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Analysis of Metaphors in Major Judgments of the Court of Justice of the European Union

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ABSTRACT

The present paper focuses on metaphors in a selection of major judgments produced by the Court of Justice of the European Union. The major judgements of the Court of Justice examine the main case-law trends from the year 2022. Due to the limited scope of this paper, and a rigorous procedure employed for linguistic metaphor identification, only the first five subject areas of the first chapter of the major judgements have been chosen. The subject areas are as follows: 1. Values of the European Union. 2. Withdrawal of a Member State from the European Union. 3. Fundamental rights 4. Citizenship of the Union and 5. Institutional Provisions. Following the Metaphor Identification Procedure (MIP) developed by the Pragglejaz Group (2007), the metaphors were examined in terms of the establishment of the basic and contextual meanings of the lexical units. By closely examining the five relevant subject areas of the major judgements and applying MIP steps as well as the Conceptual Metaphor Theory (CMT) proposed by Lakoff and Johnson (1980), a variety of metaphorical expressions have been identified in the examined text of court judgements. The results reveal that all the first five subtopics of major judgements contained legal metaphors with source domains such as OBJECT, POSSESSION, PLACE, CONTAINER, BUILDING, PERSON and numerous others. The main focus in the paper is on the qualitative analysis of selected metaphors (exemplified by a total of 129 metaphoric expressions) that were examined through the application of CMT and MIP. The study confirms the hypothesis that legal writing is abundant with metaphorical expressions that tend to be conventional and are used to facilitate the understanding of abstract and complex notions in the field of law.

INTRODUCTION

Metaphors serve as instruments for reshaping people's perception of the world and altering their understanding of it. A metaphor can be a lens, a map or even a conversation. If a metaphor is seen as a lens, its power comes in focusing, filtering or in the action of blocking something (Berger 2004: 169). If a metaphor is perceived as a map, its intention is to not only shape, but also direct an understanding of a notion that is structured onto a concept. Likewise, a metaphor can also be viewed as a conversation. In a conversation, the meaning lies in the way people interact with each other (ibid. 2004: 169). The implication of various words arises from an interaction between the target domains - an abstract or unusual concept - and the source domain - something concrete and well-known (ibid. 2004: 169). The most crucial aspect of how metaphors are used in conversation is the association of qualities and attributes between the target and source domains (Berger 2004: 169).

Metaphors have been evident in language since ancient times, dating back to the 4th century BCE, as proved by the work of the Ancient Greek philosopher Aristotle. He began to write about the ways of persuasion and illustrated metaphors as unique devices that assisted in ‘dressing up’ a language (Redden 2017:1). The main phenomenal argument that he claimed was that metaphors did not only provide a certain style or clearness, but most importantly, that metaphors are a distinction like nothing else compared to it (ibid. 2017:1). His perspective of metaphor as a decorative tool for language lasted for centuries. This shift in the view of language had led to subsequent scholars in perceiving metaphors as deceptive and distracting elements in written and spoken discourse (Redden 2017:1).

Considering that latest linguistic scholars have claimed that metaphors are tools for creating meaning, it can be confidently stated that individuals perceive the world in diverse ways to structure the reality around them. Hence, there has been a growing interest in the study of figures of speech, with a significant focus on the concept of comparing one thing to another. Metaphors, therefore, can convey more complex meanings and are effective in both qualitative and quantitative data analyses.

The subject of the Thesis is an analysis of conceptual metaphors in a selection of major judgments of the year 2022 of the Court of Justice.

The present research aims to examine the use of metaphors in legal discourse (court judgements) and how these can be interpreted within two primary theoretical frameworks - Conceptual Metaphor Theory (CMT) and Metaphor Identification Procedure (MIP).

The main objectives of this thesis are:

1. To review Conceptual Metaphor Theory, Metaphor Identification Procedure and the first five subtopics of the major judgements published in the year 2022 by choosing close reading;

2. To identify linguistic metaphorical expressions in phrases extracted from the major judgements, reconstruct conceptual metaphors, and categorize them into tables by the primary source domains;

3. To reconstruct conceptual metaphors based on the linguistic metaphorical expressions identified in the text by naming their target and source domains;

4. To conduct a qualitative analysis of metaphors by discussing their conceptual and communicative role in the given context.

This Thesis is composed of the following sections: Literature Review, Data and Methods, Results and Discussion, and Conclusions. Literature Review is the first part of this present paper, which sets the theoretical background for the thesis, presents the fundamental theories within the field of Cognitive Linguistics, Conceptual Metaphor Theory, Metaphors in legal discourse and the prevalent conceptual metaphors structuring legal language within previous carried out studies. The second part of the Thesis, Data and Methods, presents the various approaches of data selection and bases of analysis. The third part of the Thesis, Results and Discussion, examines the findings of the study, interprets the data, and discusses their implications. The Conclusions part summarizes the key findings of the research and highlights the insights from the research. The Thesis is supplied with a Summary in Lithuanian, a list of References (with primary and secondary sources) and two Appendices.

It is expected that this research of metaphors in legal discourse, based on the narrowly investigated legal discourse, will contribute to the better understanding of metaphors in court judgements.

1. LITERATURE REVIEW

1.1. Metaphors

Metaphors are figures of speech that have the power of referring to one thing by mentioning another thing. Metaphors as such are not only linguistic, but also cognitive tools that play a significant role in shaping thought, perception, and communication. A glance at metaphors through the usage of legal terminology is evident in Shakespeare's 46th Sonnet, in which the author speaks figuratively using legal terms (Makela 2011: 400). This sonnet has a unique structure, which resembles the process of litigation. Hence, the process of taking legal action is seen through the author's heart and eyes (ibid. 2011: 400). The sonnet uses the idea of two parties (heart and eyes) in court to depict a conflict between the eye and heart over a memory. In the sonnet the heart metaphorically "pleads" as if in a courtroom, while the eye, as a defendant, metaphorically can "deny" the plea. This way, the heart and the eyes metaphorically represent human beings, who can act as parties in a courtroom. Moreover, the jury is described as a "quest" which metaphorically stands for a group of jurors. It is also important to highlight that the structure of the sonnet is depicted through a pleading and is finalised with a final verdict (ibid. 2011: 400).

Metaphors have the capacity to transfer meanings from one object to another, which provide a reader with a symbolic representation that conveys abstract or complex ideas. The transformation of one meaning into another meaning indicates that metaphors transfer complex or abstract concepts by an association with more familiar or concrete ideas. For example, in the metaphorical expression: 'experience is a treasure,' the noun 'treasure' is intended to describe an 'experience' to highlight that the 'experience' is valuable (Zhang et al. 2021: 1). Legal language is the field specific discourse chosen for this paper and in the further sections below I am going to elaborate on the significance of metaphors in law.

One law professor, Steven L. Winter, claims that "metaphor is a central modality of human thought without which we cannot even begin to understand the complex regularities of the products of the human mind." (Winter 2001: 43). With that statement it is clear that the human mind and cognition are influenced by the metaphors humans use in various discourses.

Another law professor Loughlan, claims that the way we perceive metaphors has changed over time. She claims that in a traditional view of metaphor, a metaphor is only a decorative

and figurative use of language in which one object is described in terms of another (Loughlan 1993: 213). However, in a modern view, a metaphor is seen as a conceptual phenomenon which is significant to our capacity as humans to access and understand abstract subjects. A metaphor does not only 'phrase the thought', but it structures the way of thought (Loughlan 1993: 214).

In recent years, contemporary scholarship has increasingly acknowledged that the "ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature', and that metaphor is an essential cognitive tool, not only in speaking and writing, but in thinking" (Loughlan 1993: 214). Keeping that idea in mind, the conceptual system serves as a guiding tool for how individuals perceive the world and the thoughts they generate when encountering ideas or concepts in their surroundings.

With the various linguistic perspectives on metaphors in mind, it is essential to claim that metaphors are essential cognitive tools that have the power to refer to one concept by mentioning another concept. Metaphors as such carry a symbolic meaning of not only abstract, but also complex ideas, metaphors serve as a central modality of human thought and these are decorative as well as figurative uses of language.

1.1.1. Metaphors in cognitive linguistics

Metaphors play a crucial role in human thought and language and it is one of the most prolific areas in cognitive linguistics. This is because a metaphor acts as a tool through which we can observe how language mirrors and shapes human thought. It provides insights into human cognition, communication, and cultural patterns. A range of studies have emerged to investigate metaphors from a cognitive perspective and one of such studies was written by Hong and Rossi (2021). These linguists claim that before the 1990s, the challenge of translating metaphors was primarily undertaken through linguistic approaches and textual strategies (Hong and Rossi 2021: 2). However, nowadays, a cognitive approach asserts that metaphor is not only a linguistic element, but it should be comprehended as a conceptual tool, which allows the understanding and reasoning of abstract concepts and experiences (ibid. 2021: 2).

Cognitive scientists demonstrate through their research that our conceptual thinking is predominantly expressed through the usage of metaphors. They have described metaphors in

terms of a mapping process (Bratianu 2018: 2). The mapping process must always contain a source as well as a target domain. The source domain usually contains a semantic field of concrete concepts while the target domain encompasses a semantic field of abstract concepts (ibid. 2018: 3). This way of analyzing metaphors helps us to understand meanings of concepts by transferring some attributes from one concept into another concept. This implies that the concepts mirror the semantic structure and characteristics of the target and source domains. Yet, not every attribute can be transferred from the source domain to the target domain, as not all attributes may be applicable. One widely recognized metaphorical process employed by linguistics involves representing *time* in terms of *space* (Bratianu 2018: 3). This is evident from the language used when speaking about time through space with metaphorically used lexis.

One metaphor can even have an argument expressed in terms of being in a war with somebody. The analysis for consideration can be of the conceptual metaphor that ARGUMENT IS WAR. Loughlan particularly claims that this legal metaphor is extremely widespread in legal discourse. Many more metaphors that could go into the category that ARGUMENT IS WAR can be found in language, e.g.: Your claims are *indefensible*. He *attacked* every weak point in my argument. I *demolished* … his argument. He *shot down* all of my arguments (Loughlan 1993: 214). The metaphorical concept ARGUMENT IS WAR must namely capture what humans do when they argue. If the principle of metaphor is identifying and undergoing one kind of thing in terms of another, then argument as such is performed and understood in terms of being at war (ibid. 1993: 214). Furthermore, it's important to clarify that an argument shouldn't be equated with war. Arguments and armed conflicts are separate entities; one involves verbal exchange while the other entails physical conflict, each belonging to different categories of actions.

1.1.2. Conceptual metaphor theory

It has been over 30 years since the model of the Conceptual Metaphor Theory (often referred to as CMT) by Lakoff and Johnson was established, yet the exploration of metaphors continues to captivate researchers even in disciplines such as law. It is widely known that the perception of metaphors as a cognitive phenomenon was introduced by the popular publication *Metaphors We Live By* (1980). Moreover, the CMT theory has a huge impact on

the view of metaphors, because it reflects how people understand abstract concepts through the viewpoint or framework of more concrete ones (Lakoff and Johnson 1980: 3).

For instance, in the conceptual metaphor ARGUMENT IS WAR the abstract concept of ARGUMENT is understood in terms of the more concrete concept of WAR (Loughlan 1993: 214). In the CMT, the "target domain" is the subject or concept that must be understood in an abstract way and the so called "source domain" is the concrete domain that is used to explain or understand the target domain. As a rule, to denote conceptual domains in text involves the use of small capital letters and it is expressed by achieving the formula TARGET DOMAIN IS SOURCE DOMAIN (Lakoff and Johnson 1980: 3). In summary, CMT concentrates on the process of mapping attributes of one domain onto another domain, so it becomes possible to understand the abstract domain.

In Lakoff and Johnson's groundbreaking publication *Metaphors We Live By* the cognitive approach to metaphor opens a profound concept in metaphor research. According to this cognitive perspective, the human conceptual system is inherently “fundamentally metaphorical” (Lakoff and Johnson 1980: 3). This in fact, indicates that metaphor is not merely a linguistic phenomenon but a fundamental part of human cognition.

Several scholars have tried to apply the CMT framework in legal discourse. One of such studies have been conducted by Chiu and Chiang who examined fight metaphors employed in Taiwan legal statutes and judgments. The crucial point of their research paper is the conceptual metaphor that they found, which happens to be LITIGATION IS A FIGHT (Chiu and Chiang 2011: 877). The scholars showed that the conceptual metaphor LITIGATION IS A FIGHT reflects an ideological tendency rather than something else.

A variety of FIGHT metaphors found in judicial judgments can be grouped into various groups (ibid. 2011: 891). For instance, Chiu and Chang based various categories on the different aspects of the source domain FIGHT. In legal language, the word FIGHT in judgments can refer to certain aims (e.g. survival, winning, defeat, etc.), to a process of litigation (e.g. the actions and strategies of attorneys, litigants, etc.), to people involved (e.g. defenders, aggressors, etc.), and the courtroom setting (ibid. 2011: 891). Some of the conceptual metaphors underlying litigation were LITIGATION IS A FIGHT FOR CONTROL (in the category of goal), LITIGATION IS MILITARY ACTION (category of manner), THE OPPOSING PARTIES ARE RIVALS (category of participants) and COURTROOM IS SITE OF STRUGGLE (in the category of location).

Other scholars that used the CMT framework within their legal work are Šeškauskienė and Stepančuk (2014). Their aim was to examine metaphors in courtroom hearings using the CMT outline. The authors draw attention to the various metaphors that are utilized in hearings held in court. The data used in this study included transcripts of three oral arguments of the Supreme Court of the United States. The metaphors found in criminal cases were assembled and the conceptual metaphor LAW IS AN OBJECT was identified. The conceptual metaphor LAW IS AN OBJECT most often was instantiated through verbs *to take* or *to give* attached to the nouns, e.g. *to accept the law as it was given by a judge* found in legal transcripts. (Šeškauskienė and Stepančuk 2014: 106).

When law is referred to as an object it can also be interpreted as something you can physically touch. It is an entity that may have a specific shape, size, color, and is composed of some material or made up of multiple parts (Šeškauskienė and Stepančuk 2014: 108). Another identified conceptual metaphor involves personification. LAW IS A PERSON serves as a conceptual metaphor implying that legal affairs are conceptualized as if they were a living entity. Instances of this personification were present in over 30 percent of the collected data (2014: 112). Moreover, the authors highlighted that people consider contextual features related to language because language plays a fundamental role in legal matters, essentially serving as the primary tool of the law (2014: 115). The study has shown that legal discourse in courtroom hearings is structured using metaphors that conceptualize legal matters chiefly in relation to objects or individuals (ibid. 115).

1.1.3. Metaphors in legal discourse

Another scholar, Michael R. Smith, based his close reading on metaphors in legal writing and discovered four types of metaphors. These metaphors tend to operate in persuasive legal discourse. What is interesting to highlight is the fact that the four levels of metaphors resemble the four basic mechanisms of any legal argument (Smith 2007: 920). These are as such: (1) the legal principles governing an issue; (2) the tools of analysis applied to the governing principles; (3) the writing style of an advocate who is presenting the legal argument; and (4) the inherent nature of language itself, which serves as the foundation of any written legal argument (Smith 2007: 920).

Ebbesson states that metaphors have the ability to reshape reality and claims that a “Metaphor is the rhetorical process by which discourse unleashes the power that certain fictions have to redescribe reality.” (Ebbeson 2008: 260). The scholar continues to say that metaphors are highly used in legal discourse and contexts among legal representatives. Metaphors are not only symbols that direct normative content (as in traffic signs or other symbols), but these can also act as expressions used in behaviour and vocabulary of lawyers. The usage of various metaphors can also reveal the way lawyers perceive situations in which they use arguments in legal reasoning and when solving legal issues (Ebbeson 2008: 260).

Legal metaphors can be found anywhere. In fundamental legal concepts and principles, as well as in terminology related to legal actions, participants, entities, institutions, and legal methodologies (Ebbeson 2008: 261). Some metaphors can be more used than others, however most common expressions of metaphors can be found in court procedures. An example could be “defence” or even “defendant” which signify the fundamental metaphor of perceiving court procedures as acts of “war”. In that “war” a someone would have to win rather than seek for reconciliation (Ebbeson 2008: 261). In this procedure mentioned before, two parties in a case exist. One party would win and the other party would lose. It is interesting to mention that our perception of the court procedure would be different if the two parties were referred to in reconciliatory terms. Moreover, spatial metaphors exist in legal language, which are illustrated by notions such as "higher" and "lower" courts and the concept of sovereignty. Such metaphors have the capability to shape our comprehension of the legal system, frequently depicted in diagrams illustrating various "levels" of courts (Ebbeson 2008: 261).

Interestingly, one scholar has pointed out that common law as a branch of law can be seen as a tree. A tree metaphor is found not only in the civil law system, but also in common law in which the physical characteristics of a tree (trunk, branches and roots) are highlighted (Richard 2014: 4). In common Law system, the trunk represents the laws that were developed in the 11th century in England when William conquered victory in Hastings. Moreover, the branches stand for the offspring of this law system through the process of colonisation. Lastly, metaphorically, the roots point out the process of rooting something into history and something that is established by a legitimacy (Richard 2014: 5). As Richard says, the tree metaphor has a huge advantage when describing three major powers: the “judicial branch”, the “legislative branch” and the “executive branch” (“the branches of the law”).” (Richard 2014: 6).

1.1.4. Prevalent conceptual metaphors structuring in legal discourse

Metaphors can have various functions that help humans see objects, ideas or fields in a different perspective. Some scholars claim that metaphors can be seen in numerous different shapes (Berger 2004). One of such shapes that a metaphor can take is a lens, a map or even a conversation. Through a lens, a metaphor can not only help to focus, but it can also filter and block information. A metaphor can also be a map - it has a capacity to shape and direct people's understanding by taking a known object, tool or idea and putting it into a newer concept. Attention should be drawn to defining and directing qualities of a map rather than focusing on the distances and boundaries. Berger claims that maps metaphor like qualities are seen through the shape of a map, because a map directs our journeys (Berger 2004: 169). Lastly a metaphor can also be seen as a conversation. Its meaning can arrive from an interaction between a target (abstract concept) and the source domain (concrete concept). In this way a metaphor can show the qualities and properties of each domain (Berger 2004: 169).

Berger argues that an enhanced comprehension of the cognitive function of metaphor can assist legal professionals when shaping law. To explore the role of metaphor in shaping the law, the article by Berger delves into the influence of metaphor, particularly in a specific legal case (Berger 2004: 171). It focuses on the primary metaphor that views A CORPORATION IS A PERSON, within the broader metaphorical framework proposed by the marketplace of ideas model for First Amendment protection (ibid. 2004: 171). The interplay between these two metaphors has steered the evolution of First Amendment doctrine safeguarding corporate speech. The scholar continues to show that without these metaphors, statements made by corporations would not be eligible for First Amendment protection, as corporations are perceived as artificial entities lacking ideas, perspectives, a voice, self-realization, and a vote in democratic self-government (ibid. 2004: 171). Furthermore, these metaphors make it challenging to assume that corporations have a voice and should engage actively in unregulated discussions (Berger 2004: 171).

When taking terminology into consideration, terms that occur quite often in legal discourse are freedom, equality, dignity, and autonomy. These terms function as expressions with unique symbolic and political significance. Another field in which judicial principles can fill the entire legal system to achieve political goals is not only in the discourse of law, but in politics as well (Stefanì 2016: 364).

Two scholars have analyzed various conceptual metaphors of EU white papers in English and Lithuanian languages. It is crucial to highlight their attempt at examining the translation of conceptual metaphors, because law can be seen in various shapes like a war or enemy. As the authors state, the examination of translations from English to Lithuanian reveal that certain conceptual metaphors can be accurately retained (Gražytė & Maskaliūnienė 2009: 84). However, in other instances, factors such as interlinguistic aspects, contextual considerations, or linguistic and social norms in the target language led to the avoidance of metaphors in Lithuanian (ibid. 2009:84). When analyzing the metaphor DEALING WITH A PROBLEM IS WAR in EU white papers, the authors realized that the set of English phrases also demonstrated a somewhat distinct viewpoint in Lithuanian phrases. In Lithuanian the conceptual metaphor PROBLEM IS AN ENEMY is reflected in the use of vocabulary meaning to cause 'harm' or 'danger' (Gražytė & Maskaliūnienė 2009: 75).

In brief, there are various perspectives on metaphors that have been viewed by linguistic scholars. Some scholars claim that conceptual thinking is predominantly expressed through the usage of metaphors (Bratianu 2018: 2), that metaphors should be interpreted as conceptual tools, which allow the understanding and reasoning of abstract concepts and experiences (Hong and Rossi 2021: 2), or that metaphors can shape a certain subject (e.g. law) and assist legal professionals when shaping law as a field itself (Berger 2004: 171).

2. DATA AND METHODS

To collect materials suitable for the present study, a selection of major judgements of the year 2022 published by the Court of Justice of the EU has been chosen. The selection of major judgements is an annual publication by the Court of Justice of the European Union and its aim is to make the case law visible and accessible to everyone. All the judgements are produced by the Research and Documentation Directorate, which incorporates concise summaries of key rulings from the Court of Justice and the General Court of the European Union. Each summary (online) also comes with a hyperlink that leads to the full text of the respective decision. The Selection of Major Judgments is exclusively available in a digital format.

French is the language of deliberation of the Courts of the European Union, however the documents and publications of the European Union are typically made available in all official languages (24 official languages in total) to ensure accessibility and transparency for all

citizens of the member states. The Selection of Major Judgments is a publication of the European Union, so the major judgements are also published in the English language, in which the metaphors in major judgements have been analyzed.

To adopt an original approach to publicizing case-law, the selection of major judgements aligns significant developments in case-law throughout the previous year, which are offered to legal professionals. The major judgements of the Court of Justice and the General Court review the main case-law trends over the past year. The key rulings are organized by subject matter, mirroring the structure of the Treaties of the European Union. Each summary is numbered and categorized into various topics like intellectual property, protection of personal data, public health, energy, civil service and many more. Due to the limited scope of this paper, the first five subject areas of the first chapter of the major judgements have been chosen. These are as follows: 1. Values of the European Union. 2. Withdrawal of a Member State from the European Union. 3. Fundamental rights 4. Citizenship of the Union and 5. Institutional Provisions. The texts collected from each of the sections were compiled into a corpus of 45,211 words which is supplied in Appendix 2.

The first five subject areas of the major judgements have numerous legal issues concerned, which makes the summaries of key rulings suitable for analysis, as they contain a large number of metaphors related to the legal language. For the purpose of this study, the metaphors have been analyzed in terms of the subject matter and have been examined having reconstructed conceptual patterns in terms of target and source domains.

For a deeper metaphor analysis of this present thesis I have chosen close reading, the MIP procedures for identifying metaphors in text as well as metaphorical mapping which refers to the cognitive development through which one concept or domain is understood and represented in terms of another concept or domain.

The linguistic metaphor identification was based on an updated version of Metaphor Identification Procedure (MIP) developed by the Pragglejaz Group (2007). This procedure is the main framework at usage when identifying certain lexical units as metaphorical expressions.

The MIP (Metaphor Identification Procedure) goes as follows (Pragglejaz Group 2007: 3):

1. *Read the entire text–discourse to establish a general understanding of the meaning.*
2. *Determine the lexical units in the text–discourse*

3. (a) For each lexical unit in the text, establish its meaning in context, that is, how it applies to an entity, relation, or attribute in the situation evoked by the text (contextual meaning). Take into account what comes before and after the lexical unit.

(b) For each lexical unit, determine if it has a more basic contemporary meaning in other contexts than the one in the given context. For our purposes, basic meanings tend to be

—More concrete; what they evoke is easier to imagine, see, hear, feel,

smell, and taste.

—Related to bodily action.

—More precise (as opposed to vague)

—Historically older.

Basic meanings are not necessarily the most frequent meanings of the lexical unit.

(c) If the lexical unit has a more basic current–contemporary meaning in other contexts than the given context, decide whether the contextual meaning contrasts with the basic meaning but can be understood in comparison with it.

4. If yes, mark the lexical unit as metaphorical.

With close reading of the five relevant subject areas of the major judgements and the application of MIP steps, various linguistic metaphorical expressions have been identified. The first five subtopics of the major judgements of the Court of Justice had legal metaphors with such source domains: OBJECTS, POSSESSIONS, PLACE, CONTAINERS, BUILDING, PERSON, and many more.

The linguistic expression of metaphors has been identified using the MIP procedure in which the meaning (basic and contextual) of metaphorical expressions were established in context. In that context it was necessary to find out the basic contemporary meaning and to acknowledge if the lexical units in the phrases were considered as metaphorical.

The linguistic metaphorical expressions were then examined to identify conceptual metaphors applying the Conceptual Metaphor Theory (CMT) proposed by Lakoff and Johnson (1980), which defines metaphor as understanding one conceptual domain in terms of another one. Additionally, metaphors were categorized based on their primary source domains to uncover

predominant patterns in metaphorical usage and determine the most prevalent source domains that structure the conceptualization of legal concepts (e.g., objects, persons, etc.).

3. RESULTS AND DISCUSSION

The present section is divided into various parts in which metaphorical expressions were categorized by different source domains. The source domains were categorized in groups such as a target domain being a PERSON, POSSESSION, PLACE, ENJOYMENT, OBJECT, GIFT, PHYSICAL CONSTRAINT, BUILDING, PHYSICAL ACTION, etc. The metaphorical expressions were analyzed in terms of their basic and contextual meanings.

In cognitive linguistics, within the framework of the Metaphor Identification Procedure (MIP), a lexical unit is considered metaphorical if its basic current-contemporary meaning contrasts with its contextual meaning yet shares similarities in certain features of meaning. The metaphorical expressions were only identified and analyzed in which the contextual meanings contrasted with the basic meaning and but were understood in comparison with it. In this paper, the metaphorical expressions that were analyzed usually had more than one interpretation of a lexical unit. Moreover, the definitions of the words which had metaphoricity in them were checked online through various English language dictionary sources like Longman Dictionary of Contemporary English, Cambridge dictionary or Oxford learner's dictionary to establish a precise meaning of the words.

3.1. Source domain: PERSON/ HUMAN BODY / BODY

Legal notions can be grouped into various source domains, one of such can be a concept being a PERSON, HUMAN BODY or BODY. This is the most prevalent source domain found in all five subject areas (1. Values of the European Union. 2. Withdrawal of a Member State from the European Union. 3. Fundamental rights 4. Citizenship of the Union and 5. Institutional Provisions) of the first chapter of the major judgements of the Court of Justice).

The conceptual metaphors were established using the CMT framework and MIP procedure, so using the examination of these frameworks led to the target and source domains being grouped into: STATE IS A PERSON, MEMBER STATE IS A PERSON, POLITICAL ENTITY IS A HUMAN BODY, COURT IS A PERSON, and A LEGAL ENTITY IS A BODY.

All the conceptual metaphors were grouped with examples found directly in the judgements of the Court of Justice and the lexical units within metaphorical expressions were analysed in more depth. This was needed to have not only the contextual meaning established through the dictionary, but also the basic meaning analyzed in order to understand the meanings behind the legal words. The results of the legal notions having a source domain PERSON/ HUMAN BODY/ BODY are displayed in Table 1. The conceptual metaphors with the formula TARGET DOMAIN IS SOURCE DOMAIN are displayed on the left side of the table, and the metaphorical expressions are highlighted in bold on the right with phrases found directly in the major judgements.

Table 1. Source domain: PERSON/ HUMAN BODY/ BODY

Conceptual metaphor	Metaphorical expression
STATE IS A PERSON	1. *Hungary (…)* ***brought*** *an action* 2. *Poland therefore* ***founded*** *its action* 3. *(…) are* ***parties*** *to the Lisbon Agreement* 4. *(…) obligation which a candidate State must* ***meet***
MEMBER STATE IS A PERSON	5. *Seven Member States of the European Union are* ***parties*** *to that agreement.*
POLITICAL ENTITY IS A HUMAN BODY	6. *(…) was appointed for the first time to the position of judge by a* ***political body***
COURT IS A PERSON	7. *The Court* ***holds…*** 8. *Court* ***clarifies*** *that (…)* 9. *Court* ***raises*** *the question* 10. *Court* ***confirms*** *that* 11. *The court* ***recalls*** *that* 12. *The court* ***rejects*** *the plea (…)* 13. *the Court* ***considers****,* 14. *The Court* ***notes*** *that* 15. *The Court* ***examines*** *that* 16. *The referring Court* ***asks***

	17. *The Court **observes** that* 18. *The Court **points out** that (…)*
LEGAL ENTITY IS A BODY	19. *Regarding that **body** as an impartial and independent court.*

For instance, the first conceptual metaphor STATE IS A PERSON has four different metaphorical expressions that go within that formula of TARGET DOMAIN IS SOURCE DOMAIN. The first and second phrases show how countries like Hungary or Poland are conceptualized as persons using the tool of personification. As Longman dictionary states, personification is "the representation of a thing or a quality as a person, in literature or art" (Longman Dictionary of Contemporary English online, 2024). That means that if something is described in a text by assigning human like qualities or behaviors to non-living entities, these concepts can be seen through the usage of personification.

The following metaphorical expressions are instances of personification. (1) *Hungary (…) brought an action* and (2) *Poland therefore founded its action*. According to Cambridge dictionary, to bring an action means "to start a legal process usually against a person, company, or government agency that will be decided in a law court"' and with that meaning countries themselves cannot just start legal processes, but human beings, for instance the representatives of the countries, can. So in sentences (1) and (2), the contextual meaning has a wider explanation of the meaning to bring an action, and in a metaphorical sense it is clear that the states of Hungary and Poland are metaphorized as human beings that start legal proceedings to be inspected in law courts.

If attention is brought to the conceptual domain MEMBER STATE IS A PERSON and the lexical unit is 'parties' in the (5) phrase *seven Member States of the European Union are parties to that agreements*, we can see that the contextual meaning is different from the basic meaning. In the (5) phrase it is possible to acknowledge that the lexical unit 'parties' has a different sense in legal language. In legal language, a party stands for a representative of some kind.

To be more precise, Oxford learner's dictionary defines a *party* to an agreement to be an "individual concerned in a proceeding" (Oxford learner's dictionary online, 2024). Oxford learner's dictionary elaborates more to that meaning that a party can be "any of the groups of people constituting a side in a formal proceeding, such as the litigants in a legal action, those

who enter into a contract, etc. ", so in example (5) a *party* is referred to a person that decided to enter into a contract of some kind, therefore the lexical unit *party* can be marked as metaphorical. The essence of this term's metaphoricity lies in the fact that another meaning (basic meaning), i.e. "a group of people who are involved in an activity together, especially a visit" (Cambridge Dictionary online, 2024), may be interpreted as the meaning that gives rise to metaphoricity of HUMAN BEING/PERSON.

3.2. Source domain: POSSESSION

Another interesting and compelling example of a conceptual metaphor involves the idea of considering an abstract legal notion as a possession, something that can be owned by someone. Conceptual metaphors that fall under this category and were found in the major judgements are: STATUS IS A POSSESSION, BUDGET IS A POSSESSION, CITIZENSHIP IS A POSSESSION, RIGHTS ARE POSSESSIONS, and NATIONALITY IS A POSSESSION. Just as the Cambridge dictionary indicates, a possession is something that we can own or carry with us at a specific moment of time (Cambridge Dictionary online, 2024) and this meaning can give rise to metaphorical conceptualisation of certain legal concepts as if they were possessions.

Table 2. Source domain: POSSESSION

Conceptual metaphor	Metaphorical expression
STATUS IS A POSSESSION	20. *On account of the **loss of** her **status***
	21. ***Loss of** his or her **status** as a citizen*
BUDGET IS A POSSESSION	22. *EU's powers to **defend** its budget*
CITIZENSHIP IS A POSSESSION	23. ***Loss of** citizenship*
RIGHTS ARE POSSESSIONS	24. *To **retain** the rights*
	25. *to **lose** not only their entitlement to those rights*
	26. *Was not **entitled to** refer questions*
	27. *was **granted** subject to full **respect***
NATIONALITY IS A POSSESSION	28. *She no longer **holds** the nationality of a member state*
	29. *The **loss of** the nationality of a Member State*

As seen from Table 2, target domains like STATUS, BUDGET, CITIZENSHIP, RIGHTS, or NATIONALITY can be understood as being somebody's possession. The most common and used target domains used in major judgements were RIGHTS, NATIONALITY, CITIZENSHIP and STATUS, because these notions were either lost, defended, retained, entitled, or held just like possessions can be.

To my mind, target domain concepts such as STATUS, RIGHTS, NATIONALITY, or CITIZENSHIP, which are commonly encountered in court judgments, serve as representations of abstract concepts that hold significant importance in legal discourse. When applying the conceptual metaphor theory, it becomes obvious that abstract notions, such as rights, nationality, and citizenship, are frequently conceptualized in relation to more tangible domains, such as the concept of POSSESSION. For example, the concept of rights may be metaphorically understood in terms of ownership or possession, while nationality or citizenship may be metaphorically understood in as a sense of belonging or affiliation.

Examples that take target domains such as STATUS, RIGHTS, NATIONALITY or CITIZENSHIP with the source domain POSSESSION can be found in phrases of major judgements such as (20) *on account of the loss of her status*, (23) *loss of citizenship*, (24) *to retain the rights*, (25) *to lose not only their entitlement to those rights*, (26) *was not entitled to refer questions* and (27) *was granted subject to full respect.*

If a closer look is taken at the conceptual metaphor RIGHTS ARE POSSESSIONS, we can see that metaphorical expressions occur in phrases such as: (24) *to retain the rights*, (25) *to lose not only their entitlement to those rights*, (26) *was not entitled to refer questions* and (27) *was granted subject to full respect.* All of the lexical units in their basic senses denote losing, giving, retaining and others are conventional expressions that realise metaphors. Moreover, these legal concepts are conceptualized as possessions that one can obtain, be granted or lose.

For instance, the verb *to retain* has many meanings and one of such meanings of the verb can take senses like "to get the services of a lawyer by paying them before you need them" or it can also mean "to keep or continue to have something, especially a position or money, or control of something" (Cambridge dictionary online, 2024). However, in the major judgements and in the (24) phrase *to retain rights*, the verb *to retain* has a contextual meaning to keep or continue to have something, however, the phrase takes together within its lexical unit the noun *rights*, in which *rights* themselves cannot be retained, because rights are intangible.

3.3. Source domain: PLACE/LOCATION/SPACE

Other interesting patterns in the field of law that take up a different source domain in legal discourse and court judgments is the source domain PLACE which can also be interpreted as LOCATION or SPACE. Conceptual metaphors found in the major judgements that take source domains PLACE/LOCATION/SPACE are PROFESSIONAL POSITION IS A PLACE , LEGAL REGULATION IS A LOCATION, JURISDICTION IS A PLACE, LEGAL ISSUES ARE PHYSICAL LOCATIONS, and LEGAL AUTHORITY IS A BOUNDED SPACE. Therefore, legal concepts and target domains like professional status, legal statutes, jurisdiction, legal matters, and legal authority expressed in court judgements may be perceived as entities capable of being positioned within a defined place, locality, or spatial context. Table 3 shows the exact metaphorical expressions that realise metaphors based on the source domains PLACE/LOCATION/SPACE.

