Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 12 January 2023[1]

Joined Cases C-363/21 and C-364/21

Ferrovienord SpA
v
Istituto Nazionale di Statistica – ISTAT (C-363/21),
interveners:
Procura generale della Corte dei conti,
Ministero dell'Economia e delle Finanze
and
Federazione Italiana Triathlon
v
Istituto Nazionale di Statistica – ISTAT,
Ministero dell'Economia e delle Finanze (C-364/21),
interveners:
Procura generale della Corte dei conti

(Requests for a preliminary ruling
from the Corte dei conti (Court of Auditors, Italy))

(Reference for a preliminary ruling – Regulation (EU) No 549/2013 – European system of national and regional accounts in the European Union (ESA 2010) – Classification of institutional units in sector S.13 (general government) – EU statistical legislation – Control mechanisms – Direct effect – Directive 2011/85/EEC – National budgetary frameworks – Direct effect – Effective judicial protection – Judicial review by a court of auditors or by the administrative courts)

[1] Original language: Spanish.

1. These (joined) requests for a preliminary ruling provide the Court[2] with an opportunity to clarify the scope of the legislation governing the European System of Accounts 2010, established by Regulation (EU) No 549/2013.[3] They seek to determine in particular:

— Whether that regulation and Directive 2011/85/EU[4] can be relied in disputes between different public entities or between individuals and statistical authorities.

— What form of effective judicial protection must Member States put in place when establishing remedies by which the application of the EU rules in this field can be subjected to review.

I. Legal framework

A. European Union law

1. Regulation No 549/2013

2. Article 1 provides:

'1. This Regulation sets up the European System of Accounts 2010 ("the ESA 2010" or "the ESA").

2. The ESA 2010 provides for:

(a) a methodology (Annex A) on common standards, definitions, classifications and accounting rules that shall be used for compiling accounts and tables on comparable bases for the purposes of the Union, together with results as required under Article 3;

(b) a programme (Annex B) setting out the time limits by which Member States shall transmit to the Commission (Eurostat) the accounts and tables to be compiled in accordance with the methodology referred to in point (a).

…

4. This Regulation does not oblige any Member State to use the ESA 2010 in compiling accounts for its own purposes.'

3. Chapter 1 (General features and basic principles) of Annex A (ESA 2010) provides:

'1.01 The European System of Accounts … is an internationally compatible accounting framework for a systematic and detailed description of a total economy (that is, a region, country or group of countries), its components and its relations with other total economies.

…

[2] The Court's case-law in this field is still scant and only just emerging. Most notable within it is the judgment of 11 September 2019, *FIG and FISE* (C-612/17 and C-613/17, EU:C:2019:705; 'the judgment in *FIG and FISE*').

[3] Regulation of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ 2013 L 174, p. 1).

[4] Council Directive of 8 November 2011 on requirements for budgetary frameworks of the Member States (OJ 2011 L 306, p. 41).

1.57 Institutional units are economic entities that are capable of owning goods and assets, of incurring liabilities and of engaging in economic activities and transactions with other units in their own right. For the purposes of the ESA 2010 system, the institutional units are grouped together into five mutually exclusive domestic institutional sectors:

(a) non-financial corporations;

(b) financial institutions;

(c) general government;

(d) households;

(e) non-profit institutions serving households.

The five sectors together make up the total domestic economy. Each sector is also divided into subsectors. The ESA 2010 system enables a complete set of flow accounts and balance sheets to be compiled for each sector, and subsector, as well as for the total economy. Non-resident units can interact with these five domestic sectors, and the interactions are shown between the five domestic sectors and a sixth institutional sector: the rest of the world sector.

…'

4. Chapter 2 (Units and groupings of units) of that annex (ESA 2010) states:

'…

2.12 *Definition*: an institutional unit is an economic entity characterised by decision-making autonomy in the exercise of its principal function. …

…

2.32 Each sector and subsector groups together the institutional units which have a similar type of economic behaviour.

…

General government (S.13)

2.111 *Definition*: the general government sector (S.13) consists of institutional units which are non-market producers whose output is intended for individual and collective consumption, and are financed by compulsory payments made by units belonging to other sectors, and institutional units principally engaged in the redistribution of national income and wealth.

…'

5. Chapter 20 (The government accounts) of that annex provides:

'…

20.05 The general government sector (S.13) consists of all government units and all non-market non-profit institutions (NPIs) that are controlled by government units. It also comprises other non-market producers as identified in paragraphs 20.18 to 20.39.

…'

2. Directive 2011/85

6. According to Article 1:

'This Directive lays down detailed rules concerning the characteristics of the budgetary frameworks of the Member States. Those rules are necessary to ensure Member States' compliance with obligations under the TFEU with regard to avoiding excessive government deficits.'

7. Article 2 states:

'For the purposes of this Directive, the definitions of "government", "deficit" and "investment" set out in Article 2 of the Protocol (No 12) on the excessive deficit procedure annexed to the TEU and to the TFEU shall apply.[[5]] The definition of sub-sectors of general government set out in point 2.70 of Annex A to Regulation (EC) No 2223/96 [of 25 June 1996 on the European system of national and regional accounts in the Community (OJ 1996 L 310, p. 1)] shall also apply.

In addition, the following definition shall apply:

"budgetary framework" means the set of arrangements, procedures, rules and institutions that underlie the conduct of budgetary policies of general government, in particular:

…

(f) arrangements for independent monitoring and analysis, to enhance the transparency of elements of the budget process;

…'

8. Article 3(1) provides:

'As concerns national systems of public accounting, Member States shall have in place public accounting systems comprehensively and consistently covering all sub-sectors of general government and containing the information needed to generate accrual data with a view to preparing data based on the ESA 95 standard. Those public accounting systems shall be subject to internal control and independent audits.'

[5] 'Protocol No 12 on excessive deficits'.

3. Regulation (EU) No 473/2013[6]

9. Article 2 states:

‘1. For the purposes of this Regulation, the following definitions shall apply:

(a) “independent bodies” means bodies that are structurally independent or bodies endowed with functional autonomy vis-à-vis the budgetary authorities of the Member State, and which are underpinned by national legal provisions ensuring a high degree of functional autonomy and accountability, …

2. The definitions of “general government sector” and of “sub-sectors of the general government sector”, set out in point 2.70 of Annex A to Regulation (EC) No 2223/96 of 25 June 1996 on the European System of national and regional accounts in the Community shall also apply to this Regulation.

…’

10. In accordance with Article 5:

‘1. Member States shall have in place independent bodies for monitoring compliance with:

(a) numerical fiscal rules incorporating in the national budgetary processes their medium-term budgetary objective as established in Article 2a of Regulation (EC) No 1466/97;

(b) numerical fiscal rules as referred to in Article 5 of Directive [2011/85].

