COURT OF JUSTICE
OF THE EUROPEAN UNION

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

Judgment of the Court of Justice (Fourth Chamber) of 11 June 2026, Centro Petroli Roma, C-386/24

[Link to the full text of the judgment]

Reference for a preliminary ruling – Rule of law – Judicial independence – Article 267 TFEU – Obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling – Individual liability of judges – Taxation – General arrangements for excise duty – Directive 2008/118/EC – Article 16(1) – Tax warehouse – Opening and operation – Authorisation – Conditions – Fixing by national legislation – Distinction according to the storage capacity of warehouses – Criterion relating to the existence of 'actual operational and supply needs of the installation' for all warehouses – Additional criterion relating to the delivery of a minimum quantity of products over a reference period or to the dependence on another tax warehouse for small warehouses – Whether justified – Principle of proportionality

Ruling on a reference for a preliminary ruling from the Consiglio di Stato (Council of State, Italy), for the second time in the same case, the Court of Justice recalls that Member States can lay down criteria for the operation of a tax warehouse within the meaning of Directive 2008/118 [1] provided that the principle of proportionality is observed. Incidentally, the Court states the conditions under which the personal liability of judges may be incurred in the event of a failure to make a reference for a preliminary ruling.

Centro Petroli Roma, a company engaged in the production, processing and marketing of energy products, held a licence to operate a commercial warehouse under the tax warehouse regime. That licence was suspended by the competent authority on account of the failure to comply with the requirements laid down by the national legislation.

Following an action for annulment that was dismissed at first instance, the company brought an action before the referring court, claiming that the national legislation was incompatible with, inter alia, Directive 2008/118, and asked that a reference be made to the Court of Justice for a preliminary ruling.

Even though, according to the referring court, the national legislation at issue was compatible with EU law, the referring court nevertheless granted that request, while seeking clarification on the criteria for implementing the doctrine of 'acte clair'.

By its order of 15 December 2022, [2] the Court provided that clarification; however, it did so without ruling on the interpretation of Directive 2008/118, with the result that, since the applicant repeated its request for a preliminary ruling, the referring court considers that there remain grounds on which to justify a new reference to the Court of Justice, in the particular context where the personal liability of the judges of which it is composed could be incurred, as provided for by national law, if it refused the request to make a reference for a preliminary ruling.

In those circumstances, the referring court asks the Court of Justice to determine whether, in essence, EU law, and in particular Directive 2008/118, precludes Member States from imposing, in the form of criteria relating to 'actual operational and supply needs of the installation' and to delivery thresholds of a minimum quantity of products over a reference period or to relationships of dependency on

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1 Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12), as amended by Council Directive (EU) 2019/475 of 18 February 2019 (OJ 2019 L 83, p. 42).

2 Order of 15 December 2022, *Centro Petroli Roma* (C-597/21, EU:C:2022:1010).

another tax warehouse, conditions for authorising tax warehouses for liquefied petroleum gas and other energy products.

Findings of the Court

First of all, the Court recalls that, in order to preserve the requirement of judicial independence, the personal liability of judges must arise only in exceptional cases where there is a serious violation of law, where judges act arbitrarily or where they deny justice.

In that context, a national court of last instance must, in principle, refer any questions on the interpretation of EU law to the Court of Justice. The national court may be relieved of its obligation only if one of the three Cilfit [3] exceptions applies, in particular if the correct interpretation of the EU law in question is so obvious that there is no reasonable doubt.

In those circumstances, the grounds of the decision must demonstrate why the interpretation of EU law is obvious and leaves no scope for any reasonable doubt, taking into account the specific characteristics of EU law, the particular difficulties of its interpretation and the risk of divergences in case-law within the European Union. However, that court is not required to demonstrate that other national courts or tribunals or the Court of Justice would give the same interpretation, but must justify that that obvious nature would also be acknowledged by them.

For those reasons, in exceptional cases where there is a serious violation of law, where judges act arbitrarily or where they deny justice, the individual liability of the judges of a national court of last instance which gives reasons for its refusal to make a reference for a preliminary ruling cannot be incurred solely because they did not grant that request.

As regards the substance, the Court notes that Member States alone have the power to authorise the opening and operation of a tax warehouse and to set the conditions for the operation of that warehouse, which must pursue the objective set out in the second paragraph of Article 16(1) of Directive 2008/118 of preventing evasion or abuse.

Even though Article 16(1) of that directive leaves Member States a margin of discretion in determining those conditions, in so far as they aim to prevent evasion and abuse, Member States must comply with the general principles of EU law, including the principle of proportionality.

In that connection, in the first place, the criteria in the national legislation relating to ‘actual operational and supply needs’, to the quantitative threshold of 30% of withdrawals or to the relationship of dependency on another warehouse aim to verify whether the economic activity exercised in the warehouse is genuine and, on that basis, those criteria seem appropriate for achieving the objective of combating evasion and abuse pursued by Directive 2008/118. However, on account of the vagueness of the wording of the first of those criteria which leaves a wide margin of discretion to the competent authorities, the referring court must ensure that that criterion actually aims to verify the reality of the operational activity of the warehouse.

In the second place, the referring court must examine whether the measures provided for by that legislation have been limited to what was strictly necessary and whether there are less restrictive but equally effective means of achieving the objective of combating evasion and abuse.

In the third and last place, the referring court must verify whether that legislation is disproportionate to the intended objective, having regard to the impact that that legislation may have on the access of operators to the tax warehouse regime, which contributes to facilitating the circulation of excise goods within the European Union.

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3 Judgment of 6 October 1982, *Cilfit* (283/81, EU:C:1982:335).

II. CITIZENSHIP OF THE UNION: DERIVED RIGHT OF RESIDENCE OF THIRD-COUNTRY NATIONALS WHO ARE FAMILY MEMBERS OF A CITIZEN OF THE UNION

Judgment of the Court of Justice (Grand Chamber) of 4 June 2026, Safi, C-147/24

Link to the full text of the judgment

Reference for a preliminary ruling – Article 20 TFEU – Citizenship of the Union – Directive 2008/115/EC – Return of illegally staying third-country nationals – Article 5(a) and (b) – Obligation to take account of the best interests of the child and of family life – Article 6(2) – Decision of the competent authority of the host Member State refusing to grant a derived right of residence on its territory to the third-country national, who is the parent of a minor child who is a Union citizen, and ordering that third-country national to go immediately to another Member State – Interference with the exercise by a Union citizen of his or her right of free movement and residence within the territory of the Member States – Child having never resided in a Member State other than that of which he or she is a national – Derived right of residence of the parent, who is a third-country national, in the Member State of which the child is a national and in which that child resides – Right of residence of that parent in another Member State – Article 7 of the Charter of Fundamental Rights of the European Union – Right to respect for private and family life – Article 24(2) and (3) of the Charter of Fundamental Rights – Best interests of the child

Ruling on a request for a preliminary ruling from the rechtbank Den Haag (District Court, The Hague, Netherlands), the Court of Justice, sitting as the Grand Chamber, explains the scope of Article 20 TFEU in the context of an application for a derived right of residence made by the mother, who is a third-country national, of a minor child of Netherlands nationality, that child being a Union citizen who has resided since birth with his parents in the Netherlands.

V, of Moroccan nationality, lived in Spain from 1999 to 2014 on the basis of a right of residence granted, pursuant to Spanish law, on account of her economic activity in that Member State. Since her marriage in 2014, she has resided in the Netherlands with her spouse, who was born there and who has Netherlands and Moroccan nationality. Their marriage was entered in the civil status registers of the Netherlands municipality in which they reside. However, V does not hold a residence permit for the Netherlands. In 2015, a son, who holds Netherlands nationality, was born to the couple, and who the couple care for together. That child has speech and language difficulties and has never lived on the territory of a Member State other than that of the Netherlands. V's spouse receives social assistance benefits does not receive any income from employment on account of his state of health and, for that reason, is dispensed in part from the obligation to work.

In 2020, V lodged an application for a derived right of residence under Article 20 TFEU. Her application and subsequent complaint were rejected, including after the submission of a document attesting that she had renounced her right of residence in Spain.

Before the referring court, V submits that that she has a derived right of residence in the Netherlands on account of the fact that her minor son is dependent on her. For its part, the competent national authority maintains that there is no such right on the ground that V already has a right of residence in Spain and that the child could accompany his mother to that Member State.

In that context, the referring court asks, in essence, whether Article 20 TFEU, read in the light of Article 7 and Article 24(2) and (3) of the Charter of Fundamental Rights of the European Union ('the Charter'), requires the national authority to verify, before refusing to grant a right of residence in such a situation, whether the family life which a child leads with both his or her parents, on whom he or she is dependent, could continue in another Member State and whether the relocation of that child to the latter Member State would be contrary to his or her best interests.

Findings of the Court

In the first place, the Court points out that, if V no longer has a right of residence in Spain, the Netherlands authorities are required to grant her a derived right of residence in the Netherlands under Article 20 TFEU. According to the findings of the referring court, there is a relationship of dependency between V and her minor son, who is a Union citizen, given that the latter lives in a stable manner with both his parents and that the custody of that child is shared by both parents, on whom he is also legally, emotionally and financially dependent. Consequently, having regard to that relationship of dependency, if V were refused the right to reside in the Netherlands, her minor child would be compelled to accompany his mother and therefore to leave the territory of the European Union. Such a departure would have the effect of depriving that child of the genuine enjoyment of the substance of the rights conferred by his status as a Union citizen and would undermine the effectiveness of that status.

In the second place, the Court states that, if V still has a right of residence in Spain that fact does not, in itself, rule out the possibility that she may enjoy a derived right of residence in the Netherlands under Article 20 TFEU. Were V to be refused such a derived right of residence, her child would be compelled to accompany his mother to Spain and, therefore, to leave the territory of the Netherlands, having regard to the relationship of dependency between V and her minor child. Such a relocation would be liable to infringe some of that child's fundamental rights, in particular the right to respect for family life and the rights of the child, enshrined in Article 7 and Article 24(2) and (3) of the Charter, respectively.

In that context, the Court observes that the decision rejecting a request for the grant of a derived right of residence under Article 20 TFEU in a situation such as that covered by the dispute in the main proceedings constitutes an implementation of EU law, within the meaning of Article 51(1) of the Charter. That decision necessarily interferes with the exercise of the right of the minor child, who is a Union citizen, to move and reside freely on the territory of the Member States, since that child is, in fact, compelled to leave his Member State of residence, of which he is a national, in order to settle in another Member State.

It follows that, before adopting such a decision, the competent national authorities are required to ensure compliance with the fundamental rights as guaranteed by the Charter.

In that regard, the Court notes that, first, subject to verification by the referring court, the decision refusing to grant a derived right of residence to the mother of the minor child, that child being a Union citizen, would harm the family unit in that it would deprive that child of the opportunity which he has enjoyed since birth to maintain regular personal relations and regular contact with both his parents. There is a genuine risk that that child will be separated from his father, in so far as the latter might find it impossible to obtain the right to reside on a long-term basis in Spain due to the fact that he is not in a position to earn income. Were such a breach to be established, a derived right of residence in the Netherlands would have to be granted to that child's mother under Article 20 TFEU, read in the light of Article 7 and Article 24(3) of the Charter.

Secondly, the Court recalls that, in all actions relating to children, the child's best interests must be a primary consideration. In the present case, the child concerned does not speak Spanish but Dutch. In addition, he did not speak until he was five years old and has speech and language difficulties, and is therefore receiving specialised education in the Netherlands for pupils in need of specific support which the general education system is unable to provide. Subject to verification by the referring court, it appears that such circumstances are such as to demonstrate that it is in the best interests of the minor child concerned that he continues to reside in the Netherlands and that, consequently, compelling his relocation to Spain would, in fact, be contrary to those interests. In that situation, a derived right of residence would therefore have to be granted to his mother under Article 20 TFEU, read in the light of Article 24(2) of the Charter.

Judgment of the Court of Justice (Second Chamber) of 4 June 2026, Besthame, C-560/24

Link to the full text of the judgment

Reference for a preliminary ruling – Citizenship of the Union – Right to move and reside freely in the territory of the Member States – Directive 2004/38/EC – Article 3(1) – Beneficiaries – Family members of a Union citizen – Derived right of residence of a third-country national – Subsequent naturalisation of that national – Article 35 – Fraud or abuse of rights – Marriage of convenience – Temporal scope – Power of investigation of the competent national authorities into the existence of a marriage of convenience

Following a request for a preliminary ruling from the Court of Appeal (Ireland), the Court of Justice provides clarification on the temporal scope of Article 35 of Directive 2004/38, [4] under which Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by that directive in the case of abuse of rights or fraud, such as marriages of convenience. [5] It also rules on the measures that a Member State may take on the basis of that provision where a third-country national, having obtained a right of residence based on that directive by means of a marriage of convenience with a citizen of the Union, has subsequently acquired the nationality of that Member State.

R.S., a third-country national, entered Ireland as the holder of a student residence permit and, in 2010, a few days before the expiry of that permit, he married a Union citizen who had exercised her freedom to move and reside in Ireland. He then obtained a five-year residence card as a family member of a Union citizen.

