Furthermore, under Article 3(1) of Decision 2021/509,⁸¹ the EPF has legal capacity in its own right, with the result that acts adopted by its Committee cannot be attributed to the Council.

Accordingly, the present action is not part of the categories of actions reserved for the Court of Justice and must be examined by the General Court.

⁸⁰ Decision of the European Peace Facility (EPF) Committee of 21 June 2024 on the allocation to assistance measures for the supply of military support to the Ukrainian Armed Forces of the amounts allocated through the EPF in accordance with the conditions specified in Council Decision (CFSP) 2024/1471 of 21 May 2024 on the allocation of the amounts of the financial contribution paid to [the EPF] pursuant to Decision (CFSP) 2024/1470 (OJ L, 2024/1471).

⁸¹ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ 2021 L 102, p. 14).

Nevertheless, in the second place, the General Court rules that the present action does not fall within the jurisdiction of the EU judiciary and must, therefore, be dismissed on that ground.

The General Court observes, first of all, that the EU judiciary does not, in principle, have jurisdiction in CFSP matters, subject to the two exceptions provided for in the last sentence of the second subparagraph of Article 24(1) TEU and in the second paragraph of Article 275 TFEU, namely monitoring of compliance with Article 40 TEU and review of the legality of restrictive measures directed against natural or legal persons. Since the contested decision is not covered by either of those two exceptions, the EU judiciary does not have jurisdiction to hear and determine the present case on that basis.

Next, the General Court finds that the contested decision is an act that is directly related to the political or strategic choices made in the context of the CFSP, leading to a lack of jurisdiction on the part of the EU judiciary, in accordance with the case-law of the Court of Justice.⁸² That decision determined the allocation and specific distribution of the funds corresponding to the first instalment of the net profits ensuing from the extraordinary revenues to the financing of the acquisition of equipment 'of a military nature' intended for the Ukrainian Armed Forces and, moreover, chose the assistance measure to which those funds would be allocated.

That finding is confirmed, first, by the fact that the contested decision was adopted on the basis of Article 3 of Decision 2024/1471, in accordance with specific strategic orientation provided by the Political and Security Committee, and on the basis of a decision proposal that had been submitted to the EPF Committee by the European External Action Service.

Second, by deciding on the allocation of the funds corresponding to the first instalment of the net profits ensuing from the extraordinary revenues, the contested decision 'implemented' Decision 2024/1471, which identifies strategic interests of the European Union in the field of the CFSP and defines actions to be taken in that field.

Third, Decision 2024/1471, which the contested decision implemented, was adopted on the basis, inter alia, of Article 28(1) TEU, relating to the European Union's operational action in the context of the CFSP, and is therefore directly related to the political or strategic choices made within the framework of the CFSP.⁸³

Fourth, the political or strategic nature of the contested decision is borne out by the fact that that decision was adopted in response to an urgent request from the Ukrainian Government for the supply of military equipment, and platforms, designed to deliver lethal force and, moreover, makes available to the Ukrainian Armed Forces military equipment, such as ammunition and artillery systems, air defence missiles and systems and military equipment from the Ukrainian defence industry.

In the light of the foregoing, the action is dismissed in its entirety.

⁸² Judgment of 10 September 2024, *KS and Others v Council and Others* (C-29/22 P and C-44/22 P, EU:C:2024:725, paragraph 117).

⁸³ See paragraph 126 of the judgment in *KS and Others v Council and Others*.

Nota bene:

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

- Judgment of the Court (Third Chamber) of 24 September 2026, Steizer, C-176/25
- 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
- Judgment of the General Court (First Chamber) of 9 September 2026, Abramovich v Council, T-358/25
- Judgment of the General Court (Fourth Chamber) of 30 September 2026, Avetisyan v Council, T-323/25