…’

B. National law

1. Law No 196/2009[7]

11. Article 1 reads:

‘1. General government shall contribute to the achievement of the public finance targets set at national level in accordance with the procedures and criteria laid down by the European Union and shall share the resulting responsibilities. …

2. … The term “general government” means …, with effect from the year 2012[,] the institutions and entities included for statistical purposes by [Istituto Nazionale di Statistica (National Institute of Statistics, Italy; ‘ISTAT’)] in the list … published … in the *Gazzetta ufficiale della Repubblica italiana* (Official Gazette of the Italian Republic) …, as subsequently updated in accordance with paragraph 3 of the present article on the basis of the definitions in specific EU regulations …

6 Regulation of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (OJ 2013 L 140, p. 11).

7 Legge n. 196 del 31 dicembre 2009, di contabilità e finanza pubblica (Law No 196 of 31 December 2009 on accounting and public finances) (GURI No 303 of 31 December 2009, Ordinary Supplement No 245).

3. ISTAT shall designate the public entities mentioned in paragraph 2 by decision published in the *Gazzetta ufficiale* (Official Gazette) by 30 September each year.

…'

2. Law No 243/2012[8]

12. Article 2(1)(a) defines 'general government' as 'entities identified by the procedures and measures provided for, in accordance with EU law, in the regulations on public accounting and public finances, and embodied in the subsectors of central government, local government and national social security institutions'.

13. In accordance with Article 20, the Corte dei conti (Court of Auditors, Italy) is to conduct successive reviews of the fiscal management of general government for the purposes of coordinating public finances and fiscal equilibrium in the manner and on the basis laid down by law.

3. Law No 161/2014[9]

14. Paragraph 1 of Article 30 ('Enforcement of the non-directly applicable provisions of Directive [2011/85] and Regulation No 473/2013') provides that, with a view to giving full effect to the non-directly applicable parts of Directive 2011/85 and Regulation No 473/2013 in relation to the activity of monitoring compliance with the budgetary rules, the Corte dei conti (Court of Auditors) is to verify that the budgetary data held by general government are in conformity with the accounting rules.

4. Codice della giustizia contabile[10]

15. Article 11(6)(b), as amended by Decree-Law No 137/2020, which became Law No 176/2020,[11] provides:

'The Combined Chambers [of the Corte dei conti], in special composition, exercising their exclusive jurisdiction in matters of public accounting, shall decide at sole instance on proceedings … relating to the designation of general government entities by ISTAT, *solely for the purposes of applying national legislation on controlling public expenditure*'.[12]

[8] Legge n. 243, del 24 dicembre 2012, disposizioni per l'attuazione del principio del pareggio di bilancio ai sensi dell'articolo 81, sesto comma, della Costituzione (Law No 243 of 24 December 2012, provisions implementing the balanced budget principle within the meaning of the sixth paragraph of Article 81 of the Constitution) (GURI No 12 of 15 January 2013).

[9] Legge n. 161 – Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea – Legge europea 2013-bis, del 30 ottobre 2014 (Law No 161 – Provisions discharging the obligations arising from Italy's membership of the European Union – European Law 2013-bis of 30 October 2014) (GURI No 261 of 10 November 2014 – Ordinary Supplement No 83).

[10] Decreto legislativo n. 174, del 26 agosto 2016, Codice di giustizia contabile, adottato ai sensi dell'articolo 20 della legge 7 agosto 2015, n. 124 (Legislative Decree No 174 of 26 August 2016, Code of Accounting Procedure, adopted pursuant to the Law of 7 August 2015; 'the CGC') (GURI No 209 of 7 September 2016 – Ordinary Supplement No 41).

[11] Decreto legge n.°137 del 28 ottobre 2020, Ulteriori misure urgenti in materia di tutela della salute, sostegno ai lavoratori e alle imprese, giustizia e sicurezza, connesse all'emergenza epidemiologica da COVID-19, convertito con modificazioni dalla Legge n. 18 dicembre 2020, n. 176, del 18 dicembre 2020 (Decree-Law No 137 of 28 October 2020 concerning urgent measures on health protection, aid to workers and businesses, and justice and security in connection with the COVID-19 epidemiological emergency (GURI No 269 of 28 December 2020), now, with amendments, Law No 176 of 18 December 2020) (GURI No 319 of 24 December 2020 – Ordinary Supplement No 43) ('Decree-Law No 137/2020').

[12] My emphasis.

II. Facts, disputes and questions referred for a preliminary ruling

16. On 30 September 2020, ISTAT included Ferrovienord SpA ('Ferrovienord') and the Federazione Italiana Triathlon ('FITRI') in the list of general government entities ('ISTAT 2020 list') entered in the consolidated profit and loss account for the Italian State.[13]

17. Ferrovienord and FITRI brought an action for the annulment of that decision before the Corte dei conti (Court of Auditors). In their view, the conditions for inclusion in the ISTAT 2020 list were not met.

18. ISTAT opposed that action on the ground that the inclusion of those organisations in the ISTAT 2020 list was correct. The Procura generale della Corte dei conti (Public Prosecutor's Office of the Court of Auditors, Italy) sought the referral of a question as to the constitutionality of Article 23-*quater* of Decree-Law No 137/2020.[14]

19. The Corte dei conti (Court of Auditors) ordered that the Ministero dell'Economia e delle Finanze (Ministry of Economic and Financial Affairs, Italy) be joined to the proceedings, while at the same time referencing the issues concerning the compatibility of the new provision with EU law. It asked the parties to comment specifically on this matter.

20. In the view of the Corte dei conti (Court of Auditors):

– Article 11(6)(b) of the CGC gave it jurisdiction to adjudicate on ISTAT decisions relating to the designation of general government entities.

– However, that provision was amended by Article 23-*quater*(2) of Decree-Law No 137/2020, which limited the powers of the Court of Auditors in matters concerning the ISTAT list to review '*solely for the purposes of applying the national legislation on controlling public expenditure*'.[15]

– Consistency between domestic budgetary law and the obligations arising from EU law is a principle of Italian constitutional law, along with those of transparency and budgetary equilibrium (Articles 81 and 97 of the Constitution).

– In domestic law, that consistency is ensured through the so-called 'budgetary equilibrium' balance, which limits the use of borrowing by the various State authorities (Article 4(4) and Articles 9 and 10 of Law No 243/2012). The balances and any corrections to them are determined on the basis of the data transmitted by the general government entities entered in the consolidated account.

– Consequently, compliance with the objectives of economic policy coordination under Article 121 TFEU is contingent upon the correct compilation of the ISTAT list (so far as concerns the general government entities under an obligation to deliver budgetary equilibrium).