In 2015, R.S. acquired Irish nationality and, since then, his right of residence has been based on that nationality.

After his divorce in 2018 and the submission of an application for residence in Ireland, made in 2019 by a third-country national, the mother of a child, an Irish national, of whom R.S. is the father, an investigation was initiated into the existence of a marriage of convenience contracted in 2010.

By decision of 13 February 2020, the Minister for Justice (Ireland) 'revoked' R.S.'s residence card on the ground, inter alia, that the marriage contracted in 2010 was a marriage of convenience. By a new decision, on 1 February 2022, the Minister for Justice found that R.S. had produced false or misleading documents and that he had contracted that marriage in order to obtain a status or a right to which he would not otherwise have been entitled under Directive 2004/38. Accordingly, any entitlement or status conferred under that directive as a result of that marriage is deemed withdrawn from the outset.

R.S. challenged those decisions before the High Court (Ireland), claiming that, from the moment he had acquired Irish nationality, he was no longer covered by Directive 2004/38 and that the Minister for Justice had acted ultra vires. Since that action was dismissed, R.S. brought an appeal before the referring court.

Findings of the Court

First of all, the Court states that Article 35 of Directive 2004/38 is worded broadly. It authorises Member States to adopt the 'necessary measures' in order to refuse, terminate or withdraw any right 'conferred' by that directive, such as a right of residence derived from a family member of a Union citizen who has exercised his or her freedom of movement and residence. The adoption of such

[4] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

[5] Any such measure must be proportionate and subject to the procedural safeguards provided for in that directive.

measures is not, however, subject to any express time limit. In particular, there is no requirement that that right must still be exercised at the time those measures are adopted.

Furthermore, the Court points out that Directive 2004/38 not only governs the conditions for obtaining and retaining the rights of residence it makes provision for, but also lays down, in situations arising from the loss of those rights, rules which continue to apply to a person who is no longer a 'beneficiary' within the meaning of Article 3(1) of that directive. Consequently, the temporal scope of certain provisions of Directive 2004/38 goes beyond that of the concept of 'beneficiary'. Thus, even after losing the status of a beneficiary, a person may remain subject to certain provisions of that directive where their subject matter and purpose so justify.

The Court also points out that abusive conduct, which consists in the artificial creation of the conditions required for obtaining an advantage and their formal compliance, is difficult to detect and is often discovered after it has been committed. Therefore, the objective of combating fraud requires that Article 35 of Directive 2004/38 be interpreted as permitting Member States to take the necessary measures in the event of a fraud which affected a right conferred by the directive, even on a date when that right ceased to have effect and the person concerned no longer has the status of a beneficiary. A contrary interpretation would risk benefiting those who have committed fraud.

According to the Court, no other conclusion can be drawn from the judgment in Chenchooliah, [6] in which it did not intend to limit the temporal scope of Article 35 of Directive 2004/38, but merely distinguished situations falling within the scope of fraud or abuse of rights under that provision from those covered by Article 15 of that directive.

Accordingly, the Court states that Article 35 of Directive 2004/38 implicitly confers on the Member States the power to investigate suspected fraud or abuse of rights and to verify its existence, without necessarily adopting, thereafter, measures refusing, terminating or withdrawing a right conferred under that directive. Although that provision leaves the Member States a certain discretion as to the 'necessary measures', subject to compliance with the principle of proportionality and the procedural safeguards laid down by that directive, a finding of fraud or abuse of rights, which is a necessary step prior to the possible adoption of such measures, presupposes verification of the existence of such fraud or abuse. According to the case-law of the Court, that verification requires an individual examination of the specific case, which may lead to a finding that fraud or abuse of rights has not been established.

Lastly, since a finding of a marriage of convenience may, in the dispute in the main proceedings, lead to the revocation of naturalisation and the loss of citizenship of the Union, the Court points out that Article 20 TFEU does not preclude, subject to compliance with the principle of proportionality, a Member State from withdrawing from a Union citizen the nationality of that Member State acquired by naturalisation where that nationality has been obtained fraudulently.

The Court concludes that Article 35 of Directive 2004/38 allows the national authorities to investigate and, if appropriate, make a determination or reach a conclusion that a person, who was previously a beneficiary of a derived right to move and reside under that directive, committed a fraud or an abuse of rights, even if that person acquired the nationality of that Member State and if, on the date of the investigation, his residence in that Member State is no longer based on that directive.

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[6] Judgment of 10 September 2019, *Chenchooliah* (C-94/18, EU:C:2019:693).

III. PROTECTION OF PERSONAL DATA

Judgment of the Court of Justice (Fifth Chamber) of 4 June 2026, Darashev, C-312/24

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 in criminal matters – Regulation (EU) 2016/679 – Directive (EU) 2016/680 – Scope – Processing of data collected in the course of an investigation against a police officer as a person suspected of a criminal offence – Recording of data relating to this investigation in the police officer's personnel file – Lawfulness of processing – Point (c) of the first subparagraph of Article 6(1) and Article 6(3) of that regulation – Processing necessary for compliance with a legal obligation – Legal basis for the processing – Article 17 of that regulation – Right to erasure

Hearing a request for a preliminary ruling from the Sofiyski rayonen sad (Sofia District Court, Bulgaria) on a question concerning the area where the GDPR [7] meets Directive 2016/680, [8] the Court of Justice rules on the lawfulness of the processing of personal data by means of which a public authority, in its capacity as employer, keeps in the personnel file of a police officer data relating to his or her status as a suspect in a suspended criminal investigation, without that person having been charged or accused ('the data processing at issue in the main proceedings'). It also specifies the basis and conditions for exercising the right to erasure of data stored in such circumstances.

The applicant held various positions as a police officer within various directorates of the Bulgarian Ministry of the Interior. In a criminal investigation initiated by the investigations directorate of that ministry, against an unknown perpetrator, in respect of the offence of robbery, he was placed in police custody and, in his capacity as a suspect, was subject to various investigative measures. Information relating to that investigation was collected by that directorate and stored by the directorate in which the applicant worked in his personnel file, even though that investigation had been suspended, and without the person concerned having been charged or accused. Subsequently, the applicant brought an action before the referring court seeking that the Prokuratura na Republika Bulgaria (Public Prosecutor's Office of the Republic of Bulgaria) be ordered to pay him compensation for non-material damage suffered as a result of the measures to which he was subject in the course of the criminal investigation at issue and for the consequences resulting therefrom, in particular the fact that he had not been promoted within that ministry on the ground that he was a suspect in that investigation.

The referring court seeks to determine whether the data processing at issue in the main proceedings falls within the scope of the GDPR or Directive 2016/680. It also asks whether the principle of the 'right to be forgotten', laid down in Article 17(1)(a) of the GDPR, could apply to the applicant's situation.

Findings of the Court

As regards, in the first place, the applicability of the GDPR or Directive 2016/680 to the data processing at issue in the main proceedings, the Court notes that, in accordance with Article 1(1) of that directive, that directive applies to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences. By contrast,

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[7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and corrigendum OJ 2018 L 127, p. 2; 'the GDPR').

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

under Article 9(1) of that directive, where the processing is carried out for purposes other than those set out above, the GDPR is to apply. That regulation therefore applies to the activity carried out by the directorate of a public authority consisting of storing in the personnel file of one of its officials data relating to his status as a suspect in a criminal investigation, in so far as that processing is carried out not for the purposes of investigation of the applicant but for human resources management purposes. It is irrelevant in that regard that that directorate obtained those data through another directorate belonging to the same public authority, the latter directorate being empowered to conduct that type of investigation.

In the second place, ruling on the lawfulness of the processing of the data at issue in the main proceedings, the Courts considers, first, that that processing is likely to be necessary for compliance with legal obligations, within the meaning of point (c) of the first subparagraph of Article 6(1) of the GDPR, laid down by the national legislation concerning the management of the personnel files of officers and the disciplinary liability of those officers, which are implemented by the public authority responsible for processing in instructions of a regulatory nature which thus constitute the legal basis for that data processing. Furthermore, the Court notes that Article 6(3) of the GDPR does not preclude the legal basis for such processing from being defined by that authority in a regulatory act intended to implement the legal obligations imposed on it, for the purposes of point (c) of the first subparagraph of Article 6(1) of that regulation, on condition that that authority is empowered by national law to adopt that act, the legal basis is clear and precise and its application is foreseeable for the data subjects.

As regards, secondly, the legal obligation concerned, requiring the processing of the data at issue in the main proceedings, the Court states that the imposition of more stringent moral and ethical criteria on police officers in order to demonstrate that they have the professional and human qualities necessary for the performance of their duties may be regarded as falling within an objective of legitimate public interest, within the meaning of Article 6(3) of the GDPR, namely, in essence, that of ensuring the probity of staff responsible for safeguarding public order and protecting the population.

Thirdly, the Court points out that it is for the referring court to verify the proportionality of the national legislation requiring the data processing at issue in the main proceedings. In particular, as regards the storage of those data, Article 17(3)(b) of the GDPR must be interpreted as meaning that, where the period of storage of those data exceeds that necessary for compliance with the legal obligation to which the controller is subject, the data subject is capable of recovering his or her right to erasure of those data, in particular where they are no longer necessary in relation to the purposes for which they were collected or processed. The Court also states that the data at issue in the main proceedings constitute personal data 'relating to criminal convictions and offences', the processing of which is subject to the additional conditions of lawfulness laid down in Article 10 of the GDPR, irrespective of the fact that, during the criminal investigation, the commission of the offence in respect of which the person was suspected was not established. Accordingly, the Court concludes that the GDPR must be interpreted as meaning that the storage, in the personnel file of a police officer, for the purposes of the management of his career and the monitoring of compliance, by that staff member, with the rules inherent in his or her duties, of personal data relating to his or her status as a suspect in a suspended criminal investigation, where that officer was neither charged with nor accused of the offence concerned, may be regarded as justified for the purposes of compliance with a legal obligation to which the public authority, the employer of that officer, is subject on the basis of national law, provided that that legal basis is clear and precise, that its application is foreseeable for data subjects and that that obligation meets an objective of public interest and is proportionate to that objective.

Judgment of the Court of Justice (Fifth Chamber) of 18 June 2026, NTH Haustechnik, C-484/24

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(1)(e) – Storage limitation – Point (e) of the first subparagraph of Article 6 – Lawfulness of processing such data relating to a contract of employment in judicial proceedings – Article 17(3)(e) – No obligation to erase such data where processing is necessary for the establishment, exercise or defence of legal claims – Data collected by the employer with a view to proving a serious failure by the employee to comply with his or her obligations – Use of evidence obtained unlawfully

Ruling on a request for a preliminary ruling from the Landesarbeitsgericht Niedersachsen (Higher Labour Court, Lower Saxony, Germany), the Court of Justice clarifies whether and the conditions under which a national court may take into account personal data adduced as evidence but which was obtained in breach of the GDPR. [9]

NTH Haustechnik GmbH ('NTH'), a heating and air-conditioning undertaking, terminated the employment contract of EM, who continued to have access to the premises and to the computers located there. Three years later, NTH discovered that EM had sold, via the eBay online sales platform, goods which the undertaking claims it owned.

NTH became aware of those sales by accessing EM's private eBay account using her user ID and password. In that context, the referring court does not rule out the possibility that the data collection at issue was unlawful.

The referring court therefore requested the Court make a preliminary ruling on whether it was possible to take such evidence into account.

Findings of the Court

In the first place, in order to enable the referring court to ascertain whether the processing of personal data falls, in the present case, within the scope of the GDPR, the Court recalls that, as EU law currently stands, it is for national law to determine the rules relating to the admissibility and assessment of facts and evidence.

However, the Court states that, since each transmission of data to a controller distinct from the previous controller entails a corresponding act of collection by that controller, a court must be regarded as undertaking such an act of collection when it gathers, on the basis of electronic documents which a party has transmitted to it, certain personal data found in those documents.

In the second place, the Court rules on whether an alternative lawfulness condition is set out in Article 17(3)(e) of the GDPR, which lays down an exception to the right to request that its data be erased, where those data are necessary for the establishment, exercise or defence of legal claims.

In that regard, the Court notes that that exception to the right to erasure does not constitute an alternative lawfulness condition, since the GDPR sets out an exhaustive and restrictive list of the cases in which processing of personal data can be regarded as lawful. [10]

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

10 First subparagraph of Article 6(1) of the GDPR.

In the third place, the Court clarifies whether the principle of 'data minimisation' requires a court to ensure, for each processing of personal data it undertakes, that the principle of proportionality is observed as regards the data thereby concerned.

To that end, the Court recalls that the GDPR, [11] by providing that personal data undergoing processing must be adequate, relevant and necessary in relation to the purposes relating thereto, makes such processing subject to observance of the principle of 'data minimisation'.