Table 3. Source domain: PLACE/LOCATION/SPACE

Conceptual metaphor	Metaphorical expression
PROFESSIONAL POSITION IS A PLACE	30. ***Appointed for*** *the first time to the position of judge* 31. ***Stand as*** *a candidate* 32. ***Sitting as*** *a single judge* 33. *Judge was* ***kept in*** *that position* 34. *Judge (…) was* ***kept in*** *their post*
LEGAL REGULATION IS A LOCATION	35. *(which)* ***lays down*** *rules* 36. ***subject to*** *the principle of proportionality*
JURISDICTION IS A PLACE	37. *(…)* ***falls within*** *the competence of (…)*
LEGAL ISSUES ARE PHYSICAL LOCATIONS	38. ***On a point*** *of law*
LEGAL AUTHORITY IS A BOUNDED SPACE	39. ***Exceeded*** *the limits of its discretion*

As indicated in Table 3, the prevailing conceptual metaphors primarily utilized the source domain of PLACE or LOCATION. Specifically, four phrases were identified with place as the

source domain, suggesting that professional status or vacancy can be perceived in terms of physical presence or a legal regulation can be seen as a location.

If a closer look is taken at the conceptual metaphor PROFESSIONAL POSITION IS A PLACE we can see that a judge can be appointed to a position (*Appointed for the first time to the position of judge* (phrase 30), that a candidate or a single judge can stand/sit in a professional position (*Stand as a candidate, sitting as a single judge* (phrases 31 and 32). Moreover, even a judge can be either be kept in a position or it can be kept in their post (*Judge was kept in that position, Judge (…) was kept in their post* (phrases 33 and 34)). All four phrases show that the target domains are seen to be physically in a place, located someplace.

In the above-listed examples, professional statuses are metaphorically treated as physical places that one can occupy, move to, or be removed from a professional status. It can be reasoned that this metaphor implies stability and a specified location within a hierarchy or structure, similar to a physical place in the real world. It underlines the notion of the legal profession as structured and hierarchical. By focusing more on the conceptual metaphor LEGAL REGULATION IS A LOCATION it becomes evident that regulations are perceived as being situated in a specific place or context. Another set of expressions, namely, (35) *(which) lays down rules,* and (36) *subject to the principle of proportionality* recognizes a metaphor of legal regulation as some bounded physical area that limits certain actions or decisions. This spatial metaphor highlights the limiting and guiding nature of regulations, much like how physical boundaries direct movement within space.

To move on, the expression in example (37) *(…) falls within the competence of (…)* implements a metaphorical view whereby jurisdiction is framed as a defined area of authority. If a closer look is put into the verb *to fall*, it is apparent to say that the initial basic meaning of the verb is defined as "to suddenly go down onto the ground or towards the ground without intending to or by accident:" (Cambridge Dictionary online, 2024). However, the verb *to fall* can also take defined meanings like to "become lower in size, amount, or strength" (ibid. 2024). However, the contextual meaning is different from the basic meaning. To *fall within the competence of* implies that something is within the legal authority or jurisdiction of a particular entity or organization. It suggests that an entity has the power to deal with or handle a legal matter in question. Phrase 37, *to fall into a competence* means that something comes within the jurisdiction of a particular competency or area of expertise. It implies that something or someone is subject to or related to a specific field. This might indicate that an

entity of a jurisdiction must acquire the necessary skills or knowledge to efficiently deliver concerns within that jurisdiction.

The metaphorical perspective in example (37) portrays legal power as restricted within defined spheres or boundaries much like territorial boundaries. In a similar way, expressions such as (38) *On a point of law* show a fundamental conceptualization of legal issues as locations. It suggests that they are distinct positions that one can approach, emphasizing the idea of navigating through legal complexities as one would move through physical spaces. Finally, the metaphor behind the metaphorical expression (39) *Exceeded the limits of its discretion,* interprets legal authority as a space with defined limits. Overstepping these limits implies moving out of an authorized area, highlighting the notion of legal constraints.

To conclude, the frequent use of spatial metaphors in legal texts helps to conceptualise abstract legal concepts and processes in more tangible, understandable terms. By mapping our everyday experiences with physical space onto complex legal ideas, such metaphors assist in understanding the complex and abstract fields of law.

3.4. Source domain: ENJOYMENT

Another source domain, not so widely used in legal discourse, is ENJOYMENT. Through the action of enjoying something, rights and some types of statuses can be not only established, but also directly applied. Two conceptual metaphors that can be found with the source domain ENJOYMENT is RIGHTS ARE A FORM OF ENJOYMENT, and STATUS IS A FORM OF ENJOYMENT. The metaphorical use with such target and source domains are shown in Table 4.

Table 4. Source domain: ENJOYMENT

Conceptual metaphor	Metaphorical expression
RIGHTS ARE A FORM OF ENJOYMENT	40. ***enjoyment*** *of all the rights* 41. *does not* ***enjoy*** *institutional recognition* 42. *She no longer* ***enjoyed*** *the right to vote*
STATUS IS A FORM OF ENJOYMENT	43. *No longer* ***enjoy*** *the status of citizen of the Union*

Only two target domains, RIGHTS and STATUS can be interpreted in the view of seeing these notions as an enjoyment. For instance, rights can be enjoyed, meaning people can use their rights in one way or another as in phrase (40) *enjoyment of all the rights*, institutional recognition can be used or 'enjoyed' in example (41) *enjoy institutional recognition*, or even a person cannot be subject to the right to vote and who cannot *enjoy the right to vote* (42).

The initial meaning of the verb *to enjoy*, according to the Cambridge dictionary, is "to feel happy because of doing or experiencing something" (Cambridge dictionary online, 2024). However, in a legal sense, the verb *to enjoy* takes on a different meaning. According to Longman dictionary, the verb *to enjoy* in legal discourse takes the meaning "to use a legal right and benefit from it" (Longman dictionary of Contemporary English online, 2024), which explains the meaning behind the metaphorical expressions like to enjoy a right to vote or to *enjoy a status of a citizen* as in example (43).

The source domain in the metaphors listed above is ENJOYMENT which typically involves experiences of desire, satisfaction, a sense of fulfillment or benefit in everyday life. This domain is mapped onto more abstract legal concepts such as rights and status (as seen in examples (42) and (43)). This metaphorical mapping implies that rights are perceived as beneficial and pleasurable conditions that one can possess and experience, much like one enjoys personal benefits. The use of the verb to *enjoy* in this context highlights that having rights is not just a matter of law but also a matter of personal advantage and satisfaction. The loss or absence of these rights, as in examples (41) *does not enjoy institutional recognition* or (42) *no longer enjoyed the right to vote* implies a deprivation of something valuable and personally fulfilling.

To move on, in example (42) *no longer enjoy the status of a citizen of the Union*, the metaphor outlines the *status* itself. A particular legal or civic status is outlined as something that can be experienced positively and whose loss is felt as a personal disadvantage. The phrase captures how citizenship, with its associated rights and privileges, is not just a legal condition but something that enhances personal life, contributing to one's identity and social capability. The metaphorical framing of rights and status as forms of ENJOYMENT in legal discourse can be said to serve several functions. Firstly, it makes abstract legal concepts more relatable and understandable by connecting them to everyday experiences of benefit and satisfaction. Secondly, by comparing rights and statuses to personal enjoyment, it highlights their importance and desirability, stressing what is most important in legal discussions.

Finally, such metaphors can be a guidance to how people perceive their rights and the rights of others, potentially motivating more active defense and appreciation of legal rights.

3.5. Source domain: OBJECT

The most occurred source domain in the analysis of this paper was the source domain OBJECT. This might lead to the reason that the source domain OBJECT can give a tangible and concrete way to conceptualize abstract legal concepts. In legal discourse the language itself is very precise, because it uses concrete objects as metaphors that can help to understand more complex legal principles, procedures and notions. For example, concepts like rights, legislative power, legal actions, acts of breach, competence, etc. can be metaphorically understood in terms of possessing physical objects.

Many examples of conceptual metaphors are present in Table 5 with the source domain OBJECT. Target domains that took the source domain OBJECT were: LAW, LEGISLATIVE POWER, LEGAL ACTION, BREACHES, LEGAL ARGUMENTS, COMPETENCE, JUDGEMENTS, OPINIONS, RIGHTS, LEGAL IDEAS, STATUS, CONSENT, VALUES, OFFENCES and LEGAL FRAMEWORK.

Table 5. Source domain: OBJECT

Conceptual metaphor	Metaphorical expression
LAW IS A PHYSICAL OBJECT	44. ***Laid down by*** *national law* 45. *Fullfilled* ***under*** *Austrian Law* 46. *financing conditions* ***laid down*** *by EU law* 47. *Can* ***derive*** *such standing directly from EU law*
LEGISLATIVE POWER IS A PHYSICAL OBJECT	48. *being* ***taken by*** *the EU legislature*
LEGAL ACTION IS AN OBJECT	49. ***Lodged*** *an appeal* 50. *Five actions were* ***brought*** *before the Court* 51. *those measures* ***may target*** *actions*
BREACHES ARE OBJECTS	52. ***to put an end*** *to those breaches*

LEGAL ARGUMENTS ARE OBJECTS	53. *the appellants **brought** an appeal* 54. *In response to Poland's **line of argument*** 55. *the authority **brought** an appeal*
COMPETENCE IS AN OBJECT	56. ***falling under** the exclusive competence*
JUDGEMENT IS A MOVING OBJECT	57. *(…) which **delivered** the judgement*
OPINION IS A MOVING OBJECT	58. *opinion….) **going beyond** the context of the legislative process*
RIGHTS ARE PHYSICAL OBJECTS	59. *A **series** of rights*
LEGAL IDEAS ARE SACRED OBJECTS	60. ***Enshrined in** EU Law* 61. *None of those provisions **enshrines** that right*
STATUS IS AN OBJECT	62. *deprived of the rights **attaching to** that status,*
CONSENT IS AN OBJECT	63. *In the **absence of** such consent*
VALUES ARE PHYSICAL OBJECTS	64. *European Union must be able to **defend** those values,*
OFFENCES ARE TANGIBLE OBJECTS	65. *Offences (…) can no longer be **taken into account***
LEGAL FRAMEWORK IS AN OBJECT	66. ***conducted within** the framework*

As is noticeable from Table 5, a substantial number of target domains can be associated with the source domain OBJECT. For instance, in the metaphoric expression in (44) *laid down by national law*, one can observe that national law is in a way conceptualized as a physical object that can be *laid down* on a platform. Moreover, Oxford learner's dictionary claims, that the basic meaning of the verb *to lay down* means "to put something down or stop using it" (Oxford learner's dictionary online, 2024), so the contextual meaning involves recognizing that *national law* refers to something being formally established or prescribed by laws enacted at national level. This contextual sense is also defined by the dictionary through the definition "if you lay down a rule or a principle, you state officially that people must obey it or use it"

(Oxford learner's dictionary online, 2024). If an individual would imply to 'lay down' a specific type of law, like national law, he or she would suggest to create a new rule in a certain legal area. So, when more attention is brought to example (44) *laid down by national law* it likely means that a rule or regulation has been established by a legislative body of a country within a particular legal context.

A similar instance can be illustrated with the phrase (45) *fullfilled under Austrian Law*. The phrase *fulfilled under Austrian Law* that stands in the category of the conceptual metaphor LAW IS A PHYSICAL OBJECT, indicates that an obligation or agreement has been implemented in accordance with the legal requirements of Austrian legislation. A metaphor is realised through the preposition *under* which makes Austrian Law metaphorically conceptualised as a physical object. According to Longman dictionary, the preposition *under* carries the meaning "below or at a lower level than something or covered by something over". So, with the contextual meaning in mind, *Austrian Law* is viewed like an object that can be relocated. A similar meaning is also seen in phrase (44) *laid down by national law* because it suggests that the action, agreement, obligation etc. must comply with the regulations, and legal procedure set forth by national law. Metaphorically, these two phrases imply an adherence to a set of standards, rules, or expectations.

A comparative study by Deignan has shown that even feelings can be conceptualized as physical objects. With the example of conceptual metaphors A FEELING IS A PHYSICAL OBJECT and DIGNITY IS A FEELING the scholar highlights some crucial points. He claims that dignity is a feeling and that the feeling is conceptualized as a physical object and while the face is a metonymy for a feeling (Deignan 2008: 254). It is also interesting to see that this author categorizes the conceptual metaphor DIGNITY IS A FEELING as a proposition, while FACE IS A PHYSICAL OBJECT is seen as a complex metaphor (ibid. 2008: 254).

In legal contexts, metaphors often transform abstract legal concepts into more concrete and tangible objects, making complex ideas more approachable. This phenomenon is illustrated, for example, in the way legal arguments are discussed. For instance, consider the metaphorical expressions found in the following phrases: (53) *the appellants brought an appeal*, (54) *In response to Poland's line of argument* and (55) *the authority brought an appeal*. These examples highlight the metaphorical conceptualisation of legal arguments as objects that can be moved or transferred. This metaphorical framing becomes evident through the use of the verb *brought*, which is typically associated with physical objects. In the

expressions (53) *the appellants brought an appeal* and (55) *the authority brought an appeal*, the legal documents (appeals) are treated as physical entities that one can carry from one place to another. Similarly, the phrase in (54) *Poland's line of argument* suggests a spatial dimension where arguments are aligned in a sequence, similar to objects laid out in a row.

These metaphorical expressions principally support Lakoff and Johnson's conceptual metaphor theory which suggests that abstract concepts are often understood through more concrete experiences. In legal discourse, such metaphors not only make the text more relatable but also shape how legal reasoning is perceived and structured in people's minds. The metaphor of carrying an appeal, for instance, implies a transfer of responsibility or ownership of the argument from one party to another, which is a crucial aspect of legal proceedings.

3.6. Source domain: BUILDING/ PHYSICAL SUPPORT

Another quite commonly used source domain in the language of court judgements is BUILDING/PHYSICAL SUPPORT. The source domain BUILDING/ PHYSICAL SUPPORT frequently carries the idea of supporting a certain foundation, structure, or framework to better understand abstract ideas like in the field of law. BUILDING OR PHYSICAL SUPPORT source domains intend to display a notion of stability and support, like a platform on which something stable can be built. Subsequently a physical building rests on a solid foundation to stand, the use of this conceptual metaphor suggests people understand abstract ideas which can be built upon a foundation of more concrete and tangible concepts, like a building (house, palace, etc.).

Legal notions that can be understood as buildings and which are grounded on physical support are legal arguments, legal actions, legal decisions, law itself, and institutional balance. The conceptual metaphors that have been found in the major judgements are LEGAL ARGUMENTS ARE BUILDINGS, LEGAL ACTIONS ARE BUILDINGS, LEGAL DECISIONS ARE BUILDINGS, LAW IS PHYSICAL SUPPORT, DECISION IS SUPPORT and INSTITUTIONAL BALANCE IS A SUPPORT. A table which represents such conceptual metaphors in legal usage are shown in Table 6 below.

Table 6. Source domain: BUILDING/ PHYSICAL SUPPORT/ SUPPORT

Conceptual metaphor	Metaphorical expression
LEGAL ARGUMENTS ARE BUILDINGS	67. *Claims (…) are without* ***foundation*** 68. *In* ***support*** *of the principal claim* 69. *Reasonable* ***grounds*** 70. *Made only* ***on legitimate grounds***
LEGAL ACTIONS ARE BUILDINGS	71. *Hungary therefore* ***bases its action,***
LEGAL DECISIONS ARE BUILDINGS	72. *a decision is* ***based on***
LAW IS PHYSICAL SUPPORT	73. *The principle of* ***maintaining*** *the applicability of EU law*
DECISION IS SUPPORT	74. *decision is* ***justified***
INSTITUTIONAL BALANCE IS A SUPPORT	75. ***distorting*** *the institutional balance*

The source domain BUILDING or PHYSICAL SUPPORT typically depicts the stability of something. It can be the stability of a building, physical structure such as bridge, department, etc., any physical structure planned for construction must possess reliable stability. Metaphorically, the concept of a stable building extends beyond physical structures into people's everyday lives. Just as a building needs a solid foundation to remain standing, individuals often rely on stable foundations in their lives for safety and security. This could be interpreted in the concepts of stable relationships, a secure income or a good and strong health.

As seen from the table, many legal notions can be viewed as a building or a concept with a physical support. For instance, in the (67) phrase *claims (…) are without foundation*, legal claims are conceptualised as buildings which require a solid foundation to remain upright. The absence of the foundation in this metaphorical expression suggests that the claims lack the needed substantiation or support, in a similar way how a building without a secure and solid foundation is prone to collapse. The metaphor conveys that for legal arguments to be considered valid and robust, they must be built on well-grounded assertions, just as a building must be constructed on a firm base.

3.7. Source domain: PHYSICAL ACTION

Another quite often emerging conceptual metaphor in the language of court judgements can be found with the source domain PHYSICAL ACTION. The target domains can vary from the notions of LEGAL ACTIONS, LEGAL ACTIVITIES, ASSESSMENT as well as RIGHTS and OBLIGATIONS. The Longman dictionary defines 'action' as "the way something moves or works" (Longman dictionary of Contemporary English online, 2024). So, in a legal sense, notions like legal processes or activities can move or work in a physical way. In Table 7, it is possible to see how the target domains are capable of moving in a certain way.

Table 7. Source domain: PHYSICAL ACTION

Conceptual metaphor	Metaphorical expression
LEGAL ACTIONS ARE PHYSICAL ACTIONS	76. ***lifting*** *of the measures* 77. ***brought by*** *the Parliament against the Council* 78. *action* ***brought by*** *a Member State* 79. *an action* ***brought by*** *a regional entity*
LEGAL ACTIVITIES ARE PHYSICAL ACTIONS	80. *Nationals of that State who* ***exercised*** *their right to reside* 81. ***Exercised*** *his or her right to move* 82. *collectively* ***exercising*** *the powers of the Member States,* 83. *Who* ***exercised*** *their respective rights of free movement*
ASSESSMENT IS A PHYSICAL ACTION	84. *EU Courts* ***to carry out*** *a direct review*
RIGHTS AND OBLIGATIONS PHYSICAL ACTIONS	85. ***the exercise of*** *the rights and fulfilment of the obligations*

It is interesting to take a look at some phrases that take up the source domain PHYSICAL ACTION. In the conceptual metaphor LEGAL ACTIONS ARE PHYSICAL ACTIONS it is possible to distinguish even four phrases with the verb *to exercise* that takes various metaphorical expressions with the source domain PHYSICAL ACTION. Legal activities which can be seen as

physical actions can be in such as expressions as (80) *nationals of that State who exercised their right to reside,* (81) *exercised his or her right to move,* (82) *collectively exercising the powers of the Member States* and (83) *who exercised their respective rights of free movement.* As seen from the expressions, all the phrases contain the verb *to exercise*. The basic meaning of the verb *to exercise*, in the area of physical movement, takes the definition "to do sports or physical activities in order to stay healthy and become stronger" (Longman dictionary of Contemporary English online, 2024). However, in a more broad and more legal sense, the verb *to exercise* takes a different sense compared to the one used in sports. The meaning of *to exercise* in law suggests that specific rights or power can be used "to use a power, right, or quality that you have" (ibid. 2024). The metaphorical link between the verb *to exercise* is very important. It underscores a fundamental similarity because both forms of exercise require intentionality and effort directed towards a goal.

For instance, just as regular physical exercise strengthens the body and improves overall health, the regular exercise of legal rights (such as a right to reside or freedom of movement) serves to strengthen democratic institutions and protect personal freedoms. Conversely, just as a lack of physical activity can lead to muscle atrophy, the non-exercise of legal rights can cause those rights to weaken or decline in practice.

Hence, if rights to reside, right to move, rights of free movement are exercised, it means that people have the ability to use their rights according to the national or international laws. Broadly speaking, when individuals are capable of using (or exercising) these rights, it signifies they can experience these freedoms without facing limitations or violations executed by legislative or other authoritative powers.

3.8. Source domain: ADOPTION

The source domain ADOPTION is quite a frequent source domain in the conceptual metaphor DECISION MAKING IS ADOPTION which was found in the major judgements. This conceptual metaphor seeks to highlight the idea that whenever decisions are mate, these are adopted in one way or another. Illustrative examples are shown in Table 8.

Table 8. Source domain ADOPTION

Conceptual metaphor	Metaphorical expression
DECISION MAKING IS ADOPTION	86. ***adopting*** *a decision on the transfer of that seat,* 87. ***to adopt*** *such a regulation owing* 88. *scope of the measures* ***to be adopted,*** 89. ***Adopt*** *its decision* 90. ***to adopt*** *legally binding acts,* 91. ***to adopt*** *that regulation*

In the language of law, the act of making a decision often involves a formal process known as *adoption,* a term that carries significant metaphorical weight when transferred from its conventional use. In its basic sense, *adoption* refers to the act or process of adopting a child, where an individual assumes the parenting of another, typically a child, from that person's biological or legal parent or parents, and, in so doing, permanently transfers all rights and responsibilities (Longman dictionary of Contemporary English online, 2024).

However, in legal discourse, the meaning of *adoption* encompasses the act of formally accepting and implementing decisions, policies, or regulations. For example, phrases in which decisions, regulations, measures, legally binding acts are seen as implementations can be illustrated in phrases such as (86) *adopting a decision on the transfer of that seat*, (87) *to adopt such a regulation owing*, (88) *scope of the measures to be adopted*, (89) *adopt its decision*, (90) *to adopt legally binding acts, and* (91) *to adopt that regulation*. Here, the examples illustrate how legal bodies purposely and formally choose specific courses of action to integrate into the legal system.

In those phrases listed above *adoption* is not merely administrative; it signifies a legal authority's commitment to the consequences and efficacy of the chosen measure, unlike having permanent and responsible nature of child adoption.

3.9. Source domain: CONTAINER

CONTAINER, is another great source domain used when referring certain concepts as substances, objects or concepts that can be put into a container. Legal notions that can be

grouped into the category of the source domain CONTAINER are displayed in Table 9 exemplified by 6 phrases numbered from 92 to 97.

Table 9. Source domain CONTAINER

Conceptual metaphor	Metaphorical expression
JURISDICTIONAL POWER IS A CONTAINER	92. ***fell within*** *the exclusive competence of the European Union*
PUNISHMENT IS A CONTAINER	93. ***carrying out*** *of a sentence*
OBLIGATION IS A CONTAINER	94. ***to fulfil*** *their obligations*
EU TREATY IS A CONTAINER	95. ***enshrined in*** *the EU Treaty,*
LEGAL FRAMEWORK IS A CONTAINER	96. ***under*** *the international treaties,*
MARRIAGE IS A CONTAINER	97. *the marriage was* ***entered into****.*

Various abstract target domains can be conceptualized as a CONTAINER for instance a type of punishment (*custodial sentence*), *competence* (of the European Union), *obligations*, *EU Treaty, international treaties* as well as *marriage.* The conceptual metaphors that have been found in the major judgments of the Court of Justice are JURISDICTIONAL POWER IS A CONTAINER, PUNISHMENT IS A CONTAINER, OBLIGATION IS A CONTAINER, EU TREATY IS A CONTAINER, LEGAL FRAMEWORK IS A CONTAINER and MARRIAGE IS A CONTAINER.

In legal discourse, the metaphor of containment is extensively utilised to conceptualise a variety of abstract legal concepts. This metaphor of container is particularly prevalent when discussing issues such as legal documents, areas of expertise or jurisdictional powers that are described as if they were physical entities that are bounded and have capability of holding content. The verbs that are used in the metaphorical expressions are all used to refer to a concept that can be relocated into a container. A competence can *fall within* something (e.g. of the European Union in phrase 92), somebody can *carry out* a sentence (in phrase 93), obligations can be *fulfilled* (in phrase 94), into an EU treaty something can be *enshrined* (in phrase 95), something can be positioned *under* an international treaty (in phrase 96) and someone can *enter* into a marriage (in phrase 97).

A similar study that compared a notion (mind) to a container was illustrated by the scholar Berger with the conceptual metaphor MIND IS A CONTAINER (Berger 2004: 185). The linguist claims the container itself can "entail" a whole set of associations and inferences from the mind (Berger 2004: 186). For instance, the conceptual metaphor JURISDICTIONAL POWER IS A CONTAINER and the metaphorical expression in (92) *fell within the exclusive competence of the European Union* exemplify how jurisdictional power can be metaphorically seen as a container that "entails" certain rights or powers. Both conceptual metaphors like MIND IS A CONTAINER and JURISDICTIONAL POWER IS A CONTAINER suggest a bounded area which offers a clear mental representation of spatial boundaries.

Similarly, the metaphor PUNISHMENT IS A CONTAINER finds its expression in phrases like (93) *carrying out of a sentence*, which metaphorically portrays punishment as a storage tool that holds the consequences of a sentence. The concept of obligations being *fulfilled* in phrase (94) also aligns with the container metaphor, because it suggests that obligations are like containers that need to be occupied with a certain capacity to meet legal requirements.

The metaphor covers comprehensive legal documents, such as the EU Treaty, referred to as a container in phrase (95) *enshrined in the EU Treaty*. This metaphor compares the treaty as a protective enclosure that securely stores specific laws and principles. In phrase (97), in a more personal context, marriage is depicted as a container into which one can *enter* reflecting the notion of entering a defined space of mutual legal commitments and obligations.

The verbs associated with the metaphor of container, include word combinations such as *fall within, carry out, fulfill, enshrine,* and *enter.* These words point out actions of movement, placement, and containment within defined limits. In this way, the containment metaphor significantly benefits the navigation of legal notions. By conceptualising treaties, obligations, powers, and even relational contracts like marriage as containers, the legal field manages to render the abstract concepts as tangible principles, making it more accessible for both legal practitioners and the public.

3.10. Source domain: GIFT

GIFT, as a source domain in legal language, is also one of the frequent domains that is found in court judgements. If something is "offered, presented, or given as a gift," as Oxford learner's dictionary claims, it is a present (Oxford learner's Dictionary online, 2024).

Interestingly, in the field of court judgements, NATIONALITY, RIGHTS and even POWER can be given as a gift to somebody. It is very interesting to have noticed that all the notions such as nationality, a right to vote and a power to examine all realised with the referring verb *to grant* or *to give.*

Conceptual metaphors that were found with the source domain GIFT were: NATIONALITY IS A GIFT, RIGHT IS A GIFT, JUDGEMENT IS A GIFT, and POWER IS A GIFT. The respective examples with metaphors are shown in Table 10.

Table 10. Source domain: GIFT

Conceptual metaphor	Metaphorical expression
NATIONALITY IS A GIFT	98. *She would be **granted** that nationality*
RIGHT IS A GIFT	99. ***To grant** of the right to vote*
POWER IS A GIFT	100. ***grant** the EU institutions the power to examine,*
JUDGEMENT IS A GIFT	101. *the Court **gives** a ruling*

The metaphorical expressions that take the target domains NATIONALITY, RIGHT, JUDGEMENT and POWER with the source domain GIFT are seen in three phrases such as (98) *she would be granted that nationality,* (99) *to grant of the right to vote,* (100) *grant the EU institutions the power to examine* and *the Court gives a ruling* in phrase (101). Firstly, it is crucial to examine the contextual meaning of the verb *to grant*. The verb *to grant* in subject areas like law and finance usually refers *"to legally or officially give or allow something" (*Cambridge Dictionary online, 2024). The basic meaning, however, is quite similar to the legal meaning. The basic sense of the verb *to grant* is "to let someone have something as a present, or to provide something for someone" (Longman dictionary of Contemporary English online, 2024). So, if an individual is *granted* such notions as NATIONALITY, a RIGHT or a POWER, he or she are fully authorized to own these concepts that were given to them.

Whether a gift is a physical object, a right, or a privilege, it often involves a cognitive process to giving a gift. The process of giving somebody a gift can also be realized through the commonly used verb in language which is *to give*. One can think of the verb *to give* like the

metaphor of GIFT, because when *giving* something people handover something to another person with the intention of benefiting them or showing kindness.

Comparably, when people give rights, privileges, or opportunities, they regularly understand this act of generosity as to be given a gift with positive intention. The metaphor of gift is a helpful tool when illustrating the concept of voluntarily passing something from one party to another, typically with positive aims tied to the act of giving.

3.11. Source domains: PHYSICAL CONSTRAINT, PHYSICAL STRENGTH AND PHYSICAL ENTITY

Numerous target domains obtain physical features and attributes and are thereby structured by more concrete source domains. Source domains such as PHYSICAL CONSTRAINT, PHYSICAL STRENGTH and PHYSICAL ENTITY might imply that legal concepts or processes are interpreted and conceptualized as physical qualities. The physical qualities that are taken by constraints, strength or entities might even suggest physical domains that illustrate legal phenomena seen in the judgements of the Court of Justice. The physical concepts that take such physical attributes show that abstract notions have not only tangibility, but also concreteness.

Conceptual metaphors that realise the source domains PHYSICAL CONSTRAINT, PHYSICAL STRENGTH and PHYSICAL ENTITY are illustrated in Table 11. All the phrases that were taken from the court judgements might imply that the use of such metaphorical expressions is a tool for legal practitioners to refer to concepts as physical perceptions.

Table 11. Source domains: PHYSICAL CONSTRAINT, PHYSICAL STRENGTH and PHYSICAL ENTITY.

Conceptual metaphor	Metaphorical expression
LAW IS A PHYSICAL CONSTRAINT	102. ***Absence of*** *binding effects in the EU legal order*
LEGISLATIVE POWER IS PHYSICAL STRENGTH	103. *the Parliament had not fully* ***exercised*** *its legislative prerogatives*
COURT IS A PHYSICAL ENTITY	104. *it could be challenged* ***before*** *the Court.*

REGIME IS A PHYSICAL ENTITY	105. *Regime was **in place***
JURISDICTION IS A PHYSICAL ENTITY	106. *It has **jurisdiction to rule** on that question*

As seen from the table, numerous legal concepts can be either a physical constraint (LAW IS A PHYSICAL CONSTRAINT), physical strength (LEGISLATIVE POWER IS PHYSICAL STRENGTH) or a physical entity (COURT IS A PHYSICAL ENTITY, REGIME IS A PHYSICAL ENTITY, JURISDICTION IS A PHYSICAL ENTITY). In legal discourse, the metaphors drawn from source domains such as PHYSICAL CONSTRAINT, PHYSICAL STRENGTH, and PHYSICAL ENTITY enhance the comprehension and communication of abstract legal concepts by attributing to them tangible, physical qualities. For instance, the metaphorical use of PHYSICAL CONSTRAINT in legal contexts is often linked to depict the limitations and boundaries that define legal actions.

For instance, in example (102) *the absence of binding effects* (a type of constraint) can be established in the EU legal order, which makes law itself a physical constraint. The *absence of binding effects* can highlight the awareness that legal regulations can control or guide a specified legal framework. This is comparable with physical constraints because they can limit certain actions.

Another appealing example that interprets jurisdiction itself as a physical entity is seen through the phrase (106) *it has jurisdiction to rule on that question.* Just as Longman dictionary claims, a jurisdiction is "the right to use an official power to make legal decisions, or the area where this right exists" (Longman dictionary of Contemporary English online, 2024). So given that definition a jurisdiction is an abstract, not a concrete, notion. Nonetheless in the phrase *it has jurisdiction to rule on that question* jurisdiction is considered as a concept that has the ability *to rule on a question* (just like a physical entity would). Nevertheless, *to rule on a question* implies making a decision on a specific matter that has been raised for consideration and that can only be done by a physical entity.

In legal discourse, legal notions like jurisdiction suggest the image of physical barriers, clarifying the restrictive nature of certain legal conditions or regulations. This metaphorical mapping of viewing the notions as physical constraint, strength or entity helps to make the concept of legal limitations more concrete, providing a mental image that aids in the understanding of how laws direct actions.

Moreover, the domain of PHYSICAL STRENGTH is used to interpret the impact of legal authorities or the enactment of laws. The phrase in (103) *the Parliament had not fully exercised its legislative prerogatives* emphasise the compelling nature of legal directives that can be made effective only by judicial power like the Parliament. Moreover, using PHYSICAL ENTITY as a metaphor allows for the visualisation of abstract legal elements such as rights, obligations, or policies as if they were physical objects (entities) that one can hold, transfer, or modify. This can be illustrated with phrases such as (105) *Regime was in place* or (106) *It has jurisdiction to rule on that question.*

3.12. Source domain: UPWARD MOVEMENT

Another frequent concept in the field of law discourse can employ the source domain UPWARD MOVEMENT. If a closer attention is paid to what an upward movement would imply, it would be safe to say that upward movement refers to a progress that moves in a vertical direction. The vertical direction could imply that a certain progress is being improved or advanced. In the major judgements of the Court of Justice it is possible to see that target domains such as DOUBTS, PENALTY, and FAMILY RELATIONSHIPS are conceptualized as concepts moving in an upward movement and that these notions cannot be lowered. Table 12 shows how metaphorical expressions can be conceptualized in terms of UPWARD MOVEMENT.

Table 12. Source domain: UPWARD MOVEMENT

Conceptual metaphor	Metaphorical expression
DOUBTS ARE PHYSICAL UPWARD MOVEMENT	107. *To give **rise** to reasonable and serious doubts*
PENALTY IS PHYSICAL UPWARD MOVEMENT	108. ***give rise to** a mere pecuniary penalty*
FAMILY RELATIONSHIPS ARE MOVEMENTS UPWARDS	109. ***in the ascending line** of a Union citizen,*

Upward movement as progress that is being improved or advanced is usually expressed through the verb *to rise* or it can also occur with a word combination such as *in the ascending*

line of something. This can be illustrated with the phrases such as (106) *to give rise to reasonable and serious doubts,* (107) *give rise to a mere pecuniary penalty* or (108) *in the ascending line of a Union citizen.*

Some phrases that could also imply an action moving upwards could have a verb like *in the ascending line* indicated. In the language of law, the full phrase (108) *in the ascending line of a Union citizen* might propose that direct ancestors of nationals are all in the same Union. Nevertheless the discovery of a citizen's descent through prior generations of the Union can lead to the right for citizenship, nationality, residency or specific constitutional rights.

An analogous study of metaphor, by scholars Lakoff and Johnson further reveals that metaphors can similarly be interpreted in a vertical dimension but with the conceptual metaphor MORE IS UP (Lakoff and Johnson 1999). This conceptual metaphor can be illustrated with examples such as *prices rose* or *stocks plummeted*. The linguists claim that in with the conceptual metaphor MORE IS UP, a "subjective judgment of quantity is conceptualized in terms of the sensorimotor experience of verticality" (ibid. 1999). A similar phrase with such metaphoricity is found in the major judgements of the Court of Justice. The conceptual metaphor DOUBTS ARE PHYSICAL UPWARD MOVEMENT that is illustrated with the phrase *to give rise to reasonable and serious doubts* depicts that doubts are understood in terms of physical experience with height or vertical direction.

3.13. Other source domains such as: GROWTH, FORCE, JOURNEY, SEARCH, MECHANISM, ACTING, EVALUATION, RESTRICTION, CALCULATION, DRAWINGS, SATISFACTION, CREATION, WEAPONS, PROPERTY, BURDEN, OBLIGATION, TASK/DUTY/SERVICE.

Single instances of metaphors with various source domains that employed only one metaphorical expression is illustrated in Table 13.