[13] ISTAT compiles this list annually in accordance with Article 1(3) of Law No 196/2009, in application of Regulation No 549/2013.

[14] This request was not allowed.

[15] The referring court states that the same amendment had been introduced by Article 5(2) of another Decree-Law (No 154 of 23 November 2020). That article was repealed by Law No 176/2020, converting Decree-Law No 137/2020 into law, although Law No 176/2020 incorporated the content of that article into Article 23-*quater* of Decree-Law No 137/2020.

– In the Italian legal system (first paragraph of Article 24 and first paragraph of Article 113 of the Constitution), the inclusion of an entity in the ISTAT list is actionable before the courts. Until 2012, the 'natural courts' to adjudicate on such actions were the administrative courts. Since then, jurisdiction in this regard has lain with the Corte dei conti (Court of Auditors). This court exercises judicial review of compliance with national and EU law in budgetary matters and verifies, from a subjective point of view, that the profit and loss accounts [of the entities concerned] are reliable, failing which the penalties provided for in Article 8 of Regulation (EU) No 1173/2011 [16] may apply. It thus ensures that the public finance objectives are actually attained.

– Following the reform carried out by Article 23-*quater* of Decree-Law No 137/2020, such a review can no longer produce (or refrain from producing) two necessary implicit effects both of which were previously in the gift of the same court, namely: a (positive or negative) declaration as to the existence of an obligation to communicate the relevant public finance information and data, pursuant to Law No 243/2012 and Law No 196/2009 (this being an obligation transposing Regulation No 549/2013 and Directive 2011/85); and the consequent application (or non-application) of the provisions on budgetary equilibrium and the sustainability of the debt of general government entities, in accordance with Articles 3 and 4 of Law No 243/2012 (which also transposes Regulation No 549/2013 and Directive 2011/85).

21. According to the Corte dei Conti (Court of Auditors), the 2020 legislative amendment has led to an absolute lack of jurisdiction, and consequently a lack of protection, in matters relating to the precise definition of the entities included in sector S.13 (non-local general government bodies) and, therefore, in relation to the scale of public finances, thus rendering the ESA 2010 and Directive 2011/85 ineffective. The Italian State uses the ISTAT list to determine the scope of the ESA 2010 for the further purposes of Article 126 TFEU and Protocol No 12 on excessive deficits.

22. In its opinion, there has been an infringement of the principle of sincere cooperation (Article 4 TEU), and entities classified by ISTAT as having general government status are being denied the opportunity to challenge their classification as such, in breach of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

23. It goes on to say that, even if the view were taken, as ISTAT and the Ministry of Economy and Finance maintain, that the new legislation extends the general jurisdiction of the administrative courts, doubts remain as to whether that legislation:

– Is contrary to the principles of effective judicial protection, effectiveness and legal certainty under EU law. [17]

– Infringes the principles of the equivalence of remedies and the rule of law (Article 2 TEU and Article 19 TEU), in the light of the correlation between the latter and protection of the European Union's financial interests that is established in Regulation (EU, Euratom) 2020/2092. [18]

[16] Regulation of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ 2011 L 306, p. 1).

[17] In its view, if both courts (the Court of Auditors and the Administrative Court) have to verify the correct application of the ESA 2010 by the same entity, there is a risk that they will deliver contradictory rulings on the same claim and on the precise definition of the entities falling within sector S.13, thereby reducing the effectiveness of EU law.

[18] Regulation 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).

24. It is in this context that the Corte dei conti (Court of Auditors) has referred the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the rule of direct applicability of the [European System of Accounts (ESA)] 2010 and the principle of the effectiveness of [Regulation No 549/2013] and of Directive [2011/85] preclude national legislation which limits the jurisdiction of the competent national court in respect of the correct application of the ESA 2010 solely for the purposes of national legislation on controlling public expenditure, undermining the effectiveness of the rules [of EU law], particularly with regard to the verification of transparency and reliability of budgetary balances as a means of assessing Italy’s convergence towards the [medium-term budgetary objective (MTO)]?

(2) Does the rule of the direct applicability of the ESA 2010 and the principle of the effectiveness of [Regulation No 549/2013] and of Directive [2011/85], on the point of organisational separation between budgetary authorities and audit bodies, preclude national legislation which limits the effects of the ruling of the competent national court in respect of the correct application of the ESA 2010 solely for the purposes of national legislation on controlling public expenditure, by preventing any independent audit of the subjective scope of the accounts of the Italian Government (as defined for the purposes [of EU law]) as a means of verifying Italy’s convergence towards the MTO?

(3) Does the principle of the rule of law, in the form of effective judicial protection and the equivalence of remedies, preclude national legislation which:

(a) prevents any judicial review of the correct application of the ESA 2010 by the ISTAT for the purpose of defining the scope of sector S.13 and thus the accuracy, transparency and reliability of budgetary balances, as a means of verifying Italy’s convergence towards the MTO (infringement of the principle of effective protection)?

(b) exposes the applicant – should the defendant’s interpretation of the rule be deemed correct, whether by a law governing its authentic interpretation or otherwise – to the burden of two separate legal challenges and the consequent risks of conflicting rulings as to the existence of a legal status under [EU] law, making impossible the effective protection of its right within the time allowed for fulfilment of the ensuing obligations (in other words, the financial year) and undermining the legal certainty as to the existence of general government status?

(c) provides that – should the defendant authority’s interpretation of the rule be deemed correct, whether by a law governing its authentic interpretation or otherwise – the correct definition of the budgetary scope should be determined by a different court to that which has jurisdiction in matters of budgetary law under the Italian Constitution?’

III. Procedure before the Court

25. The requests for a preliminary ruling were registered at the Court on 9 June 2021. The application that those requests be adjudicated under the expedited procedure was refused.

26. Written observations have been submitted by Ferrovienord, FITRI, the Public Prosecutor's Office of the Corte dei conti (Court of Auditors), the Italian Government and the European Commission. All of the parties mentioned attended the hearing held on 19 October 2022.

IV. Assessment

A. Preliminary observation

27. As has already been stated, the questions referred for a preliminary ruling concern the compatibility with EU law of a single provision ('the contested provision') of Italian legislation, that is to say, Article 23-*quater*(2) of Decree-Law No 137/2020.

28. Under that provision, the Corte dei conti (Court of Auditors) has jurisdiction to review ISTAT's decisions on the classification of 'institutional units' as government entities '*solely for the purposes of applying national legislation on controlling public expenditure*'. The phrase in italics was added to the CGC by Decree-Law No 137/2020.