While that principle gives 'expression' to the principle of proportionality, that does not mean that that provision, of itself, implements that principle. [12] The requirements laid down by the principle of 'data minimisation' are such as to ensure that the choice of using certain data rather than other data satisfies the first two conditions which follow from the principle of proportionality. [13]

As regards the third condition which follows from the principle of proportionality, namely that the interferences with fundamental rights must not be disproportionate to the objectives pursued, the Court considers that it is also satisfied, by carrying out a combined analysis of a number of provisions of the GDPR. [14]

Therefore, the Court concludes that the principle of 'data minimisation' does not require a court to ensure, for each processing of personal data it undertakes, that the principle of proportionality is observed in respect of the data concerned by such processing, provided that the requirements resulting from the principle of 'data minimisation' are complied with.

In the fourth place, the Court rules on whether the GDPR [15] and the Charter [16] preclude a national court from using evidence containing personal data obtained in breach of the right to the protection of privacy and the right to the protection of personal data.

From that perspective, the Court finds, first of all, that the processing of personal data undertaken by a court in connection with the personal data contained in evidence offered in support by the parties is, in principle, necessary in order to comply with a legal obligation of that court, namely the obligation to rule on whether that evidence is admissible and, where that evidence has been declared admissible in the light of the criteria laid down for that purpose by national law, to take that evidence into account in order to provide its decision.

Next, the Court finds that that legal obligation of a court must be regarded as concerning and being such as to enable an objective of public interest to be achieved, since it relates to compliance with the right to a fair trial enshrined in the Charter. [17] Even if the data concerned were obtained unlawfully and the legitimate interest of the party transmitting them does not outweigh the interest in simply adducing the evidence on which it relies, no other measure appears capable of achieving such an objective as effectively as allowing courts to process personal data found in the evidence offered in support by the parties.

In addition, the Court recalls that the right to the protection of personal data is not an absolute right, but must be balanced against the right to a fair trial. Having regard to the essential function which that right plays in society, the fact of requiring a court to take account of evidence obtained in breach of the GDPR does not appear to be such as to cause disproportionate interference with the right to privacy and the protection of personal data, as guaranteed by the Charter. From that, the Court infers that neither the Charter nor the GDPR precludes a national court from using evidence obtained in

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11 Article 5(1)(c) of the GDPR.

12 Second sentence of Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

13 Namely, that the measure at issue does in fact pursue an objective of general interest recognised by the European Union and that the resulting interferences with fundamental rights are limited to what is strictly necessary.

14 Article 5(1)(c) and the first subparagraph of Article 6(1) and the second subparagraph of Article 6(3).

15 Article 5(1) of the GDPR and point (c) of the first subparagraph of Article 6(1) of the GDPR, read in conjunction with Article 6(3) thereof, and the principle of 'data minimisation'.

16 Articles 7 and 8 of the Charter.

17 Article 47 of the Charter.

breach of the right to the protection of privacy and the right to protection of personal data by a party, where the legitimate interest of that party in such processing does not outweigh the interest in simply adducing the facts on which it relies.

By contrast, the Court states that, before disclosing such data to the parties or to third parties, the court must examine whether such data are limited to what is necessary in relation to the purposes pursued and, as appropriate, take measures to reduce as far as possible the impediment to the right to the protection of personal data which such disclosure is likely to entail.

In the fifth and last place, as regards the processing of personal data relating to third parties, the Court finds that a court is required, when acting in its judicial capacity, to comply with the GDPR when it processes personal data relating to persons who are not a party to the judicial proceedings. However, EU law does not require, in principle, that the parties to those proceedings be afforded the possibility of relying on an infringement of that regulation which is detrimental to persons who are not a party to those proceedings.

IV. BORDER CONTROLS, ASYLUM AND IMMIGRATION: ASYLUM POLICY

Judgment of the Court of Justice (Second Chamber) of 4 June 2026, Ebilum, C-440/25

Link to the full text of the judgment

Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Article 46 – Right to an effective remedy – Full and ex nunc examination – Extent of the powers of the first-instance court or tribunal – Examination of the facts by the first-instance court or tribunal – Examination of the international protection needs by the first-instance court or tribunal – Refugee status or subsidiary protection status – Directive 2011/95/EU – Standards for the qualification of third-country nationals as beneficiaries of refugee status – Article 2(d) – 'Well-founded fear of being persecuted' – Assessment

Hearing a request for a preliminary ruling from the rechtbank Den Haag, zittingsplaats Zwolle (District Court, The Hague, sitting in Zwolle, Netherlands), the Court of Justice interprets, in the context of the expedited procedure, the expression 'well-founded fear of being persecuted', used in the definition of the concept of 'refugee' within the meaning of Article 2(d) of Directive 2011/95, [18] and specifies the scope of the competent national authorities' obligation to carry out an assessment of the applicant's personal circumstances.

In 2017, eight Iraqi nationals who are members of the same family lodged applications for international protection in the Netherlands, relying on, inter alia, the fear of being persecuted upon return to Iraq. Those applications were refused on 11 September 2023 by the competent minister, who confirmed those decisions by complementary decisions on 25 February 2025. The applicants have brought an action against those decisions before the referring court.

The referring court considers that it has sufficient information to carry out itself an assessment of the credibility of certain elements of the applicants' account and of certain grounds relied on in support of

18 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

their applications. However, it explains that, according to national case-law, it does not have the power to carry out such assessments and must confine itself to annulling the contested decisions and then referring the case back to the minister. It therefore questions whether that case-law is compatible with Directive 2013/32. [19] In addition, it emphasises that the concept of 'well-founded fear' is not defined by Directive 2011/95 and that, at national level, no standard for assessing such a fear has been established. It is in that context that the referring court has requested that the Court of Justice give a preliminary ruling.

Findings of the Court

The Court begins by ruling that Article 46(3) of Directive 2013/32, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, confers on a first-instance court or tribunal before which an action has been brought against a decision rejecting an application for international protection the power to give a binding ruling on the credibility of the account provided in support of that application, on the plausibility of the applicant's fear of persecution or the real risk of that applicant suffering serious harm upon return to his or her country of origin, as well as on the merits of that application, with the Member States not being permitted to place constraints on that power. That power means that the court or tribunal before which the action has been brought may, where it considers that it has available to it all the necessary elements of fact and law, carry out a full and ex nunc – that is to say exhaustive and up-to-date – examination of the applicant's international protection needs. The Court specifies that that court or tribunal must be able to take into account new evidence which has come to light following the adoption of the decision under appeal, provided that the parties have the opportunity to submit their observations regarding that evidence.

Next, the Court examines the context of the assessment of whether an applicant for international protection's fear of being persecuted, referred to in Article 2(d) of Directive 2011/95, is well founded. In that regard, it finds that – as is apparent from, inter alia, its case-law relating to Article 4(3) to (5) of Directive 2011/95 – the competent authorities of the Member States must carry out, with vigilance and care, an individual, specific and objective assessment of that applicant's personal situation, of the facts and circumstances relating to his or her application, and of the facts and circumstances relating to the situation in his or her country of origin. That requirement follows not only from the actual text of Directive 2011/95, which requires the competent authorities to take into account all relevant facts as they relate to the country of origin, the statements presented by the applicant, and the individual position of the applicant, but also from the Geneva Convention, which constitutes the cornerstone of the regime for the protection of refugees.

In addition, making reference to the indications of the United Nations High Commissioner for Refugees, the Court notes that the 'well-founded fear of being persecuted' has a subjective dimension and an objective dimension. Nevertheless, in so far as the subjective element of that fear is qualified by the words 'well-founded', the assessment of whether there is a 'well-founded fear of being persecuted' cannot be carried out solely from the subjective perspective of the applicant for international protection, but must be based on an objective assessment of the situation. The Court adds that the standard required is that of a reasonable fear or a fear that can be established to a reasonable degree.

Lastly, as regards the criterion of likelihood, the Court states that, in order to establish that there is a well-founded fear of persecution, the competent national authorities cannot view the situation solely from the subjective perspective of the applicant for international protection, but must carry out an individual, specific and objective assessment of that applicant's personal situation, of the facts and circumstances relating to his or her application, and of the facts and circumstances relating to the situation in his or her country of origin. Thus, the fear of being persecuted must be considered to be established where there is a reasonable likelihood that the risk of persecution relied on by the applicant will occur upon return to his or her country of origin.

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

V. JUDICIAL COOPERATION IN CRIMINAL MATTERS: EUROPEAN ARREST WARRANT

Judgment of the Court of Justice (Grand Chamber) of 4 June 2026, Rugu and Aucroix, C-722/23 and C-91/24

Link to the full text of the judgment

Reference for a preliminary ruling – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Grounds for refusal of execution – Risk of the requested person suffering inhuman or degrading treatment prohibited by Article 4 of the Charter of Fundamental Rights of the European Union – Article 4(6) – Ground for optional non-execution – Undertaking of the executing Member State to enforce the sentence in accordance with its domestic law – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters – Article 4(5) – Request by the executing Member State to the issuing Member State to forward to it the judgment imposing a custodial sentence with a view to enforcing that sentence on its territory

Ruling on requests for a preliminary ruling from the Cour de cassation (Court of Cassation, Belgium), in two separate cases, the Court of Justice, sitting as the Grand Chamber, rules on the consequences of a refusal to execute a European arrest warrant (EAW) based on the ground for mandatory non-execution laid down in Article 1(3) of Framework Decision 2002/584, [20] where an executing judicial authority finds that the conditions for the application of the ground for optional non-execution laid down in Article 4(6) of that framework decision are met.

AR, a Romanian national (Case C-722/23), and HL, a Belgian national (Case C-91/24), both residing in Belgium, were each the subject of an EAW issued for the purpose of executing custodial sentences, the first issued by the Romanian judicial authorities on 1 August 2023, and the second by the Greek judicial authorities on 9 March 2016.

In both cases, the Belgian judicial authorities, in the capacity of executing authorities, refused surrender, taking the view that detention conditions in the issuing States would expose AR and HL to a serious risk of their fundamental rights being infringed.

The referring court, before which the appeal was brought, decided to ask the Court of Justice to determine whether, in a situation in which the courts of the executing Member State refuse to execute an EAW on the basis of the mandatory ground for non-execution arising from Article 1(3) of Framework Decision 2002/584, on account of a risk of a breach of the fundamental rights of the person concerned, those courts may, or even must, apply, in addition, the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584, in order to enforce, in the executing Member State, the sentence imposed, where that person is a national of that Member State or resides there.

Findings of the Court

As a preliminary point, the Court recalls that the refusal to execute an EAW, based on the mandatory ground for non-execution provided for in Article 1(3) of Framework Decision 2002/584, puts an end to the surrender procedure established by that framework decision. Consequently, as long as the conditions justifying that refusal persist, the requested person will not be surrendered to the authorities of the issuing State and will thus not serve the sentence imposed in that State. However,

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[20] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

Framework Decision 2002/584 does not lay down any provision as to the consequences of that refusal for the enforcement of the sentence in the executing Member State.

That said, the Court finds that the ground for optional non-execution provided for in Article 4(6) of that framework decision is autonomous in nature and is not intended to apply, in addition, where the execution of an EAW has already been refused on the basis of Article 1(3). Thus, the executing judicial authority cannot make use of that optional ground after having invoked the mandatory ground, even in order to avoid impunity for the requested person.

Nevertheless, where an executing judicial authority refuses surrender on the basis of Article 1(3) of Framework Decision 2002/584, it is required, in the light of the public interest, to seek to ensure that the requested person does not go unpunished as a result of that refusal. That obligation is based on the principle of sincere cooperation enshrined in Article 4(3) TEU and is exercised, where appropriate, by means of the provisions of Framework Decision 2008/909. [21]

To that end, the executing State is required to rely on Article 4(5) of Framework Decision 2008/909 in order to request, on its own initiative, that the issuing State forward to it the sentencing judgment and the certificate, the standard form of which is set out in Annex I to that framework decision. That transfer makes it possible to obtain recognition of the judgment in the executing State and, from that recognition, to ensure that the sentence is enforced. In that regard, the Court points out that, even though the rules of Framework Decision 2008/909 are intended primarily to facilitate the social rehabilitation of the sentenced person, they are also relevant in order to guarantee the effective enforcement of the sentence and to avoid any form of impunity. Social rehabilitation and combating impunity pursue complementary objectives.

Although the issuing Member State retains in principle the power to refuse to forward the requested judgment and certificate, it is required to exercise that prerogative in such a way as to ensure effective cooperation, which aims to preserve the functioning of the EAW and the mutual recognition of judgments. It must, therefore, take account of the fact that its refusal could leave the sentenced person unpunished and compromise his or her social rehabilitation.

In addition, the Court states that the forwarding of the judgment together with the certificate is subject, in principle, to the consent of the sentenced person, in accordance with Article 6(1) of Framework Decision 2008/909. However, such consent is not to be required where the sentenced person is a national or resident of the executing State, or when he or she has fled or returned to that State after the conviction. It is for the referring court to ascertain whether one of those exceptions applies in the disputes in the main proceedings.

The Court concludes that, where the executing judicial authority has refused, on the basis of Article 1(3) of Framework Decision 2002/584, to execute an EAW issued for the purposes of enforcing a custodial sentence, that authority cannot, in order to avoid the impunity of the requested person, apply, in addition, the ground for optional non-execution provided for in Article 4(6) of that framework decision. However, in the event of such a refusal, it must invoke Article 4(5) of Framework Decision 2008/909 and, on its own initiative, request that the issuing Member State forward to it the judgment and the certificate which must accompany it, with a view to the sentence being enforced in its territory.