Table 13. Other source domains that denote legal notions as abstract concepts

Conceptual metaphor	Metaphorical expression
LEGAL ISSUES ARE PHYSICAL GROWTH	110. *at EU level, to **growing concerns** regarding respect by a number of Member States*

INFLUENCE IS A PHYSICAL FORCE	111. *Enable undue influence* ***to be exercised on him*** *currently.*
DECISION IS PHYSICAL FORCE	112. *decision cannot be* ***given*** *any binding force.*
LEGAL ACTIONS ARE JOURNEY	113. ***be attained*** *by less restrictive measures.*
LEGAL PURSUIT IS A SEARCH	114. *has standing* ***to seek*** *its annulment.*
LEGAL SYSTEM IS A MECHANISM	115. ***is compatible with*** *the principle of proportionality*
RIGHTS ARE MECHANISMS	116. *from the judgment in Raugevicius did not establish an* ***automatic*** *and absolute right for Union citizens*
PROFESSIONAL ROLE IS ACTING	117. ***acting in*** *that capacity*
LEGAL IDEAS ARE EVALUATION	118. ***in the light of*** *the legal framework*
LEGAL PROCESSES ARE EVALUATION	119. *It* ***meets the requirements*** *laid down by the Court*
MEASURES IS A RESTRICTION	120. ***lifting*** *of the measures*
DECISION MAKING IS CALCULATION	121. *on* ***account*** *of his legal residence*
CONCLUSIONS ARE DRAWINGS	122. *Same conclusion must be* ***drawn*** *in the case of*
REGULATIONS ARE SATISFACTION	123. *was sufficient* ***to satisfy*** *that requirement.*
RISK IS A CREATION	124. *Irregulations (…)* ***create*** *a real risk.*
MEASURES ARE WEAPONS	125. *those measures may* ***target*** *actions and programmes*
RIGHT IS A PROPERTY	126. *may* ***infringe*** *the derived right*
RESPONSIBILITY IS A BURDEN	127. *to* ***assume*** *sole Responsibility*
PUNISHMENT IS AN OBLIGATION	128. *the sentence that was* ***imposed on*** *that Union citizen*

PUNISHMENT IS A SERVICE/DUTY/TASK	129. *To **serve** a sentence*

It can be seen from the table, that legal issues, actions, pursuit, system, ideas, processes can be represented in various abstract concepts just like physical growth, journey, search, mechanism, evaluation and many more. For instance, the conceptual metaphor LEGAL ISSUES ARE PHYSICAL GROWTH can be found in (109) phrase that has the metaphorical expression *growing concerns* highlighted. The basic meaning of the verb to grow means to "increase in amount, size, number, or strength" (Longman dictionary of Contemporary English online, 2024). However, it is peculiar with the contextual meaning that was found in the major judgements. In the phrase *growing concerns*, the concerns, as legal issues, are growing metaphorically in terms of worry or anxiety. This might indicate that certain problems are increasing, and these need more awareness.

Another interesting observation comes with the conceptual metaphor LEGAL ACTIONS ARE JOURNEY. With this metaphor it is implied that in the (112) phrase *be attained by less restrictive measures*, the measures themselves are attained or 'moved or reached' from one place to another. Oxford Learner's dictionary claims that the basic meaning of *attain* means "to succeed in getting something, usually after a lot of effort" (Oxford learner's dictionary online, 2024).

Conversely, in the major judgements the verb *to be attained by* something indicates another, but similar, definition of the word. The other meaning for *attain* is "to reach a particular age, level or condition" (ibid. 2024). In the phrase *be attained by less restrictive measures* the legal practitioners working on the major judgements most probably wanted to denote that the restrictive measures ought to be reached within a particular level or condition.

Some legal actions, punishments or other legal processes can be seen as tools that are used like weapons. This can be illustrated with phrase (124) *those measures may target actions and programmes* that was found in the legal text. In everyday language and common knowledge, weapons execute a range of roles, which might include protection, utilizing control, and representing power. Nevertheless, in spite of the potential for initiating violence or conflict it is vital to distinguish that weapons also play a vivacious role in maintaining peace and security.

A comparative study of metaphor, by scholars Lakoff and Johnson has also exposed that conceptual metaphors can be grouped with the source domain BURDEN (Lakoff and Johnson 1999). Lakoff and Johnson have examined the conceptual metaphor DIFFICULTIES ARE BURDENS and it is very similar to the conceptual metaphor found in the major judgements classified as RESPONSIBILITY IS A BURDEN (in phrase 127 *to assume sole responsibility*). The scholars have elaborated more on the conceptual metaphor DIFFICULTIES ARE BURDENS and presented the example *she's weighed down by responsibilities*, in which the metaphor is used through the verb *weighed down*. This example shows that difficulty is muscular exertion, which demonstrates the discomfort of carrying heavy objects (ibid. 1999). Both phrases, *to assume sole responsibility* and *she's weighed down by responsibilities* use conceptual metaphors with the source domain BURDEN to represent a heavy or difficult responsibility or obligation one can have.

In the conceptual metaphor MEASURES ARE WEAPONS it is possible to recognize that applied measures are seen as weapons that are used within a particular purpose. In example (124) *those measures may target actions and programmes measures* weapons can 'target' objects or concepts like 'actions and programmes'. On the other hand, Cambridge dictionary also notes that the verb *to target* has a basic sense. The basic contemporary meaning of such verb refers to "aim an attack, or a bullet, bomb, etc., at a particular object, place, or person" (Cambridge dictionary online, 2024). With such meaning in hand, it is obvious to perceive that the meaning matches best the metaphorical expression *those measures may target actions and programmes measures*. The term *measures* undoubtedly refers to regulations, or policies that are created to control the detected actions or programs. So, in the field of law discourse, legal practitioners might use the word combination *measures may target actions or programmes*, because such measures must control specified actions or programmes that are significant and put into closer consideration.

4. CONCLUSIONS

Metaphors are powerful figures of speech that describe one thing by referring to another thing, creating a connection between the two. Beyond their linguistic function, metaphors also serve as cognitive tools that significantly influence how individuals perceive and communicate within their daily lives. In legal language metaphors are part of the specialist lexis, but they may also be used to convey specific meanings through distinctive expressions, enhancing clarity and understanding as well as serving rhetorical functions.

The main objective of this study was to examine conceptual metaphors identified in the major judgements of the Court of Justice. The study was conducted by relying on the Conceptual Metaphor Theory (Lakoff & Johnson 1980) and the metaphor identification procedure (MIP) (Pragglejaz Group 2007) applied to find metaphorical expressions in the text chosen for analysis.

The study has found numerous metaphor-related words used that realise a number of diverse source domains in the major judgements. The most prevalent conceptual metaphors made use of the following source domains that conceptually structure the understanding of different legal concepts: PERSON, POSSESSION, PLACE, ENJOYMENT, OBJECT, BUILDING, PHYSICAL ACTION, ADOPTION, CONTAINER, GIFT, PHYSICAL CONSTRAINT/ STRENGTH, ENTITY, UPWARD MOVEMENT, GROWTH, FORCE and FORCE. Most of these source domains make the complex and abstract legal concepts easier to understand through the process of concretisation, which is one of the main premises of how conceptual metaphors work in conceptualising abstract domains and describing them by borrowing lexis from the source domains. Observing which legal concepts were typically described metaphorically, the following tended to be most prevalent as target domains: LEGAL ARGUMENTS, STATUS, BREACHES, LAW, JURISDICTION, RIGHTS, JURISDICTIONAL POWER, MEASURES and LEGAL REGULATIONS.

The conceptual metaphors identified in this study encompass a total of 129 metaphorical expressions that realise them. The extensive use of metaphors in legal domains can arise from a number of factors. Primarily, legal discourse deals with complex yet precise matters, which are often articulated and defined using more concrete notions to enhance their understanding. For example, in the conceptual metaphor LEGAL ARGUMENTS ARE OBJECTS, the source domain OBJECT conveys tangibility and, thus, mental accessibility to the abstract concept of legal

argumentation. Similarly, the concepts related to spatial relations or physical locations often give rise to metaphors in legal texts and emerge in the language used in the major judgements. This is exemplified by the metaphor PROFESSIONAL POSITION IS A PLACE which, by way of comparing the two, suggests that professional status or vacancies are in a way similar to a physical location or an area of containment that can be occupied.

One of the key findings of this study is that numerous metaphorical expressions in legal texts are very conventional and contribute significantly to the development of specialised legal terminology. Furthermore, metaphors in legal texts often reflect underlying cognitive processes that shape how legal professionals think about the law. These findings align with previous scholarship on the topic, highlighting the idea that metaphors are essential in making complex and abstract legal concepts more concrete and comprehensible. Prior studies have similarly highlighted the role of metaphors in shaping legal reasoning and discourse, confirming that metaphors are fundamental to both the communication and cognitive processing of legal information.

While this study provides valuable insights into the use of metaphors in legal discourse, it has its own limitations. One limitation is its focus on major judgements from a single court, which may not capture the full diversity of metaphorical expressions used across different legal systems and jurisdictions. Additionally, the study's reliance on MIP meant that it was only possible to examine a rather small corpus. As a result, the findings may not fully represent the wide range of metaphorical expressions used across various documents and contexts. Future research could address these limitations by applying corpus-based tools to extract metaphors from a substantially larger pool of data, thereby making stronger conclusions about the dominance of metaphors in legal texts. Moreover, other studies could examine metaphors in different languages to detect trends in cross-linguistic and cross-cultural perspectives of metaphor use.

In conclusion, metaphors are deeply rooted tools in legal language, facilitating the understanding and communication of complex legal concepts. They not only enrich the specialised legal vocabulary but also provide cognitive frameworks that shape how legal professionals and the public perceive and interact with the law. By continuing to explore the role of metaphors in legal contexts, we can gain a deeper appreciation of their significance and further enhance the clarity and effectiveness of legal communication.

5. SUMMARY IN LITHUANIAN

Šio darbo tikslas – ištirti konceptualiąsias metaforas, naudojamas ES Teisingumo Teismo paskelbtų svarbiausių 2022 m. sprendimų apžvalgoje. Tyrime remtasi MIP metaforos nustatymo metodika (Pragglejaz Group 2007) ir konceptualiosios metaforos teorija (Lakoff ir Johnson 1980). Dėl ribotos darbo apimties buvo pasirinktos pirmosios penkios pagrindinių sprendimų pirmojo skyriaus temos: 1) Europos Sąjungos vertybės, 2) Valstybės narės išstojimas iš Europos Sąjungos, 3) Pagrindinės teisės, 4) Sąjungos pilietybė ir 5) Institucinės nuostatos.

Tyrimo rezultatai rodo, kad dažniausiai dokumente vartojamos metaforos grindžiamos šiomis ištakų sritimis (angl. source domains): DAIKTAS, NUOSAVYBĖ, VIETA, TALPYKLA, PASTATAS, ŽMOGUS. Šios ištakų sritys realizuojamos kalbant apie abstrakčias teisės sąvokas, pvz., teisinius argumentus, teisę ir teises, jurisdikciją, teisės aktus ar teisines priemones.

Pastebėta, kad dauguma metaforų yra labai konvencionalios ir sudaro didelę dalį dalykinės (teisės) srities terminologijos. Konceptualiuoju požiūriu tai taip pat patvirtina esminį kognityvistų teiginį, kad metaforų apstu kalbant apie abstrakčius ir sudėtingus reiškinius, o tai yra vienas teisės skiriamųjų bruožų.

Tyrimo rezultatai rodo, kad metafora yra esminis teisės kalbos elementas ir atlieka svarbų kognityvinį vaidmenį teisės diskurse. Taigi, metafora ne tik didina teisinio diskurso aiškumą ir komunikaciją, bet ir grindžia teisės reiškinių suvokimą.

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7. APPENDICES

Appendix I. Metaphors

METAPHORICAL EXPRESSION IN CONTEXT	SOURCE DOMAIN	CONCEPTUAL METAPHOR	SOURCE
Hungary (…) **brought** an action	PERSON	STATE IS A PERSON	1.Values of the European Union
Poland therefore **founded** its action	PERSON	STATE IS A PERSON	1.Values of the European Union
(…) are **parties** to the Lisbon Agreement	PERSON	STATE IS A PERSON	5.Institutional provisions
(…) obligation which a candidate State must **meet**	PERSON	STATE IS A PERSON	1.Values of the European Union
Seven Member States of the European Union are **parties** to that agreement.	PERSON	MEMBER STATE IS A PERSON	5.Institutional provisions
(…) was appointed for the first time to the position of judge by a **political body**	HUMAN BODY	POLITICAL ENTITY IS A HUMAN BODY	3.Fundamental rights
The Court **holds…**	PERSON	COURT IS A PERSON	2.Withdrawal of a Member State from the European Union
Court **clarifies** that (…)	PERSON	COURT IS A PERSON	1.Values of the European Union
Court **raises** the question	PERSON	COURT IS A PERSON	3.Fundamental rights

Court **confirms** that	PERSON	COURT IS A PERSON	1.Values of the European Union
The court **recalls** that	PERSON	COURT IS A PERSON	2.Withdrawal of a Member State from the European Union
The court **rejects** the plea (…)	PERSON	COURT IS A PERSON	3.Fundamental rights
the Court **considers**,	PERSON	COURT IS A PERSON	5.Institutional provisions
The Court **notes** that	PERSON	COURT IS A PERSON	2.Withdrawal of a Member State from the European Union
The Court **examines** that	PERSON	COURT IS A PERSON	1.Values of the European Union
The referring Court **asks**	PERSON	COURT IS A PERSON	3.Fundamental rights
The Court **observes** that	PERSON	COURT IS A PERSON	3.Fundamental rights
The Court **points out** that (…)	PERSON	COURT IS A PERSON	3.Fundamental rights
Regarding that **body** as an impartial and independent court.	BODY	LEGAL ENTITY IS A BODY	3.Fundamental rights
On account of the **loss of** her **status**	POSSESSION	STATUS IS A POSSESSION	2.Withdrawal of a Member State from the European Union
Loss of his or her **status** as a citizen	POSSESSION	STATUS IS A POSSESSION	2.Withdrawal of a Member State from the European Union

EU's powers to **defend** its budget	POSSESSION	BUDGET IS A POSSESSION	1.Values of the European Union
Loss of citizenship	POSSESSION	CITIZENSHIP IS A POSSESSION	4.Citizenship of the Union
To **retain** the rights	POSSESSION	RIGHTS ARE POSSESSIONS	2.Withdrawal of a Member State from the European Union
to **lose** not only their entitlement to those rights	POSSESSION	RIGHTS ARE POSSESSIONS	4.Citizenship of the Union
Was not **entitled to** refer questions	POSSESSION	RIGHTS ARE POSSESSIONS	3.Fundamental rights
was **granted** subject to full **respect**	POSSESSION	RIGHTS ARE POSSESSIONS	5.Institutional provisions
She no longer **holds** the nationality of a member state	POSSESSION	NATIONALITY IS A POSSESSION	2.Withdrawal of a Member State from the European Union
The **loss of** the nationality of a Member State	POSSESSION	NATIONALITY IS A POSSESSION	2.Withdrawal of a Member State from the European Union
Appointed for the first time to the position of judge	PLACE	PROFESSIONAL POSITION IS A PLACE	3.Fundamental rights
Stand as a candidate	PLACE	PROFESSIONAL POSITION IS A PLACE	2.Withdrawal of a Member State from the European Union
Sitting as a single judge	PLACE	PROFESSIONAL POSITION IS A PLACE	3.Fundamental rights

Judge was **kept in** that position	PLACE	PROFESSIONAL POSITION IS A PLACE	3.Fundamental rights
Judge (…) was **kept in** their post	PLACE	PROFESSIONAL POSITION IS A PLACE	3.Fundamental rights
(which) **lays down** rules	LOCATION	LEGAL REGULATION IS A LOCATION	2.Withdrawal of a Member State from the European Union
subject to the principle of proportionality	LOCATION	LEGAL REGULATION IS A LOCATION	4.Citizenship of the Union
(…) **falls within** the competence of (…)	PLACE	JURISDICTION IS A PLACE	3.Fundamental rights
On a point of law	LOCATION	LEGAL ISSUES ARE PHYSICAL LOCATIONS	4.Citizenship of the Union
Exceeded the limits of its discretion	SPACE	LEGAL AUTHORITY IS A BOUNDED SPACE	2.Withdrawal of a Member State from the European Union
enjoyment of all the rights	ENJOYMENT	RIGHTS ARE A FORM OF ENJOYMENT	1.Values of the European Union
does not **enjoy** institutional recognition	ENJOYMENT	RIGHTS ARE A FORM OF ENJOYMENT	5.Institutional provisions
She no longer **enjoyed** the right to vote	ENJOYMENT	RIGHTS ARE A FORM OF ENJOYMENT	2.Withdrawal of a Member State from the European Union
No longer **enjoy** the status of citizen of the Union	ENJOYMENT	STATUS IS A FORM OF ENJOYMENT	2.Withdrawal of a Member State from the European Union
Laid down by national law	OBJECT	LAW IS A PHYSICAL OBJECT	4.Citizenship of the Union

Fullfilled **under** Austrian Law	OBJECT	LAW IS A PHYSICAL OBJECT	4.Citizenship of the Union
financing conditions **laid down** by EU law	OBJECT	LAW IS A PHYSICAL OBJECT	1.Values of the European Union
Can **derive** such standing directly from EU law	OBJECT	LAW IS A PHYSICAL OBJECT	3.Fundamental rights
being **taken by** the EU legislature	OBJECT	LEGISLATIVE POWER IS A PHYSICAL OBJECT	5.Institutional provisions
Lodged an appeal	OBJECT	LEGAL ACTION IS AN OBJECT	4.Citizenship of the Union
Five actions were **brought** before the Court	OBJECT	LEGAL ACTION IS AN OBJECT	5.Institutional provisions
those measures **may target** actions	OBJECT	LEGAL ACTION IS AN OBJECT	1.Values of the European Union
to put an end to those breaches	OBJECT	BREACHES ARE OBJECTS	1.Values of the European Union
the appellants **brought** an appeal	OBJECT	LEGAL ARGUMENTS ARE OBJECTS	3.Fundamental rights
In response to Poland's **line of argument**	OBJECT	LEGAL ARGUMENTS ARE OBJECTS	1.Values of the European Union
the authority **brought** an appeal	OBJECT	LEGAL ARGUMENTS ARE OBJECTS	4.Citizenship of the Union
falling under the exclusive competence	OBJECT	COMPETENCE IS AN OBJECT	5.Institutional provisions
(…) which **delivered** the judgement	OBJECT	JUDGEMENT IS A MOVING OBJECT	3.Fundamental rights

opinion(…)**going beyond** the context of the legislative process	OBJECT	OPINION IS A MOVING OBJECT	1.Values of the European Union
A **series** of rights	OBJECT	RIGHTS ARE PHYSICAL OBJECTS	2.Withdrawal of a Member State from the European Union
Enshrined in EU Law	OBJECT	LEGAL IDEAS ARE SACRED OBJECTS	4.Citizenship of the Union
None of those provisions **enshrines** that right	OBJECT	LEGAL IDEAS ARE SACRED OBJECTS	2.Withdrawal of a Member State from the European Union
deprived of the rights **attaching to** that status,	OBJECT	STATUS IS AN OBJECT	4.Citizenship of the Union
In the **absence of** such consent	OBJECT	CONSENT IS AN OBJECT	4.Citizenship of the Union
European Union must be able to **defend** those values,	OBJECT	VALUES ARE PHYSICAL OBJECTS	1.Values of the European Union
Offences (…) can no longer be **taken into account**	OBJECT	OFFENCES ARE TANGIBLE OBJECTS	4.Citizenship of the Union
conducted within the framework	OBJECT	LEGAL FRAMEWORK IS AN OBJECT	5.Institutional provisions
Claims (…) are without **foundation**	BUILDING	LEGAL ARGUMENTS ARE BUILDINGS	1.Values of the European Union
In **support** of the principal claim	BUILDING	LEGAL ARGUMENTS ARE BUILDINGS	1.Values of the European Union
Reasonable **grounds**	BUILDING	LEGAL ARGUMENTS ARE BUILDINGS	1.Values of the European Union

Made only **on legitimate grounds**	BUILDING	LEGAL ARGUMENTS ARE BUILDINGS	4.Citizenship of the Union
Hungary therefore **bases its action,**	BUILDING	LEGAL ACTIONS ARE BUILDINGS	1.Values of the European Union
a decision is **based on**	BUILDING	LEGAL DECISIONS ARE BUILDINGS	4.Citizenship of the Union
The principle of **maintaining** the applicability of EU law	PHYSICAL SUPPORT	LAW IS PHYSICAL SUPPORT	2.Withdrawal of a Member State from the European Union
decision is **justified**	SUPPORT	DECISION IS SUPPORT	4.Citizenship of the Union
distorting the institutional balance	SUPPORT	INSTITUTIONAL BALANCE IS A SUPPORT	5.Institutional provisions
lifting of the measures	PHYSICAL ACTION	LEGAL ACTIONS ARE PHYSICAL ACTIONS	1.Values of the European Union
brought by the Parliament against the Council	PHYSICAL ACTION	LEGAL ACTIONS ARE PHYSICAL ACTIONS	5.Institutional provisions
action **brought by** a Member State	PHYSICAL ACTION	LEGAL ACTIONS ARE PHYSICAL ACTIONS	5.Institutional provisions
an action **brought by** a regional entity	PHYSICAL ACTION	LEGAL ACTIONS ARE PHYSICAL ACTIONS	5.Institutional provisions
Nationals of that State who **exercised** their right to reside	PHYSICAL ACTION	LEGAL ACTIVITIES ARE PHYSICAL ACTIONS	2.Withdrawal of a Member State from the European Union
Exercised his or her right	PHYSICAL ACTION	LEGAL ACTIVITIES ARE PHYSICAL	2.Withdrawal of a Member State from

to move		ACTIONS	the European Union
collectively **exercising** the powers of the Member States,	PHYSICAL ACTION	LEGAL ACTIVITIES ARE PHYSICAL ACTIONS	5.Institutional provisions
Who **exercised** their respective rights of free movement	PHYSICAL ACTION	LEGAL ACTIVITIES ARE PHYSICAL ACTIONS	2.Withdrawal of a Member State from the European Union
EU Courts **to carry out** a direct review	PHYSICAL ACTION	ASSESSMENT IS A PHYSICAL ACTION	5.Institutional provisions
the exercise of the rights and fulfilment of the obligations	PHYSICAL ACTION	RIGHTS AND OBLIGATIONS PHYSICAL ACTIONS	5.Institutional provisions
adopting a decision on the transfer of that seat,	ADOPTION	DECISION MAKING IS ADOPTION	5.Institutional provisions
to adopt such a regulation owing	ADOPTION	DECISION MAKING IS ADOPTION	1.Values of the European Union
scope of the measures **to be adopted,**	ADOPTION	DECISION MAKING IS ADOPTION	1.Values of the European Union
Adopt its decision	ADOPTION	DECISION MAKING IS ADOPTION	4.Citizenship of the Union
to adopt legally binding acts,	ADOPTION	DECISION MAKING IS ADOPTION	5.Institutional provisions
to adopt that regulation	ADOPTION	DECISION MAKING IS ADOPTION	1.Values of the European Union
fell within the exclusive competence of the European Union	CONTAINER	JURISDICTIONAL POWER IS A CONTAINER	5.Institutional provisions
carrying out of a	CONTAINER	PUNISHMENT IS A	4.Citizenship of the

sentence		CONTAINER	Union
to fulfil their obligations	CONTAINER	OBLIGATION IS A CONTAINER	5.Institutional provisions
enshrined in the EU Treaty,	CONTAINER	EU TREATY IS A CONTAINER	5.Institutional provisions
under the international treaties,	CONTAINER	LEGAL FRAMEWORK IS A CONTAINER	4.Citizenship of the Union
the marriage was **entered into**.	CONTAINER	MARRIAGE IS A CONTAINER	4.Citizenship of the Union
She would be **granted** that nationality	GIFT	NATIONALITY IS A GIFT	4.Citizenship of the Union
To grant of the right to vote	GIFT	RIGHT IS A GIFT	2.Withdrawal of a Member State from the European Union
grant the EU institutions the power to examine,	GIFT	POWER IS A GIFT	1.Values of the European Union
the Court **gives** a ruling	GIFT	JUDGEMENT IS A GIFT	5.Institutional provisions
Absence of binding effects in the EU legal order	PHYSICAL CONSTRAINT	LAW IS A PHYSICAL CONSTRAINT	5.Institutional provisions
the Parliament had not fully **exercised** its legislative prerogatives	PHYSICAL STRENGTH	LEGISLATIVE POWER IS PHYSICAL STRENGTH	5.Institutional provisions
it could be challenged **before** the Court.	PHYSICAL ENTITY	COURT IS A PHYSICAL ENTITY	5.Institutional provisions
Regime was **in place**	PHYSICAL ENTITY	REGIME IS A	3.Fundamental

		PHYSICAL ENTITY	rights
It has **jurisdiction to rule** on that question	PHYSICAL ENTITY	JURISDICTION IS A PHYSICAL ENTITY	3.Fundamental rights
To give **rise** to reasonable and serious doubts	UPWARD MOVEMENT	DOUBTS ARE PHYSICAL UPWARD MOVEMENT	3.Fundamental rights
give rise to a mere pecuniary penalty	UPWARD MOVEMENT	PENALTY IS PHYSICAL UPWARD MOVEMENT	4.Citizenship of the Union
in the ascending line of a Union citizen,	UPWARD MOVEMENT	FAMILY RELATIONSHIPS ARE MOVEMENTS UPWARDS	4.Citizenship of the Union
at EU level, to **growing concerns** regarding respect by a number of Member States	PHYSICAL GROWTH	LEGAL ISSUES ARE PHYSICAL GROWTH	1.Values of the European Union
Enable undue influence **to be exercised on him** currently.	PHYSICAL FORCE	INFLUENCE IS A PHYSICAL FORCE	3.Fundamental rights
decision cannot be **given** any binding force.	PHYSICAL FORCE	DECISION IS PHYSICAL FORCE	5.Institutional provisions
be attained by less restrictive measures.	JOURNEY	LEGAL ACTIONS ARE JOURNEY	4.Citizenship of the Union
has standing **to seek** its annulment.	SEARCH	LEGAL PURSUIT IS A SEARCH	5.Institutional provisions
is compatible with the principle of	MECHANISM	LEGAL SYSTEM IS A	4.Citizenship of the

proportionality		MECHANISM	Union
from the judgment in Raugevicius did not establish an **automatic** and absolute right for Union citizens	MECHANISMS	RIGHTS ARE MECHANISMS	4.Citizenship of the Union
acting in that capacity	ACTING	PROFESSIONAL ROLE IS ACTING	5.Institutional provisions
in the light of the legal framework	EVALUATION	LEGAL IDEAS ARE EVALUATION	5.Institutional provisions
It **meets the requirements** laid down by the Court	EVALUATION	LEGAL PROCESSES ARE EVALUATION	3.Fundamental rights
lifting of the measures	RESTRICTION	MEASURES IS A RESTRICTION	1.Values of the European Union
on **account** of his legal residence	CALCULATION	DECISION MAKING IS CALCULATION	5.Institutional provisions
Same conclusion must be **drawn** in the case of	DRAWINGS	CONCLUSIONS ARE DRAWINGS	3.Fundamental rights
was sufficient **to satisfy** that requirement.	SATISFACTION	REGULATIONS ARE SATISFACTION	4.Citizenship of the Union
Irregulations (…) **create** a real risk.	CREATION	RISK IS A CREATION	3.Fundamental rights
those measures may **target** actions and programmes	WEAPONS	MEASURES ARE WEAPONS	1.Values of the European Union
may **infringe** the derived right	PROPERTY	RIGHT IS A PROPERTY	4.Citizenship of the Union

to **assume** sole Responsibility	BURDEN	RESPONSIBILITY IS A BURDEN	4.Citizenship of the Union
the sentence that was **imposed on** that Union citizen	OBLIGATION	PUNISHMENT IS AN OBLIGATION	4.Citizenship of the Union
To **serve** a sentence	SERVICE/DUTY/TASK	PUNISHMENT IS A SERVICE/DUTY/TASK	4.Citizenship of the Union

Appendix II. First five subtopics of Chapter one of the Major Judgements (Year 2022) of the Court of Justice

Chapter 1 – The Court of Justice

I. Values of the European Union
Judgment of 16 February 2022 (Full Court), Hungary v Parliament and Council (C-156/21, EU:C:2022:97)

(Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU and of the principles of legal certainty, proportionality and equality of Member States before the Treaties) Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 1 established a 'horizontal conditionality mechanism 'intended to protect the budget of the European Union in the event of a breach of the principles of the rule of law in a Member State. To that end, that regulation allows the Council of the European Union, on a proposal from the European Commission, to adopt, under the conditions set out in the regulation, appropriate protective measures such as the suspension of payments to be made from the Union budget or the suspension of the approval of one or more programmes to be paid from that budget. The contested regulation makes the adoption of such measures subject to the submission of specific evidence capable of establishing not only that there has been a breach of the principles of the rule of law, but also the impact of that breach on the implementation of the Union budget. The contested regulation follows on from a series of initiatives which concern, more generally, the protection of the rule of law in the Member States 2 and which are intended to provide answers, at EU level, to increasing concerns relating to the compliance by several Member States with the common values of the European Union as set out in Article 2 TEU. 3 Hungary, supported by the Republic of Poland, 4 brought an action seeking, principally, annulment of the contested regulation and, in the alternative, annulment of certain of its provisions. In support of its claims, it submitted, in essence, that that regulation, although formally presented as an act which falls within the scope of the

financial rules referred to in Article 322(1)(a) TFEU, is in fact intended to penalise as such all breaches by a Member State of the principles of the rule of law, the requirements 1 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1, and corrigendum OJ 2021 L 373, p. 94, 'the contested regulation'). 2 See, in particular, the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 July 2019, 'Strengthening the rule of law within the Union – A blueprint for action', COM(2019) 343 final, following the Communication from the Commission to the European Parliament and the Council of 11 March 2014, 'A new EU framework to strengthen the rule of law', COM(2014) 158 final. 3 The founding values of the European Union, common to the Member States, which are set out in Article 2 TEU, include the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. 4 The Republic of Poland also brought an action for the annulment of Regulation 2020/2092 (Case C-157/21). 12 of which are, in any event, insufficiently precise. Hungary therefore bases its action, inter alia, on the EU's lack of competence to adopt such a regulation owing to both the lack of a legal basis and the circumvention of the procedure laid down in Article 7 TEU, and on a failure to comply with the requirements of the principle of legal certainty. The Court, thus called upon to rule on the EU's powers to defend its budget and its financial interests against effects that may result from breaches of the values contained in Article 2 TEU, considered that the present case is of fundamental importance which justified it being referred to the full Court. For the same reasons, the Court granted the European Parliament's request that the case be dealt with pursuant to the expedited procedure. In its judgment, the Court dismisses Hungary's action for annulment in its entirety. Findings of the Court Prior to examining the substance of the action, the Court rules on the Council's request that various passages of Hungary's application be disregarded in so far as they are based on material taken from a confidential opinion of the Council Legal Service which had been disclosed without the required authorisation. In that regard, the Court confirms that it is, in principle, permissible for the institution concerned to make production for use in legal proceedings of such an internal document subject to prior authorisation. Nonetheless, where the legal opinion in question relates to a legislative procedure, as in the present case, account should be taken of the principle of openness, since the disclosure of such an opinion increases the transparency and openness of the legislative process. Thus, the overriding public interest in transparency and openness of the legislative process outweighs, in principle, the interest of the institutions as regards the disclosure of an internal legal opinion. In the present case, since the Council did not prove that the opinion concerned is of a particularly sensitive nature or has a particularly wide scope that goes beyond the context of the legislative process in question, the Court therefore refuses the Council's request. As regards the substance, the Court, in the first place, examines the pleas relied on in support of the principal claim for annulment of the contested regulation in its entirety, alleging, first, that the European Union lacked competence to adopt that regulation and, secondly, breach of the principle of legal certainty. As regards, first, the legal basis for the contested regulation, the Court points out that the procedure laid down by that regulation can be initiated only where there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way. Furthermore, the measures that may be adopted under the contested

regulation relate exclusively to the implementation of the Union budget and are all such as to limit the financing from that budget according to the impact on the budget of such an effect or serious risk. Therefore, the contested regulation is intended to protect the European Union from effects resulting from breaches of the principles of the rule of law in a sufficiently direct way, and not to penalise those breaches as such. In response to Hungary's line of argument that a financial rule cannot have the objective of defining the scope of the requirements inherent in the values referred to in Article 2 TEU, the Court points out that compliance by the Member States with the common values on which the European Union is founded – which have been identified and are shared by the Member States and which define the very identity of the European Union as a legal order common to those States – such as the rule of law and solidarity, justifies the mutual trust between those States. Since that compliance is thus a condition for the enjoyment of all the rights deriving from the application of the Treaties to the Member State concerned, the European Union must be able to defend those values, within the limits of its powers. On that point, the Court specifies, first, that compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it 13 may disregard after its accession. Secondly, it points out that the Union budget is one of the principal instruments for giving practical effect, in the EU's policies and activities, to the fundamental principle of solidarity between Member States and that the implementation of that principle, through the Union budget, is based on the Member States 'mutual trust in the responsible use of the common resources included in that budget. The sound financial management of the Union budget and the financial interests of the European Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State. Those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure. Accordingly, a 'horizontal conditionality mechanism', such as that established by the contested regulation, which makes the receipt of financing from the Union budget subject to the respect by a Member State for the principles of the rule of law, is capable of falling within the scope of the power conferred by the Treaties on the European Union to establish 'financial rules 'relating to the implementation of the Union budget. The Court makes clear that the provisions of the contested regulation which identify those principles, which list cases that may be indicative of breaches of those principles, which specify the situations or conduct that such breaches must concern and which define the nature and scope of the protective measures that may, where appropriate, be adopted, are constituent elements of that mechanism and thus form an integral part of it. Next, as regards the complaint alleging circumvention of the procedure laid down in Article 7 TEU and the provisions of Article 269 TFEU, the Court rejects Hungary's line of argument that only the procedure laid down in Article 7 TEU grants the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU in a Member State. In addition to the procedure laid down in Article 7 TEU, numerous provisions of the Treaties, frequently implemented by various acts of secondary legislation, grant the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State. Furthermore, the Court observes that the purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalise serious and persistent breaches of each of the common values on which the European Union is founded and which define its identity, in particular with a view to compelling the Member State concerned to put an end to those breaches. By contrast, the contested regulation is intended to protect the Union budget, and only in the event of a breach of the principles of the

rule of law in a Member State which affects or seriously risks affecting the efficient implementation of that budget. Furthermore, the procedure laid down in Article 7 TEU and that established by the contested regulation differ as regards their subject matter, the conditions for initiating them, the conditions for the adoption and lifting of the measures provided for and the nature of those measures. Consequently, those two procedures pursue different aims and each has a clearly distinct subject matter. It follows, moreover, that the procedure established by the contested regulation cannot be regarded as intended to circumvent the limitation on the Court's general jurisdiction, provided for by Article 269 TFEU, since its wording refers only to the review of the legality of an act adopted by the European Council or by the Council under Article 7 TEU. Lastly, since the contested regulation allows the Commission and the Council to examine only situations or conduct attributable to the authorities of a Member State which appear relevant to the efficient implementation of the Union budget, the powers granted to those institutions by that regulation do not go beyond the limits of the powers conferred on the European Union. Secondly, in its examination of the plea alleging breach of the principle of legal certainty, the Court holds that Hungary's line of argument concerning the lack of precision in the contested regulation is wholly unfounded, both as regards the criteria relating to the conditions for initiating the procedure and as regards the choice and scope of the measures to be adopted. In that regard, the Court observes at the outset that the principles set out in the contested regulation, as constituent elements 14 of the concept of 'the rule of law', 5 have been developed extensively in its case-law, that those principles have their source in common values which are also recognised and applied by the Member States in their own legal systems and that they stem from a concept of 'the rule of law 'which the Member States share and to which they adhere, as a value common to their constitutional traditions. Consequently, the Court finds that the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles. As regards, more specifically, the criteria relating to the conditions for initiating the procedure and the choice and scope of the measures to be adopted, the Court specifies that the contested regulation requires, for the adoption of the protective measures which it lays down, that a genuine link be established between a breach of a principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a situation or conduct that is attributable to an authority of a Member State and relevant to the efficient implementation of the Union budget. In addition, the Court notes that the concept of 'serious risk 'is clarified in the EU financial legislation and points out that the protective measures that may be adopted must be strictly proportionate to the impact of the breach found on the Union budget. In particular, according to the Court, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of protecting the Union budget as a whole. Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with strict procedural requirements involving inter alia several consultations with the Member State concerned, and concludes that the contested regulation meets the requirements of the principle of legal certainty. In the second place, the Court examines the alternative claims for partial annulment of the contested regulation. In that regard, the Court decides, first, that the annulment of Article 4(1) of the contested regulation would cause the substance of that regulation to be altered, since that provision sets out the conditions for the adoption of the protective measures provided for by that regulation, with the result that the claim for annulment of that provision alone must be regarded as inadmissible. Secondly, the Court holds as unfounded the complaints directed against a series of other provisions of the contested regulation, alleging

lack of a legal basis and infringements of the provisions of EU law relating to public deficits and of the principles of legal certainty, proportionality and equality of Member States before the Treaties. It therefore rejects all of the alternative claims and therefore Hungary's action in its entirety. Judgment of 16 February 2022 (Full Court), Poland v Parliament and Council (C-157/21, EU:C:2022:98) (Action for annulment – Regulation (EU, Euratom) 2020/2092 – General regime of conditionality for the protection of the European Union budget – Protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States – Legal basis – Article 322(1)(a) TFEU – Article 311 TFEU – Article 312 TFEU – Alleged circumvention of Article 7 TEU and Article 269 TFEU – Alleged infringements of Article 4(1), Article 5(2) and Article 13(2) TEU, of the second paragraph of Article 296 TFEU, of Protocol (No 2) on the application of the principles of subsidiarity and proportionality and of the principles of conferral, 5 Under Article 2(a) of the contested regulation, the concept of 'the rule of law 'includes 'the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law'. 15 legal certainty, proportionality and equality of the Member States before the Treaties – Alleged misuse of powers) Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 6 is part of the continuance of a series of initiatives covering, more generally, the protection of the rule of law in Member States 7 which are designed to provide a response, at EU level, to growing concerns regarding respect by a number of Member States for the common values of the Union as set out in Article 2 TEU. 8 The Republic of Poland, supported by Hungary, 9 brought an action seeking the annulment of the contested regulation. In support of its claim, it argued, in essence, that that regulation, whilst formally presented as an act forming part of the financial rules referred to in Article 322(1)(a) TFEU in actual fact seeks to penalise any interference by a Member State with the principles of the rule of law, the requirements of which are, in any event, insufficiently precise. Poland therefore founded its action, inter alia, on the European Union lacking competence to adopt such a regulation, on account of an absence of legal basis and circumvention of the procedure laid down in Article 7 TEU, together with disregard for the limits inherent in the competences of the European Union and disregard for the principle of legal certainty. Having been called upon to give a ruling on the competences of the European Union to protect its budget and its financial interests against effects which may result from breaches of the values set out in Article 2 TEU, the Court found that the present case is of fundamental importance, justifying it being attributed to the full formation of the Court. For the same reasons, the European Parliament's request for the case to be dealt with pursuant to the expedited procedure was granted. In its judgment, the Court dismisses in its entirety the action for annulment brought by Poland. Findings of the Court Prior to examining the substance of the action, the Court gives a ruling on the request by the Council for various extracts from Poland's application to be disregarded, in so far as they are based on material taken from a confidential opinion of the legal service of the Council, thereby disclosed without the necessary authorisation. In that regard, the Court confirms that it is, in principle, permissible for the institution concerned to make production for use in legal proceedings of such an internal document subject to prior authorisation. Nonetheless, in the situation where the legal opinion in question relates to a legislative procedure, as in the present case, consideration must be given to the principle of transparency, since the disclosure of such an opinion increases the transparency and openness of the legislative process. Accordingly, the overriding public interest in the transparency and openness of the legislative process prevails, as a rule, over the interest of the 6 Regulation

(EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1, and corrigendum OJ 2021 L 373, p. 94; ‘the contested regulation’). 7 See, in particular, the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 July 2019, ‘Strengthening the rule of law within the Union – A blueprint for action’, COM(2019) 343 final, following the Communication from the Commission to the European Parliament and the Council of 11 March 2014, ‘A new EU framework to strengthen the rule of law’, COM(2014) 158 final. 8 The founding values of the European Union, common to the Member States, set out in Article 2 TEU, include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. 9 Hungary also brought an action seeking the annulment of Regulation 2020/2092 (Case C-156/21). 16 institutions in relation to the disclosure of an internal legal opinion. In the present case, given that the Council did not establish that the opinion concerned was particularly sensitive in nature or particularly wide in scope, going beyond the context of the legislative process at issue, the Court accordingly rejects the Council’s request. As regards the substance of the matter, in the first place, the Court examines together the pleas alleging that the European Union lacked competence to adopt the contested regulation. So far as concerns, first of all, the legal basis of the contested regulation, the Court finds that the procedure laid down by that regulation can be initiated only where there are reasonable grounds for considering not only that there have been breaches of the principles of the rule of law in a Member State, but, in particular, that those breaches affect, or seriously risk affecting, in a sufficiently direct way, the sound financial management of the Union or the protection of its financial interests. In addition, the measures which may be adopted under the contested regulation relate exclusively to the implementation of the Union budget and are all such as to limit the financing from that budget according to the impact on the budget of such an effect or serious risk. Accordingly, the regulation is intended to protect the Union budget from effects resulting, in a sufficiently direct way, from breaches of the principles of the rule of law and not to penalise those breaches as such. In response to Poland’s line of argument that the purpose of a financial rule cannot be to clarify the extent of the requirements inherent in the values referred to in Article 2 TEU, the Court points out that compliance by the Member States with the common values on which the European Union is founded – which have been identified and are shared by the Member States and which define the very identity of the European Union as a legal order common to those States – such as the rule of law and solidarity, justifies the mutual trust between those States. Since that compliance is a condition for the enjoyment of all the rights deriving from the application of the Treaties to the Member State concerned, the European Union must be able to defend those values, within the limits of its powers. On that point, the Court specifies, first, that compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession. Secondly, the Court states that the Union budget is one of the principal instruments for giving practical effect, in the EU’s policies and activities, to the fundamental principle of solidarity between Member States and that the implementation of that principle, through the Union budget, is based on the Member States ’mutual trust in the responsible use of the common resources included in that budget. The sound financial management of the Union budget and the financial interests of the Union may be seriously compromised by breaches of the principles of the rule of law committed in a Member State. Those breaches may result, inter alia, in there being no guarantee that expenditure covered by the Union budget satisfies all the

financing conditions laid down by EU law and therefore meets the objectives pursued by the European Union when it finances such expenditure. Accordingly, a ‘horizontal conditionality mechanism’, such as that established by the contested regulation, which makes receipt of financing from the Union budget subject to the respect by a Member State for the principles of the rule of law, is capable of falling within the power conferred by the Treaties on the European Union to establish ‘financial rules ’relating to the implementation of the Union budget. The Court clarifies that the provisions of the contested regulation which identify those principles, which set out situations which may be indicative of a breach of those principles, which clarify the situations or conduct which must be concerned by such breaches and which define the nature and scope of protective measures which may, where necessary, be adopted are constituent elements forming an integral part of such a mechanism. Next, as regards the complaint alleging circumvention of the procedure laid down in Article 7 TEU, the Court rejects Poland’s line of argument that only the procedure laid down in Article 7 TEU grants the institutions of the Union the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU in a Member State. Indeed, in 17 addition to the procedure laid down in Article 7 TEU, numerous provisions of the Treaties, frequently implemented by various acts of secondary legislation, grant the EU institutions the power to examine, determine the existence of and, where appropriate, impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State. Furthermore, the Court finds that the purpose of the procedure laid down in Article 7 TEU is to allow the Council to penalise serious and persistent breaches of each of the common values on which the European Union is founded and which define its identity, in particular with a view to compelling the Member States concerned to put an end to those breaches. By contrast, the contested regulation is intended to protect the Union budget, and applies only in the event of a breach of the principles of the rule of law in a Member State which affects or seriously risks affecting the proper implementation of that budget. In addition, the procedure laid down in Article 7 TEU and the procedure established by the contested regulation differ as regards their purpose, conditions for initiation, conditions for adoption and for lifting of the measures envisaged and the nature of those measures. Therefore, those two procedures pursue different aims and each has a clearly distinct subject matter. It follows, moreover, that the procedure established by the contested regulation cannot be regarded as seeking to circumvent the limitation on the general jurisdiction of the Court laid down in Article 269 TFEU, since its wording concerns only the review of the legality of an act adopted by the European Council or by the Council under Article 7 TEU. In the second place, the Court examines the other substantive complaints put forward by Poland against the contested regulation. In that context, the Court finds, first of all, that Poland’s claims alleging breach of the principle of conferral and of the duty to respect the essential functions of the Member States are without foundation. The Court points out that the Member States ’free exercise of the competences available to them in their reserved areas is conceivable only in compliance with EU law. For that reason, by requiring that the Member States thus comply with their obligations deriving from EU law, the European Union is not in any way claiming to exercise those competences itself nor is it, therefore, arrogating them. Next, in the examination of the pleas alleging failure to respect the national identity of Member States, on the one hand, and breach of the principle of legal certainty, on the other, the Court rules that there is no substantive basis for Poland’s line of argument regarding the lack of precision vitiating the contested regulation, both as regards the conditions for initiating the procedure and the choice and scope of the measures to be adopted. In that regard, the Court observes at the outset that the principles set out in the contested regulation, as constituent elements of the concept of the ‘rule of law’, 10 have been developed extensively in its case-law, that those

principles have their source in common values which are also recognised and applied by the Member States in their own legal systems and that they stem from a concept of the ‘rule of law ’which the Member States share and to which they adhere, as a value common to their constitutional traditions. Consequently, the Court finds that the Member States are in a position to determine with sufficient precision the essential content and the requirements flowing from each of those principles. As regards, specifically, the conditions for initiating the procedure and the choice and scope of the measures to be adopted, the Court clarifies that the contested regulation requires, for the adoption of the protective measures which it lays down, that a genuine link be established between a breach of a 10 According to Article 2(a) of the contested regulation, the concept of ‘the rule of law ’includes ‘the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law’. 18 principle of the rule of law and an effect or serious risk of effect on the sound financial management of the Union or the financial interests of the Union and that such a breach must concern a situation or conduct that is attributable to an authority of a Member States and relevant to the proper implementation of the Union budget. In addition, the Court notes that the concept of ‘serious risk ’is clarified in the EU financial legislation and states that the protective measures which may be adopted must be strictly proportionate to the impact of the breach found on the Union budget. In particular, those measures may target actions and programmes other than those affected by such a breach only where that is strictly necessary to achieve the objective of protecting the Union budget as a whole. Lastly, the Court finds that the Commission must comply, subject to review by the EU judicature, with strict procedural requirements involving, inter alia, several consultations with the Member State concerned, and concludes that the contested regulation meets the requirements arising from respect for the national identity of Member States and the principle of legal certainty. Finally, in so far as Poland disputes the very need to adopt the contested regulation, in the light of the requirements of the principle of proportionality, the Court finds that Poland has not put forward any evidence capable of demonstrating that the EU legislature exceeded the broad discretion available to it in that regard The Court rejects that final complaint and is, accordingly, entitled to dismiss the action in its entirety.

II. Withdrawal of a Member State from the European Union

Judgment of 9 June 2022 (Grand Chamber), Préfet du Gers and Institut national de la statistique et des études économiques (C-673/20, EU:C:2022:449) (Reference for a preliminary ruling – Citizenship of the Union – National of the United Kingdom of Great Britain and Northern Ireland residing in a Member State – Article 9 TEU – Articles 20 and 22 TFEU – Right to vote and to stand as a candidate in municipal elections in the Member State of residence – Article 50 TEU – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community – Consequences of the withdrawal of a Member State from the Union – Removal from the electoral roll in the Member State of residence – Articles 39 and 40 of the Charter of Fundamental Rights of the European Union – Validity of Decision (EU) 2020/135) EP, a United Kingdom national residing in France since 1984, was removed from the French electoral roll following the entry into force, on 1 February 2020, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (‘the Withdrawal Agreement’). 12 EP

challenged that removal before the tribunal judiciaire d'Auch (Court of Auch, France) on the ground that she was no longer entitled to vote either in France, on account of the loss of her status as a citizen of the Union following the withdrawal of the United Kingdom from the Union, or in the United Kingdom, on account of the fact that she no longer enjoyed the right to vote and to stand as a candidate in that State. 13 According to EP, that loss infringes the principles of legal certainty and proportionality and also constitutes discrimination between Union citizens and an infringement of her freedom of movement. The referring court considers that the application of the provisions of the Withdrawal Agreement to EP constitutes a disproportionate breach of her fundamental right to vote. It asks in that regard whether Article 50 TEU 14 and the Withdrawal Agreement must be interpreted as repealing the EU citizenship of nationals of the United Kingdom, who, while remaining nationals of that State, have resided in the territory of another Member State for more than 15 years and are, accordingly, deprived entirely of the right to vote. If that question is answered in the affirmative, it asks to what extent the relevant provisions of the Withdrawal Agreement 15 and of the TFEU 16 must be regarded as allowing such nationals to retain the rights to EU citizenship that they enjoyed before the withdrawal of the United Kingdom from the Union. It also raises a question concerning the validity of 11 The judgment of 24 March 2022, Galapagos BidCo. (C-723/20, EU:C:2022:209), must also be mentioned under this heading. That judgment is presented under heading XI.3 'Regulation 2015/848 on insolvency proceedings'. 12 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7). 13 By virtue of a legal rule of the United Kingdom, under which a national of that State who has resided abroad for more than 15 years is no longer entitled to take part in elections in the United Kingdom. 14 Article 50 TEU relates to the right of and arrangements for the withdrawal of a Member State from the European Union. 15 Articles 2, 3, 10, 12 and 127 of the Withdrawal Agreement. 16 Articles 18, 20 and 21 TFEU. 20 the Withdrawal Agreement and, accordingly, the validity of Council Decision 2020/135 on the conclusion of that agreement. 17 In its judgment, the Court holds, first, that the relevant provisions of the TEU 18 and of the TFEU, 19 read in conjunction with the Withdrawal Agreement, must be interpreted as meaning that, as from the withdrawal of the United Kingdom from the European Union, nationals of that State who exercised their right to reside in a Member State before the end of the transition period laid down in that agreement no longer enjoy the status of citizen of the Union. More particularly, they no longer enjoy the right to vote and to stand as a candidate in municipal elections in their Member State of residence, including where they are also deprived, by virtue of the law of the State of which they are nationals, of the right to vote in elections held by that State. Second, the Court has not identified any factor capable of affecting the validity of Decision 2020/135. Findings of the Court In the first place, the Court recalls that Union citizenship requires, in accordance with Article 9 TEU and Article 20(1) TFEU, possession of the nationality of a Member State and that there is an indissociable and exclusive link between the possession of the nationality of a Member State and the acquisition, and retention, of the status of citizen of the Union. A series of rights attaches to Union citizenship, 20 including the fundamental and individual right to move and reside freely within the territory of the Member States. In particular, as regards Union citizens residing in a Member State of which they are not nationals, those rights include the right to vote and to stand as a candidate in municipal elections in the Member State where they reside, a right which is also recognised by the Charter of Fundamental Rights of the European Union ('the Charter'). 21 By contrast, none of those provisions enshrines that right for nationals of third States. Consequently, the fact that an individual has, where the State of which he or she is a national used to be a Member State, exercised his or her right to move and reside freely in

the territory of another Member State is not such as to enable him or her to retain the status of citizen of the Union and all the rights attached thereto by the TFEU, if, following the withdrawal of his or her State of origin from the European Union, he or she no longer holds the nationality of a Member State. In the second place, the Court recalls that, by virtue of its sovereign decision, taken under Article 50(1) TEU, to leave the European Union, the United Kingdom has no longer been a member of the European Union since 1 February 2020, so that its nationals now have the nationality of a third State and no longer that of a Member State. The loss of the nationality of a Member State entails, for any person who does not also hold the nationality of another Member State, the automatic loss of his or her status as a citizen of the Union. Accordingly, that person no longer enjoys the right to vote and to stand as a candidate in municipal elections in his or her Member State of residence. 17 Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1). 18 Article 9 TEU on Union citizenship and Article 50 TEU on the right of and arrangements for the withdrawal of a Member State from the European Union. 19 Article 20 TFEU on Union citizenship, Article 21 TFEU on the freedom of movement and freedom to reside of Union citizens, and Article 22 TFEU on the rights to vote and to stand as a candidate of citizens of the Union. 20 By virtue of Article 20(2) and Articles 21 and 22 TFEU. 21 Article 40 of the Charter. 21 In that regard, the Court states that, since the loss of Union citizenship for a United Kingdom national is an automatic consequence of the United Kingdom’s sovereign decision to withdraw from the European Union, neither the competent authorities of the Member States nor their courts may be required to carry out an individual examination of the consequences of the loss of the status of Union citizens for the persons concerned, in the light of the principle of proportionality. In the third place, the Court notes that the Withdrawal Agreement contains no provision which maintains, beyond the withdrawal of the United Kingdom from the European Union, in favour of United Kingdom nationals who have exercised their right to reside in a Member State before the end of the transition period, the right to vote and to stand as a candidate in municipal elections in their Member State of residence. Although that agreement sets out the principle of maintaining the applicability of EU law in the United Kingdom during the transition period, Article 127(1)(b) of that agreement however expressly excludes, by way of derogation from that principle, the application in the United Kingdom and in its territory of the provisions of the TFEU and the Charter 22 relating to the right of citizens of the Union to vote and to stand as a candidate in the European Parliament and in municipal elections in their Member State of residence during that period. Admittedly, the wording of that exclusion refers to the United Kingdom and ‘the territory of that State ’without expressly referring to its nationals. However, having regard to Article 127(6) of the Withdrawal Agreement, that exclusion must be understood as also applying to United Kingdom nationals who exercised their right to reside in a Member State in accordance with EU law before the end of the transition period. The Member States were therefore no longer required, as from 1 February 2020, to treat United Kingdom nationals residing in their territory as nationals of a Member State as regards the grant of the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections. An interpretation to the contrary of Article 127(1)(b) of the Withdrawal Agreement, consisting of limiting the application of that agreement solely to the territory of the United Kingdom and therefore solely to Union citizens who resided in that State during the transition period, would create an asymmetry between the rights conferred by that agreement on United Kingdom nationals and Union citizens. That asymmetry would be contrary to the purpose of that agreement, which is to ensure mutual protection for citizens of the Union and for United Kingdom nationals who exercised their

respective rights of free movement before the end of the transition period. As regards the period, which began at the end of the transition period, the Court notes that the right of United Kingdom nationals to vote and to stand as a candidate in municipal elections in the Member State of residence does not fall within the scope of Part Two of the Withdrawal Agreement, which lays down rules designed to protect, after 1 January 2021, on a reciprocal and equal basis, Union citizens and United Kingdom nationals 23 who exercised their rights to freedom of movement before the end of the transition period. Finally, the first paragraph of Article 18 TFEU and the first paragraph of Article 21 TFEU, 24 which the Withdrawal Agreement renders applicable during the transition period and subsequently, cannot be interpreted as requiring Member States to continue to grant, after 1 February 2020, to United 22 Articles 20(2)(b) and 22 TFEU and Articles 39 and 40 of the Charter. 23 Article 10(a) and (b) of the Withdrawal Agreement. 24 Article 18 TFEU concerns the prohibition of any discrimination on grounds of nationality and Article 21 TFEU concerns the freedom of movement and the freedom of establishment of citizens of the Union. 22 Kingdom nationals who reside in their territory the right to vote and to stand as a candidate in municipal elections held in that territory which they grant to Union citizens. In the fourth and last place, as regards the validity of Decision 2020/135, the Court holds that that decision is not contrary to EU law. 25 In particular, there is no factor that permits the view that the European Union, as a contracting party to the Withdrawal Agreement, exceeded the limits of its discretion in the conduct of external relations, by not requiring that a right to vote and to stand as a candidate in municipal elections in the Member State of residence be provided for United Kingdom nationals who exercised their right to reside in a Member State before the end of the transition period. 25 In the present case, Article 9 TEU, Articles 18, 20, 21 and 22 TFEU and Article 40 of the Charter.

III. Fundamental rights

Right to an effective remedy and right to a fair trial 27 Judgment of 29 March 2022 (Grand Chamber), Getin Noble Bank (C-132/20, EU:C:2022:235) (Reference for a preliminary ruling – Admissibility – Article 267 TFEU – Concept of ‘court or tribunal – ’Article 19(1) TEU – Article 47 of the Charter of Fundamental Rights of the European Union – Rule of law – Effective judicial protection – Principle of judicial independence – Tribunal previously established by law – Judicial body, a member of which was appointed for the first time to the position of judge by a political body within the executive branch of an undemocratic regime – Way in which the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland) operates – Unconstitutionality of the law on the basis of which that council was composed – Possibility of regarding that body as an impartial and independent court or tribunal within the meaning of EU law) In 2017, in Poland, several consumers had brought an action before the competent regional court concerning the allegedly unfair nature of a term in the loan agreement which they had concluded with Getin Noble Bank, a bank. Since they did not obtain full satisfaction either at first instance or on appeal, the appellants brought an appeal before the Sąd Najwyższy (Supreme Court, Poland), the referring court. In order to examine the admissibility of the appeal brought before it, that court is required, in accordance with national law, to determine whether the composition of the panel of judges which delivered the judgment under appeal was lawful. In that context, sitting as a single judge, the referring 26 The following judgments must also be mentioned under this heading: judgment of 9 June 2022, Préfet du Gers and Institut national de la statistique et des études économiques (C-673/20, EU:C:2022:449), on the right to vote in elections to the European Parliament and in municipal elections, presented under heading II. ‘Withdrawal of a Member State from the

European Union'; judgments of 5 May 2022, Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources) (C-451/19 and C-532/19, EU:C:2022:354), relating to respect for family life and the rights of the child, presented under heading IV.3. 'Derived right of residence of third-country nationals who are family members of a Union citizen', and of 22 December 2022, Generalstaatsanwaltschaft München (Request for extradition to Bosnia and Herzegovina) (C-237/21, EU:C:2022:1017), on protection in the event of extradition, presented under heading IV.4. 'Discrimination on grounds of nationality'; judgment of 7 September 2022, Cilevičs and Others (C-391/20, EU:C:2022:638), relating to cultural and linguistic diversity, presented under heading VIII.2. 'Freedom of establishment'; judgment of 14 July 2022, Procureur général près la cour d'appel d'Angers (C-168/21, EU:C:2022:558), relating to the principle of proportionality of offences and penalties, presented under heading X.1. 'European arrest warrant'; judgments of 22 February 2022, Stichting Rookpreventie Jeugd and Others (C-160/20, EU:C:2022:101), relating to the protection of health and the rights of the child, presented under heading XIII.2. 'Tobacco products', and of 8 December 2022, Orde van Vlaamse Balies and Others (C-694/20, EU:C:2022:963), relating to respect for family life, presented under heading XIII.5. 'Administrative cooperation in the field of taxation', as well as the judgment of 24 February 2022, Glavna direktsia 'Pozharna bezopasnost i zashtita na naselenieto '(C-262/20, EU:C:2022:117), concerning fair and equitable working conditions, presented under heading XV.1. 'Organisation of working time'. 27 The following judgments must also be mentioned under this heading: judgment of 10 March 2022, Grossmania (C-177/20, EU:C:2022:175), presented under heading VII. 'EU law and national law'; judgment of 8 November 2022, Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention) (C-704/20 and C-39/21, EU:C:2022:858), presented under heading IX.1. 'Asylum policy'; judgments of 22 February 2022, Openbaar Ministerie (Tribunal established by law in the issuing Member State) (C-562/21 PPU and C-563/21 PPU, EU:C:2022:100), presented under heading X.1. 'European arrest warrant', of 19 May 2022, Spetsializirana prokuratura (Trial of an absconded accused person) (C-569/20, EU:C:2022:401), presented under heading X.2. 'Right to be present at the trial', and of 1 August 2022, TL (Lack ofinterpretion and translation) (C-242/22 PPU, EU:C:2022:611), presented under heading X.3. 'Right to interpretation and translation in criminal proceedings'. 24 court raises the question whether the composition of the appellate court is consistent with EU law. In its view, the independence and impartiality of the three appeal judges could be called into question by reason of the circumstances in which they were appointed to the office of judge. In that regard, the referring court, first, refers to the circumstance that the initial appointment of one of the judges (FO) to such a position was by decision of a body of the undemocratic regime that was in Poland before its accession to the European Union and that that judge was kept in that position after the end of that regime, without having sworn a new oath and still benefiting from the length of service acquired when that regime was in place. 28 Second, the referring court claims that the judges concerned were appointed to the appellate court on a proposal of the Krajowa Rada Sądownictwa (National Council of the Judiciary, Poland; 'the KRS'): one of them, in 1998, when the resolutions of the body were not substantiated and no legal remedy was available against them, and the other two, in 2012 and 2015, when, according to the Trybunał Konstytucyjny (Constitutional Court, Poland), the KRS did not operate transparently and its composition was contrary to the Constitution. By its Grand Chamber judgment, the Court holds, in essence, that the principle of effective judicial protection of the rights which individuals derive from EU law 29 must be interpreted as meaning that the irregularities alleged by the referring court with regard to the appeal judges at issue are not in themselves such as to give rise to reasonable and serious doubts, in the minds of individuals, as to the independence and impartiality of those judges,

nor, therefore, to call into question the status of an independent and impartial tribunal, previously established by law, of the panel of judges in which they sit. Findings of the Court As a preliminary point, the Court rejects the plea of inadmissibility according to which the single judge of the Polish Supreme Court, called upon to examine the admissibility of the appeal brought before that court, was not entitled to refer questions to the Court of Justice for a preliminary ruling in view of the flaws in his own appointment, which call into question his independence and impartiality. In so far as a reference for a preliminary ruling emanates from a national court or tribunal, it must be presumed that it meets the requirements laid down by the Court to constitute a 'court or tribunal 'within the meaning of Article 267 TFEU. Such a presumption may nevertheless be rebutted where a final judicial decision handed down by a national or international court would lead to the conclusion that the court constituting the referring court is not an independent and impartial tribunal established by law. Since the Court has no information to rebut such a presumption, the request for a preliminary ruling is therefore admissible. Next, the Court examines the two parts of the questions referred. By the first part, the referring court asks whether the second subparagraph of Article 19(1) TEU and Article 47 of the Charter preclude a panel of judges in which a judge who, like FO, began their career under the communist regime and was kept in their post after the end of that regime from being considered to be an independent and impartial tribunal. 28 It will be referred to below as 'circumstances predating accession'. 29 Principle to which the second subparagraph of Article 19(1) TEU refers, according to which 'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law', and which is affirmed in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), and by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29). The latter reaffirms, in Article 7(1) and (2), the right to an effective remedy to which consumers who consider themselves wronged by those terms are entitled. 25 In that regard, after acknowledging that it has jurisdiction to rule on that question, 30 the Court states that, although the organisation of justice in the Member States falls within the competence of the latter, they are required, in the exercise of that competence, to comply with their obligations under EU law, including the obligation to ensure observance of the principle of effective judicial protection. As regards the impact on a judge's independence and impartiality of the circumstances prior to accession, relied on by the referring court vis-à-vis judges such as FO, the Court points out that, at the time of Poland's accession to the European Union, it was considered that, in principle, its judicial system was consistent with EU law. In addition, the referring court has provided no specific explanation as to how the conditions for FO's initial appointment would enable undue influence to be exercised on him currently. Thus, the circumstances surrounding his initial appointment could not in themselves be considered to be such as to give rise to reasonable and serious doubts, in the minds of individuals, as to the independence and impartiality of that judge, in the subsequent exercise of his judicial duties. By their second part, the questions referred seek to ascertain, in essence, whether the second subparagraph of Article 19(1) TEU, Article 47 of the Charter and Article 7(1) and (2) of Directive 93/13 preclude a panel of judges connected with the court or tribunal of a Member State in which a judge sits whose initial appointment to a judicial position or subsequent appointment to a higher court occurred either upon selection as a candidate for the position of judge by a body composed on the basis of legislative provisions subsequently declared unconstitutional by the constitutional court of that Member State ('the first circumstance at issue') or after selection as a candidate for the position of judge by a body lawfully composed but following a procedure that was neither transparent nor public and no legal remedy was available against it ('the second circumstance at issue') from being considered to be an independent and impartial tribunal previously established by law. In that

regard, the Court observes that not every error that may take place during the procedure for the appointment of a judge is of such a nature as to cast doubts on the independence and impartiality of that judge. In the present case, as regards the first circumstance at issue, the Court notes that the Constitutional Court did not rule on the independence of the KRS when it declared unconstitutional the composition of that body at the time of the appointment of the two judges other than FO in the panel of judges who delivered the judgment under appeal before the referring court. That declaration of unconstitutionality is therefore not capable, per se, of calling into question the independence of that body or raising doubts, in the minds of individuals, as to the independence of those judges, with regard to external factors. Moreover, no specific evidence capable of substantiating such doubts was put forward by the referring court to that effect. The same conclusion must be drawn in the case of the second circumstance at issue. It is not apparent from the order for reference that the KRS, in its composition after the end of the Polish undemocratic regime, lacked independence from the executive and the legislature. In those circumstances, those two circumstances do not establish an infringement of the fundamental rules applicable to the appointment of judges. Thus, provided that the irregularities relied on do not create a real risk that the executive could exercise undue discretion undermining the integrity of the 30 According to settled case-law, the Court has jurisdiction to interpret EU law only as regards its application in a new Member State with effect from the date of that State's accession to the European Union. In the present case, even though it relates to circumstances predating accession to the European Union by Poland, the question referred concerns a situation which did not produce all its effects before that date since FO, appointed as a judge before accession, is currently a judge and performs duties corresponding to that office. 26 outcome of the judicial appointment process, EU law does not preclude a panel of judges in which the judges concerned sit from being considered to be an independent and impartial tribunal established by law. Judgment of 8 November 2022 (Grand Chamber), Deutsche Umwelthilfe (Approval of motor vehicles) (C-873/19, EU:C:2022:857) (Reference for a preliminary ruling – Environment – Aarhus Convention – Access to justice – Article 9(3) – Charter of Fundamental Rights of the European Union – Article 47, first paragraph – Right to effective judicial protection – Environmental association – Standing of such an association to bring an action before a national court against EC type-approval granted to certain vehicles – Regulation (EC) No 715/2007 – Article 5(2)(a) – Motor vehicles – Diesel engine – Pollutant emissions – Valve for exhaust gas recirculation (EGR valve) – Reduction of nitrogen oxide (NOx) emissions limited by a 'temperature window – ' Defeat device – Authorisation of such a device where the need is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle – State of the art) Volkswagen AG is a car manufacturer which marketed motor vehicles equipped with a Euro 5 generation EA 189-type diesel engine and with a valve for exhaust gas recirculation ('the EGR valve'), one of the technologies used by car manufacturers to control and reduce emissions of nitrogen oxide (NOx). The software operating the exhaust gas recirculation system was programmed in such a way that, under normal conditions of use, the exhaust gas recirculation rate was reduced. Thus, the vehicles concerned did not comply with the NOx emission limit values laid down by Regulation No 715/2007 on type-approval of motor vehicles. 31 In the EC type-approval procedure 32 for one of those vehicle models, the Kraftfahrt-Bundesamt (Federal Motor Transport Authority, Germany; 'the KBA') found that the software at issue constituted a defeat device 33 which was not consistent with that regulation. 34 Volkswagen therefore updated the software by setting the EGR valve so that exhaust gas purification was fully effective only when the outside temperature was greater than 15 °C and lower than 33 °C ('the temperature window'). By decision of 20 June 2016 ('the contested decision'), the KBA granted authorisation for the software at issue. 31

Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1). 32 Under Article 3(5) of Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1), 'EC type-approval 'means the procedure whereby a Member State certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant administrative provisions and technical requirements of EU law. 33 Within the meaning of Article 3(10) of Regulation No 715/2007. That provision defines a defeat device as 'any element of design which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use'. 34 Article 5 of Regulation No 715/2007. 27 Deutsche Umwelthilfe, an environmental association which is authorised to bring legal proceedings, in accordance with German law, brought an action against the contested decision before the Schleswig-Holsteinisches Verwaltungsgericht (Administrative Court, Schleswig-Holstein, Germany). That court notes that, under German law, Deutsche Umwelthilfe does not have standing to bring legal proceedings against the contested decision. It is, however, uncertain whether that association can derive such standing directly from EU law. If so, it raises the question whether the temperature window is compatible with Regulation No 715/2007. Having found that that window constitutes a defeat device within the meaning of that regulation, it asks whether the software in question may be authorised on the basis of the exception to the prohibition of such devices laid down in that regulation, 35 which requires that 'the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle'. On a request for a preliminary ruling from that court, the Court of Justice, sitting as the Grand Chamber, rules on the standing of an environmental association to challenge before a national court an administrative decision granting an authorisation which may be contrary to EU law, in the light of the Aarhus Convention 36 and the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). It also specifies the circumstances in which a defeat device may be justified under Regulation No 715/2007. 37 Findings of the Court First of all, the Court recalls that under Article 9(3) of the Aarhus Convention, each party must ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. In that regard, the Court finds, in the first place, that an administrative decision relating to EC typeapproval which may be contrary to Regulation No 715/2007 falls within the material scope of Article 9(3) of the Aarhus Convention, since it constitutes an act of a public authority which is alleged to contravene the provisions of national law relating to the environment. In pursuing the objective of ensuring a high level of environmental protection by reducing NOx emissions from diesel vehicles, Regulation No 715/2007 forms part of 'national law relating to the environment 'within the meaning of the aforementioned provision. That finding is in no way affected by the fact that the regulation at issue was adopted on the basis of Article 95 EC (now Article 114 TFEU) and not on a specific legal basis for the environment, since, in accordance with Article 114(3) TFEU, the Commission, in its proposals for measures for the approximation of the provisions laid down

by law, regulation or administrative action in Member States concerning environmental protection, is to take as a base a high level of protection, taking account in particular of any new development based on scientific facts. In the second place, the Court points out that an environmental association authorised to bring legal proceedings falls within the personal scope of Article 9(3) of the Aarhus Convention, inasmuch as it is part of the public concerned by that provision and meets the criteria, if any, laid down in national law. 35 Article 5(2)(a) of Regulation No 715/2007. 36 Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention'). 37 Article 5(2)(a) of Regulation No 715/2007. 28 In the third place, as regards the concept of criteria laid down in national law within the meaning of that provision, the Court clarifies that although it follows from Article 9(3) of the Aarhus Convention that Member States may, in the context of the discretion they have in that regard, establish procedural rules setting out conditions that must be satisfied in order to be able to pursue the review procedures referred to in that provision, such criteria relate only to the determination of those persons entitled to bring an action. It follows that Member States may not reduce the material scope of Article 9(3) by excluding from the subject matter of the action certain categories of provisions of national environmental law. Furthermore, Member States must comply with the right to an effective remedy, enshrined in Article 47 of the Charter, when establishing the applicable procedural rules and cannot impose criteria so strict that it would be impossible for environmental associations to challenge the acts or omissions that are the subject of the Aarhus Convention. 38 The Court concludes from this that Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, precludes a situation where such an association is unable to challenge a decision granting or amending EC type-approval which may be contrary to Regulation No 715/2007. 39 That situation would indeed constitute an unjustified limitation of the right to an effective remedy. Consequently, it is for the referring court to interpret national procedural law in a manner consistent with the Aarhus Convention and with the right to an effective remedy enshrined in EU law, in order to enable an environmental association to challenge such a decision before a national court. If a consistent interpretation to that effect were to prove impossible and in the absence of direct effect of Article 9(3) of the Aarhus Convention, Article 47 of the Charter confers on individuals a right which they may rely on as such, with the result that it may be relied on as a limit on the discretion left to the Member States in that regard. In such a case, it will be for the referring court to disapply the national provisions precluding an environmental association, such as Deutsche Umwelthilfe, from exercising any right to bring an action against a decision granting or amending EC type-approval which may be contrary to Regulation No 715/2007. 40 Lastly, the Court finds that the use of a defeat device can be justified by a need to protect the engine against damage or accident and for safe operation of the vehicle, within the meaning of Regulation No 715/2007, 41 only where that device strictly meets the need to avoid immediate risks of damage or accident to the engine, caused by a malfunction of a component of the exhaust gas recirculation system, of such a serious nature as to give rise to a specific hazard when a vehicle fitted with that device is driven. Furthermore, the need for such a defeat device exists only where, at the time of the EC type-approval of that device or of the vehicle equipped with it, no other technical solution makes it possible to avoid the abovementioned risks. Ne bis in idem principle Judgment of 22 March 2022 (Grand Chamber), bpost (C-117/20, EU:C:2022:202) (Reference for a preliminary ruling – Competition – Postal services – Tariff system adopted by a universal service provider – Fine imposed by a national postal regulator – Fine imposed by a national competition 38 Article