29. In the view of the Italian Government, the referring court misinterprets the contested provision, inasmuch as it maintains that that provision removes the power of judicial review of ISTAT's decisions on inclusion in the list of general government entities.

30. The Italian Government argues, conversely, that, under that provision, the power of review is simply given back to the administrative courts, while the Corte dei conti (Court of Auditors) retains the power of judicial review of the legal consequences of including those institutional units in the ISTAT list.

31. In the context of a reference for a preliminary ruling, the Court of Justice lacks jurisdiction to interpret provisions of domestic law. It falls exclusively to the national court to determine the exact scope of national laws, regulations or administrative provisions. [19]

32. The Court may, however, interpret provisions of EU law by giving answers based on a given interpretation of domestic law. This is the case in particular where, as here, the referring court itself reiterates the line of argument put forward by 'the defendant' (that is to say, the Italian Government) as a proposition that might succeed. [20]

B. Admissibility

1. Status as a court or tribunal

33. It is essential to analyse first and foremost whether the body which has made these two references to the Court for a preliminary ruling is a 'court or tribunal of a Member State' within the meaning of Article 267 TFEU.

[19] Judgments of 28 April 2022, *SeGEC and Others* (C-277/21, EU:C:2022:318, paragraph 21), and of 4 March 2020, *Schenker* (C-655/18, EU:C:2020:157, paragraph 19 and the case-law cited).

[20] Third question referred for a preliminary ruling, points (b) and (c).

34. The Court has held to be inadmissible requests for a preliminary ruling submitted by regional review divisions of the Italian Court of Auditors acting as administrative authorities [21] or by the Corte dei conti (Court of Auditors) in the course, in each case, of proceedings for the *ex post* review of the financial management of various public bodies. [22]

35. The Court did, however, reply to the requests for a preliminary ruling submitted by the Corte dei conti (Court of Auditors) in the judgment in *FIG and FISE*, [23] without calling into question the status of that court as a 'court or tribunal', in circumstances similar to those at issue here.

36. In this case, the same court is called upon to settle a dispute in the exercise of its judicial functions under Italian law rather than in the exercise of its *ex post* supervisory and review functions. Indeed, the very subject matter of the dispute is the scope of its judicial functions following their limitation under Article 23-*quater* of Decree-Law No 137/2020.

37. It was made clear at the hearing that that legislative amendment does not remove the judicial competence of the Corte dei conti (Court of Auditors), but only restricts it. Although it cannot now annul ISTAT lists with *erga omnes* effect, it can disapply them in a particular dispute, in relation only to the applicant entity, in the context of the national legislation on controlling public expenditure.

38. In short, the Corte dei conti (Court of Auditors) exercises judicial powers by virtue of which it may refer questions to the Court of Justice for a preliminary ruling if it is called upon to settle disputes such as those which have given rise to those references.

2. Inadmissibility arising from a possible misinterpretation of domestic law?

39. The Italian Government, reasoning along the lines set out above, [24] objects to the admissibility of the first and second questions referred for a preliminary ruling and point (a) of the third, inasmuch as they start from the 'erroneous premiss that, following the amendment of Article 11 of the CGC, it will no longer be possible to apply to any Italian court in order to challenge the correct compilation of ISTAT's S.13 list'.

40. That objection is untenable:

– First, if, as here, the questions raised relate to the interpretation of EU law, the Court is in principle required to give a ruling, given the presumption that a reference for a preliminary ruling is relevant. [25]

– Secondly, as I have already explained, the Court's reply to the doubts raised by the referring body must start from the interpretation of the national provisions concerned which has been adopted by that body, without prejudice to its right to provide the referring body with an

[21] Order of 4 October 2021, *Comune di Camerota* (C-161/21, not published, EU:C:2021:833).

[22] Orders of 26 November 1999, *RAI* (C-440/98, EU:C:1999:590, paragraph 14), and of 26 November 1999, *ANAS* (C-192/98, EU:C:1999:589, paragraph 23).

[23] On that occasion, the disputes concerned the inclusion for 2017 of two entities (the Federazione Italiana Golf and the Federazione Italiana Sport Equestri) in the list of public authorities entered in the consolidated public profit and loss accounts, pursuant to a decision adopted by ISTAT.

[24] Point 30 et seq. of this Opinion.

[25] Judgments of 17 March 2022, *Daimler* (C-232/20, EU:C:2022:196, paragraph 44), and of 25 November 2021, *job-medium* (C-233/20, EU:C:2021:960, paragraph 17).

indication of another reading of those provisions, in particular where the referring body itself acknowledges that it might conceivably accept that alternative reading.

41. In short, the Court can give a useful answer to the referring body, on the basis of the available information on Italian domestic law, by interpreting Regulation No 549/2013, Directive 2011/85 and Regulation No 473/2013.

C. First question referred for a preliminary ruling

42. The referring court wishes to ascertain whether the contested provision of national law is compatible with the direct applicability of Regulation No 549/2013 and with the effectiveness of that regulation and Directive 2011/85.

43. In order to answer the first question, it is in my view necessary first of all to analyse: (a) whether the obligations requiring Member States to transmit accounting data to the Commission, as laid down in Regulation No 549/2013, are binding and directly effective; and (b) whether Directive 2011/85 imposes obligations only on statistical authorities and governments but not on other public entities, and whether it establishes rights and obligations for individuals and is capable of having direct effect.

44. I shall address the absence of any power of judicial review, to which the Corte dei conti (Court of Auditors) also refers in those two questions, when I come to analyse the third question.

1. Invocability of Regulation No 549/2013

45. The discipline prohibiting excessive public debt [26] is applied through a procedure involving the Commission and the Council. This monitors the fiscal position of the Member States and the amount of their public debt.

46. In order to be able to undertake such supervision, the European Union needs reliable statistics [27] on the economic position of the Member States, in particular their government deficit and government debt.

[26] Basically, Member States must not run a government deficit exceeding 3% of their GDP or issue government debt in excess of 60% of their GDP (Article 126 TFEU and Protocol No 12 on excessive deficits).

[27] The general provision of EU law on statistics is Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ 2009 L 87, p. 164). That regulation states that the European Statistical System is a partnership between the Community statistical authority, which is the Commission (Eurostat), and the national statistical institutes and other national authorities responsible in each Member State for the development, production and dissemination of European statistics.

47. The Commission's powers to verify statistical data were strengthened by Regulation (EC) No 479/2009,[28] which spelled out the obligation incumbent on Member States to report their deficit and debt levels to it (Article 3 of Protocol No 12 on excessive deficits) and gave Eurostat[29] certain powers to monitor the statistical data supplied by the Member States.