[21] Council Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27).

VI. TRANSPORT: LIABILITY OF CARRIERS OF PASSENGERS BY SEA IN THE EVENT OF ACCIDENTS

Judgment of the Court of Justice (Fifth Chamber) of 4 June 2026, Costa Crociere and Others, C-629/24

[Link to the full text of the judgment]

Reference for a preliminary ruling – Transport – Regulation (EC) No 392/2009 – Liability of carriers of passengers by sea in the event of accidents – Article 2 – Scope – Article 3 – Liability and insurance – Article 7 – Information to passengers – Athens Convention relating to the Carriage of Passengers and their Luggage by Sea – Article 3 – Liability of the carrier for the death of or personal injury to a passenger – Articles 6 and 7 – Limits of liability – Directive 90/314/EEC – Package travel, package holidays and package tours – Article 5 – Liability of the organiser of package travel for the proper performance of the package – Cruise – Personal injury sustained by a traveller on board the ship – Limits of compensation under international conventions

Ruling on a request for a preliminary ruling from the Cour de cassation (Court of Cassation, France), the Court holds that, where a cruise has the characteristics of a tourism package, actions for damages relating to personal injury sustained by a passenger on board the cruise ship during carriage by sea are to be governed by the liability regime of the maritime carrier providing the cruise with that ship, as laid down in Regulation No 392/2009. [22]

In the present case, passengers who sustained personal injury during carriage on board a cruise ship brought an action against the maritime carrier – the operator of the ship – and against the travel agency. That cruise had the characteristics of a tourism package. In that context, the referring court asks the Court whether such damage is covered by the liability regime for package travel established by Directive 90/314, [23] as relied on by those passengers, or by the maritime carriage regime governed by Regulation No 392/2009, as relied on by the maritime carrier, who is the operator of the ship.

Findings of the Court

First of all, the Court notes that Directive 90/314 establishes a binding regime of contractual liability of package travel organisers to consumers who have concluded a contract with them for such travel. On that basis, Member States must take the necessary steps to ensure that the organiser and/or retailer is liable to the consumer for the proper performance of the obligations arising from that contract, irrespective of whether they are to be performed by that organiser and/or retailer or by other suppliers of services, as well as for the damage resulting from the failure to perform or improper performance of the contract. However, that liability is not unlimited. The organiser and/or retailer are not to be liable for failures in the performance of the contract if they are attributable to the consumer or are attributable to a third party and are unforeseeable or unavoidable, or are due to a case of force majeure or an event which the organiser could not foresee or forestall. In addition, Member States may enact legislation to the effect that the consumer's compensation is limited in accordance with the international conventions governing such services, which include the Athens Convention. [24]

22 Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ 2009 L 131, p. 24).

23 Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

24 The 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, signed on 13 December 1974, as amended by the Protocol of 2002 ('the Athens Convention').

While Directive 90/314 provides only for the possibility for Member States to limit that compensation, the limits of the carrier's liability laid down in the Athens Convention have themselves been binding on all the Member States since 31 December 2012. From that date, Regulation No 392/2009 establishes an EU regime relating to liability applicable to the carriage of passengers by sea based on the relevant provisions of the Athens Convention, which are set out in an annex to that regulation.

Where a maritime carrier is supplying services to an organiser of a cruise sold as package travel, that organiser, who is liable to the consumer in the event of the non-performance or improper performance of the carriage by sea by that carrier, must also be entitled to the benefit of the limitations on compensation to which a carrier is entitled under the Athens Convention where that convention applies to such carriage. Consequently, from no later than 31 December 2012, the Member States no longer have the option of limiting freely the organiser's liability for the carriage by sea of passengers, but are required to limit that liability of the organiser in line with that convention. Accordingly, the limits of the maritime carrier's liability apply to a consumer's compensation from an organiser, following damage due to the non-performance or improper performance of services during a cruise which was sold to that consumer in the form of a package.

Next, the Court observes that the carrier liability regime provided for in the Athens Convention relates only to loss, in the event of the death of a passenger or personal injury sustained by a passenger, caused by events occurring in the course of the carriage. The latter corresponds to the period during which the passenger is on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger is transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier, but excludes the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation.

Therefore, any claim for compensation on account of the death of a passenger or personal injury sustained by him or her during his or her carriage by sea is covered by the liability regime laid down by the Athens Convention. With regard to any non-performance or improper performance of the services on board a cruise ship in the course of carriage which has caused the death or personal injury of a passenger, the organiser may rely on the limitations of liability to the passenger provided for in the Athens Convention which the carrier may invoke, without there being any need to distinguish between services relating to carriage, on-board accommodation or on-board recreation. In the event of death or personal injury, those limitations go beyond those provided for in Directive 90/314.

Lastly, the Court notes that a consumer who has bought a package for a cruise may bring an action for damages on the basis of Regulation No 392/2009 and the Athens Convention either against the carrier that actually carried out the carriage by sea or against the organiser of the cruise. Where a passenger participating in a cruise brings an action for damages against the organiser of package travel and an action for damages against the maritime carrier, the compensation obtained as a result of one of those actions must be taken into consideration when assessing the compensation sought in the context of the other action in order to prevent the passenger from obtaining compensation greater than the loss suffered.

VII. COMPETITION: RULES APPLICABLE TO UNDERTAKINGS

Judgment of the General Court (Ninth Chamber, sitting with five Judges) of 3 June 2026, Vivendi v Commission, T-1097/23

Competition – Concentrations – Request for information – Article 11(3) of Regulation (EC) No 139/2004 – Choice of legal base – Misuse of powers – Obligation to state reasons – Not arbitrary – Impossibilium nulla obligatio est – Proportionality – Necessity of the information requested – Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms – Freedom of expression – Protection of journalistic sources – Plea of illegality – Article 7 of the Charter of Fundamental Rights – Right to respect for private and family life

Judgment of the General Court (Ninth Chamber, sitting with five Judges) of 3 June 2026, Lagardère v Commission, T-1119/23

Competition – Concentrations – Request for information – Article 11(3) of Regulation (EC) No 139/2004 – Necessity of the information requested – Misuse of powers – Obligation to state reasons – Legal certainty – Proportionality – Impossibilium nulla obligatio est – Article 7 of the Charter of Fundamental Rights – Right to respect for private and family life – Documents stored on personal communication tools and applications – Article 11 of the Charter of Fundamental Rights – Freedom of expression – Protection of journalistic sources

The General Court rejects in their entirety the actions brought by Lagardère SA and Vivendi SE, the applicants, against two requests for information that were addressed to them by the European Commission pursuant to Article 11(3) of the EU Merger Regulation. [25] On that occasion, it examines the extent to which the collection and analysis of exchanges of information by natural persons connected to the undertakings concerned by means of professional communication tools as well as personal communication tools, where they are used for professional purposes, are capable of complying with the right to respect for private life enshrined in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

In October 2022, Vivendi, a French group with an international dimension specialising in media and entertainment, notified the Commission of a concentration consisting of the acquisition of sole control of Lagardère, a French group active, inter alia, in the media sector.

By decision of 9 June 2023, the Commission authorised the proposed concentration, subject to the implementation of commitments entered into by Vivendi. However, the Commission suspected a potential early implementation of the concentration and opened a formal investigation in that regard.

In that context, by decisions of 19 September 2023, [26] it sent each of the two applicants a request for information requiring them to provide, inter alia, all documents relating to certain topics or containing certain search terms exchanged, sent or received from 1 January 2020 to 19 September 2023 ('the period concerned') by designated persons. Those documents covered, inter alia, information transmitted by means of both professional and personal electronic communication tools, provided that they were used at least once for professional purposes.

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

[26] Commission Decisions C (2023) 6428 final and C (2023) 6429 final of 19 September 2023 relating to a proceeding pursuant to Article 11(3) of Council Regulation (EC) No 139/2004 (Case M.11184 – Vivendi/Lagardère) ('the decisions of 19 September 2023'), as amended respectively by Commission Decisions C (2023) 7463 final and C (2023) 7464 final of 27 October 2023 ('the decisions of 27 October 2023') ('the contested decisions').

By their actions before the General Court, the applicants seek the annulment of the contested decisions.

Findings of the Court

In support of their action, the applicants submitted, inter alia, that the contested decisions infringed the right to respect for private life enshrined in Article 7 of the Charter.

In that regard, the Court considers, first, that the contested decisions constitute a limitation on the exercise of that right. In that respect, it begins by observing that the documents to be collected, processed and transmitted to the Commission may contain information relating to the private life of certain employees and company officers of the applicants.

It adds that the contested decisions refer to exchanges made by means of both professional and personal communication tools, provided that those tools were used at least once for professional communications. In addition, those decisions require that all exchanges between certain persons be surrendered where a single exchange responds to certain search terms.

Therefore, the contested decisions may require the disclosure of very varied personal data, which is difficult to determine a priori and is potentially of a large scale. Such data, taken as a whole, make it possible to draw precise conclusions concerning the private lives of the persons concerned. Consequently, the implementation of the contested decisions entails the risk of a serious interference with the fundamental right enshrined in Article 7 of the Charter.

Secondly, the General Court finds that that limitation of the right to respect for private life satisfies the four conditions in order to be justified under Article 52(1) of the Charter, namely compliance with the principle of legality, respect for the essence of the rights and freedoms concerned, the pursuit of objectives of general interest recognised by the European Union and compliance with the principle of proportionality.

As regards the first condition, the Court recalls that the legal basis authorising such a limitation must define its scope in a sufficiently clear and precise manner. The limitation at issue is provided for by an EU legislative act, namely Regulation No 139/2004, which confers on the Commission, in a sufficiently clear and precise manner, the power to adopt decisions requesting information.

As regards the second condition, the Court points out that a limitation on a fundamental right respects its essence where that limitation does not call that right into question as such, in particular where it is applicable under specific conditions provided that those conditions are satisfied.

In the present case, the information collected and transmitted to the Commission pursuant to the contested decisions is capable of providing only sparse and incidental information on certain aspects of the private life of the persons concerned. They relate to different categories of data relating to private life which are not necessarily related to each other and do not constitute a homogeneous whole.

The Court also notes that the temporal, personal and material scope of the contested decisions is defined by means of the precise definitions of the period concerned, of the persons concerned and of the search terms, with the result that those decisions do not require the applicants to collect and transmit to the Commission all the documents exchanged between its employees and company officers.

Similarly, the scope of application of the contested decisions is limited only to persons who have used their personal communication tools for professional purposes. The requests for information in question are intended to establish infringements of the competition rules, an area in which relevant exchanges may take place between the persons concerned via means of communication other than professional means. In that regard, the Court points out that, since the purpose of such a request is to obtain the information necessary to ascertain whether the suspected infringements of the obligations under Regulation No 139/2004 have occurred, information relating to the private life of the data subjects and their personal data is collected only on an incidental basis.

Furthermore, the contested decisions set out specific procedural safeguards concerning sensitive personal data, which must be identified and provided in an encrypted and separate manner.

Lastly, the processing of data provided in the context of a competition investigation is governed by general procedural safeguards designed to ensure, inter alia, security, integrity and confidentiality. Only Commission staff and officials in charge of the investigation may, if necessary, acquaint themselves with personal data. Those persons are subject to strict obligations of professional secrecy and to the prohibition on disclosing the information gathered or using it for purposes other than those for which it was obtained.

As regards the third condition, the Court points out that the contested decisions are a manifestation of the powers conferred on the Commission by Article 11 of Regulation No 139/2004 in order to carry out its task of ensuring compliance with competition law in the internal market. That objective constitutes an objective of general interest capable of justifying even a serious interference with the fundamental right enshrined in Article 7 of the Charter.

As regards the fourth condition, the Court considers, first, that the limitation on the right to respect for private life resulting from the contested decisions constitutes an appropriate measure for attaining the general interest objective of protecting competition in the internal market, since it imposes on the companies concerned the obligation to gather and transmit to the Commission the information necessary to determine whether the suspected anti-competitive practices occurred.

Next, that limitation is necessary, since the abovementioned objective cannot reasonably be achieved just as effectively by other means that are less restrictive of fundamental rights. The exchange of information within an undertaking or between undertakings takes place largely by electronic means, by means of professional, or even personal, communication tools.

The Commission's powers of investigation in the field of competition law would risk being deprived of practical effect if undertakings could avoid the obligation to respond to a request for information on the sole ground that certain documents contain the words 'personal' or 'private' or are exchanged by means of personal communication tools, without examining whether those documents in fact contain information relating to the commercial activities of the undertakings in question.

Lastly, after weighing up the relevant factors of the case, the Court holds that the limitation on the right to respect for private life at issue is strictly proportionate, in that the disadvantages involved in the implementation of the contested decisions do not appear disproportionate to the public interest objective pursued.

In particular, those decisions do not give full and unchecked access to all the data contained in the personal communication tools of the data subjects and are not intended to establish a continuous, untargeted and systematic monitoring regime, including the automated assessment of personal data of all the applicant's employees and company officers, or of the persons concerned by those decisions.