9(3) of the Aarhus Convention. 39 Article 5(2) of Regulation No 715/2007. 40 Article 5(2)(a) of Regulation No 715/2007. 41 Article 5(2)(a) of Regulation No 715/2007. 29 authority – Charter of Fundamental Rights of the European Union – Article 50 – Non bis in idem principle – Existence of the same offence – Article 52(1) – Limitations to the non bis in idem principle – Duplication of proceedings and penalties – Conditions – Pursuit of an objective of general interest – Proportionality) In 2010, the incumbent postal services provider in Belgium, bpost SA, established a new tariff system. By decision of 20 July 2011, the Belgian postal regulator 42 imposed a fine of EUR 2.3 million on bpost for infringement of the applicable sectoral rules inasmuch as that new system was allegedly based on an unjustified difference in treatment as between consolidators and direct clients. That decision was annulled by the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium), on the ground that the pricing practice at issue was not discriminatory. That judgment, which has become final, was delivered following a reference for a preliminary ruling which gave rise to the Court's judgment in bpost. 43 In the meantime, by decision of 10 December 2012, the Belgian competition authority determined that bpost had committed an abuse of a dominant position prohibited by the Law on the protection of competition 44 and by Article 102 TFEU. That abuse consisted in the adoption and implementation of the new tariff system in the period between January 2010 and July 2011. Accordingly, the Belgian competition authority fined bpost EUR 37 399 786, the fine previously imposed by the postal regulator having been taken into account in the calculation of that amount. That decision was also annulled by the cour d'appel de Bruxelles (Court of Appeal, Brussels) because it was contrary to the non bis in idem principle. In that regard, that court found that the proceedings conducted by the postal regulator and by the competition authority concerned the same facts. The Cour de cassation (Court of Cassation, Belgium), however, set aside that judgment and referred the case back to the cour d'appel de Bruxelles (Court of Appeal, Brussels). In the subsequent proceedings, the cour d'appel de Bruxelles (Court of Appeal, Brussels) decided to refer two questions to the Court of Justice for a preliminary ruling to establish, in essence, whether the non bis in idem principle, as affirmed by Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), precludes a postal services provider from being fined for an infringement of EU competition law where, on the same facts, that provider has already been the subject of a final decision relating to an infringement of the rules governing the postal sector. In answer to those questions, the Court, sitting as the Grand Chamber, specifies both the scope and the limits of the protection conferred by the non bis in idem principle guaranteed by Article 50 of the Charter. Findings of the Court The Court begins by recalling that the non bis in idem principle, as affirmed by Article 50 of the Charter, prohibits a duplication both of proceedings and of penalties of a criminal nature for the purposes of that article for the same acts and against the same person. 42 Institut belge des services postaux et des télécommunications (IBPT) (Belgian Institute for Postal Services and Telecommunications). 43 Judgment of 11 February 2015, bpost (C-340/13, EU:C:2015:77). 44 Loi du 10 juin 2006 sur la protection de la concurrence économique (Law of 10 June 2006 on the protection of economic competition) (Moniteur belge, 29 June 2006, p. 32755), coordinated by the Royal Decree of 15 September 2006 (Moniteur belge, 29 September 2006, p. 50613). 30 The criminal nature of the proceedings instituted against bpost by the Belgian postal regulator and by the Belgian competition authority having been confirmed by the referring court, the Court goes on to note that the application of the non bis in idem principle is subject to a twofold condition, namely, first, that there must be a prior final decision (the 'bis 'condition) and, secondly, that the prior decision and the subsequent proceedings or decisions must concern the same facts (the 'idem 'condition). Since the Belgian postal regulator's decision was annulled by a judgment which has acquired the force of res judicata

and according to which bpost was acquitted in the proceedings brought against it under rules governing the postal sector, it appears that the proceedings instituted by that regulator were disposed of by a final decision, meaning that the ‘bis ’condition is satisfied in the present case. As regards the ‘idem ’condition, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, regardless of their legal classification under national law or the legal interest protected. In that regard, identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space. Consequently, it is for the referring court to determine whether the facts in respect of which the two sets of proceedings were instituted against bpost on the basis, respectively, of rules governing the postal sector and of competition law are identical. Should that be the case, the duplication of the two sets of proceedings brought against bpost would constitute a limitation of the non bis in idem principle guaranteed by Article 50 of the Charter. Such a limitation of the non bis in idem principle may nevertheless be justified on the basis of Article 52(1) of the Charter. In accordance with that provision, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. That provision also states that, subject to the principle of proportionality, limitations on those rights and freedoms may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. In that regard, the Court notes that the possibility, provided for by law, of duplication of the proceedings conducted by two different national authorities and the penalties imposed by them respects the essence of Article 50 of the Charter, provided that the national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides only for the possibility of a duplication of proceedings and penalties under different legislation. As regards the question whether such duplication can meet an objective of general interest recognised by the European Union, the Court finds that the two sets of legislation under which proceedings were brought against bpost have distinct legitimate objectives. While the object of the rules governing the postal sector is the liberalisation of the internal market for postal services, the rules relating to the protection of competition pursue the objective of ensuring that competition in the internal market is not distorted. It is thus legitimate, for the purposes of guaranteeing the ongoing liberalisation of the internal market for postal services, while ensuring the proper functioning of that market, for a Member State to punish infringements both under sectoral rules concerning the liberalisation of the relevant market and under national and EU competition rules. As regards compliance with the principle of proportionality, this requires that the duplication of proceedings and penalties provided for by national legislation does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued. 31 In that regard, the Court states that the fact that two sets of proceedings are pursuing distinct objectives of general interest which it is legitimate to protect cumulatively can be taken into account, in an analysis of the proportionality of the duplication of proceedings and penalties, as a factor that would justify that duplication, provided that those proceedings are complementary and that the additional burden which that duplication represents can accordingly be justified by the two objectives pursued. With regard to the strict necessity of such duplication of proceedings and penalties, it is necessary to assess whether the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary

and whether the overall penalties imposed correspond to the seriousness of the offences committed. To that end, it is necessary to examine whether there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the two competent authorities; whether the two sets of proceedings have been conducted in a sufficiently coordinated manner within a proximate timeframe; and whether the overall penalties imposed correspond to the seriousness of the offences committed. Accordingly, any justification for a duplication of penalties is subject to conditions which, when satisfied, are intended in particular to limit, albeit without calling into question the existence of 'bis 'as such, the functionally distinct character of the proceedings in question and therefore the actual impact on the persons concerned of the fact that those proceedings against them are brought cumulatively. Judgment of 22 March 2022 (Grand Chamber), Nordzucker and Others (C-151/20, EU:C:2022:203) (Reference for a preliminary ruling – Competition – Article 101 TFEU – Cartel prosecuted by two national competition authorities – Charter of Fundamental Rights of the European Union – Article 50 – Ne bis in idem principle – Existence of the same offence – Article 52(1) – Limitations to the ne bis in idem principle – Conditions – Pursuit of an objective of general interest – Proportionality) Nordzucker AG and Südzucker AG are two German sugar producers which, together with a third major producer, dominate the German sugar market. That market was traditionally divided into three main geographical areas, each controlled by one of those three major producers. Agrana Zucker GmbH ('Agrana'), which is a subsidiary of Südzucker, is the main sugar producer in Austria. From no later than 2004, Nordzucker and Südzucker agreed not to compete with each other by penetrating their traditional core sales areas. It was in that context that, at the beginning of 2006, Südzucker's sales director called Nordzucker's sales director to complain about deliveries of sugar on the Austrian market by a Slovak subsidiary of Nordzucker, suggesting that this could have consequences on the German sugar market ('the 2006 telephone conversation'). In order to benefit from the national leniency programmes, Nordzucker subsequently warned both the Bundeskartellamt (Federal Competition Authority, Germany) and the Bundeswettbewerbsbehörde (Federal Competition Authority, Austria) of its participation in an agreement on the German and Austrian sugar markets. Those two authorities initiated investigation procedures at the same time. In 2014, the German competition authority found, by a decision which has become final, that Nordzucker, Südzucker and the third German producer had participated in an anticompetitive agreement in breach of Article 101 TFEU and the corresponding provisions of German law, and, in particular, imposed a fine of EUR 195 500 000 on Südzucker. That decision also reproduces the content of the 2006 telephone conversation concerning the Austrian sugar market. 32 By contrast, the Austrian competition authority's application seeking, first, a declaration that Nordzucker, Südzucker and Agrana had infringed Article 101 TFEU and the corresponding provisions of Austrian law and, secondly, the imposition of two fines on Südzucker, one of which to be imposed jointly and severally on Agrana, was dismissed by the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria). The Austrian competition authority brought an appeal against that decision before the Oberster Gerichtshof (Supreme Court, Austria), the referring court. In that context, the referring court is unsure whether the ne bis in idem principle, enshrined in Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), precludes it from taking account of the 2006 telephone conversation in the proceedings pending before it, since that conversation was expressly referred to in the German competition authority's decision of 2014. That court is also unsure whether, in the light of the Court of Justice's case-law, the ne bis in idem principle applies in proceedings finding an infringement, which, owing to an undertaking's participation in a national leniency programme, do not result in the imposition

of a fine In answer to those questions, the Court, sitting as the Grand Chamber, clarifies the relationship with the ne bis in idem principle in parallel or successive proceedings under competition law in respect of the same anticompetitive conduct in several Member States. Findings of the Court The Court begins by recalling that the ne bis in idem principle, as enshrined in Article 50 of the Charter, prohibits a duplication both of proceedings and of penalties of a criminal nature, for the purposes of that article, as regards the same acts and against the same person. In competition law matters, that principle precludes, specifically, an undertaking's being found liable or the bringing of proceedings against it afresh on the grounds of anticompetitive conduct for which it has been penalised or declared not to be liable by a prior decision that can no longer be challenged. The application of the ne bis in idem principle in proceedings under competition law is, therefore, subject to a twofold condition, namely, first, that there must be a prior final decision (the 'bis 'condition) and, secondly, that t
he prior decision and the subsequent proceedings or decisions concern the same conduct (the 'idem 'condition). Since the German competition authority's decision of 2014 constitutes a prior final decision which had been given after a determination had been made as to the merits of the case, the 'bis 'condition is met as regards the proceedings conducted by the Austrian competition authority. As regards the 'idem 'condition, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, whatever their legal classification under national law or the legal interest protected. The identity of anticompetitive practices must be examined in the light of the territory and the product market concerned and the period during which those practices had as their object or effect the prevention, restriction or distortion of competition. Accordingly, it is for the referring court to ascertain, by assessing all the relevant circumstances, whether the German competition authority's decision of 2014 found that the cartel at issue existed, and penalised it, as a result of the cartel's anticompetitive object or effect not only in German territory, but also Austrian territory. If that were the case, further proceedings and, as the case may be, further penalties for infringement of Article 101 TFEU and the corresponding provisions of Austrian law, as a result of the cartel in Austrian territory, would constitute a limitation of the fundamental right guaranteed in Article 50 of the Charter. Such a limitation could not, moreover, be justified under Article 52(1) of the Charter. Article 52(1) provides, inter alia, that any limitation on the exercise of the rights and freedoms recognised by the Charter must genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. 33 Admittedly, since the prohibition of cartels laid down in Article 101 TFEU pursues the general interest objective of ensuring undistorted competition in the internal market, the limitation of the ne bis in idem principle, guaranteed in Article 50 of the Charter, resulting from a duplication of proceedings and penalties of a criminal nature by two national competition authorities, may be justified under Article 52(1) of the Charter where those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct. However, if two national competition authorities were to take proceedings against and penalise the same facts in order to ensure compliance with the prohibition on cartels under Article 101 TFEU and the corresponding provisions of their respective national law prohibiting agreements which may affect trade between Member States within the meaning of Article 101 TFEU, those two authorities would pursue the same objective of ensuring that competition in the internal market is not distorted. Such a duplication of proceedings and penalties would not meet an objective of general interest recognised by the European Union, with the result that it could not be justified under Article 52(1) of the Charter. As regards the proceedings conducted by the Austrian competition authority with regard to Nordzucker, the Court confirms, ultimately, that such proceedings for the enforcement of competition law, in which, owing to Nordzucker's

participation in the national leniency programme, only a declaration of the infringement of that law can be made, are also liable to be covered by the ne bis in idem principle. As a corollary to the res judicata principle, the ne bis in idem principle aims to ensure legal certainty and fairness; in ensuring that once a natural or legal person has been tried and, as the case may be, punished, that person has the certainty of not being tried again for the same offence. It follows that the initiation of criminal proceedings is liable, as such, to fall within the scope of the ne bis in idem principle, irrespective of whether those proceedings actually result in the imposition of a penalty. Judgment of 28 October 2022 (Grand Chamber), Generalstaatsanwaltschaft München (Extradition and ne bis in idem) (C-435/22 PPU, EU:C:2022:852) (Reference for a preliminary ruling – Urgent preliminary ruling procedure – Judicial cooperation in criminal matters – Charter of Fundamental Rights of the European Union – Article 50 – Convention implementing the Schengen Agreement – Article 54 –Ne bis in idem principle – Extradition agreement between the European Union and the United States of America – Extradition of a third-country national to the United States under a bilateral treaty concluded by a Member State – National who has been convicted by final judgment for the same acts and has served his sentence in full in another Member State) In January 2022, HF, a Serbian national, was temporarily arrested in Germany on the basis of a red notice published by the International Criminal Police Organisation (Interpol) at the request of the authorities of the United States of America. The latter request the extradition of HF with a view to criminal proceedings for offences consisting of a conspiracy to participate in racketeer-influenced corrupt organisations and conspiracy to commit bank fraud and fraud by means of telecommunication, committed between September 2008 and December 2013. When he was arrested, HF stated that he was resident in Slovenia and produced, inter alia, a Slovenian residence permit which had expired in November 2019. The person concerned has already been convicted by final judgment in Slovenia for the same acts as those referred to in the extradition request, as regards the offences committed up to June 2010. In addition, he has already served his sentence in full. Accordingly, the Oberlandesgericht München (Higher Regional Court, Munich, Germany), called upon to rule on HF's extradition request, decided to ask the Court of Justice whether the principle ne bis in idem requires it to refuse that extradition for offences for which final judgment has been passed in Slovenia. That principle, which is enshrined in both Article 54 of the Convention implementing the 34 Schengen Agreement ('the CISA') 45 and Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), prohibits, inter alia, a person against whom final judgment has been passed in a Member State from being tried again in another Member State for the same offence. In that context, the referring court also asks whether the extradition treaty concluded between Germany and the United States, 46 in so far as it allows extradition to be refused on the basis of the principle ne bis in idem only in the case of a conviction in the requested State (here, Germany), is likely to affect the application of that principle in the dispute in the main proceedings. By its judgment, delivered in the context of the urgent preliminary ruling procedure, the Court, sitting as the Grand Chamber, rules that Article 54 of the CISA, read in the light of Article 50 of the Charter, precludes the extradition, by the authorities of a Member State, of a third-country national to another third country, where final judgment has been passed in another Member State, as regards that national, in respect of the same acts as those referred to in the extradition request and he or she has served the sentence which has been imposed there. The fact that the extradition request is based on a bilateral extradition treaty limiting the scope of the principle ne bis in idem to judgments delivered in the requested Member State is irrelevant in that regard. Findings of the Court In the first place, as regards whether the concept of 'person 'referred to in Article 54 of the CISA includes a third-country national, the Court observes first of all that that article guarantees the

protection of the principle ne bis in idem where a person's trial has been finally disposed of in a Member State. Accordingly, the wording of that provision does not establish a condition relating to possession of the nationality of a Member State. Next, the context of that article supports such an interpretation. Article 50 of the Charter, 47 in the light of which Article 54 of the CISA must be interpreted, also does not establish a link with the status of citizen of the European Union. Finally, the objectives pursued by that provision, namely, in particular, to ensure legal certainty through respect for decisions of public bodies which have become final, and fairness, support the interpretation that the application of that provision is not limited solely to nationals of a Member State. In that regard, the Court also states that there is nothing in Article 54 of the CISA to suggest that enjoyment of the fundamental right provided for therein is subject, as regards third-country nationals, to compliance with conditions relating to the lawful nature of their stay or to a right to freedom of movement within the Schengen area. In a case such as that in the main proceedings, irrespective of the lawful nature of his or her stay, the person concerned must therefore be regarded as falling within the scope of Article 54 of the CISA. In the second place, the Court finds that the Agreement on extradition between the European Union and the United States of America ('the EU-USA Agreement'), 48 which applies to relations existing 45 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 19), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013. 46 Auslieferungsvertrag zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika (Extradition Treaty between the Federal Republic of Germany and the United States of America) of 20 June 1978 (BGBl. 1980 II, p. 647; 'the Germany-USA Extradition Treaty'). 47 Article 50 of the Charter provides that 'no one 'is to be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the European Union in accordance with the law. 48 Agreement on extradition between the European Union and the United States of America of 25 June 2003 (OJ 2003 L 181, p. 27). 35 between the Member States and that third State on extradition, is applicable to the dispute in the main proceedings, since the extradition request was made, on the basis of the Germany-USA Extradition Treaty, after the entry into force of that EU-USA Agreement. While it is true that the latter does not expressly provide that the applicability of the principle ne bis in idem may allow a Member State to refuse extradition requested by the United States, however, Article 17(2) thereof, 49 which in principle allows a Member State to prohibit the extradition of persons who have already been finally judged in respect of the same offence for which extradition is sought, constitutes an autonomous and subsidiary legal basis for the application of that principle where the applicable bilateral treaty does not enable that question to be resolved. However, the Germany-USA Extradition Treaty settles prima facie the question raised in the dispute in the main proceedings since it does not envisage that extradition can be refused if the person prosecuted has been finally judged, for the offence referred to in the request for extradition, by the competent authorities of a State other than the requested State. 50 On this point, the Court nevertheless recalls that, as required by the principle of primacy, it is for the referring court to ensure the full effect of Article 54 of the CISA and Article 50 of the Charter in the dispute in the main proceedings, by disapplying, of its own motion, any provision of the GermanyUSA Extradition Treaty which proves to be incompatible with the principle ne bis in idem enshrined in those articles. Although the provisions of the Germany-USA Extradition Treaty relating to the application of the principle ne bis in idem are set aside on the ground that they are contrary to EU law, that treaty no longer allows the question of extradition raised in the dispute in the main proceedings to be

resolved, so that the application of that principle may be based on the autonomous and subsidiary legal basis of Article 17(2) of the EU-USA Agreement. In the last place, although it finds that the first paragraph of Article 351 TFEU 51 is not a priori applicable to the dispute in the main proceedings having regard to the date on which the GermanyUSA Extradition Treaty was concluded, the referring court wonders whether that provision should not be interpreted broadly as also referring to agreements concluded by a Member State after 1 January 1958 or the date of its accession, but before the date on which the European Union became competent in the field covered by those agreements. In that regard, noting in particular that exceptions must be interpreted strictly so that general rules are not negated, the Court specifies that that derogating provision must be interpreted as applying only to agreements concluded before 1 January 1958 or, in the case of acceding States, before the date of their accession, so that it is not applicable to the Germany-USA Extradition Treaty. 49 Article 17 of that EU-USA Agreement, headed 'Non-derogation', provides, in paragraph 2 thereof, that 'where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States'. 50 Under Article 8 of the Germany-USA Extradition Treaty, extradition is not to be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the requested State for the offence for which his or her extradition is requested. However, that provision does not provide for such a possibility where a final judgment has been passed in another State. 51 Under that provision, 'the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties'. 36 Freedom of expression and right to information 52 Judgment of 26 April 2022 (Grand Chamber), Poland v Parliament and Council (C-401/19, EU:C:2022:297) (Action for annulment – Directive (EU) 2019/790 – Article 17(4), point (b), and point (c), in fine – Article 11 and Article 17(2) of the Charter of Fundamental Rights of the European Union – Freedom of expression and information – Protection of intellectual property – Obligations imposed on online content-sharing service providers – Prior automatic review (filtering) of content uploaded by users) Directive 2019/790 on copyright and related rights in the digital single market 53 established a new specific liability mechanism in respect of online content-sharing service providers ('the providers'). Article 17 of that directive lays down the principle that the providers are directly liable where works and other protected subject matter are unlawfully uploaded by users of their services. The providers concerned may nevertheless be exempted from that liability. To that end, they are, inter alia, required, in accordance with the provisions of that article, 54 actively to monitor the content uploaded by users, in order to prevent the placing online of the protected subject matter which rightholders do not wish to make available on those services. The Republic of Poland brought an action seeking, principally, the annulment of point (b) and point (c), in fine, of Article 17(4) of Directive 2019/790 and, in the alternative, annulment of that article in its entirety. It submits, in essence, that those provisions require the providers to carry out – by means of IT tools for automatic filtering – preventive monitoring of all the content which their users wish to upload, without providing safeguards to ensure that the right to freedom of expression and information is respected. 55 The Court of Justice, sitting as the Grand Chamber, gives a ruling for the first time on the interpretation of Directive 2019/790. It dismisses Poland's action, holding that the obligation of the providers, laid down by that directive, to carry out a prior automatic review of the content uploaded by users, is accompanied by appropriate safeguards

in order to ensure respect for the right to freedom of expression and information of those users and a fair balance between that right and the right to intellectual property. Findings of the Court Examining, first of all, the admissibility of the action, the Court finds that point (b) and point (c), in fine, of Article 17(4) of Directive 2019/790 are not severable from the remainder of Article 17 and that, consequently, the head of claim seeking annulment of point (b) and point (c), in fine, only is inadmissible. Article 17 of Directive 2019/790 establishes a new liability regime in respect of the providers, the various provisions of which form a whole and seek to strike a balance between the 52 The judgment of 15 March 2022, Autorité des marchés financiers (C-302/20, EU:C:2022:190), must also be mentioned under this heading. That judgment is presented under heading XIII.4 'Dissemination of inside information in the financial sector'. 53 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92). 54 See Article 17(4), point (b), and point (c), in fine, of Directive 2019/790. 55 As guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter'). 37 rights and interests of those providers, those of users of their services and those of rightholders. Consequently, such partial annulment would alter the substance of Article 17. As to the substance of the case itself, next, the Court examines Poland's single plea in law, alleging a limitation on the exercise of the right to freedom of expression and information, arising from the liability regime introduced by Article 17 of Directive 2019/790. First of all, the Court points out that the sharing of information on the internet via online content-sharing platforms falls within the scope of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 11 of the Charter. It observes that, in order to avoid liability where users upload unlawful content to the platforms of the providers for which the latter have no authorisation from the rightholders, those providers must demonstrate that they meet all the conditions for exemption from liability, laid down in Article 17(4), points (a), (b) and (c) of Directive 2019/790, namely that they have: – made their best efforts to obtain such an authorisation (point (a)); and – acted expeditiously to bring to an end, on their platforms, specific copyright infringements after they have occurred and after receiving a sufficiently substantiated notice from rightholders (point (c)); and – made their best efforts, after receipt of such a notice or where those rightholders have provided them with the relevant and necessary information prior to the occurrence of a copyright infringement, 'in accordance with high industry standards of professional diligence 'to prevent such infringements from occurring or reoccurring (points (b) and (c)). Those obligations therefore require de facto the providers to carry out a prior review of the content that users wish to upload to their platforms, provided that they have received from the rightholders the information or notices provided for in points (b) and (c) of Article 17(4) of Directive 2019/790. In order to carry out such a review, the providers must use automatic recognition and filtering tools. Such a prior review and prior filtering are liable to restrict an important means of disseminating online content and thus to constitute a limitation on the right to freedom of expression and information guaranteed in Article 11 of the Charter. In addition, that limitation is attributable to the EU legislature, since it is the direct consequence of the specific liability regime. Accordingly, the Court concludes that that regime entails a limitation on the exercise of the right to freedom of expression and information of the users concerned. Lastly, as regards the question whether the limitation at issue is justified in the light of Article 52(1) of the Charter, the Court notes, first, that that limitation is provided for by law, since it results from the obligations imposed on the providers of the abovementioned services by a provision of an EU act, namely point (b) and point (c), in fine, of Article 17(4) of Directive 2019/790, and respects the essence of the right to freedom of expression and information of internet users. Secondly, in the context of the

review of proportionality, the Court finds that that limitation meets the need to protect intellectual property guaranteed in Article 17(2) of the Charter, that it appears necessary to meet that need and that the obligations imposed on the providers do not disproportionately restrict the right to freedom of expression and information of users. First, the EU legislature laid down a clear and precise limit on the measures that may be taken in implementing those obligations, by excluding, in particular, measures which filter and block lawful content when uploading. Secondly, Directive 2019/790 requires Member States to ensure that users are authorised to upload and make available content generated by themselves for the specific purposes of quotation, criticism, review, caricature, parody or pastiche. Furthermore, the providers must inform their users that they can use works and other protected subject matter under exceptions 38 or limitations to copyright and related rights provided for in EU law. 56 Thirdly, the liability of the providers can be incurred only on condition that the rightholders concerned provide them with the relevant and necessary information with regard to that content at issue. Fourthly, Article 17 of that directive, the application of which does not lead to any general monitoring obligation, means that the providers cannot be required to prevent the uploading and making available to the public of content which, in order to be found unlawful, would require an independent assessment of the content by them. 57 In that regard, it may be that availability of unauthorised content can only be avoided upon notification of rightholders. Fifthly, Directive 2019/790 introduces several procedural safeguards, in particular the possibility for users to submit a complaint where they consider that access to uploaded content has been wrongly disabled, as well as access to out-of-court redress mechanisms and to efficient judicial remedies. 58 Sixthly, that directive requires the European Commission to organise stakeholder dialogues to discuss best practices for cooperation between the providers and rightholders, and also to issue guidance on the application of that regime. 59 Accordingly, the Court concludes that the obligation on the providers to review, prior to its dissemination to the public, the content that users wish to upload to their platforms, resulting from the specific liability regime established in Article 17(4) of Directive 2019/790, has been accompanied by appropriate safeguards by the EU legislature in order to ensure respect for the right to freedom of expression and information of users, and a fair balance between that right, on the one hand, and the right to intellectual property, on the other. It is for the Member States, when transposing Article 17 of that directive, to take care to act on the basis of an interpretation of that provision which allows a fair balance to be struck between the various fundamental rights protected by the Charter. Further, when implementing the measures transposing that article, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with that article but also make sure that they do not act on the basis of an interpretation of the article which would be in conflict with those fundamental rights or with the other general principles of EU law, such as the principle of proportionality. 56 Article 17(7) and (9) of Directive 2019/790. 57 Article 17(8) of Directive 2019/790. 58 The first and second subparagraphs of Article 17(9) of Directive 2019/790. 59 Article 17(10) of Directive 2019/790. 39 Protection of personal data a. Retention of personal data Judgment of 5 April 2022 (Grand Chamber), Commissioner of An Garda Síochána and Others (C-140/20, EU:C:2022:258) (Reference for a preliminary ruling – Processing of personal data in the electronic communications sector – Confidentiality of the communications – Providers of electronic communications services – General and indiscriminate retention of traffic and location data – Access to data – Subsequent court supervision – Directive 2002/58/EC – Article 15(1) – Charter of Fundamental Rights of the European Union – Articles 7, 8 and 11 and Article 52(1) – Possibility for a national court to restrict the temporal effect of a declaration of the invalidity of national legislation that is incompatible with EU law –Excluded) In recent years, the Court of Justice has ruled, in

several judgments, on the retention of and access to personal data in the field of electronic communications. 60 In particular, by two judgments of the Grand Chamber of 6 October 2020, 61 the Court confirmed its case-law resulting from the judgment in Tele2 Sverige as to the disproportionate nature of the general and indiscriminate retention of traffic and location data. It also clarified inter alia the extent of the powers that the Directive on privacy and electronic communications recognises Member States have in respect of the retention of those data for the purposes of safeguarding of national security and combating crime. In this case, the request for a preliminary ruling was submitted by the Supreme Court (Ireland) in the context of civil proceedings brought by a person sentenced to life imprisonment for a murder committed in Ireland. That person challenged the compatibility with EU law of certain provisions of national law on the retention of data generated in the context of electronic communications. 62 60 Thus, in the judgment of 8 April 2014, Digital Rights Ireland and Others (C-293/12 and C-594/12, ECLI:EU:C:2014:238), the Court declared Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) invalid on the ground that the interference with the rights to respect for private life and to the protection of personal data, recognised by the Charter of Fundamental Rights of the European Union (‘the Charter’), which resulted from the general obligation to retain traffic and location data laid down by that directive was not limited to what was strictly necessary. Next, in the judgment of 21 December 2016, Tele2 Sverige and Watson and Others (C-203/15 and C-698/15, ECLI:EU:C:2016:970), the Court held that Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) (‘the Directive on privacy and electronic communications’), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11), precludes national legislation providing for the general and indiscriminate retention of traffic and location data for the purposes of combating crime. Finally, in the judgment of 2 October 2018, Ministerio Fiscal (C-207/16, EU:C:2018:788), the Court interpreted Article 15(1) in a case which concerned access by public authorities to data relating to the civil identity of users of electronic communications systems. 61 Judgments of 6 October 2020, Privacy International (C-623/17, EU:C:2020:790), and La Quadrature du Net and Others (C-511/18, C-512/18 and C-520/18, EU:C:2020:791). 62 Communications (Retention of Data) Act 2011. That law was enacted in order to transpose into Irish law Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54). 40 Pursuant to that law, 63 traffic and location data relating to the telephone calls of the person charged had been retained by providers of electronic communications services and made accessible to the police authorities. The referring court’s doubts related in particular to the compatibility with the Directive on privacy and electronic communications, 64 read in the light of the Charter, 65 of a system of the general and indiscriminate retention of those data, in connection with combating serious crime. In its judgment, the Court, sitting as the Grand Chamber, confirms, while also providing detail as to its scope, the case-law resulting from the judgment in La Quadrature du Net and Others by recalling that the general and indiscriminate retention of traffic and location data relating to electronic communications is not permitted for the purposes of combating serious crime and preventing serious threats to public security. It

also confirms the case-law resulting from the judgment in Prokuratuur (Conditions of access to data relating to electronic communications), 66 in particular as regards the obligation to make access by the competent national authorities to those retained data subject to a prior review carried out either by a court or by an administrative body that is independent in relation to a police officer. Findings of the Court The Court holds, in the first place, that the Directive on privacy and electronic communications, read in the light of the Charter, precludes legislative measures which, as a preventive measure, for the purposes of combating serious crime and preventing serious threats to public security, provide for the general and indiscriminate retention of traffic and location data. Having regard, first, to the dissuasive effect on the exercise of fundamental rights 67 which is liable to result from the retention of those data, and, second, to the seriousness of the interference entailed by such retention, it is necessary for that retention to be the exception and not the rule in the system established by that directive, such that those data should not be retained systematically and continuously. Crime, even particularly serious crime, cannot be treated in the same way as a threat to national security, since to treat those situations in the same way would be likely to create an intermediate category between national security and public security for the purpose of applying to the latter the requirements inherent in the former. However, the Directive on privacy and electronic communications, read in the light of the Charter, does not preclude legislative measures which provide, for the purposes of safeguarding national security, combating serious crime and preventing serious threats to public security, for the targeted retention of traffic and location data which is limited, on the basis of objective and non-discriminatory factors, according to the categories of persons concerned or using a geographical criterion, for a period that is limited in time to what is strictly necessary, but which may be extended. It adds that such a retention measure covering places or infrastructures that regularly receive a very high volume of visitors, or strategic locations, such as airports, stations, maritime ports or tollbooth areas, may allow the competent authorities to obtain information as to the presence in those places or geographical areas of persons using a means of electronic communication within those areas and to 63 The law permits, for reasons going beyond those inherent to the protection of national security, the preventative, general and indiscriminate retention of traffic and location data of all subscribers for a period of two years. 64 More specifically, Article 15(1) of Directive 2002/58. 65 In particular, Articles 7, 8, 11 and 52(1) of the Charter. 66 Judgment of 2 March 2021, Prokuratuur (Conditions of access to data relating to electronic communications) (C-746/18, EU:C:2021:152). 67 Enshrined in Articles 7 to 11 of the Charter. 41 draw conclusions as to their presence and activity in those places or geographical areas for the purposes of combating serious crime. In any event, the fact that it may be difficult to provide a detailed definition of the circumstances and conditions under which targeted retention may be carried out is no reason for the Member States, by turning the exception into a rule, to provide for the general retention of traffic and location data. That directive, read in the light of the Charter, also does not preclude legislative measures that provide, for the same purposes, for the general and indiscriminate retention of IP addresses assigned to the source of an internet connection for a period that is limited in time to what is strictly necessary, as well as data relating to the civil identity of users of electronic communications systems. As regards that latter aspect, the Court holds more specifically that neither the Directive on privacy and electronic communications nor any other act of EU law precludes national legislation, which has the purpose of combating serious crime, pursuant to which the purchase of a means of electronic communication, such as a pre-paid SIM card, is subject to a check of official documents establishing the purchaser’s identity and the registration, by the seller, of that information, with the seller being required, should the case arise, to give access to that information to the