48. In the interests of the homogeneity required, Member States must use a single uniform nomenclature common to the entire European Union when discharging their reporting obligation. At present, that nomenclature is the ESA 2010, to which Regulation No 479/2009 has been adapted.

49. The ESA 2010 is in principle applicable to all EU acts that refer to the ESA or its definitions. However, no Member State is obliged to use the ESA 2010 in compiling accounts for its own purposes (Article 1(3) and (4) of Regulation No 549/2013).

50. According to Regulation No 549/2013, Member States must transmit to the Commission (Eurostat) the accounts and tables set out in Annex B within the time limits specified therein for each table (Article 3(1)) and Eurostat must assess the quality of the data so transmitted (Article 4(4)).

51. As the Court has stated, 'the ESA 2010 establishes a reference framework for drawing up the accounts of the Member States, for the purposes of both Union citizens and the European Union itself. The accounts should be drawn up on the basis of a single set of principles that are not open to differing interpretations, so that comparable results can be obtained'.[30]

52. In particular, Member States must determine sector S.13 (general government) in accordance with Annex A, point 2.111, of the ESA 2010,[31] and subdivide it into four sub-sectors in which they must classify the relevant institutional units. From those entities they must collect accounting data which they must compile, in accordance with the methodology of the ESA 2010, for transmission to the Commission.

53. In order to ensure that the ESA 2010 is correctly applied to sector S.13, the EU rules provide for various control mechanisms in operation in the relations between Eurostat and the Member States (in particular their national statistical institutes):

– The advisory procedure between the Commission (Eurostat) and the Member States (Article 2(3) of Regulation No 549/2013 and Article 10 of Regulation No 479/2009).

– The mechanism for permanent dialogue between Eurostat and the national statistical institutes (Articles 11, 11a and 11b of Regulation No 479/2009).

[28] Council Regulation of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (OJ 2009 L 145, p. 1).

[29] Acting on behalf of the Commission, Eurostat performs the role of statistical authority, in accordance with Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics (OJ 1997 L 112, p. 56). Again acting on behalf of the Commission, Eurostat is responsible for evaluating the quality of data and supplying the data to be used in the context of the excessive deficit procedure.

[30] Judgments in *FIG and FISE*, paragraph 32; of 3 October 2019, *Fonds du Logement de la Région de Bruxelles-Capitale* (C-632/18, EU:C:2019:833, paragraph 32); and of 28 April 2022, *SeGEC and Others* (C-277/21, EU:C:2022:318, paragraph 23).

[31] See the text of this in point 4 of this Opinion.

– The publication of national statistical data with reservations (Article 15 of Regulation No 479/2009). Where appropriate, Eurostat may amend data reported by the Member State and provide the amended data if the data reported do not comply with that regulation.

– The procedure for imposing sanctions for the manipulation of statistics (Article 8 of Regulation No 1173/2011).

54. The Commission argues [32] that the aforementioned control mechanisms ensure that institutional units are correctly classified in sector S.13. They enable Eurostat to ensure that Member States comply with their obligation to gather and transmit accounting data of sufficient quality in accordance with the ESA 2010.

55. Consequently, the Commission goes on to say,

– Should an institutional unit be incorrectly classified in the general government sector by the national authorities, Eurostat can correct the error and publish the correct data.

– Regulation No 549/2013 imposes obligations to report statistical data only on national authorities, in particular national statistical institutes, but not on individuals.

56. The Commission infers from the foregoing that Regulation No 549/2013 cannot be relied on directly by individuals. Any institutional units (such as Ferrovienord and FITRI) considering themselves to have been incorrectly included by ISTAT in sector S.13 could not therefore challenge the decisions of that institute by claiming that they are incompatible with Regulation No 549/2013. They could only claim infringement of the rules of Italian domestic law.

57. I am not convinced by the Commission's position.

58. First, Regulation No 549/2013 is applicable in any event to disputes such as these, whether directly or by unconditional reference in Italian domestic law. The Court has jurisdiction to interpret it even in purely domestic situations, where '… the provisions of EU law have been made applicable by national legislation, which, in dealing with situations confined in all respects within a single Member State, follows the same approach as that provided for by EU law'. [33]

59. The referring court adequately explains that the EU statistical legislation applies to relations between the Italian authorities and the national entities as a result of the reference to that legislation in Italian law.

60. In the disputes which have given rise to these two references for a preliminary ruling, ISTAT classifies Ferrovienord and FITRI as general government entities and includes them in the ISTAT 2020 list. In acting in this way, it applies certain provisions of Regulation No 549/2013, and their inclusion gives rise to legal consequences for those entities.

61. Second, it is important to distinguish between two scenarios which nonetheless lead to the same outcome.

[32] The Commission's written observations, paragraph 29.

[33] See, to that effect, judgments of 18 October 1990, *Dzodzi* (C-297/88 and C-197/89, EU:C:1990:360, paragraphs 36, 37 and 41); of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874, paragraph 53); and of 27 June 2018, *SGI and Valériane* (C-459/17 and C-460/17, EU:C:2018:501, paragraph 28).

– If Ferrovienord and FITRI were private entities (individuals for the purposes of reliance on Regulation No 549/2013), a matter which falls to be decided by the referring court, they would be able to rely on the direct effect of that regulation as against ISTAT, which is clearly an authority of the Italian State. This would be a vertical relationship in which an individual enforces an EU regulation against a public entity.

– If the referring court were to take the view that Ferrovienord and FITRI are public entities, as Regulation No 549/2013 is binding in its entirety on the Italian State and all Italian public entities have to comply with it, an institutional unit in the public sector which has standing to challenge a decision by ISTAT could rely on it in a dispute with that institute.

62. When ISTAT, acting in its capacity as the Italian statistical authority, determines which entities are to be included in sector S.13, it is applying the nomenclature of the ESA 2010 and, therefore, Regulation No 549/2013.

63. Entities which are the addressees of decisions by ISTAT that entail the application of Regulation No 549/2013 can, if they have standing to do so under domestic law, challenge those decisions before the national courts if they consider them to have been incorrectly adopted by ISTAT.

64. Put another way, institutional entities with standing to bring proceedings before their national courts may rely on the provisions of Regulation No 549/2013 in order to argue that ISTAT has misapplied the ESA 2010.

65. In short, in their respective actions against ISTAT's decisions, Ferrovienord and FITRI will be able to rely on Regulation No 549/2013 whether the referring court classifies them as public or private entities.

66. The Court has implicitly recognised the applicability and direct effect of Regulation No 549/2013 in disputes concerning whether various entities were to be classified one way or the other under the corresponding chapters of Annex A to that regulation:

– The case disposed of by the judgment in *FIG and FISE*[34] concerned whether the Italian Olympic Committee exercised control over the national golf and equestrian sports federations. Nobody questioned whether the provisions of Regulation No 549/2013 could be relied on and were binding and, in the disputes in the main proceedings, both sports federations were able to challenge their classification as general government entities in the ISTAT list.