As regards the link between the owner of the communication tools and the infringement at issue, the Court points out that the collection and access to any data relating to private life contained in professional and personal communication tools used at least once for professional purposes is, in principle, incidental in the context of the search for information of a commercial nature intended to incriminate the undertaking under investigation.

Furthermore, the fact that there is an ex post judicial review, expressly referred to in any decision requesting information in accordance with Article 11(3) of Regulation No 139/2004, constitutes a fundamental guarantee to ensure the compatibility of the measure at issue with Article 7 of the Charter.

The Court also states that the mere fact that the procedural safeguards set out in the contested decisions refer only to sensitive personal data and not, generally, to data relating to private life does not mean that those decisions do not respect the fundamental right to respect for private life enshrined in Article 7 of the Charter. The latter right is closely linked to the right to the protection of personal data, enshrined in Article 8(1) of the Charter.

Since the Court finds that none of the pleas in law put forward by the applicants is well founded, actions are dismissed in their entirety.

VIII. FISCAL PROVISIONS: INDIRECT TAXES ON THE RAISING OF CAPITAL

Judgment of the Court of Justice (First Chamber) of 4 June 2026, Nova Iberomoldes, C-837/24

Link to the full text of the judgment

Reference for a preliminary ruling – Taxation – Indirect taxes on the raising of capital – Directive 2008/7/EC – Article 5(1)(a) and (e) – Contributions of capital – Restructuring operations – Article 6(1)(a) to (c) – Duties on the transfer of securities – Transfer duties – Formation of a capital company – Paying-up of the share capital by means of shares held by the contributing company in companies owning immovable property – Tax in respect of the transfers of immovable property for consideration

Having received a request for a preliminary ruling from the Tribunal Arbitral Tributário (Tax Arbitration Tribunal, Portugal), the Court of Justice rules, in the context of a business reorganisation, on the compatibility with Directive 2008/7 [27] of a tax on the acquisition of immovable property due in respect of a non-cash contribution, to a company, of shares of another company which is the owner of immovable property.

Nova Iberomoldes, a public limited company incorporated under Portuguese law, was formed in 2019 as part of a business reorganisation, with a view to carrying on the activity of a holding company. Its share capital was fully paid up by means of non-cash contributions, in the form of shareholdings held by its sole shareholder in several companies, one of which owned immovable property. The Portuguese tax authorities took the view that that asset contribution transaction should be subject to municipal tax on transfers of immovable property for consideration ('IMT' [28]), which Nova Iberomoldes disputes.

In that context, the referring court asks the Court, in essence, whether Directive 2008/7 permits the imposition of a tax on the transfer of immovable property in respect of a transaction involving the formation of a capital company, the share capital of which is fully paid up by means of shareholdings held in other companies owning immovable property by the contributing company, which receives, as consideration, the entire share capital of the company thus formed.

Findings of the Court

In the first place, the Court recalls that Article 5(1)(a) and (e) of Directive 2008/7 requires Member States not to subject capital companies to any form of indirect tax whatsoever in respect of the contributions of capital referred to in Article 3 of that directive and in respect of the restructuring operations referred to in Article 4 thereof.

In the present case, the transaction in which Nova Iberomoldes was formed meets the criteria of 'restructuring operations' as set out in Article 4(1)(b) of Directive 2008/7. The share capital of Nova Iberomoldes was fully paid up by the company which is its sole shareholder, through the contribution of shares which the latter company held in the capital of other companies and which represented the majority of the voting rights of those companies; the consideration for those shares were the securities representing the capital of Nova Iberomoldes. Accordingly, that restructuring operation must not be subject to any form of indirect tax whatsoever.

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27 Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital (OJ 2008 L 46, p. 11).

28 Imposto municipal sobre as Transmissões Onerosas de imóveis (Decreto-Lei n.º 287/2003).

In that regard, and in so far as IMT is levied in connection with the transfer of shares of a company owning immovable property, in particular where there is a contribution, to a capital company, of such shares, IMT constitutes an indirect tax falling within the prohibition under Article 5(1) of Directive 2008/7. The Court thus rejects the argument that the operative event for IMT lies in the economic transfer of ownership of immovable property rather than in the transfer of shares, and rejects the argument that the basis of assessment for IMT is not the value of the shares contributed, but the reference value of the relevant immovable property for tax purposes, since, in any event, the levying of IMT in connection with the contribution, to a capital company, of shares of a company owning immovable property, has the effect of making such a contribution subject to that tax.

In the second place, the Court rejects the application, to the facts at issue in the main proceedings, of the derogations from Article 5 of Directive 2008/7 that are permitted by Article 6(1) thereof.

First, under Article 6(1)(a) of Directive 2008/7, Member States may levy duties on the transfer of securities, since that derogating provision can apply only to transfers of securities which constitute an independent transaction. In the present case, in so far as the transfer of shares is not an independent transaction, but an incidental transaction, integral to a restructuring operation referred to in Article 5(1)(e) of Directive 2008/7, IMT cannot fall within that derogation.

Second, it follows from Article 6(1)(b) of that directive that Member States may levy transfer duties on the transfer of immovable property to a capital company. However, no transfer of the right of ownership took place in the present case, since the immovable property in question remained within the assets of the company the shares of which were contributed to Nova Iberomoldes. Moreover, even if it were necessary to take an economic perspective, it cannot be found that a transfer of actual ownership of immovable property took place in connection with a reorganisation operation such as that at issue in the main proceedings.

Lastly, the Court rejects the argument that the tax at issue could be justified by the objective of preventing tax evasion and avoidance. Such a justification cannot be based on a general presumption applied without exception, as otherwise the principle of proportionality would be undermined.

IX. APPROXIMATION OF LAWS

1. EUROPEAN UNION TRADEMARK

Judgment of the General Court (Seventh Chamber, sitting with five Judges) of 3 June 2026, Lami Packaging v EUIPO – Tetra Laval (Shape of octagonal carton), T-104/25

[Link to the full text of the judgment]

EU trade mark – Invalidity proceedings – Three-dimensional mark – Shape of octagonal carton – Sign consisting exclusively of the shape of goods which is necessary to obtain a technical result – Manufacturing process – Use of the product – Article 7(1)(e)(ii) and Article 51(1)(a) of Regulation (EC) No 40/94

Hearing an action for annulment, which it upholds, the General Court clarifies the concept of 'technical result' within the meaning of Article 7(1)(e)(ii) of Regulation No 40/94. [29]

[29] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Tetra Laval Holdings & Finance SA is the proprietor of a three-dimensional EU trade mark representing the shape of an octagonal carton, registered with the European Union Intellectual Property Office (EUIPO) in respect of packaging.

Lami Packaging (Kunshan) Co. Ltd, the applicant, filed an application for a declaration of invalidity in respect of that mark, claiming that it consisted exclusively of the shape or characteristic of goods which is necessary to obtain a technical result within the meaning of Article 7(1)(e)(ii) of Regulation No 40/94. That application was first upheld by the Cancellation Division, then rejected by the Board of Appeal of EUIPO, which found, inter alia, that the essential characteristics linked to the shape of the product of that mark related to its manufacturing process, but did not influence the function performed by the product.

The applicant therefore brought an action for annulment of that decision before the Court.

Findings of the Court

In the first place, the Court notes that, according to the judgment in Société des Produits Nestlé, [30] only the technical results which are apparent when the product at issue is used are relevant for the application of Article 7(1)(e)(ii) of Regulation No 40/94. Consequently, the ground for refusal laid down in that article applies where the shape provides a means for a product to obtain a technical result when used, but does not apply to the manner in which the product is manufactured.

That approach falls within the objective of that article, which seeks to prevent trade mark law from granting a monopoly on technical solutions likely to be sought by the user in the products of competitors. The assessment of the technical result must therefore be carried out in the light of the functionalities of the shape during the product's use, whereas the manner in which it is manufactured is irrelevant from the point of view of the end consumer.

In the second place, the Court notes that the product covered by the contested mark is a container the main technical function of which consists of holding liquids or foodstuffs and that the essential characteristics of that mark all contribute to the product's ability to fulfil that technical function. In addition, the Court observes that the shape of that mark also ensures the stability of the container and its ability to be handled, two technical benefits which are relevant in the context of the use of the product. It follows that the essential characteristics of the contested mark enable the product to be used in accordance with the use for which it was designed, with the result that those characteristics are necessary to obtain a technical result which relates to the way in which the product functions.

As regards the fact that the prismatic shape of the contested mark reduces the quantity of packaging paperboard necessary to hold a given volume of liquid, the Court states, first of all, that that optimisation of the container's capacity makes the basic function of the product more effective, because it makes it possible to increase the quantity of liquids or foodstuffs contained in the container. Therefore, the shape of the contested mark cannot be regarded as being merely the result of an optimised manufacturing process which has no effect on the manner in which the product functions.

Next, the Court states that the improvement in the ratio between the volume of the container and the quantity of material necessary for its manufacture means that the packaging is lighter than traditionally shaped packaging. That reduction of the weight and volume of the packaging thus constitutes a technical result that is relevant from the perspective of the public targeted by the contested mark, namely professional intermediaries of the foodstuff industry, because it facilitates the storage and transport of the product, by positively affecting the manner in which the product may be used.

Lastly, the Court states that, although the public targeted by the contested mark consists of professional customers, it is also relevant to analyse the functionality of the essential characteristics of the contested mark by taking into account the situation of end users, who are destined to purchase

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30 Judgment of 16 September 2015, *Société des Produits Nestlé* (C-215/14, EU:C:2015:604).

the products. In that regard, it notes that the technical benefits resulting from the shape of the contested mark also concern the manner in which the product is used by the end consumers. On account of its particular shape, the packaging is easier for consumers to grasp and use.

In the light of the foregoing, the Court holds that the Board of Appeal erred in finding that the technical result obtained by the contested mark concerned only the manufacturing process of the product and had no effect on the function performed by that product. Therefore, it concludes that the shape of the contested mark is necessary to obtain a technical result within the meaning of Article 7(1)(e)(ii) of Regulation No 40/94.

2. PUBLIC PROCUREMENT

Judgment of the Court of Justice (Fifth Chamber) of 4 June 2026, Strominator Elektro, C-820/24

Link to the full text of the judgment

Reference for a preliminary ruling – Award of public works, public supply and public service contracts – Principles of equal treatment and transparency – Directive 2014/24/EU – Article 72 – Modification of contracts during their term – Concept of 'contracts during their term' – Receipt of the works carried out – Submission of the final invoice – No payment made by the contracting authority

Ruling on a request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Austria), the Court of Justice rules that a public contract is no longer 'during its term', within the meaning of Article 72 of Directive 2014/24, [31] where the successful tenderer has performed in full the services which were to be provided under the contract at issue, the contracting authority has definitively received those services and the successful tenderer has submitted the final invoice, even if that contracting authority has not yet paid the price set out therein.

On 3 August 2022, the Bundesimmobiliengesellschaft mbH ('BIG') awarded Fiegl a contract for electrical fitting works for part of a school campus located in Salzburg (Austria) ('the initial contract').

Less than one month before the initial contract was concluded, a fire broke out in another block of that school campus, making it necessary to review the spatial and functional design of that campus. That revision meant that BIG had to cancel certain services that Fiegl was obliged to perform under that contract.

On 15 December 2023, Fiegl submitted the final invoice for the services provided and not cancelled under the initial contract, and, on 22 December 2023, it was awarded a new contract by BIG for the performance of lighting works in a part of the campus that was not covered by the initial contract ('the new contract'). It was awarded without publication of a call for tenders.

On 9 July 2024, Strominator, which was awarded a contract by BIG on 6 December 2023 for the performance of electrical fitting works for the purpose of repairing the fire damage, brought an action before the referring court seeking a declaration that awarding the new contract without publishing a call for tenders was unlawful. According to BIG, its approach constituted a lawful modification to the initial contract, meaning that a new procurement procedure did not need to be followed.

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31 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), as amended by Commission Delegated Regulation (EU) 2021/1952 of 10 November 2021 (OJ 2021 L 395, p. 23).

In order to determine whether such a procedure was necessary in the present case, the referring court must answer the question whether the initial contract could be considered to constitute a contract 'during its term', within the meaning of Article 72 of Directive 2014/24, when the new contract was awarded. In that regard, although the services agreed and not cancelled under the initial contract had been performed and definitively received, and the final invoice had been submitted, it had not yet been paid by BIG. In those circumstances, the national court referred a question to the Court of Justice for a preliminary ruling seeking to determine, in essence, whether a public contract may be considered to constitute a contract 'during its term', within the meaning of that provision, so long as the final invoice submitted by the successful tenderer in respect of the works performed in accordance with that contract and definitively received has not been paid.

Findings of the Court

The Court observes, first of all, that Article 72 of Directive 2014/24 imposes the specific condition that a contract can be modified without a new procurement procedure if it is in fact a contract 'during its performance'.

The term 'performance' refers, as is apparent from the second part of Article 2(1)(5) and the first subparagraph of Article 58(4), and Article 67(3) and Article 70 of Directive 2014/24, to the services which the successful tenderer is required to provide and not to the contracting authority's obligation to pay.