competent national authorities. The same is the case for legislative measures which allow, also for the purposes of combating serious crime and preventing serious threats to public security, recourse to an instruction requiring providers of electronic communications services by means of a decision of the competent authority that is subject to effective judicial review, to undertake, for a specified period of time, the expedited retention (quick freeze) of traffic and location data in their possession. Only actions to combat serious crime and, a fortiori, to safeguard national security are such as to justify that retention, on the condition that the measure and access to the retained data comply with the limits of what is strictly necessary. The Court recalls that such a retention measure may be extended to traffic and location data relating to persons other than those who are suspected of having planned or committed a serious criminal offence or acts adversely affecting national security, provided that those data can, on the basis of objective and non-discriminatory factors, shed light on such an offence or acts adversely affecting national security, such as data concerning the victim thereof, and his or her social or professional circle. However, the Court indicates next that all the abovementioned legislative measures must ensure, by means of clear and precise rules, that the retention of data at issue is subject to compliance with the applicable substantive and procedural conditions and that the persons concerned have effective safeguards against risks of abuse. The various measures for the retention of traffic and location data may, at the choice of the national legislature and subject to the limits of what is strictly necessary, be applied concurrently. In addition, the Court states that to authorise, for the purposes of combating serious crime, access to those data retained generally and indiscriminately in order to address a serious threat to national security would be contrary to the hierarchy of objectives of public interest which may justify a measure taken pursuant to the Directive on privacy and electronic communications. 68 That would be to allow access to be justified for an objective of lesser importance than that which justified its retention, namely the safeguarding of national security, which would risk depriving of any effectiveness the prohibition on a general and indiscriminate retention for the purpose of combating serious crime. 68 That hierarchy is set out in the case-law of the Court, and in particular in the judgment of 6 October 2020, La Quadrature du Net and Others (C-511/18, C-512/18 and C-520/18, EU:C:2020:791), paragraphs 135 and 136. Under that hierarchy, combating serious crime is of lesser importance than safeguarding national security. 42 In the second place, the Court holds that the Directive on privacy and electronic communications, read in the light of the Charter, precludes national legislation pursuant to which the centralised processing of requests for access to data retained by providers of electronic communications services, issued by the police in the context of the investigation or prosecution of serious criminal offences, is the responsibility of a police officer, who is assisted by a unit established within the police service which enjoys a degree of autonomy in the exercise of its duties, and whose decisions may subsequently be subject to judicial review. First, such a police officer does not fulfil the requirements of independence and impartiality which must be met by an administrative body carrying out the prior review of requests for access issued by the competent national authorities, as he or she does not have the status of a third party in relation to those authorities. Second, while the decision of that officer may be subject to subsequent judicial review, that review cannot be substituted for a review which is independent and, except in duly justified urgent cases, undertaken beforehand. In the third place, lastly, the Court confirms its case-law according to which EU law precludes a national court from limiting the temporal effects of a declaration of invalidity which, pursuant to national law, it is bound to make as regards national legislation requiring providers of electronic communications services to retain, generally and indiscriminately, traffic and location data, owing to the incompatibility of that legislation with the Directive on privacy and electronic

communications. However, the Court recalls that the admissibility of evidence obtained by means of such retention is, in accordance with the principle of procedural autonomy of the Member States, a matter for national law, subject to compliance, inter alia, with the principles of equivalence and effectiveness. Judgment of 21 June 2022 (Grand Chamber), Ligue des droits humains (C-817/19, EU:C:2022:491) (Reference for a preliminary ruling – Processing of personal data – Passenger Name Records (PNR) – Regulation (EU) 2016/679 – Article 2(2)(d) – Scope – Directive (EU) 2016/681 – Use of PNR data of air passengers of flights operated between the European Union and third countries – Power to include data of air passengers of flights operated within the European Union – Automated processing of that data – Retention period – Fight against terrorist offences and serious crime – Validity – Charter of Fundamental Rights of the European Union – Articles 7, 8 and 21 as well as Article 52(1) – National legislation extending the application of the PNR system to other transport operations within the European Union – Freedom of movement within the European Union – Charter of Fundamental Rights – Article 45) PNR (Passenger Name Record) data are reservation information stored by air carriers in their reservation and departure control systems. The PNR Directive 69 requires those carriers to transfer the data of any passenger on an extra-EU flight o

perated between a third country and the European Union to the Passenger Information Unit (‘PIU’) of the Member State of destination or departure of the flight concerned, in the fight against terrorist offences and serious crime. The PNR data thus transferred are subject to advance assessment by the PIU 70 and are then retained for the purposes of a possible subsequent assessment by the competent authorities of the Member State concerned or 69 Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ 2016 L 119, p. 132) (‘the PNR Directive’). 70 The purpose of that advance assessment is to identify persons who require further examination by the competent authorities, in view of the fact that such persons may be involved in a terrorist offence or serious crime. It is to be carried out systematically and by automated means, by comparing PNR data against ‘relevant ’databases or by processing them against pre-determined criteria in Article 6(2) (a) and (3) of the PNR Directive. 43 those of another Member State. A Member State may decide to apply that directive also to intra-EU flights. 71 The Ligue des droits humains brought an action before the Cour constitutionnelle (Constitutional Court, Belgium) seeking annulment of the Law of 25 December 2016, 72 which transposes both the PNR Directive and the API Directive into Belgian law. 73 According to the applicant, that law infringes the right to respect for private life and to the protection of personal data. It criticises, first, the very broad nature of PNR data and, second, the general nature of the collection, transfer and processing of those data. The law also infringes the free movement of persons in that it indirectly restores border controls by extending the PNR system to intra-EU flights and to transport operations carried out by other means within the European Union. In that context, the Belgian Constitutional Court referred 10 questions to the Court of Justice for a preliminary ruling relating, inter alia, to the validity and interpretation of the PNR Directive as well as to the applicability of the GDPR. 74 Those questions result in the Court taking another look at the processing of PNR data with regard to the fundamental rights to respect for private life and the protection of personal data 75 enshrined in the Charter of Fundamental Rights of the European Union. 76 By its judgment, delivered by the Grand Chamber, the Court confirms that the PNR Directive is valid in so far as it can be interpreted consistently with the Charter and clarifies the interpretation of some of its provisions. 77 Findings of the Court After having specified which of the data processing operations provided for by national legislation, such as that at issue, intended to transpose both the API Directive and the PNR Directive are those to which the GDPR’s general rules

apply, 78 the Court verifies the validity of the PNR Directive. 71 Making use of the possibility provided for in Article 2 of the PNR Directive. 72 Loi du 25 décembre 2016 relative au traitement des données des passagers (Law of 25 December 2016 on the processing of passenger data) (Moniteur belge of 25 January 2017, p. 12905). 73 Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ 2004 L 261, p. 24) ('the API Directive'). That directive regulates the transfer of advance passenger information data by air carriers to the competent national authorities (such as the number and type of travel document used as well as nationality) for the purpose of improving border controls and combating illegal immigration. 74 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'). 75 'The fundamental rights guaranteed in Articles 7 and 8 of the Charter'. The Court has already examined the compatibility with those rights of the system for the collection and processing of PNR data envisaged by the draft agreement between Canada and the European Union on the transfer and processing of passenger name record data (Opinion 1/15 (EU-Canada PNR Agreement) of 26 July 2017 (EU:C:2017:592)). 76 'The Charter. '77 In particular, Article 2 ('Application of [the Directive] to intra-EU flights'), Article 6 ('Processing of PNR data') and Article 12 ('Period of data retention and depersonalisation') of the PNR Directive. 78 The Court clarifies that the GDPR is applicable to the processing of personal data provided for by such legislation, as regards, on the one hand, data processing operations carried out by private operators and, on the other hand, data processing operations carried out by public authorities covered, solely or in addition, by the API Directive. By contrast, the GDPR does not apply to the operations envisaged by such legislation which are covered only by the PNR Directive, and are carried out by the PIU or by the competent authorities in order to combat terrorist offences and serious crime. 44 • The validity of the PNR Directive In its judgment, the Court holds that, since the Court's interpretation of the provisions of the PNR Directive in the light of the fundamental rights guaranteed in Articles 7, 8 and 21 as well as Article 52(1) of the Charter 79 ensures that that directive is consistent with those articles, the examination of the questions referred has revealed nothing capable of affecting the validity of the said directive. As a preliminary point, it recalls that an EU act must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter, and the Member States must thus ensure that they do not rely on an interpretation thereof that would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles recognised by EU law. As regards the PNR Directive, the Court states that many recitals and provisions of that directive require such a consistent interpretation, stressing the importance that the EU legislature, by referring to the high level of data protection, gives to the full respect for the fundamental rights enshrined in the Charter. The Court finds that the PNR Directive entails undeniably serious interferences with the rights guaranteed in Articles 7 and 8 of the Charter, in so far, inter alia, as it seeks to introduce a surveillance regime that is continuous, untargeted and systematic, including the automated assessment of the personal data of everyone using air transport services. It points out that the question whether Member States may justify such an interference must be assessed by measuring its seriousness and by verifying that the importance of the objective of general interest pursued is proportionate to that seriousness. The Court concludes that the transfer, processing and retention of PNR data provided for by that directive may be considered to be limited to what is strictly necessary for the purposes of combating terrorist offences and serious crime, provided that the powers provided for by that

directive are interpreted restrictively. In that regard, the judgment delivered today states, inter alia, that: – The system established by the PNR Directive must cover only clearly identifiable and circumscribed information under the headings set out in Annex I to that directive, which relates to the flight operated and the passenger concerned, which means, for some of the headings set out in that annex, that only the information expressly referred to is covered. 80 – Application of the system established by the PNR Directive must be limited to terrorist offences and only to serious crime having an objective link, even if only an indirect one, with the carriage of passengers by air. As regards such serious crime, the application of that system cannot be extended to offences which, although meeting the criterion laid down by that directive relating to the threshold of severity and being referred to in, inter alia, Annex II to that directive, amount to ordinary crime having regard to the particular features of the domestic criminal justice system. 79 In accordance with that provision, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. In addition, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. 80 Thus, in particular, ‘forms of payment information ’(heading 6 of the annex) must be limited to the payment methods and billing of the air ticket, to the exclusion of any other information not directly relating to the flight, and the ‘general remarks ’(heading 12) can relate only to the information expressly listed in that heading, relating to passengers who are minors. 45 – Any extension of the application of the PNR Directive to selected or all intra-EU flights, which a Member State may decide by exercising the power provided for in that directive, must be limited to what is strictly necessary. For that purpose, it must be open to effective review either by a court or by an independent administrative body whose decision is binding. In that regard, the Court states: • Only in a situation where that Member State finds that there are sufficiently solid grounds for considering that it is confronted with a terrorist threat which is shown to be genuine and present or foreseeable, the application of that directive to all intra-EU flights from or to the said Member State, for a period of time that is limited to what is strictly necessary but may be extended, does not exceed what is strictly necessary. 81 • In the absence of such a terrorist threat, the application of that directive cannot cover all intra-EU flights, but must be limited to intra-EU flights relating, inter alia, to certain routes or travel patterns or to certain airports in respect of which there are, according to the assessment of the Member State concerned, indications that are such as to justify that application. The strictly necessary nature of that application to intra-EU flights thus selected must be reviewed regularly, in accordance with changes in the circumstances that justified their selection. – For the purposes of the advance assessment of PNR data, the objective of which is to identify persons who require further examination before their arrival or departure and is carried out, as a first step, by means of automated processing, the PIU may, on the one hand, compare those data only against the databases on persons or objects sought or under alert. 82 Those databases must be non-discriminatory and exploited, by the competent authorities, in relation to the fight against terrorist offences and serious crime having an objective link, even if only an indirect one, with the carriage of passengers by air. As regards, on the other hand, the advance assessment against predetermined criteria, the PIU cannot use artificial intelligence technology in self-learning systems (‘machine learning’), capable of modifying, without human intervention and review, the assessment process and, in particular, the assessment criteria on which the result of the application of that process is based, as well as the weighting of those criteria. Those criteria must be determined in such a way that their application targets, specifically, individuals who might be reasonably suspected of involvement in terrorist offences or serious crime and takes into consideration both

‘incriminating ’as well as ‘exonerating ’circumstances, while not giving rise to direct or indirect discrimination. 83 81 The existence of that threat is, in itself, capable of establishing a connection between, on the one hand, the transfer and processing of the data concerned and, on the other, the fight against terrorism. Therefore, making provision for the application of the PNR Directive to all intra-EU flights from or to the said Member State, for a limited period of time, does not go beyond what is strictly necessary, and the decision providing for that application must be open to effective review either by a court or by an independent administrative body. 82 Namely databases concerning persons or objects sought or under alert within the meaning of Article 6(3)(a) of the PNR Directive By contrast, analyses using various databases could take the form of ‘data mining ’and could lead to a disproportionate use of those data, providing the means of establishing a detailed profile of the individuals concerned solely because they intend to travel by air. 83 Pre-determined criteria must be targeted, proportionate and specific, and be regularly reviewed (Article 6(4) of the PNR Directive). The advance assessment against pre-determined criteria must be carried out in a non-discriminatory manner. According to the fourth sentence of Article 6(4) of the PNR Directive, the criteria are in no circumstances to be based on a person’s race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation. 46 – In view of the margin of error inherent in such automated processing of PNR data and the fairly substantial number of ‘false positives’, resulting from the application thereof in 2018 and 2019, the appropriateness of the system established by the PNR Directive for the purpose of attaining the objectives pursued essentially depends on the proper functioning of the verification of positive results obtained under those processing operations, which the PIU carries out, as a second step, by non-automated means. In that regard, the Member States must lay down clear and precise rules capable of providing guidance and support for the analysis carried out by the PIU agents in charge of that individual review for the purposes of ensuring full respect for the fundamental rights enshrined in Articles 7, 8 and 21 of the Charter and, in particular, guarantee a uniform administrative practice within the PIU that observes the principle of non-discrimination. In particular, they must ensure that the PIU establishes objective review criteria enabling its agents to verify, on the one hand, whether and to what extent a positive match (‘hit’) concerns effectively an individual who may be involved in terrorist offences or serious crime, as well as, on the other hand, the non-discriminatory nature of automated processing operations. In that context, the Court also points out that the competent authorities must ensure that the person concerned is able to understand how those pre-determined assessment criteria and programs applying those criteria work, so that it is possible for that person to decide with full knowledge of the relevant facts, whether or not to exercise his or her right to a judicial redress. Similarly, in the context of such an action, the court responsible for reviewing the legality of the decision adopted by the competent authorities as well as, except in the case of threats to State security, the persons concerned themselves must have an opportunity to examine both all the grounds and the evidence on the basis of which the decision was taken, including the pre-determined assessment criteria and the operation of the programs applying those criteria. – The subsequent disclosure and assessment of PNR data, that is to say, after the arrival or departure of the person concerned, may be made only on the basis of new circumstances and objective evidence capable of either giving rise to a reasonable suspicion that that person is involved in serious crime having an objective link, even if only an indirect one, with the carriage of passengers by air, or from which it can be inferred that those data could, in a given case, contribute effectively to the fight against terrorist offences having such a link. The disclosure of PNR data for the purposes of such a subsequent assessment must, as a general rule, except in the event of duly justified urgency, be subject to a prior review

carried out either by a court or by an independent administrative authority, upon reasoned request by the competent authorities and irrespective of whether that request was introduced before or after the expiry of the sixmonth time limit after the transfer of those data to the PIU. 84 • Interpretation of the PNR Directive After establishing the validity of the PNR Directive, the Court provides further clarification as to the interpretation of that directive. First, it points out that the directive lists exhaustively the objectives pursued by the processing of PNR data. Therefore, that directive precludes national legislation which authorises PNR data to be processed for purposes other than the fight against terrorist offences and serious crime. Thus, national legislation that includes, among the purposes for which PNR data are to be processed, monitoring activities within the remit of the intelligence and security services is liable to disregard the exhaustive nature of that list. Likewise, the system established by the PNR Directive cannot be provided for the purposes of improving border controls and combating illegal 84 Under Article 12(1) and (3) of the PNR Directive, such control is expressly provided for only in respect of requests for disclosure of PNR data made after the six-month time limit after the transfer of those data to the PIU. 47 immigration. 85 It also follows that PNR data may not be retained in a single database that may be consulted both for the purposes of the PNR Directive as well as for other purposes. Second, the Court explains the concept of an independent national authority, competent to verify whether the conditions for the disclosure of PNR data, for the purposes of their subsequent assessment, are met and to approve such disclosure. In particular, the authority put in place as the PIU cannot be classified as such since it is not a third party in relation to the authority which requests access to the data. Since the members of its staff may be agents seconded from the authorities entitled to request such access, the PIU appears necessarily linked to those authorities. Accordingly, the PNR Directive precludes national legislation pursuant to which the authority put in place as the PIU is also designated as a competent national authority with power to approve the disclosure of PNR data upon expiry of the period of six months after the transfer of those data to the PIU. Third, as regards the retention period of PNR data, the Court holds that Article 12 of the PNR Directive, read in the light of Articles 7 and 8 as well as Article 52(1) of the Charter, precludes national legislation which provides for a general retention period of five years for PNR data, applicable indiscriminately to all air passengers. According to the Court, after expiry of the initial retention period of six months, the retention of PNR data does not appear to be limited to what is strictly necessary as regards air passengers for whom neither the advance assessment nor any verification carried out during the initial retention period of six months, nor any other circumstance, have revealed the existence of objective evidence – such as the fact that the PNR data of the passengers concerned have given rise to a verified positive match in the context of the advance assessment – capable of establishing a risk that relates to terrorist offences or serious crime having an objective link, even if only an indirect one, with those passengers ’air travel. By contrast, it takes the view that, during the initial period of six months, the retention of the PNR data of all air passengers subject to the system established by that directive does not appear, as a matter of principle, to go beyond what is strictly necessary. Fourth, the Court provides guidance on the possible application of the PNR Directive, for the purposes of combating terrorist offences and serious crime, to other modes of transport carrying passengers within the European Union. The directive, read in the light of Article 3(2) TEU, Article 67(2) TFEU and Article 45 of the Charter, precludes a system for the transfer and processing of the PNR data of all transport operations carried out by other means within the European Union in the absence of a genuine and present or foreseeable terrorist threat with which the Member State concerned is confronted. In such a situation, as in the case of intra-EU flights, the application of the system established by the PNR Directive must be limited to PNR data of transport operations

relating, inter alia, to certain routes or travel patterns, or to certain stations or certain seaports for which there are indications that are such as to justify that application. It is for the Member State concerned to select the transport operations for which there are such indications and to review regularly that application in accordance with changes in the circumstances that justified their selection. 85 That is to say, the objective of the API Directive. 48 b. Processing of personal data in the financial sector Judgment of 20 September 2022 (Grand Chamber), VD and SR (C-339/20 and C-397/20, EU:C:2022:703) (References for a preliminary ruling – Single market for financial services – Market abuse – Insider dealing – Directive 2003/6/EC – Article 12(2)(a) and (d) – Regulation (EU) No 596/2014 – Article 23(2)(g) and (h) – Supervisory and investigatory powers of the Autorité des marchés financiers (AMF) – General interest objective seeking to protect the integrity of financial markets in the European Union and public confidence in financial instruments – Option open to the AMF to require the traffic data records held by an operator providing electronic communications services – Processing of personal data in the electronic communications sector – Directive 2002/58/EC – Article 15(1) – Charter of Fundamental Rights of the European Union – Articles 7, 8 and 11 and Article 52(1) – Confidentiality of the communications – Restrictions – Legislation providing for the general and indiscriminate retention of traffic data by operators providing electronic communications services – Option for a national court to restrict the temporal effects of a declaration of invalidity in respect of provisions of national law that are incompatible with EU law – Precluded) Following an investigation by the Autorité des marchés financiers (Financial Markets Authority, France; 'the AMF'), 86 criminal proceedings were brought against VD and SR, two natural persons charged with insider dealing, concealment of insider dealing, aiding and abetting, corruption and money laundering. In the course of that investigation, the AMF had used personal data from telephone calls made by VD and SR, generated on the basis of the code des postes et des communications électroniques (French Post and Electronic Communications Code), 87 in connection with the provision of electronic communications services. In so far as the respective investigations into them was based on the traffic data provided by the AMF, VD and SR each brought an action before the cour d'appel de Paris (Court of Appeal, Paris, France), relying, inter alia, on a plea alleging infringement of Article 15(1) of the Directive on privacy and electronic communications, 88 read in the light of Articles 7, 8 and 11 and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter'). Specifically, VD and SR, relying on the case-law arising from the judgment in Tele2 Sverige and Watson and Others, 89 challenged the fact that the AMF took the national provisions at issue as its legal basis for the collection of those data, whereas, according to them, those provisions, first, did not comply with EU law in so far as they provided for general and indiscriminate retention of connection data and, second, laid down no restrictions on the powers of the AMF's investigators to require the retained data to be provided to them. By two judgments of 20 December 2018 and 7 March 2019, the cour d'appel de Paris (Court of Appeal, Paris) rejected the actions brought by VD and SR. When it rejected the plea referred to above, the 86 Investigation carried out under Article L.621-10 of the code monétaire et financier (French Monetary and Financial Code), in the version applicable to the disputes in the main proceedings. 87 Specifically, on the basis of Article L.34-1 of the Post and Electronic Communications Code, in the version applicable to the disputes in the main proceedings. 88 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11). 89 Judgment of 21 December

2016, Tele2 Sverige et Watson and Others (C-203/15 and C-698/15, EU:C:2016:970). 49 court adjudicating on the substance of the case relied, inter alia, on the fact that the Market Abuse Regulation 90 allows the competent authorities to require, in so far as permitted by national law, existing data traffic records held by operators providing electronic communications services, where there is a reasonable suspicion of an infringement of the prohibition on insider dealing and where such records may be relevant to the investigation of that infringement. VD and SR then brought an appeal before the Cour de cassation (Court of Cassation, France), the referring court in the present cases. In that context, that court is uncertain how to reconcile Article 15(1) of the Directive on privacy and electronic communications, read in the light of the Charter, with the requirements under Article 12(2)(a) and (d) of the Market Abuse Directive 91 and Article 23(2)(g) and (h) of the Market Abuse Regulation. That uncertainty arises from the legislative measures at issue in the main proceedings, which provide, as a preventive measure, that operators providing electronic communications services are to retain traffic data generally and indiscriminately for one year from the day of recording for the purposes of combating market abuse offences including insider dealing. Should the Court of Justice find that the legislation on the retention of the connection data at issue in the main proceedings does not comply with EU law, the referring court is uncertain as to whether that legislation retains its effects provisionally, in order to avoid legal uncertainty and to allow the data previously collected and retained to be used for the purpose of detecting insider dealing and bringing criminal proceedings in respect of it. By its judgment, the Court, sitting as the Grand Chamber, holds that the general and indiscriminate retention of traffic data for a year from the date on which they were recorded by operators providing electronic communications services is not authorised, as a preventive measure, in order to combat market abuse offences. Furthermore, it confirms its case-law to the effect that EU law precludes a national court from restricting the temporal effects of a declaration of invalidity which it is required to make with respect to provisions of national law that are incompatible with EU law. Findings of the Court The Court notes, first of all, that, in interpreting a provision of EU law, it is necessary not only to refer to its wording but also to consider its context and the objectives of the legislation of which it forms part. As regards the wording of the provisions that are the subject of the reference for a preliminary ruling, the Court states that, while Article 12(2)(d) of the Market Abuse Directive refers to the AMF's power to 'require existing telephone and existing data traffic records', Article 23(2)(g) and (h) of the Market Abuse Regulation refers to the power of that authority to require, first, 'data traffic records held by investment firms, credit institutions or financial institutions 'and, second, to require, 'in so far as permitted by national law, existing data traffic records held by a telecommunications operator'. According to the Court, it is clear from the wording of those provisions that they merely provide a framework for the AMF's power to 'require 'the data available to those operators, which corresponds to access to those data. Furthermore, the reference made to 'existing 'records, such as those 'held 'by those operators, suggests that the EU legislature did not intend to lay down rules governing the 90 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 and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014 L 173, p. 1). 91 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). 50 option open to the national legislature to impose an obligation to retain such records. According to the Court, that interpretation is, moreover, supported both by the context of those provisions and by the objectives pursued by the rules of which those same provisions form part. As regards the context of the provisions that are the subject of the questions referred, the Court observes that,

although, under the relevant provisions of the Market Abuse Directive 92 and the Market Abuse Regulation, 93 the EU legislature intended to require the Member States to take the necessary measures to ensure that the competent financial authorities have a set of effective tools, powers and resources as well as the necessary supervisory and investigatory powers to ensure the effectiveness of their duties, those provisions make no mention of any option open to Member States of imposing, for that purpose, an obligation on operators providing electronic communications services to retain generally and indiscriminately traffic data, nor do they set out the conditions in which those data must be retained by those operators so that they can be submitted to the competent authorities where appropriate. As regards the objectives pursued by the legislation at issue, the Court finds that it is apparent, first, from the Market Abuse Directive 94 and, second, from the Market Abuse Regulation 95 that the purpose of those instruments is to protect the integrity of EU financial markets and to enhance investor confidence in those markets, a confidence which depends, inter alia, on investors being placed on an equal footing and being protected against the improper use of inside information. The purpose of the prohibition on insider dealing laid down in those instruments 96 is to ensure equality between the contracting parties in stock-market transactions by preventing one of them that possesses inside information and that is, therefore, in an advantageous position vis-à-vis other investors, from profiting from that information, to the detriment of those that are unaware of it. Although, according to the Market Abuse Regulation, 97 connection data records constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation, the fact remains that that regulation makes reference only to records ‘held ’by operators providing electronic communications services and to the power of that competent financial authority to ‘require ’ those operators to send ‘existing ’data. Thus, it is in no way apparent from the wording of that regulation that the EU legislature intended, by that regulation, to give Member States the power to impose on operators providing electronic communications services a general obligation to retain data. It follows that neither the Market Abuse Directive nor the Market Abuse Regulation can constitute the legal basis for a general obligation to retain the data traffic records held by operators providing electronic communications services for the purposes of exercising the powers conferred on the competent financial authority under those measures. The Court then notes that the Directive on privacy and electronic communications is the measure of reference on the retention and, more generally, the processing of personal data in the electronic communications sector, which means that the Court’s interpretation, given in respect of that directive, also governs the traffic data records held by operators providing electronic communications services, 92 Article 12(1) of Directive 2003/6. 93 Article 23(3) of Regulation No 596/2014, read in the light of recital 62 of that regulation. 94 Recitals 2 and 12 of Directive 2003/6. 95 Article 1 of Regulation No 596/2014, read in the light of recitals 2 and 24 of that regulation. 96 Article 2(1) of Directive 2003/6 and Article 8(1) of Regulation No 596/2014. 97 Recital 62 of Regulation No 596/2014. 51 which the competent financial authorities, within the meaning of the Market Abuse Directive 98 and the Market Abuse Regulation, 99 may require from those operators. The assessment of the lawfulness of the processing of records held by operators providing electronic communications services 100 must, therefore, be carried out in the light of the conditions laid down by the Directive on privacy and electronic communications and of the interpretation of that directive in the Court’s case-law. The Court finds that the Market Abuse Directive and the Market Abuse Regulation, read in conjunction with the Directive on privacy and electronic communications and in the light of the Charter, preclude legislative measures which, as a preventive measure, in order to combat market abuse offences including insider dealing, provide for the temporary, albeit general and indiscriminate, retention of traffic data,

namely for a year from the date on which they were recorded, by operators providing electronic communications services. Lastly, the Court confirms its case-law according to which EU law precludes a national court from restricting the temporal effects of a declaration of invalidity which it is required to make, under national law, with respect to provisions of national law which, first, require operators providing electronic communications services to retain generally and indiscriminately traffic data and, second, allow such data to be submitted to the competent financial authority, without prior authorisation from a court or independent administrative authority, owing to the incompatibility of those provisions with the Directive on privacy and electronic communications read in the light of the Charter. However, the Court recalls that the admissibility of evidence obtained by means of such retention is, in accordance with the principle of procedural autonomy of the Member States, a matter for national law, subject to compliance, inter alia, with the principles of equivalence and effectiveness. The latter principle requires national criminal courts to disregard information and evidence obtained by means of the general and indiscriminate retention of data in breach of EU law if the persons concerned are not in a position to comment effectively on that information and that evidence and they pertain to a field of which the judges have no knowledge and are likely to have a preponderant influence on the findings of fact. Judgment of 22 November 2022 (Grand Chamber), Luxembourg Business Registers (C-37/20 and C-601/20, EU:C:2022:912) (Reference for a preliminary ruling – Prevention of the use of the financial system for the purposes of money laundering or terrorist financing – Directive (EU) 2018/843 amending Directive (EU) 2015/849 – Amendment to Article 30(5), first subparagraph, point (c), of Directive 2015/849 – Access for any member of the general public to the information on beneficial ownership – Validity – Articles 7 and 8 of the Charter of Fundamental Rights of the European Union – Respect for private and family life – Protection of personal data) For the purposes of combating and preventing money laundering and terrorist financing, the antimoney-laundering directive 101 requires Member States to keep a register containing information on 98 Article 11 of Directive 2003/6. 99 Article 22 of Regulation No 596/2014. 100 As provided for in Article 12(2)(d) of Directive 2003/6 and Article 23(2)(g) and (h) of Regulation No 596/2014. 101 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; ‘the anti-money-laundering directive’). 52 the beneficial ownership 102 of companies and of other legal entities incorporated within their territory. Following an amendment of that directive by Directive 2018/843, 103 some of that information must be made accessible in all cases to any member of the general public. In accordance with the anti-money-laundering directive as thus amended (‘the amended anti-money-laundering directive’), Luxembourg legislation 104 established a Register of Beneficial Ownership (RBO) designed to retain and make available a series of information on the beneficial ownership of registered entities, access to which is open to any person. In that context, the tribunal d’arrondissement de Luxembourg (District Court, Luxembourg) was seised of two actions, brought by WM and Sovim SA, respectively, challenging the rejection by Luxembourg Business Registers, the administrator of the RBO, of their applications seeking to preclude the general public’s access to information relating, in the first case, to WM as the beneficial owner of a real estate company and, in the second case, to the beneficial owner of Sovim SA. In those two cases, since it had doubts in particular as to the validity of the provisions of EU law establishing the system of public access to information relating to beneficial ownership, the Tribunal d’arrondissement de Luxembourg (District Court) made a reference to the Court of Justice for

a preliminary ruling on validity. By its judgment, the Court, sitting as the Grand Chamber, declares Directive 2018/843 invalid in so far as it amended the anti-money-laundering directive in such a way that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public. 105 Findings of the Court In the first place, the Court finds that the general public's access to information on beneficial ownership, provided for in the amended anti-money-laundering directive, constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union ('the Charter') respectively. In that regard, the Court observes that, since the data concerned include information on identified individuals, namely the beneficial owners of companies and other legal entities incorporated within the Member States 'territory, the access of any member of the general public to those data affects the fundamental right to respect for private life. In addition, making available those data to the general public constitutes the processing of personal data. It adds that making personal data available to the general public in that manner constitutes an interference with the abovementioned fundamental rights, whatever the subsequent use of the information communicated. 106 102 Under Article 3(6) of the anti-money-laundering directive, beneficial owners are any natural persons who ultimately own or control the customer and/or the natural persons on whose behalf a transaction or activity is being conducted. 103 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ 2018 L 156, p. 43). 104 Loi du 13 janvier 2019 instituant un Registre des bénéficiaires effectifs (Mémorial A 2019, no 15) (Law of 13 January 2019 establishing a Register of Beneficial Ownership). 105 Invalidity of Article 1(15)(c) of Directive 2018/843, amending point (c) of the first subparagraph of Article 30(5) of the antimoney-laundering directive. 106 Judgment of 21 June 2022, Ligue des droits humains (C-817/19, EU:C:2022:491, paragraph 96 and the case-law cited). 53 As regards the seriousness of that interference, the Court notes that, in so far as the information made available to the general public relates to the identity of the beneficial owner as well as to the nature and extent of the beneficial interest held in corporate or other legal entities, that information is capable of enabling a profile to be drawn up concerning certain personal identifying data, the state of the person's wealth and the economic sectors, countries and specific undertakings in which he or she has invested. In addition, that information becomes accessible to a potentially unlimited number of persons, with the result that such processing of personal data is liable to enable that information to be freely accessed also by persons who, for reasons unrelated to the objective pursued by that measure, seek to find out about, inter alia, the material and financial situation of a beneficial owner. That possibility is all the easier when the data in question can be consulted on the internet. Furthermore, the potential consequences for the data subjects resulting from possible abuse of their data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated and that it thereby becomes increasingly difficult, or even illusory, for those data subjects to defend themselves effectively against abuse. In the second place, as part of the examination of the justification for the interference at issue, first, the Court notes that, in the present case, the principle of legality is respected. The limitation on the exercise of the abovementioned fundamental rights, resulting from the general public's access to information on beneficial ownership, is provided for by a legislative act, namely the amended antimoney-laundering directive. In addition, that directive specifies that those data must be adequate, accurate and

current, and expressly lists certain data to which the public must be allowed access. It also lays down the conditions under which Member States may provide for exemptions from such access. Secondly, the Court clarifies that the interference in question does not undermine the essence of the fundamental rights guaranteed in Articles 7 and 8 of the Charter. While it is true that the amended anti-money-laundering directive does not contain an exhaustive list of the data which any member of the general public must be permitted to access, and that Member States are entitled to provide for access to additional information, the fact remains that only adequate information on beneficial owners and beneficial interests held may be obtained, held and, therefore, potentially made accessible to the public, which excludes, inter alia, information which is not adequately related to the purposes of the amended anti-money-laundering directive. As it is, it does not appear that making available to the general public information which is so related would in any way undermine the essence of the fundamental rights referred to. Thirdly, the Court points out that, by providing for the general public's access to information on beneficial ownership, the EU legislature seeks to prevent money laundering and terrorist financing by creating, by means of increased transparency, an environment less likely to be used for those purposes, which constitutes an objective of general interest that is capable of justifying even serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter. Fourthly, in the context of the examination of whether the interference at issue is appropriate, necessary and proportionate, the Court holds that, admittedly, the general public's access to information on beneficial ownership is appropriate for contributing to the attainment of that objective. However, it finds that that interference cannot be considered to be limited to what is strictly necessary. First, the strict necessity of that interference cannot be demonstrated by relying on the fact that the criterion of the 'legitimate interest – 'which, according to the anti-money-laundering directive, in the version prior to its amendment by Directive 2018/843, any person wishing to access information on beneficial ownership had to have – was difficult to apply and that its application could give rise to arbitrary decisions. The fact that it may be difficult to provide a detailed definition of the circumstances and conditions under which the public may access information on beneficial ownership is no reason for the EU legislature to provide for the general public to access that information. 54 Secondly, nor can the explanations set out in Directive 2018/843 establish that the interference at issue is strictly necessary. 107 To the extent that, according to those explanations, the general public's access to beneficial ownership information is intended to allow greater scrutiny of information by civil society, in particular by the press and civil society organisations, the Court finds that both the press and civil society organisations that are connected with the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing the information concerned. The same is true of the persons who wish to know the identity of the beneficial owners of a company or other legal entity because they are likely to enter into transactions with them, or of the financial institutions and authorities involved in combating offences of money laundering or terrorist financing. Nor, moreover, is the interference in question proportionate. In that regard, the Court finds that the substantive rules governing that interference do not meet the requirement of clarity and precision. The amended anti-money-laundering directive provides that any member of the general public may have access to 'at least 'the data referred to therein, and provides that Member States may provide for access to additional information, including 'at least 'the date of birth or the contact details of the beneficial owner concerned. However, by using the expression 'at least', that directive allows for data to be made available to the public which are not sufficiently defined and identifiable. Furthermore, as regards the balancing of the seriousness of that interference against the importance of the objective of general interest referred to, the Court recognises that, in view