– In the case disposed of by the judgment in *Fonds du Logement de la Région de Bruxelles-Capitale*,[35] that fund challenged its classification by the Belgian accounting authority in the general government sector under the ESA 2010. In the settlement of that dispute, it was implicitly accepted without debate that Regulation No 549/2013 was binding and directly effective.

[34] In particular, the classification methodology follows from a combined reading of paragraphs 1.35, 2.34, 2.130, 3.31, 20.05, 20.13 and 20.17 of Annex A to Regulation No 549/2013. The general concept of 'control' is similarly defined in paragraphs 1.36, 20.15, 20.18, 20.306 and 20.309 of Annex A to the same regulation.

[35] Judgment of 3 October 2019 (C-632/18, EU:C:2019:833).

– The same was true in the case settled by the recent judgment in *SeGEC and Others*,[36] in which associations providing education in Belgium challenged their classification as general government entities.

67. The way in which the statistical authorities of a Member State apply the rules of the ESA 2010 affects not only those authorities themselves but also the entities (institutional units) of the Member State concerned.[37] Both the referring court and the Italian Government[38] recognise that inclusion in the ISTAT 2020 list means that the legal person in question will have to comply with the national rules intended to limit public spending.

68. While it is true that the ESA 2010 governs the statistics of general government bodies, it also takes into account the economic activities of individuals, whose legal positions may be affected by the ISTAT classifications concerned.

69. Consequently, any private institutional unit may rely directly on the relevant paragraphs of the ESA 2010 nomenclature in order to obtain from a national court a ruling as to whether the national authorities applied those paragraphs correctly when classifying it one way or the other. In the same way, a public entity may rely on the binding nature of the provisions of Regulation No 549/2013 in an action against ISTAT, if it is allowed to bring proceedings against that institute under domestic law.[39]

70. The foregoing is not precluded by the fact that, in accordance with Article 1(4) of Regulation No 549/2013, Member States may use a statistical nomenclature other than that of the ESA 2010 'in compiling accounts for [their] own purposes'. If they take up that option, they will later have to reformulate the data collected in accordance with the ESA 2010 before submitting them to the Commission.

71. ISTAT must compile the sector S.13 list by applying the nomenclature contained in Regulation No 549/2013. If an entity is classified as an institutional entity in that sector, it must provide ISTAT with its economic data in accordance with the nomenclature determined by the State concerned. As has already been stated, Italy extended the use of the ESA 2010 nomenclature to the institutional units in its general government.[40] That extension supports the proposition that Regulation No 549/2013 must be applied directly by ISTAT in order to classify entities such as Ferrovienord or FITRI under the 'general government' heading.[41]

[36] Judgment of 28 April 2022 (C-277/21, EU:C:2022:318).

[37] Judgment in *FIG and FISE*, paragraph 32: 'as is apparent from recitals 1 and 3 of Regulation No 549/2013 and paragraphs 1.01 and 1.19 of Annex A thereto, the ESA 2010 establishes a reference framework for drawing up the accounts of the Member States, for the purposes of *both Union citizens* and the European Union itself' (emphasis added).

[38] Written observations of the Italian Government, paragraphs 13 and 14. These underline that an entity included in the ISTAT 2020 list may not, for example, grant certain social advantages to its workers or it will be subject to restrictions on the purchase and sale of certain goods.

[39] In some Member States, disputes between public authorities or institutions must be settled through channels other than legal action.

[40] The Commission reports that some Member States have laid down rules, similar to those in Italy, requiring the ESA 2010 nomenclature be used for the purposes of providing data to their statistical institutes, while others use different nomenclatures.

[41] See points 39 to 41 of this Opinion.

2. Invocability of Directive 2011/85

72. For the purposes of the present case, Directive 2011/85:

– ‘Lays down detailed rules concerning the characteristics of the budgetary frameworks of the Member States. Those rules are necessary to ensure Member States’ compliance with obligations under the TFEU with regard to avoiding excessive government deficits’ (Article 1).

– Adopts the definitions of general government and the different subsectors thereof contained in the ESA 2010 and uses these in the context of the budgetary frameworks of the Member States (Article 2).[42]

– Specifies that ‘… Member States shall have in place public accounting systems comprehensively and consistently covering all sub-sectors of general government and containing the information needed to generate accrual data with a view to preparing data based on the [ESA 2010] standard. Those public accounting systems shall be subject to internal control and independent audits’ (Article 3).

73. The medium-term budgetary frameworks, forecasts and numerical fiscal rules governed by Directive 2011/85 are laid down by the national authorities of the Member States, for communication to the Commission, and largely concern the statistical institutes and ministries of economic affairs of those States. I cannot find in that directive any provisions which are directed at other public entities or which are capable of having a direct impact on the legal situation of individuals.

74. Consequently, Directive 2011/85 does not contain any provisions capable of having direct effect and conferring rights and obligations on individuals, or on public entities other than statistical authorities or ministries of economic affairs.

75. That view is not precluded by the fact that the Italian rules drawn up to incorporate into Italian domestic law the obligations laid down in Directive 2011/85 included measures additional to the requirements of that directive. It will be for the national courts, if necessary, to interpret and apply the additional rules included in the domestic provisions implementing Directive 2011/85.

3. Interim conclusion

76. In short, I take the view that:

– Regulation No 549/2013 may be relied on by an institutional unit (a public or private entity) in connection with its inclusion by ISTAT in sector S.13 (general government) of the ESA 2010.

– Directive 2011/85, inasmuch as it governs only relationships between national statistical and economic planning authorities and the EU institutions, and does not contain provisions applicable to any other type of public or private entity, cannot be relied on by the latter.

[42] The budgetary frameworks include in particular: systems of budgetary accounting and statistical reporting; rules and procedures governing the preparation of forecasts for budgetary planning; country-specific numerical fiscal rules; budgetary procedures; medium-term budgetary frameworks; arrangements for independent monitoring and analysis to enhance the transparency of elements of the budget process; and mechanisms and rules that regulate fiscal relationships between public authorities across subsectors of general government.

D. Second question referred for a preliminary ruling

77. The Corte dei conti (Court of Auditors) wishes to ascertain whether the limitation of its power of judicial review of the ISTAT 2020 list is compatible with Directive 2011/85 and Regulation No 473/2013. In its view, the contested provision of national law dismantles the mechanism for the independent monitoring of budgetary authorities provided for in those provisions of EU law and prevents it from reviewing the application of the budgetary rules.