A contract can therefore be considered to constitute a contract 'during its term', within the meaning of Article 72 of Directive 2014/24, only when the services which the successful tenderer is required to provide under that contract have not been fully performed. Consequently, it is only possible to modify that contract, under the conditions laid down in that provision, until such time as the successful tenderer has performed the services in full. In that regard, the failure of the contracting authority to pay is irrelevant.

Next, the Court notes that Article 72 of Directive 2014/24 introduces a degree of flexibility in the application of the rules governing public contracts, in order to enable contracting authorities to respond pragmatically to the situations they face during the performance of contracts.

Where the services of the successful tenderer have been definitively received by the contracting authority and the final invoice has been submitted, there is no longer any need to allow the contracting authority any leeway in the application of the rules governing public contracts, since it can be ruled out that it will encounter, during the performance of the contract concerned, situations which would have to be taken into consideration by means of a modification.

Finally, since Article 72 of Directive 2014/24 constitutes a provision derogating from the principles of equal treatment and transparency which must be interpreted strictly, the contracting authority cannot be allowed to extend, at its discretion, until it pays the price in return for the services performed by the successful tenderer, the period during which it is allowed to modify a public contract without initiating a new procurement procedure.

3. FINANCIAL SERVICES

Judgment of the Court of Justice (Fourth Chamber) of 11 June 2026, Jenec, C-81/24

Link to the full text of the judgment

Reference for a preliminary ruling – Approximation of laws – Financial services – Access to a payment account with basic features – Directive 2014/92/EU – Article 16(4) – Prevention of the use of the financial system for the purposes of money laundering and terrorist financing – Directive (EU) 2015/849 – Consumer included on the list of the United States Office of Foreign Assets Control – Refusal to open such a payment account

Hearing a request for a preliminary ruling from the Okrajno sodišče v Mariboru (Local Court, Maribor, Slovenia), the Court interprets Article 16(4) of Directive 2014/92, [32] read in conjunction with Directive 2015/849, [33] as regards the conditions under which a credit institution may refuse to open a payment account for reasons connected with countering money laundering and terrorist financing.

In 2017, LH attempted to pay in Slovenia a bill drawn up in his wife's name from the latter's bank account, which was opened with OTP banka d.d. ('OTP Bank'). However, that credit institution blocked the payment, stating to the account holder that it had adopted a series of stricter measures for the purpose of preventing money laundering and terrorist financing, in particular complying with restrictions imposed by the Office of Foreign Assets Control (OFAC) (United States of America). Subsequently, LH requested to open an account with basic features with OTP Bank, which refused without providing him with a written decision since the banking system did not allow, according to the employee of the bank, for such an account to be opened in his name.

LH contested that decision before the referring court which, harbouring doubts as to the compatibility of that refusal with Directives 2014/92 and 2015/849, requested that the Court of Justice give a preliminary ruling on whether, in essence, Article 16(4) of Directive 2014/92, read in the light of Directive 2015/849, permits Member States to require banks to refuse to open a payment account with basic features on the ground that the consumer is included on an OFAC list.

Findings of the Court

The Court notes, first of all, that Article 16 of Directive 2014/92 provides, inter alia, for the obligation for Member States to ensure that all credit institutions or a sufficient number thereof offer payment accounts with basic features to all consumers in their territory, and the conditions under which those institutions may or must refuse to open such an account. Paragraph 2 of that article provides that any consumer residing legally in the European Union has the right to open and use a payment account with basic features with a credit institution located in the territory of a Member State. However, the right of the consumer to open that account is subject to compliance with the provisions relating to the prevention of money laundering and the countering of terrorist financing laid down in Directive 2015/849.

Directive 2015/849 does not provide that inclusion on an OFAC list or on any other list of that type drawn up by a third country automatically prohibits a credit institution from establishing a business relationship with the customer concerned.

The inclusion of a customer on such a list or on any other list of that type drawn up by a third country may constitute a relevant risk factor that the credit institution is required to take into account in its individual assessment of the risk of money laundering and terrorist financing. However, where there is such a risk factor, Directive 2015/849 does not require that such an institution automatically refuse to establish a business relationship with a person subject to such a measure, but does require that institution to apply enhanced due diligence measures after carrying out an individual assessment of all of the relevant risk factors in the circumstances surrounding the intended business relationship. In that regard, the very nature of a payment account with basic features, which has limited uses, reduces that risk which may be connected with the opening of such an account. However, it cannot be ruled out that, following such an assessment, a credit institution may reach the conclusion that it is unable to manage effectively, through measures proportionate to its nature and size, the risk of money laundering or terrorist financing connected with a business relationship, even where the intended business relationship is limited to the opening of a payment account with basic features. Only in such

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[32] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ 2014 L 257, p. 214).

[33] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ 2015 L 141, p. 73).

a case could a refusal to open a payment account with basic features be based on Article 16(4) of Directive 2014/92.

In the present case, it will thus be for the referring court to assess whether the refusal to open an account in respect of LH was based on an individual assessment of the risk of money laundering or terrorist financing taking into account all of the relevant factors – beyond merely the inclusion of LH on the OFAC list – and whether OTP Bank was able, through proportionate measures, to ensure ongoing monitoring of the intended business relationship, as set out in Article 13(1)(d) of Directive 2015/849, in the event that such an account were opened.

Accordingly, Article 16(4) of Directive 2014/92, read in conjunction with Directive 2015/849, does not permit Member States to require credit institutions to refuse to open a payment account with basic features for a consumer for the sole reason that that consumer is included on a list of persons subject to restrictive measures imposed by a third country, unless the credit institution concerned has carried out an individual assessment of the risk of money laundering or terrorist financing connected with the intended business relationship.

Judgment of the Court of Justice (Fourth Chamber) of 18 June 2026, FSMA, C-376/24

Link to the full text of the judgment

Reference for a preliminary ruling – Directive 2003/6/EC – Article 3 – Regulation (EU) No 596/2014 – Article 10 – Unlawful disclosure of inside information – Insider dealing and market abuse – Financial services – Article 21 – Disclosure or dissemination of information in the media – Disclosure of inside information in the media by a politician – Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 – Article 10 – Article 11 of the Charter of Fundamental Rights – Freedom of expression – Article 52(1) and (3) of the Charter of Fundamental Rights – Interpretation and limitation on the exercise of that freedom

Ruling on a request for a preliminary ruling from cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), the Court of Justice provides clarity on the application of the exception laid down in Article 10(1) and Article 21 of Regulation No 596/2014 [34] to a politician in the context of disclosure of inside information in the media.

MT, a politician, has referred, in various media, to the possible privatisation of a public undertaking. Following those declarations, the company concerned applied to the Autorité des Services et des marchés Financiers (Financial Services and Markets Authority (FSMA)) for trading in its shares to be suspended, and its merger with another company did not take place. MT claimed that he had acted in the course of his duties as a former Minister for Public Enterprises and member of an opposition party, with the aim of sparking a public debate on a proposed privatisation.

Findings of the Court

As a preliminary point, the Court recalls that the question whether the provisions of Article 21 of Regulation No 596/2014, which lays down a specific regime for the disclosure of information for the purpose of journalism, are more lenient than those provided for by Directive 2003/6 [35] and repealed by that regulation, and whether they are applicable on the basis of the retroactive application of the

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

35 Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

more favourable law, depends on the manner in which Article 21 is to be interpreted, and thus on the examination of the substance of the case. Since Article 10 of that regulation corresponds to Article 3(a) of that directive, it does not in itself lay down a more lenient rule. Furthermore, as a result of the reference made by Article 21 to Article 10 of Regulation No 596/201, those provisions cannot be applied separately. [36]

Next, the exception laid down in Article 10(1) of Regulation No 596/2014, which allows the disclosure of inside information in the normal exercise of an employment, a profession or duties, must, in principle, be interpreted strictly, which requires the existence of a 'close connection' between the disclosure of inside information and the 'normal course' of the exercise of an employment, a profession or duties in order to justify that disclosure. In order to be lawful, such disclosure must be strictly necessary for that exercise and comply with the principle of proportionality, as the Court has already recognised in relation to the disclosure of such information 'for the purpose of journalism'. [37]

Accordingly, in the present case, first, it cannot be ruled out from the outset that the disclosure of inside information by a politician may fall within the normal exercise of his or her duties, irrespective of the exercise of parliamentary duties, in particular where that person is an active and leading member of an opposition political party and where, by that disclosure, that politician seeks to challenge the policies pursued by the government, by bringing the views of part of the voters into public debate. Thus, subject to the verifications to be carried out by the referring court and to compliance with the conditions laid down in Article 10(1) of Regulation No 596/2014, such disclosure may fall within the normal exercise of the duties of a politician.

Second, the Court examines whether such disclosure in the media may fall within the scope of Article 21 of Regulation No 596/2014, which expressly governs the disclosure of inside information in the media and which requires account to be taken, for the purposes of Article 10, in particular, of the rules governing the freedom of the press and freedom of expression in other media and the rules governing the journalist profession. However, the Court states that the determination of whether or not disclosure of inside information for the purpose of journalism or other form of expression in the media is lawful must be based on Article 10, while taking account of the further specifications set out in Article 21. [38]

Therefore, after interpreting the latter provision, in the light of its wording, its context and its objectives, the Court takes the view that the disclosure of inside information in the media by a politician may be covered by the expression 'for the purpose of … other form of expression in the media', and Article 21 may apply to such disclosure provided that that person or persons closely associated with that person do not derive, directly or indirectly, an advantage from that disclosure and that that person does not have the intention, by making that disclosure, of misleading the market.

Lastly, the Court of Justice recalls that the exception laid down in Article 21 must be interpreted in such a way as to safeguard its effectiveness having regard to its purpose, namely observance of the freedom of the press and the freedom of expression in other media, guaranteed, in particular, by Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'), while taking into consideration the relevant case-law of the European Court of Human Rights. [39]

Statements made by a politician with a view to sparking public debate on matters of public interest may fall within the scope of the freedom of expression of such a person in the fields of political speech and matters of public interest.

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36 Judgment of 15 March 2022, *Autorité des marchés financiers* (C-302/20, EU:C:2022:190, paragraphs 59 and 60).

37 See, to that effect, same judgment, paragraph 78 and the case-law cited.

38 Judgment of 15 March 2022, Autorité des marchés financiers (C-302/20, EU:C:2022:190, paragraph 75).

39 Judgment of 15 March 2022, Autorité des marchés financiers (C-302/20, EU:C:2022:190, paragraph 67 and the case-law cited).

Nevertheless, the rights and freedoms enshrined in the Charter are not absolute rights and limitations are permitted, [40] provided that they are provided for by law, that they respect the essence of those rights and freedoms and, subject to the principle of proportionality, they are necessary and genuinely meet objectives of general interest. In the present case, the limitation imposed on MT's freedom of expression resulting from the prohibition on disclosing the inside information at issue, complies with those three conditions. In particular, that limitation respects the essence of the rights and freedoms concerned, having regard to the limitations on that prohibition provided for in Articles 10 and 21 of Regulation No 596/2014.

Furthermore, while it is for the referring court to verify whether MT's disclosure is necessary and proportionate, the Court of Justice has jurisdiction to provide guidance in order to enable it to give judgment.

As to whether such disclosure is necessary, it is important to take into account the need, in order to exercise the duties of a politician, to be able to spark public debate on a matter of public interest, as well as the context in which that disclosure took place. As regards compliance with the principle of proportionality, it is necessary to examine whether the restriction on freedom of expression resulting from the prohibition of such disclosure would be excessive in relation to the harm which such a disclosure risks causing to the integrity of financial markets. To that end, account must be taken of the potentially deterrent effect of such a restriction in relation to the exercise of the duties of the politician concerned, whether the disclosure is proportionate to the aim pursued, which is to spark public debate on matters of public interest, and the negative effects of such disclosure on the integrity of financial markets, such as the existence of insider dealing liable to lead to financial losses and to a loss of confidence in the financial markets.

4. INFORMATION SOCIETY SERVICES

Judgment of the Court of Justice (Grand Chamber) of 16 June 2026, WebGroup Czech Republic and Others, C-188/24 and C-190/24

Link to the full text of the judgment

References for a preliminary ruling – Electronic commerce – Directive 2000/31/EC – Information society services – Article 2(h) – Coordinated field – Article 3 – Restriction on the free movement of information society services from another Member State – Derogation – Article 14 – Hosting – Article 15 – No general monitoring obligations – Electronic service to access pornographic content – National legislation prohibiting the provision of such content to minors and requiring the provider to put in place an age verification system – Articles 1 and 24 of the Charter of Fundamental Rights of the European Union – Electronic driving assistance or geolocation navigation service – National legislation prohibiting the provision of pornographic content to minors – National legislation prohibiting the rebroadcasting of information concerning certain roadside checks

Hearing a request for a preliminary ruling from the Conseil d'État (Council of State, France) in two disputes relating to information society services, the Court, sitting as the Grand Chamber, clarifies the conditions under which a Member State may impose on providers of such a service, established in other Member States, certain requirements meeting objectives of public policy, security or safety.

