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Order of the General Court in Case T-1126/23 | Asociația Inițiativa pentru Justiție v Commission

Rule of law: action brought by a professional association of Romanian prosecutors against the Commission decision repealing the decision establishing the mechanism for cooperation and verification is dismissed as inadmissible

By this order of inadmissibility, the General Court adopts a position, in particular, on the novel question of the relationship between the principle of direct effect and the condition of admissibility requiring that a decision against which an action for annulment is brought under the fourth paragraph of Article 263 TFEU be of direct concern to a natural or legal person

The present case has arisen against the background of a wide-ranging reform in the areas of justice and the fight against corruption in Romania, which had been monitored at EU level since 2007 under the cooperation and verification mechanism (CVM). That mechanism, established by Decision 2006/928, ¹ sought to monitor the reforms undertaken by Romania to comply with the benchmarks set out in the annex to that decision ('the benchmarks'). Those benchmarks had been set with a view to completing the accession of that State to the European Union, remedying the deficiencies identified by the European Commission prior to the accession. On 15 September 2023, considering that Romania had complied with those benchmarks, the Commission adopted Decision 2023/1786 ² ('the contested decision'), repealing Decision 2006/928 and thereby putting an end to the CVM.

The Asociația Inițiativa pentru Justiție, a professional association of Romanian prosecutors the purpose of which is to ensure respect for the value of the rule of law in Romania, challenged that repeal decision before the General Court of the European Union, claiming that the lifting of the CVM directly affects its members, on the ground that, in the absence of that mechanism, they are at an increased exposure to illegitimate disciplinary proceedings. The Commission raised a plea of inadmissibility, asserting that the decision is not of direct concern to either the association or its members.

In its order, **the General Court dismisses the action for annulment as inadmissible, on the ground that the applicant association does not have standing to bring proceedings either in its own name or on behalf of the prosecutors whose interests it defends.**

In the analysis of the question whether the contested decision has direct legal effects on the situation of the prosecutors who are members of the applicant association, the General Court states at the outset that, **in so far as that decision repealed Decision 2006/928, it should be examined in the light of the purpose and content of Decision 2006/928 and the legal and factual context in which Decision 2006/928 was adopted.** It follows that the contested decision is capable of having direct legal effects on the situation of the Romanian prosecutors only in so far as Decision 2006/928 was itself capable of having such effects.

This is not the case. **It is apparent from Decision 2006/928 that its effects were confined to relations between the European Union and Romania,** without individuals, including prosecutors, being the subject of that decision, either directly or indirectly. Therefore, contrary to what the applicant asserts, **that decision did not confer any rights on its members, with the result that it cannot be regarded as directly affecting their legal situation.**

The fact that the Court of Justice recognised the direct effect of the benchmarks³ cannot imply, per se, that those benchmarks necessarily entail corresponding rights for prosecutors, on which they could rely before the national courts. In support of that finding, the General Court observes that the Court of Justice conceived of the direct effect of the benchmarks not in terms of rights and/or obligations created vis-à-vis individuals⁴ but from the perspective that the principle of direct effect includes also the obligation for national courts to disapply any national legislation or case-law that is contrary to EU law.

The General Court specifies that, **in any event, the direct effect of the benchmarks cannot mean that individuals may challenge the removal of those benchmarks without demonstrating that that removal in itself has a direct and individual effect on their legal situation**, a demonstration which is lacking in the present case.

The General Court concludes that Decision 2006/928 did not directly affect the applicant, and that, consequently, the contested decision also did not do so, with the result that the applicant cannot have standing to bring proceedings. That being so, the General Court recalls that, **notwithstanding the repeal of Decision 2006/928 establishing the CVM, prosecutors who are the subject of disciplinary proceedings may still rely on the judicial protection that they derive from EU law under Article 19 TEU.**

The General Court recalls, lastly, that the interpretation of the conditions of admissibility of actions for annulment in the light of the fundamental right to effective judicial protection must not have the effect of setting aside the conditions expressly laid down in the Treaties.

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

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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

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¹ [Commission Decision 2006/928/EC](#) of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

² [Commission Decision \(EU\) 2023/1786](#) of 15 September 2023 repealing Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

³ Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* ([C-83/19](#), [C-127/19](#), [C-195/19](#), [C-291/19](#), [C-355/19](#) and [C-397/19](#), paragraph 249).

⁴ For the purposes of the case-law arising from the judgment of 5 February 1963, *van Gend & Loos*, [26/62](#).