78. Directive 2011/85 requires Member States:

– To adopt budgetary frameworks which include, inter alia, ‘arrangements for independent monitoring and analysis, to enhance the transparency of elements of the budget process’ (Article 2(f)).

– To have in place ‘public accounting systems … subject to internal control and independent audits’ (Article 3(1), *in fine*).

– To have ‘country-specific numerical fiscal rules [which] shall contain specifications as to … the effective and timely monitoring of compliance with the rules, based on reliable and independent analysis carried out by independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States’ (Article 6(1)(b)).

79. So far as concerns Regulation No 473/2013, Article 2(1)(a) and Article 5 thereof lay down an obligation on Member States to have in place bodies independent of the budgetary authority to ensure the effective monitoring of compliance with the EU budgetary rules. Those independent national bodies must also contribute towards the preparation of budgetary forecasts (Article 2(1)(b)).

80. Directive 2011/85 and Regulation No 473/2013 leave the Member States free to determine which independent bodies are to monitor effective compliance with the EU budgetary rules.

81. Recital 3 of Directive 2011/85 refers to the fact that independent audits may be carried out by public institutions such as courts of auditors.[43] There is, however, nothing to stop a Member State from choosing another type of entity or dividing that task between its court of auditors and other bodies. This also follows from recital 17 of Regulation No 473/2013.[44]

82. Subject to how the Italian national courts choose to read the provisions of national law in question, everything seems to indicate that, in Italy, the contested functions are performed by the Court of Auditors and the Ufficio Parlamentare di Bilancio (Parliamentary Budget Office).[45]

[43] ‘Complete and reliable public accounting practices for all sub-sectors of general government are a precondition for the production of high-quality statistics that are comparable across Member States. Internal control should ensure that existing rules are enforced throughout the sub-sectors of general government. Independent audits conducted by public institutions such as courts of auditors or by private auditing bodies should encourage best international practices.’

[44] ‘… given the diversity of possible and existing arrangements, while not the preferred option, it should be possible for more than one independent body to be in charge of monitoring compliance with those rules as long as there is a clear allocation of responsibility and as long as there is no overlap of competency over specific aspects of the monitoring.’

[45] Chapter VII of Law No 243/2012 governs the functions of this independent body, which is responsible for analysing and monitoring the evolution of public finances and assessing compliance with the budgetary rules.

83. The establishment of independent monitoring bodies is required by Directive 2011/85 and Regulation No 473/2013 only for the purposes of monitoring compliance of the EU budgetary rules.

84. However, neither those EU rules nor Regulation No 549/2013 impose on Member States an obligation to have independent bodies to prepare the statistical data they are required to communicate to the Commission (Eurostat). That task, as I have already explained, is performed by the national statistical institutes, which are not required to be independent by any provision of EU law.

85. In short, Directive 2011/85 and Regulation No 473/2013 leave Member States free to limit the intervention of their courts of auditors in the application of the ESA 2010 to general government bodies and to entrust that task in full or in part to another independent body.

E. Third question referred for a preliminary ruling

86. The Corte dei conti (Court of Auditors) wishes to ascertain whether 'the principle of the rule of law, in the form of effective judicial protection and the equivalence of remedies', preclude the contested provision of national law.

87. It follows from the information available to the Court, the observations of the parties and the answers to the questions asked at the hearing that ISTAT's decisions concerning the designation of general government bodies pursuant to the ESA 95 (predecessor to the ESA 2010) were reviewed by the administrative courts until Law No 228/2012[46] conferred that power on the Corte dei conti (Court of Auditors).

88. Law No 228/2012 added paragraph 6 to Article 11 of the CGC as follows: 'The Combined Chambers [of the Court of Auditors], in special composition, exercising their exclusive jurisdiction in matters of public accounting, shall decide at sole instance on proceedings … relating to the designation of general government entities by ISTAT'.

89. A new provision (Decree-Law No 137/2020, confirmed by Law No 176/2020) inserted at the end of the aforementioned provision the phrase 'solely for the purposes of applying national legislation on controlling public expenditure'.

90. In the view of the referring court, the contested provision:

– 'Prevents any judicial review of the correct application of the ESA 2010 by ISTAT for the purposes of defining the scope of sector S.13'.

– Imposes on the applicant the burden of bringing two legal actions, making it impossible in practice to protect its rights effectively within the prescribed time limit and undermining legal certainty as to the existence of general government status.

[46] Legge n. 228 del 24 dicembre 2012, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Legge di stabilità 2013) (Law No 228 of 24 December 2012, Provisions for preparing the annual and multiannual State budget (2013 Law on Stability)) (GURI No 302, 29 December 2012, Ordinary Supplement No 212).

– Has as its effect (if the position taken by ISTAT and the Ministry of Economy and Finance is correct) that 'a court other than that which has jurisdiction in matters of budgetary law under the Italian Constitution' adjudicates 'on the correct definition of the scope of the budget'.

91. The Italian Government, on the other hand, argues that, in limiting the jurisdiction of the Corte dei conti (Court of Auditors) to review ISTAT's decisions on the designation of general government entities, it has simply attributed (moved) that jurisdiction to the administrative courts. This, therefore, is a return to the situation prior to 2012, and there is no lack of effective judicial protection for the rights conferred by the rules of EU law.

92. The Court of Justice cannot intervene in the debate on the scope of the 2020 legislative amendment, which falls to be determined by the competent Italian courts. Still less can it enter into the polemic as to whether or not that amendment infringes the Italian Constitution. It can, however, determine whether a given interpretation infringes EU law.

93. The second subparagraph of Article 19(1) TEU compels Member States to provide remedies sufficient to ensure respect for the right to effective judicial protection [47] which individuals enjoy under Article 47 of the Charter in the fields covered by EU law.

94. Logically, that article of the Charter can be activated only on the basis set out in Article 51(1) thereof. In this case, the EU law applicable is contained in Regulation No 549/2013, as I have already stated. Since the legal situation in question is one governed, from a material point of view, by the EU law which the Italian authorities are required to apply, the provisions of the Charter are applicable.

95. However, neither that regulation nor any other provision of EU law specifies which national courts in particular are required to provide effective judicial protection. The (free) choice available to each Member State in this regard must nonetheless respect the principles of equivalence and effectiveness. [48]

96. That is the background against which the two scenarios contemplated by the referring court itself must be examined.

97. If the national legislation had simply entrusted to one court, in substitution for another, jurisdiction to provide effective judicial protection for the rights conferred by EU law, it would not have infringed Article 47 of the Charter or the second subparagraph of Article 19(1) TEU.