In Case C-188/24, the Czech companies WebGroup Czech Republic and NKL Associates, which operate pornographic websites, were served with a formal notice by the French authority responsible for

40 Article 52(1) of the Charter.

regulating digital communication, pursuant to a decree seeking to implement a provision of criminal law prohibiting any person from broadcasting content of that nature which may be seen by a minor. That decree requires those providers to make access to their sites conditional by means of an age-verification mechanism. Both those companies brought actions before the referring court for annulment of that decree, in particular for infringement of Directive 2000/31. [41]

As regards Case C-190/24, the French company Coyote System, which provides an electronic geolocation driving assistance service, is asking the referring court to annul a decree establishing a mechanism for prohibiting providers of such services from rebroadcasting, for a limited period and in a limited area, the messages of their users likely to reveal the location of certain police operations, in particular criminal investigation operations, for infringement of that directive.

The referring court therefore asks whether Directive 2000/31 precludes a Member State from imposing on providers of information society services, established in other Member States, a general and abstract obligation under criminal law, intended to prevent access by minors to pornographic content (Case C-188/24) and from prohibiting such providers from rebroadcasting information relating to certain roadside checks (Case C-190/24).

Findings of the Court

In the first place the Court points out that Directive 2000/31 is based on the application of the principle of supervision in the home Member State and the principle of mutual recognition, so that, within the coordinated field defined in Article 2(h) of that directive, information society services are regulated solely in the Member State on whose territory the providers of those services are established.

With regard to the coordinated field within the meaning of Article 2(h), the Court states that it is not limited to the requirements and matters governed by the harmonising provisions of Chapters II and III of that directive and may cover both general and abstract legislation coming under criminal law and legislation pursuing objectives of public policy, security and safety, provided that that legislation lays down requirements relating to the taking up or pursuit of the activity of information society services that are not excluded from the coordinated field under Article 2(h)(ii) and that it relates to areas which are not excluded from the scope of that directive by virtue of Article 1(5) thereof or the mechanism for supervision in the home Member State and mutual recognition referred to in Article 3(1) and (2) of that directive, by virtue of paragraph 3 thereof.

It follows that the legislative provisions at issue in the main proceedings, which contain requirements relating to the pursuit of the activity of providing information society services, fall within the coordinated field and thus the mechanism referred to in Article 3(1) and (2) of that directive. Thus, the application of that legislation to service providers established in other Member States constitutes a restriction on the free movement of the services concerned, which is in principle prohibited, subject to the possibility of a derogation provided for in Article 3(4).

In the second place, examining whether that legislation complies with the three substantive conditions laid down in Article 3(4)(a) of Directive 2000/31 for such a derogation, the Court finds, first of all, that that legislation pursues objectives recognised by the directive, including, inter alia, 'public policy', which covers the protection of minors and the fight against violations of human dignity, and 'public security', to which the prohibition on rebroadcasting information concerning certain roadside checks relates.

Next, as regards Case C-188/24, the Court points out that, under the second of those conditions, the derogation provided for in Article 3(2) cannot allow a Member State to apply a general and abstract obligation under criminal law, intended to prevent access by minors to pornographic content, to information society service providers established in other Member States. However, in view of their personalised nature, the formal individual notices served on the companies concerned may be

41 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1).

classified as measures taken against a given information society service which prejudices those objectives or presents a serious and grave risk of prejudice to those objectives, within the meaning of Article 3(4)(a) of Directive 2000/31. As regards Case C-190/24, the measures prohibiting the rebroadcasting of information relating to certain roadside checks imposed on the provider concerned may also be regarded as measures taken against a given information society service which prejudices those objectives of protecting public policy, public security and national security for the purposes of that provision.

Lastly, as regards Case C-188/24, in view of the importance attached to the protection guaranteed by Directive 2000/31 in all audiovisual media services, the physical, mental and moral development of minors and human dignity, a national measure requiring the provider of a given service to establish a system for verifying the age of users of pornographic sites must be regarded as proportionate to those objectives where that provider has not taken the appropriate measures referred to in Article 28b of Directive 2010/13. [42] As regards Case C-190/24, subject to verification by the referring court, it appears that the possibility of a prohibition on rebroadcasting laid down by the legislation at issue in that case is proportionate to the objectives of public policy, security and safety pursued by those provisions.

That being said, the legislation at issue in both those cases must also comply with the procedural obligations laid down in Article 3(4)(b) of Directive 2000/31. Thus, before taking the measures in question, it is necessary, except in the case of urgency referred to in Article 3(5), first, to ask the Member State of establishment of the provider concerned to take appropriate measures itself and, second, to give notification to the European Commission and that Member State of the intention to take such measures.

In the final place, in Case C-190/24, the Court answers questions from the referring court relating to Articles 14 and 15 of Directive 2000/31. First, the question arises as to whether a provider of geolocation driving assistance services may be classified as a 'host provider', for the purposes of Article 14(1) of that directive, and thus be exempted from its liability for rebroadcasting information relating to certain roadside checks on the ground that the information which it stores and rebroadcasts is provided by its users. The Court points out that, in order to assess that issue, it is necessary to examine whether the role of that provider is neutral, that is to say, whether its conduct is merely technical, automatic and passive, which means that it has no knowledge of or control over the content it stores, or whether, on the contrary, it plays an active role that gives it knowledge of or control over that content. Since those two conditions of knowledge and control are alternative and independent of each other, a provider who controls the information stored is excluded from the benefit of that provision, even if it does not become aware of that information due to the automation of the information processing. Where it predetermined, by means of an algorithm, the conditions under which stored information is or is not broadcast, it is irrelevant that that service provider does not itself carry out additional interventions which have the effect of promoting, modifying or deleting that information with a view to it being broadcast. In that regard, if, beyond the mere categorisation and indexation of information, the algorithm used determines under what conditions, how and in which order of priority that information is or is not broadcast, that provider exercises control over that information, with the result that the service it offers cannot be classified as an 'information society service … that consists of the storage of information provided by a recipient of the service' and therefore 'hosting' within the meaning of Article 14(1). In such a situation, Article 15(1) of Directive 2000/31 is not applicable either.

Second, the Court states that, conversely – that is to say, where the provider has neither knowledge of nor control over the information stored – the prohibition, under Article 15(1), on Member States imposing on host providers a 'general monitoring obligation' does not concern monitoring obligations 'in a specific case'. Since it has already been held that an order addressed to a host provider to

[42] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1).

remove specific items of the stored content that is identical or similar to content declared to be illegal by a national court is not such as to impose on that host provider an obligation to monitor generally the information which it stores, the Court states that it appears in the present case that the information which is the subject of the prohibitions on rebroadcasting at issue in Case C-190/24 is circumscribed in such a way that its rebroadcasting may be automatically prevented by the service provider concerned, without that provider having to acquaint itself with the content of the messages, transmitted by its users, drawing attention to the roadside checks concerned. Therefore, even if the provider of an electronic driving assistance or geolocation navigation service were to be capable of being classified as a host provider, Article 15(1) does not preclude a Member State from prohibiting that provider from broadcasting information relating to certain roadside checks provided by its users.

5. REGULATION OF DIGITAL MARKETS (DMA)

Judgment of the General Court (Eighth Chamber, sitting with five Judges) of 3 June 2026, Meta Platforms v Commission, T-1078/23

Link to the full text of the judgment

Digital services – Regulation EU 2022/1925 – Designation of gatekeepers – Concept of 'core platform service' – Online social networking service – Number-independent interpersonal communications service – Online intermediation service – Equal treatment – Article 3(2) and (5) of Regulation 2022/1925 – Important gateway for business users to reach end users – Presumptions – Rebuttal of the presumptions – Article 17(1) and (3) of Regulation 2022/1925 – Conditions for opening a market investigation – Rights of the defence – Obligation to state reasons

The General Court annuls in part the decision of the Commission [43] designating Meta Platforms as a gatekeeper within the meaning of the Digital Markets Act [44] ('the DMA') in so far as it classifies the Facebook Marketplace service ('Marketplace') as a core platform service ('CPS') that is an important gateway for business users to reach end users ('important gateway').

In July 2023, the applicant, Meta Platforms, Inc., notified the Commission that its online social networking service, comprising Facebook, Facebook Messenger ('Messenger'), Marketplace and other services had to be classified as a CPS within the meaning of the DMA. It also argued that Messenger and Marketplace did not in any event meet the threshold laid down in Article 3(2)(b) of the DMA in order for it to be designated as a gatekeeper for those services and it submitted arguments and evidence intended to rebut, as necessary, the presumptions laid down in Article 3(2) of the DMA.

By decision of 5 September 2023, the Commission found that Facebook was an online social networking service and therefore a CPS. In addition, it found that Messenger and Marketplace were self-standing CPSs that were distinct from Facebook, which consisted, respectively, of a number-independent interpersonal communications service ('NIICS') and an online intermediation service ('OIS') within the meaning of the DMA. It concluded that the applicant should be designated as a gatekeeper for those services.

The applicant brought an action for annulment of that decision before the Court.

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43 Commission Decision C(2023) 6105 final of 5 September 2023 ('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).

Findings of the Court

As a preliminary point, the Court finds that the applicant retains a legal interest in bringing proceedings despite the repeal in part of the contested decision by the Commission, [45] since that repeal has an ex nunc effect, such that the applicant was not restored to its original position.

The classification of Messenger as a CPS that is an important gateway

In the first place, the Court considers that in view of Messenger's characteristics, the Commission was entitled to find that Messenger was a service that was distinct from Facebook, given that the majority of users access it by means of a standalone Messenger application for mobile devices, that they may use that service even when their Facebook account is deactivated, and that the applicant provides and promotes tools that are specific to Messenger. The Court adds that Messenger, as a NIICS CPS, must be separated from the Facebook online social networking CPS since those services do not belong to the same category of CPS. That is apparent from a reading of the annex to the DMA, which must be taken into account in order to assess the circumstances in which CPSs provided by undertakings are to be considered as a single CPS or as separate CPSs, in particular when they are offered in an integrated way.

In the second place, the Court states that the fact that Messenger may be regarded as being supplied in an integrated way with the Facebook online social networking CPS does not prevent it from being viewed as a separate NIICS CPS. That finding does not conflict with the DMA, which envisages that type of configuration in recital 64.

In the third place, the Court observes, first of all, that the arguments and evidence intended to rebut the presumptions laid down in Article 3(2) of the DMA must be directly linked to the quantitative thresholds set out in that article and be capable of demonstrating, with a high degree of plausibility, that those presumptions are called into question. However, the applicant's arguments, based on the lack of significance of Messenger in business to consumer communications traffic in the European Economic Area, are not sufficiently substantiated to call into question the presumption laid down in Article 3(2)(b) of the DMA. Similarly, the line of argument relating to the failure to take other 'online chat services' and multi-homing into consideration is not supported by specific data in that regard.

Further, the Court finds that the use of Messenger primarily in the consumer-to-consumer context does not call into question the presumption that it is an important gateway. The mere fact that an undertaking providing CPSs may also act as an intermediary between end users does not prevent it from being an important gateway. Moreover, the fact that communications with business users on Messenger may only be initiated by end users likewise does not call that presumption into question, since the possibility of reaching those users provided for in Article 3(1)(b) of the DMA does not mean that business users must necessarily be able to initiate contact with them.

In addition, as regards the applicant's argument based on a requirement to carry out an individual assessment of whether Messenger is an important gateway, the Court observes that the Commission is not obliged to apply a method of calculating Messenger's end users that takes into account only those who use it separately from Facebook's online chat functionality. The act of using Messenger, notwithstanding the use of another service or CPS, is sufficient to be regarded as an active end user for the purposes of Article 3(2)(b) of the DMA.

Lastly, as regards the complaint relating to the Commission not opening a market investigation, the Court points out, first, that undertakings providing CPSs which meet the thresholds laid down in Article 3(2) of the DMA, as is the case with the applicant as regards Messenger, do not fall within the scope of Article 17(1) of the DMA. Second, it states that the conditions for initiating an investigation laid down in Article 17(3) of the DMA, which is applicable in the present case, are not satisfied, since the applicant has not put forward sufficiently substantiated arguments to demonstrate that, although

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45 Commission Decision C(2025) 2547 of 23 April 2025, repealing Article 2(f) of the contested decision, which designated Marketplace as a CPS.

it met the thresholds laid down in Article 3(2) of the DMA, it did not meet the requirements of Article 3(1) of the DMA.

In the last place, the Court observes that, despite the fact that decisions adopted under the second subparagraph of Article 3(5) of the DMA, such as the contested decision, are not referred to in Article 34(1) of the DMA, entitled 'Right to be heard and right of access to the file', the EU Courts must guarantee all the rights of defence of gatekeepers, including their right to be heard. However, the Court finds that the applicant's right to be heard was not infringed in the present case.

The classification of Marketplace as a CPS that is an important gateway

In that regard, the Court finds that the Commission, in taking the view that it had to take into consideration the information from the last three financial years preceding designation, namely information from 2020 to 2022, applied an incorrect legal time frame in order to assess whether Marketplace had to be classified as an OIS CPS. It in fact, confused the time frame relevant for examining whether the threshold in Article 3(2)(c) of the DMA is met, which covers the last three financial years preceding designation, with the time frame relevant for assessing the classification of a CPS service, in accordance with point 2 of Article 2 of the DMA, for which the EU legislature has not provided for any such retrospective examination.