of its importance, that objective is capable of justifying even serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter. Nevertheless, first, combating money laundering and terrorist financing is as a priority a matter for the public authorities and for entities such as credit or financial institutions which, by reason of their activities, are subject to specific obligations in that regard. For that reason, the amended anti-moneylaundering directive provides that information on beneficial ownership must be accessible, in all cases, to competent authorities and Financial Intelligence Units, without any restriction, as well as to obliged entities, within the framework of customer due diligence. 108 Secondly, in comparison with the former regime – which provided, in addition to access by the competent authorities and certain entities, for access by any person or organisation capable of demonstrating a legitimate interest – the regime introduced by Directive 2018/843 amounts to a considerably more serious interference with the fundamental rights guaranteed in Articles 7 and 8 of the Charter, without that increased interference being capable of being offset by any benefits which might result from the latter regime as compared against the former regime, in terms of combating money laundering and terrorist financing. c. Request for de-referencing in a search engine Judgment of 8 December 2022 (Grand Chamber), Google (De-referencing of allegedly false information) (C-460/20, EU:C:2022:962) (Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Directive 95/46/EC – Article 12(b) – Point (a) of the first paragraph of Article 14 – Regulation (EU) 107 The explanations set out in recital 30 of Directive 2018/843 are referred to here. 108 Article 30(5), first subparagraph, points (a) and (b) of the amended anti-money laundering directive. 55 2016/679 – Article 17(3)(a) – Operator of an internet search engine – Research carried out on the basis of a person's name – Displaying a link to articles containing allegedly inaccurate information in the list of search results – Displaying, in the form of thumbnails, photographs illustrating those articles in the list of results of an image search – Request for de-referencing made to the operator of the search engine – Weighing-up of fundamental rights – Articles 7, 8, 11 and 16 of the Charter of Fundamental Rights of the European Union – Obligations and responsibilities of the operator of the search engine in respect of processing a request for de-referencing – Burden of proof on the person requesting de-referencing) The applicants in the main proceedings, TU, who occupies leadership positions and holds shares in various companies, and RE, who was his cohabiting partner and, until May 2015, held general commercial power of representation in one of those companies, were the subject of three articles published on a website in 2015 by G-LLC, the operator of that website. Those articles, one of which was illustrated by four photographs of the applicants and suggested that they led a life of luxury, criticised the investment model of a number of their companies. It was possible to access those articles by entering into the search engine operated by Google LLC ('Google') the surnames and forenames of the applicants, both on their own and in conjunction with certain company names. The list of results provided a link to those articles and to photographs in the form of thumbnails. The applicants in the main proceedings requested Google, as the controller of personal data processed by its search engine, first, to de-reference the links to the articles at issue from the list of search results, on the ground that they contained inaccurate claims and defamatory opinions, and, second, to remove the thumbnails from the list of search results. Google refused to accede to that request. Since they were unsuccessful at first instance and on appeal, the applicants in the main proceedings brought an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany), in the context of which the Bundesgerichtshof (Federal Court of Justice) made a request to the Court of Justice for a preliminary ruling on the interpretation of the GDPR 109 and Directive 95/46. 110 By its judgment, delivered by the Grand Chamber, the Court develops its case-law on the conditions which apply to requests for de-referencing

addressed to the operator of a search engine based on rules regarding the protection of personal data. 111 It examines, in particular, first, the extent of the obligations and responsibilities incumbent on the operator of a search engine in processing a request for de-referencing based on the alleged inaccuracy of the information in the referenced content and, second, the burden of proof imposed on the data subject as regards that inaccuracy. The Court also gives a ruling on the need, for the purposes of examining a request to remove photographs displayed in the form of thumbnails in the list of results of an image search, to take account of the original context of the publication of those photographs on the internet. 109 Article 17(3)(a) of 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) ('the GDPR') (OJ 2016 L 119, p. 1). 110 Article 12(b) and point (a) of the first paragraph of Article 14 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31). 111 Judgments of 13 May 2014, Google Spain and Google (C-131/12, EU:C:2014:317), and of 24 September, GC and Others (Dereferencing of sensitive data) (C-136/17, EU:C:2019:773) and Google (Territorial scope of de-referencing) (C-507/17, EU:C:2019:772). 56 Findings of the Court In the first place, the Court rules that, in the context of striking a balance between, on the one hand, the right to respect for private life and the protection of personal data, and on the other hand, the right to freedom of expression and information, 112 for the purposes of examining a request for dereferencing made to the operator of a search engine seeking the removal from the list of search results of a link to content containing allegedly inaccurate information, such de-referencing is not subject to the condition that the question of the accuracy of the referenced content has been resolved, at least provisionally, in an action brought by the person making that request against the content provider. As a preliminary point, in order to examine the conditions in which the operator of a search engine is required to accede to a request for de-referencing and thus to remove from the list of results displayed following a search on the basis of the data subject's name, the link to an internet page on which allegations appear which that person regards as inaccurate, the Court stated, in particular, as follows: − inasmuch as the activity of a search engine is liable to affect significantly, and additionally compared with that of the publishers of websites, the fundamental rights to privacy and to the protection of personal data, the operator of that search engine, as the person determining the purposes and means of that activity must ensure, within the framework of its responsibilities, powers and capabilities, that the guarantees laid down by Directive 95/46 and the GDPR may have full effect and that effective and complete protection of data subjects may actually be achieved; − where the operator of a search engine receives a request for de-referencing, it must ascertain whether the inclusion of the link to the internet page in question in the list of results is necessary for exercising the right to freedom of information of internet users potentially interested in accessing that internet page by means of such a search, a right protected by the right to freedom of expression and of information; − the GDPR expressly lays down the requirement to strike a balance between the fundamental rights to privacy and protection of personal data, on the one hand, and the fundamental right of freedom of information on the other. First of all, the Court finds that while the data subject's rights to respect for private life and the protection of personal data override, as a general rule, the legitimate interest of internet users who may be interested in accessing the information in question, that balance may, however, depend on the relevant circumstances of each case, in particular on the nature of that information and its sensitivity for the data subject's private life and on the interest of the public in having that information, an interest

which may vary, in particular, according to the role played by the data subject in public life. The question of whether or not the referenced content is accurate also constitutes a relevant factor when making that assessment. Accordingly, in certain circumstances, the right of internet users to information and the content provider's freedom of expression may override the rights to private life and to protection of personal data, in particular where the data subject plays a role in public life. However, that relationship is reversed where, at the very least, a part – which is not minor in relation to the content as a whole – of the information referred to in the request for de-referencing proves to 112 Fundamental rights guaranteed by Articles 7, 8 and 11, respectively, of the Charter of Fundamental Rights of the European Union. 57 be inaccurate. In such a situation, the right to inform and the right to be informed cannot be taken into account, since they cannot include the right to disseminate and have access to such information. Next, as regards, first, the obligations relating to establishing whether or not the information found in the referenced content is accurate, the Court clarifies that the person requesting the de-referencing on account of the inaccuracy of such information is required to establish the manifest inaccuracy of such information or, at the very least, of a part – which is not minor in relation to the content as a whole – of that information. However, in order to avoid imposing on that person an excessive burden which is liable to undermine the practical effect of the right to de-referencing, that person has to provide only evidence that, in the light of the circumstances of the particular case, can reasonably be required of him or her to try to find. In principle, that person cannot be required to produce, as from the pre-litigation stage, in support of his or her request for de-referencing, a judicial decision made against the publisher of the website, even in the form of a decision given in interim proceedings. Second, as regards the obligations and responsibilities imposed on the operator of the search engine, the Court points out that the operator of a search engine must, in order to determine whether content may continue to be included in the list of search results carried out using its search engine following a request for de-referencing, take into account all the rights and interests involved and all the circumstances of the case. However, that operator cannot be obliged to investigate the facts and, to that end, to organise an adversarial debate with the content provider seeking to obtain missing information concerning the accuracy of the referenced content. An obligation to contribute to establishing whether or not the referenced content is accurate would impose on that operator a burden in excess of what can reasonably be expected of it in the light of its responsibilities, powers and capabilities. That solution would entail a serious risk that content meeting the public's legitimate and compelling need for information would be de-referenced and would thereby become difficult to find on the internet. There would, accordingly, be a real risk of a deterrent effect on the exercise of freedom of expression and of information if such an operator undertook such de-referencing quasisystematically, in order to avoid having to bear the burden of investigating the relevant facts for the purpose of establishing whether or not the referenced content was accurate. Therefore, where the person who has made a request for de-referencing submits evidence establishing the manifest inaccuracy of the information found in the referenced content or, at the very least, of a part – which is not minor in relation to the content as a whole – of that information, the operator of the search engine is required to accede to that request. The same applies where the person making that request submits a judicial decision made against the publisher of the website, which is based on the finding that information found in the referenced content – which is not minor in relation to that content as a whole – is, at least prima facie, inaccurate. By contrast, where the inaccuracy of such information is not obvious, in the light of the evidence provided by the person making the request, the operator of the search engine is not required, where there is no such judicial decision, to accede to such a request for de-referencing. Where the information in question is likely to contribute to a

debate of public interest, it is appropriate, in the light of all the circumstances of the case, to place particular importance on the right to freedom of expression and of information. Lastly, the Court adds that, where the operator of a search engine does not grant a request for dereferencing, the data subject must be able to bring the matter before the supervisory authority or the judicial authority so that it carries out the necessary checks and orders that controller to adopt the necessary measures. In that regard, the judicial authorities must ensure a balance is struck between competing interests, since they are best placed to carry out a complex and detailed balancing exercise, which takes account of all the criteria and all the factors established by the relevant caselaw. In the second place, the Court rules that, within the context of weighing up fundamental rights mentioned above, for the purposes of examining a request for de-referencing seeking the removal from the results of an image search carried out on the basis of the name of a natural person of photographs displayed in the form of thumbnails representing that person, account must be taken of the informative value of those photographs regardless of the original context of their publication on 58 the internet page from which they are taken. However, it is necessary to take into consideration any text element which accompanies directly the display of those photographs in the search results and which is capable of casting light on the informative value of those photographs. In reaching that conclusion, the Court notes that image searches carried out by means of an internet search engine on the basis of a person's name are subject to the same principles as those which apply to internet page searches and the information contained in them. It states that displaying, following a search by name, photographs of the data subject in the form of thumbnails, is such as to constitute a particularly significant interference with the data subject's rights to private life and that person's personal data. Consequently, when the operator of a search engine receives a request for de-referencing which seeks the removal, from the results of an image search carried out on the basis of the name of a person, of photographs displayed in the form of thumbnails representing that person, it must ascertain whether displaying the photographs in question is necessary for exercising the right to freedom of information of internet users who are potentially interested in accessing those photographs by means of such a search. In so far as the search engine displays photographs of the data subject outside the context in which they are published on the referenced internet page, most often in order to illustrate the text elements contained in that page, it is necessary to establish whether that context must nevertheless be taken into consideration when striking a balance between the competing rights and interests. In that context, the question whether that assessment must also include the content of the internet page containing the photograph displayed in the form of a thumbnail, the removal of which is sought, depends on the purpose and nature of the processing at issue. As regards, first, the purpose of the processing at issue, the Court notes that the publication of photographs as a non-verbal means of communication is likely to have a stronger impact on internet users than text publications. Photographs are, as such, an important means of attracting internet users 'attention and may encourage an interest in accessing the articles they illustrate. Since, in particular, photographs are often open to a number of interpretations, displaying them in the list of search results as thumbnails may result in a particularly serious interference with the data subject's right to protection of his or her image, which must be taken into account when weighing-up competing rights and interests. A separate weighing-up exercise is required depending on whether the case concerns, on the one hand, articles containing photographs which are published on an internet page and which, when placed into their original context, illustrate the information provided in those articles and the opinions expressed in them, or, on the other hand, photographs displayed in the list of results in the form of thumbnails by the operator of a search engine outside the context in which they were published on the original internet page. In that regard, the Court recalls that not only does the

ground justifying the publication of a piece of personal data on a website not necessarily coincide with that which is applicable to the activity of search engines, but also, even where that is the case, the outcome of the weighing-up of the rights and interests at issue may differ according to whether the processing carried out by the operator of a search engine or that carried out by the publisher of that internet page is at issue. The legitimate interests justifying such processing may be different and, also, the consequences of the processing for the data subject, and in particular for his or her private life, are not necessarily the same. 113 113 See judgment in Google Spain and Google, paragraph 86. 59 As regards second, the nature of the processing carried out by the operator of the search engine, the Court observes that, by retrieving the photographs of natural persons published on the internet and displaying them separately, in the results of an image search, in the form of thumbnails, the operator of a search engine offers a service in which it carries out autonomous processing of personal data which is distinct both from that of the publisher of the internet page from which the photographs are taken and from that, for which the operator is also responsible, of referencing that page. Therefore, an autonomous assessment of the activity of the operator of the search engine, which consists of displaying results of an image search, in the form of thumbnails, is necessary, as the additional interference with fundamental rights resulting from such activity may be particularly intense owing to the aggregation, in a search by name, of all information concerning the data subject which is found on the internet. In the context of that autonomous assessment, account must be taken of the fact that that display constitutes, in itself, the result sought by the internet user, regardless of his or her subsequent decision to access the original internet page or not. The Court observes, however, that such a specific weighing-up exercise, which takes account of the autonomous nature of the data processing performed by the operator of the search engine, is without prejudice to the possible relevance of text elements which may directly accompany the display of a photograph in the list of search results, since such elements are capable of casting light on the informative value of that photograph for the public and, consequently, of influencing the weighing-up of the rights and interests involved. d. Actions against data processing contrary to the GDPR Judgment of 28 April 2022, Meta Platforms Ireland (C-319/20, EU:C:2022:322) (Reference for a preliminary ruling – Protection of natural persons with regard to the processing of personal data – Regulation (EU) 2016/679 – Article 80 – Representation of the data subjects by a not-for-profit association – Representative action brought by a consumer protection association in the absence of a mandate and independently of the infringement of specific rights of a data subject – Action based on the prohibition of unfair commercial practices, the infringement of a consumer protection law or the prohibition of the use of invalid general terms and conditions) Meta Platforms Ireland manages the provision of services of the online social network Facebook and is the controller of the personal data of users of that social network in the European Union. The Facebook internet platform contains, at the internet address www.facebook.de, an area called ‘AppZentrum ’(‘App Center’) on which Meta Platforms Ireland makes available to users free games provided by third parties. When viewing some of those games, the user is informed that use of the application concerned enables the gaming company to obtain a certain amount of personal data and gives it permission to publish data on behalf of that user. By using that application, the user accepts its general terms and conditions and data protection policy. In addition, in the case of a specific game, the user is informed that the application has permission to post photos and other information on his or her behalf. The German Federal Union of Consumer Organisations and Associations 114 considered that the information provided by the games concerned in the App Center was unfair. Therefore, as a body 114 Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband e.V. (‘the Federal Union’). 60 with standing to bring proceedings seeking to

end infringements of consumer protection legislation, 115 the Federal Union brought an action for an injunction against Meta Platforms Ireland. That action was brought independently of a specific infringement of the right to data protection of a data subject and without a mandate from a data subject. The decision upholding that action was the subject of an appeal brought by Meta Platforms Ireland which, after that appeal was dismissed, then brought a further appeal before the Bundesgerichtshof (Federal Court of Justice, Germany). Since it had doubts as to the admissibility of the action brought by the Federal Union, and in particular as to its standing to bring proceedings against Meta Platforms Ireland, that court referred the matter to the Court of Justice. By its judgment, the Court finds that Article 80(2) of the General Data Protection Regulation 116 does not preclude a consumer protection association from being able to bring legal proceedings, in the absence of a mandate granted to it for that purpose and independently of the infringement of the specific rights of the data subjects, against the person allegedly responsible for an infringement of the laws protecting personal data, on the basis of the infringement of the prohibition of unfair commercial practices, a breach of a consumer protection law or the prohibition of the use of invalid general terms and conditions. Such an action is possible where the data processing concerned is liable to affect the rights that identified or identifiable natural persons derive from that regulation. Findings of the Court First of all, the Court notes that while the GDPR 117 seeks to ensure harmonisation of national legislation on the protection of personal data which is, in principle, full, Article 80(2) of that regulation is amongst the provisions which leaves the Member States a discretion with regard to its implementation. 118 Therefore, in order for it to be possible to proceed with the representative action without a mandate provided for in that provision, Member States must make use of the option made available to them by that provision to provide in their national law for that mode of representation of data subjects. However, when exercising that option, the Member States must use their discretion under the conditions and within the limits laid down by the provisions of the GDPR and must therefore legislate in such a way as not to undermine the content and objectives of that regulation. Next, the Court points out that, by making it possible for Member States to provide for a representative action mechanism against the person allegedly responsible for an infringement of the laws protecting personal data, Article 80(2) of the GDPR lays down a number of requirements to be complied with. Thus, first, standing to bring proceedings is conferred on a body, organisation or association which meets the criteria set out in the GDPR. 119 A consumer protection association, such 115 Under German law, the laws on consumer protection also include rules defining the lawfulness of the collection or processing or use of a consumer's personal data by an undertaking or entrepreneur. 116 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'). Under Article 80(2), 'Member States may provide that any body, organisation or association referred to in paragraph 1 of this Article, independently of a data subject's mandate, has the right to lodge, in that Member State, a complaint with the supervisory authority … pursuant to Article 77 and to exercise the rights referred to in Articles 78 and 79 if it considers that the rights of a data subject under this Regulation have been infringed as a result of the processing [of personal data concerning him or her]'. 117 As is apparent from Article 1(1) of that regulation, read in the light of recitals 9, 10 and 13 thereof. 118 Pursuant to the 'opening clauses'. 119 In particular, Article 80(1) of the GDPR. That provision refers to 'a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory objectives which are in the public 61 as the Federal Union, which pursues a public interest objective consisting in safeguarding

the rights and freedoms of data subjects in their capacity as consumers, since the attainment of such an objective is likely to be related to the protection of the personal data of those persons, may fall within the scope of that concept. Second, the exercise of that representative action presupposes that the entity in question, independently of any mandate conferred on it, considers that the rights which a data subject derives from the GDPR have been infringed as a result of the processing of his or her personal data. Thus, first, the bringing of a representative action 120 does not require prior individual identification by the entity in question of the person specifically concerned by data processing that is allegedly contrary to the provisions of the GDPR. For that purpose, the designation of a category or group of persons affected by such treatment may also be sufficient. 121 Second, the bringing of such an action does not require there to be a specific infringement of the rights which a person derives from the GDPR. In order to recognise that an entity has standing to bring proceedings, it is sufficient to claim that the data processing concerned is liable to affect the rights which identified or identifiable natural persons derive from that regulation, without it being necessary to prove actual harm suffered by the data subject, in a given situation, by the infringement of his or her rights. Thus, in the light of the objective pursued by the GDPR, authorising consumer protection associations, such as the Federal Union, to bring, by means of a representative action mechanism, actions seeking to have processing contrary to the provisions of that regulation brought to an end, independently of the infringement of the rights of a person individually and specifically affected by that infringement, undoubtedly contributes to strengthening the rights of data subjects and ensuring that they enjoy a high level of protection. Finally, the Court states that the infringement of a rule relating to the protection of personal data may at the same time give rise to an infringement of rules on consumer protection or unfair commercial practices. The GDPR 122 allows the Member States to exercise their option to provide for consumer protection associations to be authorised to bring proceedings against infringements of the rights provided for by the GDPR through rules intended to protect consumers or combat unfair commercial practices. interest, and is active in the field of the protection of data subjects 'rights and freedoms with regard to the protection of their personal data'. 120 Under Article 80(2) of the GDPR. 121 In particular, in the light of the scope of the concept of 'data subject 'in Article 4(1) of the GDPR, which covers both an 'identified natural person 'and an 'identifiable natural person'. 122 In particular, Article 80(2) of the GDPR. 62

IV. Citizenship of the Union

1. Loss of citizenship of the Union on account of loss of nationality of a Member State Judgment of 18 January 2022 (Grand Chamber), Wiener Landesregierung (Revocation of an assurance of naturalisation) (C-118/20, EU:C:2022:34) (Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Scope – Renunciation of the nationality of one Member State in order to obtain the nationality of another Member State in accordance with the assurance given by the latter to naturalise the person concerned – Revocation of that assurance on grounds of public policy or public security – Principle of proportionality – Statelessness) In 2008 JY, who was then an Estonian national residing in Austria, applied for Austrian nationality. By decision of 11 March 2014, the then competent Austrian administrative authority 124 assured her that she would be granted that nationality if she could prove, within two years, that she had relinquished her Estonian nationality. JY provided confirmation within the prescribed period that she had relinquished her Estonian nationality on 27 August 2015. JY has been stateless since. By decision of 6 July 2017, the Austrian administrative authority which had become competent 125 revoked the decision of

11 March 2014, in accordance with national law, and rejected JY's application for Austrian nationality. In order to justify its decision, that authority stated that JY no longer satisfied the conditions for grant of nationality laid down by national law. JY had committed, since receiving the assurance that she would be granted Austrian nationality, two serious administrative offences, namely failing to display a vehicle inspection disc and driving while under the influence of alcohol. She had also committed eight administrative offences before that assurance was given to her. Following the dismissal of her action against that decision, JY lodged an appeal on a point of law before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria). That court states that, in view of the administrative offences committed by JY before and after she was given assurance as to the grant of Austrian nationality, the conditions for revocation of that assurance were fulfilled under Austrian law. It asks, however, whether JY's situation falls within EU law and whether, in order to adopt its decision revoking the assurance given as to naturalisation, which prevents JY from recovering her citizenship of the Union, the competent administrative authority was required to have due regard to EU law, in particular the principle of proportionality enshrined in EU law, given the consequences of such a decision for the situation of the person concerned. In those circumstances, the referring court decided to seek a ruling from the Court of Justice on the interpretation of EU law. In its Grand Chamber judgment, the Court interprets Article 20 TFEU in the 123The judgment of 9 June 2022, Préfet du Gers and Institut national de la statistique et des études économiques (C-673/20, EU:C:2022:449), must also be mentioned under this heading. That judgment is presented under heading II. 'Withdrawal of a Member State from the European Union'. 124 The Niederösterreichische Landesregierung (Government of the Province of Lower Austria, Austria). 125 The Wiener Landesregierung (Government of the Province of Vienna, Austria). 63 context of its case-law 126 concerning the obligations of Member States with regard to the acquisition and loss of nationality under EU law. Findings of the Court In the first place, the Court rules that the situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her status of citizen of the Union with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that she or he will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union. In that regard, the Court finds, first, that, when that assurance was revoked, JY was stateless and had lost her status of citizen of the Union. Since the application for dissolution of the bond of nationality with her Member State of origin was made in the context of a naturalisation procedure seeking to obtain Austrian nationality and was a consequence of the fact that JY, taking into account the assurance given to her, complied with the requirements of that procedure, a person such as JY cannot be considered to have renounced voluntarily the status of citizen of the Union. On the contrary, having received from the host Member State the assurance that the nationality of the latter would be granted, the application for dissolution is to intended to fulfil a condition for the acquisition of that nationality and, once obtained, to continue to enjoy the status of citizen of the Union and the rights attaching thereto. Next, where, in the context of a naturalisation procedure, the competent authorities of the host Member State revoke the assurance as to naturalisation, the person concerned who was a national of one other Member State only and renounced his or her original nationality in order to comply with the requirements of that procedure is in a situation in which it is impossible for that person to continue to assert the rights arising from the status of citizen of the Union. Such a procedure, taken as a whole, affects the status conferred by Article 20 TFEU on nationals of the Member States. It may result in a person in JY's situation being deprived of the rights attaching to that

status, although, at the start of that procedure, that person was a national of a Member State and thus had the status of citizen of the Union. Finally, noting that JY, as an Estonian national, has exercised her freedom of movement and residence by settling in Austria, where she has been living for several years, the Court points out that the underlying logic of gradual integration in the society of the host Member State that informs Article 21(1) TFEU requires that the situation of citizens of the Union, who acquired rights under that provision as a result of having exercised their right to free movement within the European Union and are liable to lose not only their entitlement to those rights but also the very status of citizen of the Union, even though they have sought, by becoming naturalised in the host Member State, to become more deeply integrated in the society of that Member State, falls within the scope of the FEU Treaty provisions relating to citizenship of the Union. In the second place, the Court interprets Article 20 TFEU as meaning that the competent national authorities and the national courts of the host Member State are required to ascertain whether the decision to revoke, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of 126 Arising from the judgments of 2 March 2010, Rottmann (C-135/08, ECLI:EU:C:2010:104), and of 12 March 2019, Tjebbes and Others (C-221/17, EU:C:2019:189). 64 proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty. In order to reach that conclusion, the Court states that, where, in the context of a naturalisation procedure initiated in a Member State, that State requires a citizen of the Union to renounce the nationality of his or her Member State of origin, the exercise and effectiveness of the rights which that citizen of the Union derives from Article 20 TFEU require that that person should not at any time be liable to lose the fundamental status of citizen of the Union by the mere fact of the implementation of that procedure. Any loss, even temporary, of that status means that the person concerned is deprived, for an indefinite period, of the opportunity to enjoy all the rights conferred by that status. It follows that, where a national of a Member State applies to relinquish his or her nationality in order to be able to obtain the nationality of another Member State and thus continue to enjoy the status of citizen of the Union, the Member State of origin should not adopt, on the basis of an assurance given by that other Member State that the person concerned will be granted the nationality of that State, a final decision concerning the deprivation of nationality without ensuring that that decision enters into force only once the new nationality has actually been acquired. That said, in a situation where the status of citizen of the Union has already been temporarily lost because, in the context of a naturalisation procedure, the Member State of origin withdraws the nationality of the person concerned before that person has actually acquired the nationality of the host Member State, the obligation to ensure the effectiveness of Article 20 TFEU falls primarily on the latter Member State. That obligation arises, in particular, in respect of a decision to revoke the assurance as to naturalisation which may make the loss of the status of citizen of the Union permanent. Such a decision can therefore be made only on legitimate grounds and subject to the principle of proportionality. Under the examination of proportionality it is necessary to establish, in particular, whether that decision is justified in relation to the gravity of the offences committed by the person concerned. As regards JY, since the offences committed prior to the assurance as to naturalisation did not preclude that assurance being given, they can no longer be taken into account as a basis for the decision to revoke that assurance. As for those committed after receiving the assurance as to naturalisation, in view of their nature and gravity as well as the requirement that the concepts of public policy and public security be interpreted strictly, they do not show that JY represents a genuine, present and sufficiently

serious threat affecting one of the fundamental interests of society or a threat to public security in Austria. Traffic offences, punishable by mere administrative fines, cannot be regarded as capable of demonstrating that the person responsible for those offences is a threat to public policy and public security which may justify the permanent loss of his or her status of citizen of the Union. 65 2. Right to move and reside freely within the territory of the Member States Judgment of 10 March 2022, Commissioners for Her Majesty's Revenue and Customs (Comprehensive sickness insurance cover) (C-247/20, EU:C:2022:177) (Reference for a preliminary ruling – Right to move and reside freely within the territory of the Member States – Article 21 TFEU – Directive 2004/38/EC – Article 7(1)(b) and Article 16 – Child who is a national of a Member State residing in another Member State – Right of residence derived from the parent who is the primary carer of that child – Requirement of comprehensive sickness insurance cover – Child having a permanent right of residence for part of the periods concerned) VI and her husband are Pakistani nationals who live in Northern Ireland (United Kingdom) with their children. Their son, born in 2004, of Irish nationality, acquired a right of permanent residence in the United Kingdom on account of his legal residence for a continuous period of five years. Although VI, who initially looked after their children, works and has been subject to tax only since April 2016, her husband worked and was subject to tax for all the periods at issue in the main proceedings, since both spouses had sufficient resources to maintain their family. The Commissioners for Her Majesty's Revenue & Customs took the view that, from May to August 2006 and from August 2014 to September 2016, VI was not covered by comprehensive sickness insurance and, consequently, did not have a right of residence in the United Kingdom, so that she was not entitled, in respect of those two periods, to either Child Tax Credit or Child Benefit. The Social Security Appeal Tribunal (Northern Ireland), before which two appeals were brought in relation to those rights, asks the Court of Justice to determine to what extent the requirement to have comprehensive sickness insurance cover in the host Member State, laid down in Article 7(1)(b) of Directive 2004/38, 127 was applicable to VI and her son during the periods concerned and, if the requirement is met, whether affiliation, free of charge, to the public health insurance system of the host State, which they had, was sufficient to satisfy that requirement. The Court holds that Article 21 TFEU, which enshrines the freedom of movement and residence of Union citizens, and Article 16(1) of Directive 2004/38, which covers the acquisition of a right to permanent residence, must be interpreted as meaning that neither the child, a Union citizen, who has acquired a right of permanent residence, nor the parent who is the primary carer of that child is required to have comprehensive sickness insurance cover, within the meaning of Article 7(1)(b) of that directive, in order to retain their right of residence in the host State. In contrast, as regards periods prior to the acquisition by a child, a Union citizen, of a right of permanent residence in the host State, both that child, where a right of residence is claimed for him or her on the basis of that Article 7(1)(b), and the parent who is the primary carer of that child must have comprehensive sickness insurance cover within the meaning of that directive. 127 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 corrigendum OJ 2004 L 229, p. 35). Article 7(1)(b) of that directive states that all Union citizens are to have the right of residence on the territory of another Member State for a period of longer than three months if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have

comprehensive sickness insurance cover in the host Member State. 66 Findings of the Court As regards, first, periods after a child, a Union citizen, has acquired a right of permanent residence after residing legally for a continuous period of five years in the host Member State, the Court points out that that right is no longer subject 128 to the conditions of having, for himself or herself and his or her family, sufficient resources and comprehensive sickness insurance cover, applicable before the acquisition of such a right of permanent residence. 129 As regards the parent who is a third-country national who is the primary carer of that child, the Court finds that he or she is not a 'family member', within the meaning of Directive 2004/38, and cannot therefore derive from it 130 a right of permanent residence in the host Member State where that child is dependent on his or her parent. The concept of 'family member', within the meaning of that directive, is limited, 131 as regards the relatives in the ascending line of a Union citizen, to 'dependent direct relatives in the ascending line 'of that citizen. That said, the right of permanent residence in the host Member State, conferred by EU law on a minor national of another Member State, must, for the purposes of ensuring the effectiveness of that right of residence, be considered as necessarily implying, under Article 21 TFEU, a right for the parent who is the primary carer of that minor Union citizen to reside with him or her in the host Member State, regardless of the nationality of that parent. It follows that the inapplicability of the conditions set out, inter alia, in Article 7(1)(b) of Directive 2004/38, following the acquisition by that minor of a right of permanent residence under Article 16(1) of that directive, extends, pursuant to Article 21 TFEU, to that parent. Second, as regards periods before a child who is a Union citizen has acquired a right of permanent residence in the host State, it follows from the wording of Article 7(1)(b) of Directive 2004/38 and from the general scheme and purpose of that directive that not only the Union citizen but also his or her family members who live with that child in the host State, and the parent who is the primary carer of such a child, must be covered by comprehensive sickness insurance. In that regard, it follows from that article, read in conjunction with recital 10 and Article 14(2) of the same directive, that, throughout the period of residence in the host Member State of more than three months and less than five years, economically inactive Union citizens must, inter alia, have comprehensive sickness insurance cover for themselves and their family members so as not to become an unreasonable burden on the public finances of that Member State. In the case of a child, a Union citizen, who resides in the host State with a parent who is his or her primary carer, this requirement is satisfied both where this child has comprehensive sickness insurance which covers his or her parent, and in the inverse case where this parent has such insurance covering the child. In the case of a minor Union citizen, one of whose parents, a third-country national, has worked and was subject to tax in the host State during the period concerned, it would be disproportionate to deny that child and the parent who is his or her primary carer a right of residence on the sole ground that, during that period, they were affiliated free of charge to the public sickness insurance system of the 128 Under the last sentence of Article 16(1) of Directive 2004/38. 129 Laid down under Article 7(1)(b) of Directive 2004/38. 130 Article 16(2) of Directive 2004/38 provides that paragraph 1 thereof is to apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years. 131 Under Article 2(2) of Directive 2004/38. 67 host State. It cannot be considered that that affiliation free of charge constitutes, in the circumstances which characterise the case in the main proceedings, an unreasonable burden on the public finances of that State. 3. Derived right of residence of third-country nationals who are family members of a Union citizen Judgment of 5 May 2022, Subdelegación del Gobierno en Toledo (Residence of a family member – Insufficient resources) (C-451/19 and C-532/19, EU:C:2022:354) (Reference for a preliminary ruling – Article 20 TFEU – Citizenship of the

European Union – Union citizen who has never exercised his or her right of free movement – Application for a residence card for his or her family member who is a third-country national – Refusal – Requirement that the Union citizen has sufficient resources – Obligation for spouses to live together – Minor child who is a Union citizen – National legislation and practice – Genuine enjoyment of the substance of the rights conferred on EU nationals – Deprivation) XU is a child who was born in Venezuela to a Venezuelan mother who has sole custody of him. He resides in Spain with his mother, with the Spanish national whom she married and with the child whom she had with that Spanish national. The latter child is a Spanish national. QP, who is a Peruvian national, married a Spanish national with whom he had a child who is a Spanish national. XU and QP each are family members of a Union citizen who is a national of the State in which they reside and who has never exercised his or her right of free movement in another Member State. XU and QP had their applications for a residence card as a family member of a Union citizen 132 refused on the ground that that Union citizen did not have, for himself or herself and for the members of his or her family, sufficient financial resources. 133 Only the economic situation of the stepfather, in XU's case, and the spouse, in QP's case, was taken into account by the competent authority, namely the Subdelegación del Gobierno en Toledo (Provincial Office of the Government, Toledo, Spain). As the actions brought against those decisions were upheld, the authority brought an appeal before the referring court against the judgments given in that regard. The referring court is uncertain as to whether a practice of automatically refusing the family reunification of a third-country national with a Spanish national, who has never exercised his or her right to move freely, solely on the ground of his or her economic situation is compatible with EU law. 134 Such a practice could lead to that Spanish national having to leave the territory of the European Union. According to that court, that could be the situation in both cases, in view of the obligation to live together imposed by the Spanish legislation applicable to marriage. 135 132 In the present case, for XU, his stepfather and, for QP, his wife. 133 So as not to become a burden on the Spanish social assistance system, as provided for by Spanish legislation. 134 Article 20 TFEU relating to Union citizenship. 135 In Case C-532/19, the refusal to grant a right of residence to QP would force his wife to leave the territory of the European Union. In Case C-451/19, the refusal to grant a right of residence to XU would lead to the departure of XU and his mother from the territory of the European Union, and would force not only her husband, but also the minor child, a Spanish national born to them, to leave that territory. 68 In its judgment, the Court of Justice holds, in essence, that EU law precludes a Member State from refusing an application for family reunification made for the benefit of a third-country national, who is a family member of a Union citizen, the latter being a national of that Member State and who has never exercised his or her right of freedom of movement, solely on the ground that that Union citizen does not have, for himself or herself and that family member, sufficient resources, without there having been an examination of whether there exists, between that Union citizen and his or her family member, a relationship of dependency of such a nature that, in the event of a refusal to grant a derived right of residence to that third-country national family member, the Union citizen would be forced to leave the territory of the European Union as a whole and would thereby be deprived of the genuine enjoyment of the substance of the rights conferred by his or her status as a Union citizen. The Court then provides a number of clarifications in order to determine whether, in each case, there is a relationship of dependency capable of justifying the grant to the third-country national of a derived right of residence under EU law. Findings of the Court As regards family reunification and the requirement to have sufficient resources, as a preliminary point, the Court states that EU law does not apply, in principle, to an application for family reunification of a third country national with a member of his or her family who is a national of a Member

