

2. Article 6(a) of Directive 2016/680 and Articles 47 and 48 of the Charter of Fundamental Rights of the European Union

must be interpreted as not precluding national legislation which provides that, if the person accused of an intentional offence subject to public prosecution refuses to cooperate voluntarily in the collection of the biometric and genetic data concerning him or her in order for them to be entered in a record, the criminal court having jurisdiction must authorise a measure enforcing their collection, without having the power to assess whether there are serious grounds for believing that the person concerned has committed the offence of which he or she is accused, provided that national law subsequently guarantees effective judicial review of the conditions for that accusation, from which the authorisation to collect those data arises.

3. Article 10 of Directive 2016/680, read in conjunction with Article 4(1)(a) to (c) and Article 8(1) and (2) thereof,

must be interpreted as precluding national legislation which provides for the systematic collection of biometric and genetic data of any person accused of an intentional offence subject to public prosecution in order for them to be entered in a record, without laying down an obligation on the competent authority to verify whether and demonstrate that, first, their collection is strictly necessary for achieving the specific objectives pursued and, second, those objectives cannot be achieved by measures constituting a less serious interference with the rights and freedoms of the person concerned.

(¹) OJ C 252, 28.6.2021.

Judgment of the Court (Grand Chamber) of 31 January 2023 — European Commission v Anthony Braesch and Others

(Case C-284/21 P) (¹)

(Appeal — State aid — Articles 107 and 108 TFEU — Restructuring aid — Banking sector — Preliminary examination stage — Decision declaring the aid compatible with the internal market — Restructuring plan — Commitments given by the Member State concerned — Burden-sharing measures — Conversion of subordinated debts into equity — Bondholders — Action for annulment — Admissibility — Fourth paragraph of Article 263 TFEU — Locus standi — Natural or legal person directly and individually concerned — Breach of the procedural rights of interested parties — Failure to initiate the formal investigation procedure — Article 108(2) TFEU — Concept of ‘parties concerned’ — Regulation (EU) 2015/1589 — Article 1(h) — Concept of ‘interested party’ — National measures taken into account by the European Commission — Inadmissibility of the action)

(2023/C 94/04)

Language of the case: English

Parties

Appellant: European Commission (represented by: K. Blanck and A. Bouchagiar, acting as Agents)

Other parties to the proceedings: Anthony Braesch, Trinity Investments DAC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP, Bybrook Capital Badminton Fund LP (represented by: A. Champsaur, avocate, and by G. Faella, L. Prosperetti and M. Siragusa, avvocati)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 24 February 2021, *Braesch and Others v Commission* (T-161/18, EU:T:2021:102);
2. Dismisses as inadmissible the action brought at first instance by Mr Anthony Braesch, Trinity Investments DAC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP and Bybrook Capital Badminton Fund LP seeking the annulment of Commission Decision C(2017) 4690 final of 4 July 2017 on State Aid SA.47677 (2017/N) — Italy — New aid and amended restructuring plan of Banca Monte dei Paschi di Siena;

- Orders Mr Braesch, Trinity Investments DAC, Bybrook Capital Master Fund LP, Bybrook Capital Hazelton Master Fund LP and Bybrook Capital Badminton Fund LP to bear their own costs and to pay those incurred by the European Commission in relation to both the proceedings at first instance and those on appeal.

(¹) OJ C 252, 28.6.2021.

Judgment of the Court (Third Chamber) of 26 January 2023 (request for a preliminary ruling from the Consiliul Național de Soluționare a Contestațiilor — Romania) — SC NV Construct SRL v Județul Timiș

(Case C-403/21, (¹) NV Construct)

(Reference for a preliminary ruling — Article 267 TFEU — Definition of ‘court or tribunal of a Member State’ — Criteria — Independence and compulsory nature of the jurisdiction of the national body concerned — Stability of the members of that body — Directive 2014/24/EU — Public procurement procedures — Article 58 — Selection criteria — Possibility of including, amongst those criteria, obligations under special laws applicable to the activities connected with the contract in question and not set out as a criterion for selection in the procurement documents — Article 63(1) — Tenderer relying on the capacities of another entity in order to meet the requirements of the contracting authority — Not possible to require recourse to subcontracting)

(2023/C 94/05)

Language of the case: Romanian

Referring court

Consiliul Național de Soluționare a Contestațiilor

Parties to the main proceedings

Applicant: SC NV Construct SRL

Defendant: Județul Timiș

Intervening parties: SC Proiect — Construct Regiunea Transilvania SRL

Operative part of the judgment

- Article 58 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, read in conjunction with the principles of proportionality and of transparency guaranteed by the first subparagraph of Article 18(1) of that directive

must be interpreted as meaning that the contracting authority has the option of imposing as selection criteria obligations under special laws applicable to the activities that may be required to be carried out in the context of performing the public contract and are not of significant importance

- The principles of proportionality and of transparency guaranteed by the first subparagraph of Article 18(1) of Directive 2014/24

must be interpreted as precluding procurement documents from being automatically supplemented with qualification criteria arising under special laws applicable to activities relating to the contract to be awarded which were not set out in the procurement documents and which the contracting authority decided not to impose on the economic operators concerned.

- Article 63(1) of Directive 2014/24