That said, the Commission states that it took account of the changes made by the applicant to Marketplace on 31 July 2023, which consisted of a limitation on the number of listings that could be published per user in order to avoid the use of that service for business purposes. However, the Court finds that, in the contested decision, the Commission does not set out any specific analysis of those changes to support its conclusion that Marketplace allowed business users to offer goods or services to consumers, a necessary condition for classifying a service as an OIS, [46] nor does it specify the circumstances which it considered relevant in order to discount their impact on the assessment of that condition. Furthermore, the contested decision does not make it possible to understand the reasons why the Commission concluded that the condition of the definition of an OIS, relating to the use of the service by business users, was satisfied on the date on which the contested decision was adopted. Moreover, it does not contain any reasoning to explain why the Commission treated the changes of 31 July 2023 as future limitations which the applicant was in the process of implementing, when at the date of the contested decision it had been informed that those amendments had already been implemented.

In the light of the foregoing, the General Court concludes that the Commission erred in law in determining the applicable time frame for classifying Marketplace as an OIS and breached its duty to state reasons in relation to the justification for the classification of Marketplace as an OIS. Accordingly, it annuls Article 2(f) of the contested decision.

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[46] Point 5 of Article 2 of the DMA defines OISs as online intermediation services as defined in Article 2, point (2), of Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ 2019 L 186, p. 57).

X. SOCIAL POLICY: EQUAL TREATMENT IN EMPLOYMENT AND SOCIAL SECURITY

Judgment of the Court of Justice (Fifth Chamber) of 18 June 2026, Ministero della Difesa (Vaccination requirement for military personnel), C-522/24

[Link to the full text of the judgment]

Reference for a preliminary ruling – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Article 1 – Purpose – Article 2(2)(a) and (b) – Prohibition of discrimination on the ground of belief – National legislation requiring military personnel to be vaccinated against SARS-CoV-2 – Difference in treatment based on membership of a particular professional category – Concept of 'belief'

Ruling on a request for a preliminary ruling from the Consiglio di Stato (Council of State, Italy), the Court of Justice clarifies the scope of the prohibition of discrimination on grounds of belief laid down in Article 1 and Article 2(2)(a) and (b) of Directive 2000/78. [47]

In January 2022, BG, a senior officer of the Army Engineer Corps, was suspended from his duties for having refused to comply with the SARS-CoV-2 vaccination requirement imposed on military personnel. He brought an extraordinary appeal challenging that decision before the President of the Italian Republic, in the context of which the Ministero della Difesa (Ministry of Defence, Italy) sought the opinion of the referring court.

BG challenged that decision, alleging that, first, he suffered direct discrimination as compared with civilian personnel; secondly, he suffered, in particular as compared with vaccinated military personnel, indirect discrimination based on his beliefs, without that discrimination being justified on scientific grounds; and, thirdly, since he was prevented from pursuing his professional activity and therefore deprived of any remuneration, he was unable to provide for himself and his family, namely his wife and two minor daughters.

In those circumstances, the referring court decided to refer three questions to the Court of Justice for a preliminary ruling concerning Article 1 and Article 2(2)(a) and (b) of Directive 2000/78 which respectively require Member States to combat discrimination on the ground of belief, and Articles 1 and 24 of the Charter of Fundamental Rights of the European Union ('the Charter') regarding the protection of human dignity and the rights of the child.

Findings of the Court

In the first place, after confirming that the grounds referred to in Article 1 of Directive 2000/78 are exhaustive and that that directive is not concerned with discrimination on the basis of professional category or place of work, the Court finds that a difference in treatment such as that at issue in the present case, consisting in the national legislation requiring only some of the persons concerned to undergo compulsory vaccination in order to be able to pursue their professional activity, stems from the fact that those persons are either members of the military personnel or members of the civilian personnel and is therefore based on those workers' belonging to a particular professional category. Consequently, that difference in treatment does not come within the general framework established by Article 2(2)(a) of Directive 2000/78.

In the second place, having clarified that, for the purposes of applying Directive 2000/78, the terms 'religion' and 'belief' must be analysed as two facets of the same single ground of discrimination, the Court points out that it is apparent from Article 21 of the Charter that the ground of discrimination based on 'religion or belief' is to be distinguished from the ground based on 'political or any other opinion' and therefore covers both religious belief and philosophical or spiritual belief. In that regard,

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

the Court points out that Directive 2000/78 does not cover beliefs understood as opinions, be they political opinions or any other opinion.

BG argues, inter alia, in support of his claim of discrimination on the basis of his beliefs, that the compulsory vaccination imposed on him could not – having regard to the duties he was required to perform and in the light of certain scientific documents – be justified on health grounds. It follows that he does not seek to oppose the compulsory vaccination on the basis of his own beliefs, but to challenge, based on scientific arguments, the choices made by the Italian authorities in the field of public health.

In the light of the foregoing, the Court concludes that such considerations do not come within the concept of 'belief', within the meaning of Directive 2000/78, but constitute opinions on public health, the protection of which is not governed by the provisions of that directive. Thus, such a difference in treatment does not constitute indirect discrimination on grounds of belief and does not come within the scope of Article 2(2)(b) of Directive 2000/78.

In the third and last place, as regards the alleged infringement of Articles 1 and 24 of the Charter, the Court notes that the scope of application of the Charter is defined in Article 51(1) thereof, according to which its provisions are addressed to Member States only when they are implementing EU law. In the present case, national legislation which requires a member of military personnel to be vaccinated in order to carry out his or her professional activity does not come within the scope of Article 2(2) of Directive 2000/78. Accordingly, that legislation cannot be regarded as 'implementing Union law' within the meaning of Article 51(1) of the Charter, with the result that Articles 1 and 24 thereof are not applicable to the dispute in the main proceedings.

XI. COMMON FOREIGN AND SECURITY POLICY: RESTRICTIVE MEASURES

Judgment of the Court of Justice (Fourth Chamber) of 11 June 2026, NSD v Council, C-801/24 P

Link to the full text of the judgment

Appeal – Restrictive measures taken in view of the military aggression against Ukraine – Decision 2014/145/CFSP – Article 2(1)(f) – Regulation (EU) No 269/2014 – Article 3(1)(f) – Freezing of funds and economic resources – Concept of 'supporting, materially or financially, … the Government of the Russian Federation' – Obligation to state reasons – Interpretation – Right to property – Limitations – Principle of proportionality – Account to be taken of the situation and economic interests of the appellant's customers

The Court of Justice dismisses the appeal brought by NKO AO National Settlement Depository (NSD) against the General Court's judgment [48] concerning it. By that judgment, the General Court had dismissed that company's action seeking annulment of the acts at issue [49] on the basis of which the

[48] Judgment of 11 September 2024, *NSD* v *Council* (T-494/22, EU:T:2024:607).

[49] Council Decision (CFSP) 2022/883 of 3 June 2022 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 153, p. 92) and Council Implementing Regulation (EU) 2022/878 of 3 June 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ 2022 L 153, p. 15); Council Decision (CFSP) 2023/572 of 13 March 2023 amending Decision 2014/145/CFSP (OJ 2023 L 75 I, p. 134) and Council Implementing Regulation (EU) 2023/571 of 13 March 2023 implementing Regulation No 269/2014 (OJ 2023 L 75 I, p. 1); and Council Decision (CFSP)

Council of the European Union included and maintained its name on the lists of persons subject to restrictive measures taken in response to the actions of the Russian Federation undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

On this occasion the Court interprets for the first time the criterion laid down in Article 2(1)(f) of Decision 2014/145, as amended by Decision 2022/329, [50] and in Article 3(1)(f) of Regulation No 269/2014, as amended by Regulation 2022/330 [51] ('the (f) criterion'), which provides for the freezing of all the funds and economic resources belonging to natural or legal persons, entities or bodies supporting, materially or financially, the Government of the Russian Federation.

In 2022, the funds and economic resources of the appellant, a company incorporated under Russian law, providing securities record-keeping and custody services as the central depository in Russia, were frozen on the basis of the (f) criterion.

In support of its appeal, the appellant claims that the General Court made several errors of law, alleging a failure to state reasons for the acts at issue, misinterpretation of the (f) criterion and breach of the principle of proportionality.

Findings of the Court

As regards, in the first place, the ground of appeal alleging an insufficient statement of reasons, the Court of Justice holds that, in view of the context in which the acts at issue were adopted and of the statement of reasons in those acts, the appellant, which describes itself in its own words in its appeal as an 'important and central part of the Russian financial system', could not reasonably have been unaware of the reasons why the Council adopted restrictive measures against it.

So far as concerns, in the second place, the ground of appeal alleging misinterpretation of the (f) criterion, the General Court's analysis is confirmed by the Court of Justice, after interpreting the term 'support' from a literal perspective, as not depending on the actual provision of goods or on the existence of a transfer of funds directly benefiting the Russian Government; from a contextual perspective, ruling out any parallel with the different concept of 'financial assistance' within the meaning of Regulation No 833/2014; [52] and from a teleological perspective, taking into consideration the objective of ensuring the effectiveness of the pressure exerted on the Russian Federation to put an end to its military aggression against Ukraine. That criterion therefore covers any support capable, by its quantitative or qualitative importance, of providing the Russian Government with material or financial resources or facilities allowing it to pursue its actions to destabilise Ukraine.

The Court of Justice also finds that the General Court did not err in law by holding that the Council discharges its burden of proof if it presents to the Courts of the European Union a body of sufficiently specific, precise and consistent evidence to establish that there is a sufficient link between the person subject to a fund-freezing measure and the regime being combated. It observes that there is no rule of EU law that requires the Council, in its decisions imposing restrictive measures, to specify the standard of proof applicable in that field. In addition, that standard of proof is in line with the fact that restrictive measures are precautionary, temporary and reversible, and that their validity is always subject to the continuing existence of the factual and legal circumstances that led to their adoption. Since the effectiveness of the judicial review requires verification of the factual allegations in the statement of reasons underpinning the decision imposing restrictive measures, so that those reasons, or, at the very least, one of those reasons, can be deemed to be sufficient in themselves to support that decision, the aforementioned standard of proof enables the Courts of the European Union to

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2023/1767 of 13 September 2023 amending Decision 2014/145/CFSP (OJ 2023 L 226, p. 104) and Council Implementing Regulation (EU) 2023/1765 of 13 September 2023 implementing Regulation (EU) No 269/2014 (OJ 2023 L 226, p. 3).

50 Council Decision 2014/145/CFSP of 17 March 2014, as amended by Council Decision (CFSP) 2022/329 of 25 February 2022 (OJ 2022 L 50, p. 1).

51 Council Regulation (EU) No 269/2014 of 17 March 2014 (OJ 2014 L 78, p. 6), as amended by Council Regulation (EU) 2022/330 of 25 February 2022 (OJ 2022 L 51, p. 1).

52 Article 4(3)(b) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1).

carry out a full review of the factual basis for those measures, although without imposing on the Council a burden of proof that would be incompatible with the constraints due to urgency that surround the introduction of such measures and with the fact that they are precautionary.

As regards, in the third and last place, whether the restrictive measures at issue are proportionate, the Court of Justice notes, first, that the General Court took account of the economic consequences caused by those restrictive measures, including on the appellant's customers, the latter being able to avail themselves of legal remedies before the national courts, in particular to make a request for the release of frozen funds in accordance with the derogations laid down by Decision 2014/145 and Regulation No 269/2014. In order to ensure the functioning of the system of derogations provided for in Article 2(5) of that decision and in Article 6(1) of that regulation, those provisions must be interpreted in such a way that they authorise the national authorities to release the appellant's funds or economic resources in order to enable the appellant to make a payment taking the form of the return of its customers' securities which the appellant held in its frozen accounts with securities depositories established in the European Union. In addition, where a national authority decides on a request to release frozen funds pursuant to the derogations laid down by that decision and that regulation, it is required to ensure that the interference with the right to property of the appellant's customers is in compliance with the conditions laid down in Article 52 of the Charter of Fundamental Rights of the European Union. Second, after emphasising that the restrictive measures at issue are temporary and reversible, the Court notes that the approach of targeting economic operators which, like the appellant, support the Russian Government materially or financially cannot be regarded as being manifestly inappropriate with regard to the objective pursued by the Council, namely to reduce the revenue of the Russian State and to put pressure on that government in order to diminish its ability to finance its military aggression against Ukraine.

Nota bene:

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

- Judgment of the Court of Justice (Fourth Chamber) of 25 June 2026, Hardeker, C-182/26 PPU
- Judgment of the General Court (Seventh Chamber) of 3 June 2026, HB v Commission, T-795/19 RENV, T-796/19 RENV and T-408/21 RENV
- Judgment of the General Court (Eighth Chamber) of 17 June 2026, Bloom v Commission, T-659/24
- Judgment of the General Court (First Chamber, sitting with five Judges) of 24 June 2026, Dassault Aviation v Commission, T-77/24