State and who has never exercised his or her right of freedom of movement, and that EU law therefore does not preclude, in principle, legislation of a Member State which makes such family reunification subject to a condition of sufficient resources. However, the systematic imposition of such a condition, without exception, may infringe the derived right of residence which must be granted, in very specific situations, under Article 20 TFEU, to a third-country national who is a family member of a Union citizen, in particular if the refusal of such a right forced that citizen to leave the territory of the European Union, thereby depriving him or her of the genuine enjoyment of the substance of the rights conferred by his or her status as a Union citizen. That is the case if there exists, between that third-country national and the Union citizen, who is a member of his or her family, a relationship of dependency of such a nature that it would lead to the Union citizen being forced to accompany the third-country national in question and to leave the territory of the European Union as a whole. As regards the existence of a relationship of dependency in Case C-532/19, the Court states, first, that a relationship of dependency, capable of justifying the grant of a derived right of residence under Article 20 TFEU, does not exist solely on the ground that the national of a Member State who is an adult and who has never exercised his or her right of freedom of movement, and his or her spouse, an adult and third-country national, are required to live together, in accordance with the rules of the Member State of which the Union citizen is a national and in which the marriage was entered into. The Court then goes on to examine whether such a relationship of dependency may exist where that national and his or her spouse, a national of a Member State who has never exercised his or her right of freedom of movement, are the parents of a minor who is a national of the same Member State and who has not exercised his or her right of freedom of movement. In order to assess the risk that the child concerned, a Union citizen, might be forced to leave the territory of the European Union if his or her parent, a third-country national, were to be refused a derived right of residence in the Member State concerned, it must be determined whether that parent is the primary carer of the child and whether there is an actual relationship of dependency between 69 them, taking into account the right to respect for family life 136 and the obligation to take into consideration the child’s best interests. 137 The fact that the other parent, a Union citizen, is genuinely able and willing to assume sole responsibility for the actual day-to-day care of the child is not a sufficient ground for a finding that there does not exist, between the third-country national parent and the child, a relationship of dependency of such a nature that the child would be forced to leave the territory of the European Union if that third-country national were refused a right of residence. Such a finding must be based on the taking into account, in the best interests of the child concerned, of all the circumstances of the case. 138 Thus, the fact that the parent, who is a third-country national, lives with the minor child who is a Union citizen, is relevant for a determination as to whether there is a relationship of dependency between them, but is not a necessary condition. Furthermore, where the Union citizen minor lives on a stable basis with both of his or her parents, and the custody of that child and the legal, emotional and financial burden in relation to that child are therefore shared on a daily basis by those two parents, there is a rebuttable presumption that there is a relationship of dependency between that Union citizen minor and his or her parent, who is a third-country national, irrespective of the fact that the other parent of that child has, as a national of the Member State in which that family is established, an unconditional right to remain in that Member State. As regards the existence of a relationship of dependency in Case C-451/19, in the first place, the Court points out that, since the derived right of residence which may be granted to a third-country national under Article 20 TFEU is subsidiary in scope, the referring court must examine, inter alia, whether XU, who was a minor on the date on which the application for a residence permit was refused and whose mother, a third-country national, held such a permit

on Spanish territory, was entitled, on that date, to a right of residence in that territory under Directive 2003/86. 139 In the second place, in the event that XU does not hold any residence permit under secondary EU law or national law, the Court examines whether Article 20 TFEU may permit the grant of a derived right of residence to that third-country national. In that regard, it is necessary to determine whether, on the date on which the application for a residence permit for XU was refused, his forced departure could, in practice, have required his mother to leave the territory of the European Union because of the relationship of dependency between them and, if so, whether the departure of XU's mother would also, in practice, have forced her minor child, a Union citizen, to leave the territory of the European Union because of the relationship between that Union citizen and his mother. 136 Set out in Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'). 137 Recognised in Article 24(2) of the Charter, which includes the right for that child to maintain on a regular basis a personal relationship and direct contact with both parents, enshrined in Article 24(3) of the Charter. 138 Including the child's age, physical and emotional development, the extent of his or her emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium. 139 Article 4(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12). Even though that directive provides that it does not apply to family members of a Union citizen, in view of its objective, which is to promote family reunification, and in view of the protection which it seeks to grant to third country nationals, in particular minors, its application in favour of a third-country national minor cannot be excluded merely because his or her parent, who is a third-country national, is also the parent of a Union citizen who was born to that thirdcountry national and a national of a Member State. 70 The assessment, for the purposes of the application of Article 20 TFEU, of the existence of a relationship of dependency between a parent and his or her child, both being third-country nationals, is based, mutatis mutandis, on the same criteria as those set out above. Where it is a third-country national minor who is refused a residence permit and is likely to be forced to leave the territory of the European Union, the fact that his or her other parent could actually take care of him or her from a legal, financial and emotional point of view, including in his or her country of origin, is relevant, but is not sufficient to conclude that the parent who is a third-country national and resident in the territory of that Member State would not be forced, in practice, to leave the territory of the European Union. If, on the date on which the application for a residence permit for XU was refused, his forced departure from the Spanish territory would, in practice, have forced not only his mother, a thirdcountry national, but also her other child, who is a Union citizen, to leave the territory of the European Union, which it is for the referring court to ascertain, a derived right of residence should have been granted to his half-brother, XU, under Article 20 TFEU, in order to prevent that Union citizen from being deprived, by his departure, of the enjoyment of the essence of the rights which he holds by way of his status. 4. Discrimination on grounds of nationality Judgment of 22 December 2022 (Grand Chamber), Generalstaatsanwaltschaft München (Request for extradition to Bosnia and Herzegovina) (C-237/21, EU:C:2022:1017) (Reference for a preliminary ruling – Citizenship of the European Union – Articles 18 and 21 TFEU – Request sent to a Member State by a third State for the extradition of a Union citizen who is a national of another Member State and who has exercised his right to free movement in the first of those Member States – Request made for the purpose of enforcing a custodial sentence – Prohibition on extradition applied solely to own nationals – Restriction of freedom of movement – Justification based on the prevention of impunity – Proportionality) S.M., who has Croatian, Bosnian and Serbian nationality, has lived in Germany since 2017 and has been working there since 2020. In November 2020, the authorities of Bosnia and Herzegovina requested that the

Federal Republic of Germany extradite S.M. for the purpose of enforcing a custodial sentence that was imposed on him by a Bosnian court. The Generalstaatsanwaltschaft München (Munich Public Prosecutor's Office, Germany) applied, referring to the judgment in Raugevicius, 140 for the extradition of S.M. to be declared inadmissible. 140 In the judgment of 13 November 2018, Raugevicius (C-247/17, EU:C:2018:898; 'the judgment in Raugevicius'), the Court interpreted Article 18 TFEU (which sets out the principle of non-discrimination on grounds of nationality) and Article 21 TFEU (which guarantees, in paragraph 1, the right to move and reside freely within the territory of the Member States) as meaning that, where an extradition request has been made by a third State for a Union citizen who has exercised his or her right to free movement, for the purpose of enforcing a custodial sentence, the requested Member State, whose national law prohibits the extradition of its own nationals out of the European Union for the purpose of enforcing a sentence and makes provision for the possibility that such a sentence pronounced abroad may be served in its territory, is required to ensure that that Union citizen, provided that he or she resides permanently in the territory of the Member State in question, receives the same treatment as that accorded to its own nationals in relation to extradition (paragraph 50 and the operative part). 71 According to the Oberlandesgericht München (Higher Regional Court, Munich, Germany), which is the referring court, the validity of that application depends on whether Articles 18 and 21 TFEU are to be interpreted as providing for the non-extradition of a Union citizen even if, under the international treaties, the requested Member State 141 is required to extradite that Union citizen. That question was not answered in the judgment in Raugevicius, since, in the case which gave rise to that judgment, the requested Member State was authorised, under the international treaties applicable, not to extradite the Lithuanian national in question out of the European Union. In the present case, however, Germany is under an obligation to Bosnia and Herzegovina to extradite S.M. pursuant to the European Convention on Extradition, signed in Paris on 13 December 1957. In accordance with Article 1 of that convention, Germany and Bosnia and Herzegovina are required to surrender to each other persons who are wanted by the judicial authorities of the requesting State for the carrying out of a sentence. In that regard, the declaration made by Germany under Article 6 of that convention, concerning the protection of its 'nationals 'against extradition, restricts that term solely to persons possessing German citizenship. Thus, the Court of Justice did not address in the judgment in Raugevicius the question whether the need to contemplate measures that are less restrictive than extradition may mean that the requested Member State infringes its obligations under international law. The referring court therefore asks the Court about the interpretation of Articles 18 and 21 TFEU. It asks, in essence, whether, where a request for extradition has been made to a Member State by a third State for the purpose of enforcing a custodial sentence imposed on a national of another Member State residing permanently in the first Member State, the national law of which prohibits only the extradition of its own nationals out of the European Union and makes provision for the possibility that that sentence may be enforced in its territory provided that the third State consents to it, Articles 18 and 21 TFEU preclude that first Member State from extraditing that Union citizen, in accordance with its obligations under an international convention, if it cannot actually assume responsibility for enforcing that sentence in the absence of such consent. In its judgment, the Court replies that Articles 18 and 21 TFEU must be interpreted as meaning that: − the requested Member State is, in such circumstances, required by those provisions actively to seek consent from the third State, which made the extradition request, for the sentence imposed on the national of another Member State, residing permanently in the requested Member State, to be enforced in the latter's territory, by using all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its

relations with that third State; − in the absence of such consent, the requested Member State is not precluded by those provisions, in such circumstances, from extraditing that Union citizen, in accordance with its obligations under an international convention, in so far as that extradition does not infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union. 142 Findings of the Court In the first place, the Court recalls that, in the judgment in Raugevicius, which, like the case in the main proceedings, concerned an extradition request from a third State which had not concluded an extradition agreement with the European Union, it held that although, in the absence of EU legal 141 The Member State to which an extradition request was submitted. 142 'The Charter'. 72 provisions on the extradition of nationals of Member States to third States, Member States have the power to adopt such provisions, that power must be exercised in accordance with EU law and, in particular, with Article 18 and Article 21(1) TFEU. As a Croatian national who is lawfully resident in Germany, S.M. is entitled, as a Union citizen, to rely on Article 21(1) TFEU and falls within the scope of the Treaties, within the meaning of Article 18 TFEU. Holding also the nationality of the third country which made the extradition request cannot prevent him from asserting the rights and freedoms conferred by Union citizenship, in particular those guaranteed by Articles 18 and 21 TFEU. In the second place, the Court notes that a Member State's rules on extradition which give rise, as in the main proceedings, to different treatment, depending on whether the requested person is a national of that Member State or of another Member State, are liable to affect the freedom of movement and residence of nationals of other Member States who are lawfully resident in the territory of the requested State, in so far as they have the consequence that such nationals are not afforded the protection against extradition reserved for nationals of the latter Member State. Consequently, in a situation such as that in the main proceedings, the unequal treatment involved in permitting the extradition of a national of a Member State other than the requested Member State constitutes a restriction on that freedom, which can be justified only where it is based on objective considerations and is proportionate to the legitimate objective of national law. The legitimate objective of averting the risk that persons who have committed an offence should go unpunished may justify a measure that restricts the freedom laid down in Article 21 TFEU, provided that that measure is necessary for the protection of the interests which it is intended to secure and those objectives cannot be attained by less restrictive measures. In the case of an extradition request for the purpose of enforcing a custodial sentence, the possibility, where available under the law of the requested Member State, of the sentence to which the extradition request relates being enforced in the territory of the requested Member State constitutes an alternative to extradition which is less prejudicial to the exercise of the right to free movement and residence of a Union citizen who is permanently resident in that Member State. Therefore, under Articles 18 and 21 TFEU, such a national of another Member State, residing permanently in the requested Member State, should be able to serve a sentence in the territory of that Member State under the same conditions as nationals of that Member State. In the third place, the Court points out, however, that the case-law arising from the judgment in Raugevicius did not establish an automatic and absolute right for Union citizens not to be extradited out of the European Union. The Court also states that, where a national rule introduces, as in the case in the main proceedings, a difference in treatment between nationals of the requested Member State and Union citizens who reside there permanently, by prohibiting only the extradition of the former, that Member State is obliged actively to seek to ascertain whether there is an alternative to extradition that is less prejudicial to the exercise of the rights and freedoms which such Union citizens derive from Articles 18 and 21 TFEU, when they are the subject of an extradition request that has been issued by a third State. Thus, where the application of such an alternative to extradition consists in Union citizens who

reside permanently in the requested Member State being able to serve their sentence in that Member State under the same conditions as nationals of that Member State, but such application is subject to the consent of the third State which made the extradition request, Articles 18 and 21 TFEU require the requested Member State actively to seek the consent of that third State, by using all the mechanisms for cooperation and assistance in criminal matters which are available to it in the context of its relations with that third State. If that third State consents to the sentence being enforced in the territory of the requested Member State, that Member State will be in a position to allow the Union citizen whose extradition has been 73 requested and who resides permanently in its territory to serve in that Member State the sentence that was imposed on that Union citizen in the third State which made the extradition request, and to ensure that that Union citizen is treated in the same way as that Member State's own nationals. In such a case, that alternative to extradition could also allow the requested Member State to exercise its powers in accordance with its contractual obligations to that third State. The consent of that third State to the full sentence referred to in the extradition request being enforced in the requested Member State could render the execution of that request superfluous. If, on the other hand, the consent of that third State is not obtained, the alternative to extradition required by Articles 18 and 21 TFEU could not be applied. In that situation, that Member State can extradite the person concerned in accordance with its obligations under the European Convention on Extradition, since a refusal to extradite would not enable the risk of that person going unpunished to be averted. In that case, since the extradition of the person concerned constitutes, in the light of that objective, a necessary and proportionate measure, the restriction of the right to movement and residence stemming from extradition for the purpose of enforcing a sentence is justified. Nevertheless, the requested Member State must check that that extradition will not undermine the protection afforded by Article 19(2) of the Charter against any serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment in the third State which made the extradition request.

V. Institutional provisions

1. Seat of Union institutions and bodies Judgment of 14 July 2022 (Grand Chamber), Italy and Comune di Milano v Council (Seat of the European Medicines Agency) (C-59/18 and C-182/18, EU:C:2022:567) (Action for annulment – Law governing the institutions – EU bodies, offices and agencies – European Medicines Agency (EMA) – Competence to determine the location of the seat – Article 341 TFEU – Scope – Decision adopted by the Representatives of the Governments of the Member States in the margins of a Council meeting – Jurisdiction of the Court under Article 263 TFEU – Author and legal nature of the act – Absence of binding effects in the EU legal order) Judgment of 14 July 2022 (Grand Chamber), Italy and Comune di Milano v Council and Parliament (Seat of the European Medicines Agency) (C-106/19 and C-232/19, EU:C:2022:568) (Action for annulment – Law governing the institutions – Regulation (EU) 2018/1718 – Location of the seat of the European Medicines Agency (EMA) in Amsterdam (Netherlands) – Article 263 TFEU – Admissibility – Interest in bringing proceedings – Locus standi – Direct and individual concern – Decision adopted by the Representatives of the Governments of the Member States in the margins of a Council meeting in order to determine the location of the seat of an EU agency – Absence of binding effects in the EU legal order – Prerogatives of the European Parliament) Judgment of 14 July 2022 (Grand Chamber), Parliament v Council (Seat of the European Labour Authority) (C-743/19, EU:C:2022:569) (Action for annulment – Law governing the institutions – Bodies, offices and agencies of the European Union – European

Labour Authority (ELA) – Competence to determine the location of the seat – Article 341 TFEU – Scope – Decision adopted by the Representatives of the Governments of the Member States in the margins of a Council meeting – Jurisdiction of the Court under Article 263 TFEU – Author and legal nature of the act – Absence of binding effects in the EU legal order) Five actions were brought before the Court for annulment of various measures adopted, first, by the Representatives of the Governments of the Member States and, secondly, by the Council and the European Parliament, concerning the determination of the seat of two European agencies. Two actions were brought by the Italian Republic and the Comune di Milano (Municipality of Milan, Italy), respectively, against (i) the Council for the annulment of the decision of 20 November 2017 143 adopted by the Representatives of the Governments of the Member States (Joined Cases C-59/18 and 143 Decision adopted in the margins of a meeting of the Council designating the city of Amsterdam as the new seat of the European Medicines Agency (EMA) ('the decision determining the new seat of the EMA'). 75 C-182/18) and (ii) the Parliament and the Council for the annulment of Regulation (EU) 2018/1718 144 (Joined Cases C-106/19 and C-232/19) concerning the designation of the city of Amsterdam (Netherlands) as the new seat of the European Medicines Agency (EMA) following Brexit. Another action was brought by the Parliament against the Council for annulment of the decision of 13 June 2019 145 taken by common accord between the Representatives of the Governments of the Member States and determining the seat of the European Labour Authority (ELA) in Bratislava (Slovakia) (Case C-743/19). In the cases concerning the seat of the EMA, the Heads of State or Government had approved, following Brexit, a procedure for adopting a decision on the transfer of that seat, which had until then been established in London (United Kingdom). At the end of that procedure, the offer of the Kingdom of the Netherlands had prevailed over the offer of the Italian Republic (Milan). Consequently, the Representatives of the Governments of the Member States had, by the decision of 20 November 2017, designated, in the margins of a meeting of the Council, the city of Amsterdam as the new seat of the EMA. That designation had been confirmed by the contested regulation at the end of the ordinary legislative procedure, involving the participation of the Parliament. The Italian Republic and the municipality of Milan maintained, however, that the decision determining the new seat of the EMA, in so far as it concerned the designation of the seat of an agency of the Union and not of an institution of the Union, fell within the exclusive competence of the European Union and that it had, in fact, to be attributed to the Council. They therefore disputed the lawfulness of that decision as the basis for the contested regulation and maintained, moreover, that the Parliament had not fully exercised its legislative prerogatives when adopting that regulation. In the case concerning the seat of the ELA, the Representatives of the Governments of the Member States had approved by common accord the procedure and the criteria for deciding on the seat of that agency. In accordance with that procedure, they adopted, in the margins of a meeting of the Council, the decision fixing the seat of the ELA in Bratislava. The Parliament maintained that the actual author of that decision was in fact the Council and that, since it was a legally binding act of the European Union, it could be challenged before the Court in an action for annulment. By three Grand Chamber judgments, the Court develops its case-law on the legal framework applicable to the determination of the seat of bodies, offices and agencies of the Union. It considers, inter alia, that decisions determining the new seat of the EMA and the seat of the ELA are political acts, adopted by the Member States alone in that capacity, and not as members of the Council, with the result that those acts are not subject to the review of legality provided for under Article 263 TFEU. Those decisions cannot be treated in the same way as those taken under Article 341 TFEU, 146 which concerns only the determination of the seat of the institutions of the Union. 147 That provision cannot, therefore, constitute the legal basis

for those decisions. 144 Regulation (EU) 2018/1718 of the European Parliament and of the Council of 14 November 2018 amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines Agency (OJ 2018 L 291, p. 3; ‘the contested regulation’). 145 Decision (EU) 2019/1199 taken by common accord between the Representatives of the Governments of the Member States of 13 June 2019 on the location of the seat of the European Labour Authority (OJ 2019 L 189, p. 68; ‘the decision determining the seat of the ELA’). 146 Article 341 TFEU lays down that ‘the seat of the institutions of the Union shall be determined by common accord of the governments of the Member States’. 147 As referred to in Article 13(1) TEU. 76 Findings of the Court • Admissibility of an action brought by a regional or local entity against a regulation determining the location of the seat of a body, office or agency of the Union (Joined Cases C-106/19 and C-232/19) The Court notes, first of all, that an action brought by a regional entity cannot be treated in the same way as an action brought by a Member State within the meaning of Article 263 TFEU and that, consequently, such an entity must establish both an interest and standing to bring proceedings. After finding that the municipality of Milan had an interest in bringing proceedings, in so far as the possible annulment of the contested regulation would entail the resumption of the legislative procedure for determining the seat of the EMA in which it was a candidate, the Court holds that that entity is directly and individually concerned by that regulation and, therefore, has standing to seek its annulment. In that regard, it states, first, that that regulatory act leaves no discretion to its addressees and, secondly, that the municipality of Milan actually participated in the selection procedure for the seat of the EMA, which placed it in a situation which distinguished it individually in a similar manner to that of an addressee of the act. • The jurisdiction of the Court to hear and determine proceedings concerning decisions of the Member States on the location of the seat of a body, office or agency of the Union (Joined Cases C-59/18 and C-182/18 and Case C-743/19) The Court notes, as a preliminary point, that, in the context of an action for annulment, the EU Courts have jurisdiction only to review the legality of acts attributable to the institutions, bodies, offices and agencies of the Union. Acts adopted by the Representatives of the Governments of the Member States, acting in that capacity and thus collectively exercising the powers of the Member States, are therefore not subject to judicial review by the EU Courts, except where, having regard to its content and the circumstances in which it was adopted, the act in question is in reality a decision of the Council. The Court states, consequently, that the decisions determining the new seat of the EMA and the seat of the ELA can be understood only in the light of the legal framework applicable to the location of the seat of the bodies, offices and agencies of the Union. In that regard, the Court examines, as part of a textual, contextual and teleological analysis, whether Article 341 TFEU may validly be relied on as the basis for those decisions. 148 In the first place, it points out that the wording of Article 341 TFEU refers formally only to ‘the institutions of the Union’. In the second place, as regards the context of that provision, the Court considers, in particular, that the broad interpretation it gave to that term in relation to non-contractual liability 149 cannot usefully be relied on for the purposes of defining, by analogy, the scope of that provision. Furthermore, the Court notes that the previous institutional practice relied on by the Council, in accordance with which the seats of bodies, offices and agencies of the Union were determined on the basis of a political choice made solely by the Representatives of the Governments of the Member States, is far from being generalised, does not enjoy institutional recognition and, in any event, cannot create a precedent which is binding on the institutions. 148 The Court, on the merits, follows similar reasoning in Joined Cases C-106/19 and C-232/19. 149 Under the second paragraph of Article 340 TFEU. 77 In the third place, as regards the objective of Article 341 TFEU, the Court states, first of all, that that article preserves the decision-making powers of the Member States

in determining the seat of the institutions of the Union only. It notes, next, that the establishment of the bodies, offices and agencies of the Union is the result of an act of secondary legislation adopted on the basis of the substantive provisions implementing the EU policy in which the body, office or agency is involved. However, the decision on the location of the seat of those bodies, offices or agencies is consubstantial with the decision on their establishment. Accordingly, the EU legislature has, in principle, exclusive competence to determine the location of the seat of a body, office or agency of the Union, just as it has to define its powers and organisation. Lastly, the Court points out that the fact that the decision determining the location of the seat of a body, office or agency of the Union may have an important political dimension does not preclude that decision from being taken by the EU legislature in accordance with the procedures laid down by the substantively relevant provisions of the Treaties. In the light of the foregoing, the Court concludes that Article 341 TFEU cannot be interpreted as governing the designation of the location of the seat of a body, office or agency of the Union, such as the EMA or the ELA, and that the competence to determine the location of the seat of those agencies lies not with the Member States but with the EU legislature, in accordance with the ordinary legislative procedure. The Court then examines whether it has jurisdiction to rule on the validity of the decisions determining the location of the new seat of the EMA and the seat of the ELA under Article 263 TFEU. In that regard, it notes that the relevant criterion to exclude the jurisdiction of the EU Courts to hear and determine an action brought against acts adopted by the Representatives of the Governments of the Member States is solely that relating to their author, irrespective of their binding legal effects. To extend the concept of a challengeable act under Article 263 TFEU to acts adopted, even by common accord, by the Member States would amount to allowing the EU Courts to carry out a direct review of the acts of the Member States and, thus, to circumventing the remedies specifically provided for in the event of failure to fulfil their obligations under the Treaties. Lastly, the Court states that it is for the EU legislature, for reasons of both legal certainty and effective judicial protection, to adopt an act of the European Union ratifying or, on the contrary, departing from the political decision adopted by the Member States. Since that act necessarily precedes any measure for the actual implementation of the location of the seat of the agency concerned, only that act of the EU legislature is capable of producing binding legal effects under EU law. The Court concludes that the decisions of the Representatives of the Governments of the Member States determining the location of the new seat of the EMA and of the seat of the ELA (Joined Cases C-59/18 and C-182/18 and Case C-743/19) are not acts of the Council but acts of a political nature without any binding legal effects, taken by the Member States collectively, with the result that those decisions cannot be the subject of an action for annulment under Article 263 TFEU. Accordingly, it dismisses the actions in question as being directed against acts the legality of which it does not have jurisdiction to review. • The validity of the legislative act determining the location of the seat of a body, office or agency of the Union (Joined Cases C-106/19 and C-232/19) As regards the contested regulation, by which the Council and the Parliament confirmed, by means of the ordinary legislative procedure, the decision of the Representatives of the Governments of the Member States determining the location of the new seat of the EMA, the Court points out that it is for those institutions alone, in accordance with the principles of conferred powers and institutional 78 balance enshrined in the EU Treaty, 150 to determine its content. In that regard, it points out that that decision cannot be given any binding force capable of limiting the EU legislature’s discretion. That decision therefore has the force of a measure of political cooperation which cannot in any event encroach on the powers conferred on the institutions of the Union in the context of the ordinary legislative procedure. The fact that the Parliament was not involved in the process

which led to that decision does not therefore constitute, in any event, an infringement or circumvention of the Parliament's prerogatives as co-legislator, and the political impact of that decision on the legislative power of the Parliament and the Council cannot constitute a ground for annulment by the Court of the contested regulation. Since the decision of 20 November 2017 has no binding legal effect under EU law, the Court concludes that that decision cannot constitute the legal basis of the contested regulation, with the result that the lawfulness of that regulation cannot be affected by any unlawfulness vitiating the adoption of that decision. 2. Powers of the European institutions Judgment of 22 November 2022 (Grand Chamber), Commission v Council (Accession to the Geneva Act) (C-24/20, EU:C:2022:911) (Action for annulment – Council Decision (EU) 2019/1754 – Accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications – Article 3(1) TFEU – Exclusive competence of the European Union – Article 207 TFEU – Common commercial policy – Commercial aspects of intellectual property – Article 218(6) TFEU – Right of initiative of the European Commission – Modification by the Council of the European Union of the proposal from the Commission – Article 293(1) TFEU – Applicability – Article 4(3), Article 13(2) and Article 17(2) TEU – Article 2(1) TFEU – Principles of conferral of powers, of institutional balance and of sincere cooperation) By Decision 2019/1754, 151 the Council of the European Union approved the accession of the European Union to the Geneva Act 152 of the Lisbon Agreement 153 on Appellations of Origin and Geographical Indications. The Lisbon Agreement constitutes a special agreement within the meaning of the Paris Convention for the Protection of Industrial Property, 154 to which any State party to that convention may accede. Seven Member States of the European Union are parties to that agreement. Under that agreement, the States to which it applies constitute a Special Union within the framework of the Union for the Protection of Industrial Property established by the Paris Convention. The Geneva Act made it 150 Article 13(2) TEU. 151 Council Decision (EU) of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ 2019 L 271; p. 12; 'the contested decision'). 152 Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ 2019 L 271, p. 15; 'the Geneva Act'). 153 The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was signed on 31 October 1958, revised in Stockholm on 14 July 1967 and amended on 28 September 1979 (United Nations Treaty Series, vol. 828, No 13172, p. 205; 'the Lisbon Agreement'). 154 The Paris Convention for the Protection of Industrial Property was signed in Paris on 20 March 1883, last revised in Stockholm on 14 July 1967 and amended on 28 September 1979 (United Nations Treaties Series, vol. 828, No 11851, p. 305). 79 possible for the European Union to become a member of the same Special Union as the States which were parties to the Lisbon Agreement whereas the latter allowed only States to accede The accession of the European Union to the Geneva Act was approved on behalf of the European Union in accordance with Article 1 of the contested decision. Articles 2 and 5 of that decision make practical arrangements for the said accession. Article 3 of the contested decision authorises Member States which wish to do so to ratify or accede to the Geneva Act. As for Article 4 of that decision, it provides details concerning the representation, within the Special Union, of the European Union and of any Member State which ratifies or accedes to the Geneva Act and concerning the responsibilities which are incumbent on the European Union as regards the exercise of the rights and fulfilment of the obligations of the European Union and of those Member States arising from that act. The Commission brought an action seeking partial annulment of the contested decision, namely of Article 3 and of Article 4 thereof to the extent that the latter article contains references to the Member States. It criticises the Council for

amending its proposal 155 by introducing a provision authorising Member States which wish to do so to ratify or accede to the Geneva Act. The Commission's proposal, submitted on the basis of the provisions of the FEU Treaty concerning the implementation of the common commercial policy 156 and the procedure for the adoption of a decision concluding an international agreement in that area, 157 provided, in view of the EU's exclusive competence, that the European Union alone would accede to the Geneva Act. The Court of Justice, sitting as the Grand Chamber, rules on the admissibility of the action, in the light of the criteria concerning the author of the contested decision and whether the parts whose annulment is sought can be severed from the remainder of the act. Moreover, in the context of the examination of the main plea, which it upholds, the Court gives a ruling on the issue of the Member States being empowered by the Council to adopt legally binding acts, such as the accession to an international agreement, in an area falling under the exclusive competence of the European Union. The Court annuls in part the contested decision by finding that it was adopted in breach of Article 293(1) TFEU, read in conjunction with Article 13(2) TEU. Findings of the Court The Court of Justice rejects at the outset the argument put forward by the Italian Republic that the action is inadmissible on the ground that it is directed solely against the Council and not also against the European Parliament. It states that, under Article 218(6) TFEU, notwithstanding prior consent by the European Parliament, the Council alone is empowered to adopt a decision concluding an international agreement. The contested decision was therefore correctly signed by the President of the Council alone, that signature thus identifying the author of that decision, against which the action was to be brought. Moreover, the Court rejects the plea of inadmissibility raised by the Council, which maintained that the provisions of the contested decision which the Commission seeks to have annulled cannot be severed from the remainder of that decision and that it is therefore not possible to annul it in part. 155 Commission Proposal of 27 July 2018 for a Council Decision on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (document COM(2018) 350 final). 156 Article 207 TFEU. 157 Article 218(6)(a) TFEU. 80 In that context, the Court recalls that review of whether the contested provisions are severable requires consideration of their scope, in order to be able to assess objectively whether their annulment would alter the spirit and substance of the act at issue. In that regard, it notes that the substance of the contested decision consists of the accession of the European Union to the Geneva Act, approved on behalf of the European Union pursuant to Article 1 of that decision. By contrast, the provisions which the Commission seeks to have annulled intend to enable Member States which wish to do so to ratify or accede to the Geneva Act alongside the European Union. The Court notes that neither the situation where no Member State exercises that option nor the consequences flowing from it affects the legal scope of Article 1 of the contested decision or calls into question the accession of the European Union to the Geneva Act. The Court states that the fact that the Commission requested the temporary maintenance, from the date of delivery of the judgment to be delivered, of the effects of the parts of the contested decision which it seeks to have annulled as regards the Member States which are parties to the Lisbon Agreement has no bearing on the severability of the provisions of the contested decision whose annulment is sought. As to the substance, the Court examines the main plea, alleging that, in amending the Commission's proposal by adding a provision authorising Member States which wish to do so to ratify or accede to the Geneva Act, the Council acted outside any Commission initiative, thereby infringing Article 218(6) and Article 293(1) TFEU and distorting the institutional balance established by Article 13(2) TEU. In the first place, the Court concludes that Article 293(1) TFEU is applicable where the Council, acting on a proposal from the Commission as negotiator designated by it pursuant to Article 218(3)

TFEU, adopts a decision concluding an international agreement under Article 218(6) TFEU. In the second place, the Court examines the argument alleging breach of Article 293(1) TFEU. To that end, it recalls, first, that that provision must be read in the light of the principle of institutional balance, characteristic of the institutional structure of the European Union, which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions, as well as the principle of mutual sincere cooperation between those institutions. 158 In that regard, EU acts other than legislative acts, such as the contested decision concluding the international agreement at issue, are adopted on the basis of a Commission proposal. Under that power of initiative, the Commission promotes the general interest of the European Union and takes appropriate initiatives to that end. Article 293 TFEU, by providing, on the one hand, for a power of amendment of the proposal by the Council requiring unanimity, subject to certain exceptions, and, on the other hand, for the Commission's power to amend its proposal as long as the Council has not acted, ensures observance of the principle of institutional balance between the Commission's powers and those of the Council. Thus, the Council's power of amendment cannot extend to enabling it to distort the Commission's proposal in a manner which would prevent the objectives pursued from being achieved and deprive it of its raison d'être. Accordingly, the Court then ascertains whether the amendment made by the Council has distorted the subject matter or objective of the Commission's proposal in a manner which would prevent the objectives pursued by it from being achieved. It recalls in that regard that the subject matter of that proposal consisted of the accession of the European Union alone to the Geneva Act and that its objective was to enable the European Union to exercise properly its exclusive competence for the area covered by that act, namely the common 158 Principles set out in Article 13(2) TEU. 81 commercial policy, based on uniform principles and conducted within the framework of the principles and objectives of the EU's external action, which covers the negotiation of the Geneva Act. The Court states, moreover, that when the Treaties confer on the European Union exclusive competence in a specific area, only the European Union may legislate and adopt legally binding acts, expect where the Member States are empowered to do so by the European Union. 159 In addition, the principle of conferral of powers and the institutional framework defined in the EU Treaty to enable the European Union to exercise the powers conferred on it by the Treaties are specific characteristics of the European Union and of its law relating to the constitutional structure of the European Union. The Court finds that, by deciding to empower Member States to ratify or accede to the Geneva Act, the Council expressed a political choice alternative to the Commission's proposal, which affects the modalities for the exercise of an exclusive competence conferred on the European Union, while such a choice forms part of the Commission's assessment of the general interest of the European Union, an assessment to which the Commission's power of initiative is inextricably linked. The Court concludes that that empowerment by the Council distorts the subject matter and objective of the Commission's proposal, expressing its political choice to allow the European Union alone to accede to the Geneva Act and thus to exercise alone its exclusive competence in the area covered by that act. In addition, it adds that that conclusion cannot be called into question by the fact that the authorisation provided for in Article 3 of the contested decision was granted subject to full respect of the exclusive competence of the European Union and that, in accordance with Article 4 of that decision, in order to ensure unity in the international representation of the European Union and its Member States, the Council had entrusted the Commission with the representation of the European Union and that of any Member State wishing to avail itself of that authorisation. Despite that framework, by availing themselves of that authorisation, those States, as independent subjects of international law alongside the European Union, would exercise an exclusive competence of the latter, precluding it from

exercising that competence alone. Finally, the arguments relating to the need to ensure that the European Union has voting rights in the Assembly of the Special Union and to preserve the seniority and continuity of the protection of appellations of origin registered under the Lisbon Agreement in the seven Member States which were already parties thereto cannot justify the Council's amendment. The Court holds that any difficulty which the European Union may encounter at international level in the exercise of its exclusive competence or the consequences of that exercise on the international commitments of the Member States would not, as such, authorise the Council to amend a Commission proposal to the point that it distorts its subject matter or objective, thereby infringing the principle of institutional balance which Article 293 TFEU seeks to ensure. 159 Article 2(1) TFEU.