98. For, when a Member State chooses to attribute the power of judicial review of decisions implementing the ESA 2010 either to its court of auditors or to its administrative courts, it is exercising its procedural autonomy in a context in which EU law neither prescribes nor prohibits one solution or the other. Provided that it observes the principles of equivalence and effectiveness, that choice does not infringe the right to effective judicial protection.

[47] Judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234, paragraph 32 and the case-law cited).

[48] 'Subject to any EU rules on the matter, it is, in accordance with the principle of procedural autonomy, for the national legal order of each Member State to establish procedural rules for … remedies …, on condition, however, that those rules are not – in situations governed by EU law – less favourable than in similar domestic situations (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness)'. Judgments of 21 December 2021, *Randstad Italia* (C-497/20, EU:C:2021:1037, paragraph 58), and of 10 March 2021, *Konsul Rzeczypospolitej Polskiej w N.* (C-949/19, EU:C:2021:186, paragraph 43).

99. Conversely, if the 2020 legislative amendment entailed the absolute *disappearance* of any power of judicial review of decisions by ISTAT on the inclusion of institutional units in sector S.13 of the ESA 2010, there would be a gap in the effective judicial protection available in connection with the application of Regulation No 549/2013. In those circumstances, those institutional units would not be able to apply to any court to seek review of the actions by which ISTAT applies that regulation.

100. At the hearing, most of the parties and interveners argued that the legislative amendment had been confined to changing the form of judicial protection available to entities included in the ISTAT 2020 list. Since last year, the administrative courts have had jurisdiction to adjudicate directly on the validity of ISTAT's decisions on the inclusion of institutional units in sector S.13.[49]

101. In any event, the referring court retains jurisdiction to adjudicate on the designation of the entities classified by ISTAT, albeit for the purposes of applying the national rules on controlling public spending. The Italian Government states that, under that jurisdiction, the Corte dei conti (Court of Auditors) may adjudicate by way of interlocutory judgment on ISTAT's decisions, which it may disapply on a case-by-case basis.[50]

102. Does the existence of those two means of challenge observe the principles of equivalence and effectiveness?

103. The principle of equivalence might be adversely affected if, in similar cases, domestic procedural law provided exclusively for direct remedies. However, the Italian Government stated at the hearing that similar interlocutory remedies exist elsewhere in its legal system (such as in matters of taxation).[51] The principle of equivalence does not therefore appear to be adversely affected.

104. As regards the principle of effectiveness, I would recall that, according to the Court,

– 'EU law does not, in principle, require Member States to establish before their national courts, in order to ensure the safeguarding of the rights which individuals derive from EU law, remedies other than those established by national law …'.[52]

– However, 'the position is otherwise if it is apparent from the overall scheme of the national legal system in question that no legal remedy exists that would make it possible to ensure, *even indirectly*, respect for the rights that individuals derive from EU law, or again if the sole means whereby individuals can obtain access to a court is by breaking the law'.[53]

[49] According to what was reported at the hearing, the administrative courts *recovered* the general jurisdiction which they enjoy, unless special provisions apply, under Article 7 of the Codice del processo amministrativo (Code of Administrative Procedure), Legislative Decree No 104 of 2 July 2010 (GURI of 7 July 2010, p. 1). That power to annul was held by the Corte dei conti (Court of Auditors) between 2012 and 2020, as I have already explained.

[50] This appears to be an interlocutory procedure similar to the plea of illegality under Article 277 TFEU.

[51] See Article 7(5) of Decreto Legislativo n. 546, di 31 dicembre 1992, Disposizioni sul processo tributario in attuazione della delega al Governo contenuta nell'art. 30 della legge 30 dicembre 1991, n. 413 (Legislative Decree No 546 of 31 December 1992, Provisions on tax proceedings pursuant to the delegation conferred on the Government in Article 30 of the Law of 30 December 1991, No 413) (GURI No 9 of 13 January 1993 – Ordinary Supplement No 8).

[52] Judgments of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 143); of 21 December 2021, *Randstad Italia* (C-497/20, EU:C:2021:1037, paragraph 62); and of 7 July 2022, *F. Hoffmann-La Roche and Others* (C-261/21, EU:C:2022:534, paragraph 47).

[53] *Ibidem* (emphasis added).

105. The referring court criticises the contested provision because it imposes the burden of pursuing two legal remedies (before the administrative courts and before the Corte dei conti (Court of Auditors)). That duality could lead to contradictory judgments, to the detriment of the principle of legal certainty.

106. As the Italian Government stated at the hearing, entities included in the ISTAT 2020 list that wish to challenge their classification as forming part of general government are under no obligation to bring two actions. They are able to pursue the remedy they prefer, according to their interests:

– Before the administrative courts, they can seek and obtain the *erga omnes* annulment of ISTAT's decision.

– Before the Corte dei conti (Court of Auditors), they can challenge the consequences (in the form of measures to control public spending) of their classification as general government entities on the ISTAT list, and, where appropriate, have that classification disapplied, albeit on an interlocutory basis.

107. If the situation so described is consistent with the true position (which it will be for the referring court to determine), the system of remedies established following the adoption of the contested provision is not, in my view, rendered ineffective. The Italian legal system makes available to the institutional units affected, at the very least on an interlocutory basis, a form of effective judicial protection which appears to be compatible with the standard required by EU law, since those units are not compelled under any circumstances to pursue two legal remedies in order to secure the satisfaction of their claims.

108. It is true that the system so designed does not, as such, guarantee that there will be no contradictory judicial decisions the coexistence of which would undermine legal certainty. It is, however, for the Italian system of procedural law to provide, if it has not already done so, the appropriate mechanisms for disposing of any such conflicts between domestic courts. That said, the mere possibility that such conflicts will arise does not seem to me to be sufficient to support the assertion that that system is contrary to Article 47 of the Charter.

V. Conclusion

109. In the light of the foregoing, I propose that the Court's answer to the Corte dei conti (Court of Auditors, Italy) be as follows:

(1) Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (ESA 2010) is binding and has direct effect, and can therefore be relied on by an institutional unit (public or private entity) in connection with that unit's inclusion by the national statistical institute in sector S.13 (general government) of the ESA 2010.

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States applies only to relations between the national statistical and budgetary planning authorities and the EU institutions, and does not contain provisions applicable to any other type of public or private entity, or, therefore, produce direct effect for the benefit of the latter.

(2) Directive 2011/85 and Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area leave Member States free to determine which independent bodies are to monitor effective compliance with the EU budgetary rules.

(3) National legislation which reduces to an interlocutory procedure the judicial review by the national court of auditors of the list, drawn up by a national statistical institute, including institutional units classified as general government entities pursuant to the ESA 2010, and attributes the power of direct judicial review of that decision to the administrative courts, does not infringe the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union.